

DEYOE VISTA
COVENANT RESTRICTING RESALE WITH OPTION TO PURCHASE AND ASSIGNMENT OF RENTS

This COVENANT RESTRICTING RESALE AND OPTION TO PURCHASE AND ASSIGNMENT OF RENTS (“Covenant”) is made this [#NUMBER] day of [MONTH], [YEAR] by and between the developer, South Puget Sound Habitat for Humanity (“Habitat”), and Owner, _____, and Owner’s successors and assigns in interest for the purpose of implementing the goal of creating, preserving, maintaining and protecting affordable and owner-occupied housing for households of low income.

In consideration of the benefits received by the Owner, this Covenant shall govern and affect the right to sell, convey, encumber, transfer or dispose of in any way all portions of interest in the real property described in Exhibit A attached hereto and incorporated herein by this reference (“Property”).

The developer, South Puget Sound Habitat for Humanity (“Habitat”), intends to establish resale controls to provide for the continued availability of the Property to low income households.

Owner expressly acknowledges that this Covenant addresses a number of issues related to the purchase and resale of the Property, including without limitation that: (i) the Property must be occupied as the Owner’s principal residence; and (ii) at the time of purchase, the combined maximum income for all household members cannot exceed 80% of the Olympia, WA metropolitan statistical area (Olympia MSA) median annual income (adjusted for household size).

SECTION I
RESTRICTIONS ON DISPOSITION OF PROPERTY

1.1 Habitat’s Consent to Transfer. The Property and any interest in title thereto shall not be sold, leased, rented, assigned, or otherwise transferred to any person or entity without express written consent of Habitat, or its designee or assignee, as applicable, which consent shall be consistent with Habitat’s goal of creating, preserving, maintaining, and protecting housing for low income households, and which consent shall not be unreasonably withheld or denied so long as the proposed transfer of an interest in the Property otherwise complies with this Covenant. Such consent shall be in Habitat’s sole discretion and any proposed purchaser, lessee or assignee shall satisfy all qualification, eligibility, and assumption requirements as set forth herein. Any transfer of title to the Property or any interest therein by the Owner, or any attempt thereof, in violation of this section or any of the provisions and requirements of this Covenants shall be void ab initio and shall constitute a default hereunder.

1.2 Dispositions Not Restricted. The following transfers of title or any interest therein are not subject to Section 2.1 of this Covenant, and written consent by Habitat as provided in Section 1.1 will be based solely on the transfer being consistent with the provisions of this Section 1.2: transfer by gift, devise, or inheritance to grantee’s spouse or issue; taking of title by surviving joint tenant; transfer of title to a spouse as part of a divorce or dissolution proceedings; and acquisition of title or interest therein in conjunction with marriage; provided, however, that the covenants and restrictions created herein shall continue to run with the title to said Property following any of said transfers.

SECTION II
OPTION TO PURCHASE

2.1 Purchase Option to Habitat. Owner hereby grants and conveys to Habitat, for valuable consideration, the sufficiency of which is hereby acknowledged, an option to purchase the Property and any improvements located thereon under conditions as hereinafter set forth in Section 3.1. Habitat may designate a governmental or non-profit organization to exercise its option to purchase, and Habitat or its designee may assign this right to an individual private buyer who meets Habitat’s eligibility qualifications. After the exercise of said option by Habitat, its designee or assignee, in the manner as hereinafter prescribed, Habitat, its designee or assignee, may assign said option to purchase to any substitute, individual, or private buyer who meets the eligibility requirements and is approved by Habitat; provided, however, that such subsequent assignment shall not extend any time limits contained herein. Any transfer of title to the Property or any interest therein by the Owner, or any attempt thereof, in violation of these covenants shall be void ab initio and shall constitute a default hereunder.

2.2 Exception of FHA Loans. Notwithstanding any provision in this Covenant to the contrary, the option granted by Section 2.1 shall not be exercised by Habitat when a deed of trust insured by the Federal Housing Administration, a division of HUD (“HUD/FHA”), is secured by the subject property, and (i) Owner is undergoing consideration by HUD/FHA for assignment forbearance relief; or (ii) Owner is undergoing consideration for relief under HUD’s Temporary Mortgage Assistance Payment (TMAP) program.

SECTION III PROCEDURE FOR PURCHASE OR RESALE

3.1 Notice of Intent to Sell. Whenever the Owner no longer desires to own the Property, the Owner shall notify Habitat in writing to that effect. Such notice (the “Notice of Intent to Sell”) shall be personally delivered or deposited in the United States Mail, postage prepaid, or by certified mail and addressed to Habitat, its designee or assignee. Habitat, its designee or assignee, shall then have the right to exercise its option to purchase said Property by delivery of written notice, by personal delivery or certified mail to the Owner at any time within sixty (60) days from the receipt by Habitat of such written notice from the Owner of Owner’s intent to sell or dispose of the Property. If Habitat, its designee or assignee, exercises its option to purchase said Property, then close of escrow for said purchase shall be within one hundred twenty (120) days of Habitat’s receipt of Owner’s Notice of Intent to Sell, unless such period is extended by the mutual agreement of the Owner and Habitat, its designee or assignee. If Habitat, its designee or assignee, does not exercise its option to purchase said Property, then the Owner may proceed to sell the Property to an Eligible Buyer in compliance with the provisions of this Covenant. An Eligible Buyer is a person who meets all of the requirements set forth in this Covenant, including those eligibility requirements set forth in Section IV.

3.2 Assumption Agreement. Prior to the close of escrow an Assumption Agreement (substantially in the form attached hereto as Exhibit B) shall be executed in a form acceptable to Habitat from the proposed purchaser under which the proposed purchaser shall assume the obligations and duties and agree to be bound by the provisions set forth in this Covenant. The Assumption Agreement may contain provisions to reflect any changes to Habitat’s adopted affordability policies. The recordation of the Assumption Agreement shall be a condition of Habitat’s approval of the proposed transfer. The Owner shall pay a reasonable assumption fee to Habitat and reimburse it for out of pocket costs to cover the costs of administering its rights and obligations under this Covenant. Notwithstanding the foregoing, even if said Assumption Agreement is not so executed and recorded, any person acquiring an interest in the Property from or through the Owner shall acquire such interest subject to and be bound by the provisions of the Covenant. Any purchaser of the Property or of any portion of or interest in the Property, by the acceptance of a deed therefore, whether from Owner or from any subsequent owner of the Property, or by the signing of a contract or agreement to purchase the same, shall by the acceptance of such deed or by the signing of such contract or agreement be deemed to have consented to and accepted the covenants, conditions, restrictions and limitations set forth herein.

3.3 Escrow Process. Each Owner and proposed purchaser shall approve and sign escrow instructions provided by Habitat, which instruct escrow regarding the requirements of this Covenant, if any. Owner and proposed purchaser shall provide Habitat with a copy of the final sale contract, settlement statement, copy of signed Assumption Agreement, recording number of the Assumption Agreement, escrow instructions, and any other document that Habitat may reasonably request to enforce the terms of this Covenant.

3.4 Sale or Transfer in Violation. In the event a sale or transfer is made in violation of the terms of this Covenant or false or misleading statements are made in any documents or certification submitted to Habitat for its approval of the sale or transfer, Habitat may declare a default under this Covenant. Habitat shall also have the right to file action at law or in equity to force the parties to terminate and rescind the sale contract and declare the sale void notwithstanding the fact that the sale or transfer may have closed and become final as between the seller and purchaser. In any event, any costs, liabilities or obligations incurred by the seller and purchaser for the return of any moneys paid or received in violation hereunder or for any costs and legal expenses, shall be borne by the seller and purchaser, and not by Habitat. The seller and purchaser shall hold Habitat and its designees harmless for any action Habitat reasonably takes in good faith in enforcing the terms of this Covenant.

SECTION IV
ELIGIBILITY REQUIREMENTS

4. Any proposed purchaser must meet the following eligibility requirements to be an Eligible Buyer of the Property, and by acceptance of a deed or otherwise acquiring an interest in the Property, hereby warrants as follows:

4.1 Principal Residence. Owner will occupy the Property as his or her principal residence for the term of this Declaration. Owner shall be considered as occupying the Property as a principal place of residence if the Owner is living on the Property for at least nine (9) months out of each calendar year. In the event the Property is vacant while being actively offered for sale by Owner, this owner occupancy requirement shall not apply; however, Owner may not rent the Property during such period. It is understood that Habitat's primary purpose is to provide the opportunity to acquire a personal residence and not rental investment property; any other use of the Property in violation of this Covenant is void ab initio.

4.2 Leasing. During the term of this Covenant, the Owner shall not rent or lease the Property. It is understood that Habitat's primary purpose is to provide the opportunity to acquire a personal residence and not rental investment property; any lease in violation of this Covenant is void ab initio.

4.3 Ownership Status Report. Owner must submit a status report of Owner's occupancy of the Property within 10 days of receipt of any such request from Habitat. This report must include an explanation of any rental or vacancy questions raised by Habitat over the time period specified by Habitat in its request for a status report.

4.4 Income Limitation. At the time of purchase, the combined maximum income for all household members of the Owner shall not exceed eighty percent (80%) of the median annual income adjusted for household size for a household in the Olympia, WA MSA as published by HUD from time to time, or such income limit as Habitat may determine. In the event such income determination is no longer published, or has not been updated for a period of at least eighteen (18) months, Habitat may use or develop such other reasonable method as it may choose in order to determine the income for households in Thurston County at the median annual income for Thurston County adjusted for household size. "Income" means the definition of income under Section 8 of the United States Housing Act of 1937, codified at 42 U.S.C.S. § 1437a(b)(1990), as further determined by the United States Secretary of Agriculture in 24 CFR § 813.106 (1997). In the event that Section 8 is repealed or the definition of income under Section 8 is substantially modified, then "income" shall mean the anticipated total income for the next twelve month period received from all sources by each member of the household, excluding, however, temporary or non-recurring income (including gifts), income from the employment of children under age 18, payments for the care of foster children or foster adults, and amounts received specifically for the reimbursement of medical expenses for a member of the household; provided, however, that income does not include any funds that a person may not use to pay a mortgage (e.g. food stamps), and provided that all such income must be expected to continue for at least three years.

SECTION V
LIABILITIES

5. In no event shall Habitat become in any way liable to the Owner, or become obligated in any manner, by reason of the assignment of its option to purchase, or after such an assignment become in any way obligated or liable to the Owner for any failure of Habitat's designee or assignee to consummate a purchase of the Property or to comply with the terms of any purchase and sale agreement.

SECTION VI
TERMINATION

6.1 Duration of Habitat's Purchase Rights. The provisions set forth in this Covenant shall be in effect for fifty (50) years from the date this Covenant was originally signed.

6.2 Termination of Covenant. Notwithstanding any provision in this Covenant to the contrary, and provided that this Section 6.2 applies only to transfers of title to lenders to which this Covenant is subordinate according to Section 9, all of the provisions of this Covenant shall terminate and have no further force and effect upon the occurrence of one of the following events as noted in sections 6.2.1, 6.2.2, and 6.2.3:

6.2.1 Title to subject property is acquired by HUD/FHA, Veterans Administration (“VA”), Federal National Mortgage Association (“FNMA”), Federal Home Loan Mortgage Corporation (“FHLMC”) or another party upon foreclosure of a deed of trust or mortgage insured, made or held by HUD/FHA, VA, FNMA, FHLMC or an institutional lender or an institutional investor which is neither a natural person nor directly or indirectly related to or affiliated with Owner or Owner’s successors in interest (an “Institutional Lender”).

6.2.2 Title to the subject property is acquired by HUD/FHA, VA, FNMA, FHLMC or another party by deed in lieu of foreclosure of a deed of trust or mortgage insured, made or held by HUD/FHA, VA, FNMA, FHLMC or an institutional lender or an institutional investor which is neither a natural person nor directly or indirectly related to or affiliated with Owner or Owner's successors in interest.

6.2.3 A deed of trust insured by HUD/FHA on the subject property is assigned to HUD/FHA.

6.3 Recordation of Termination. Upon termination of the Covenant, on request of the then record owner of the fee title to the Property, Habitat shall execute, acknowledge and record a termination of the Covenant.

SECTION VII DEFAULTS, REMEDIES, ASSIGNMENTS OF RENTS

7.1 Default and Remedies. Upon violation of any of the provisions of this Covenant by Owner or Owner’s proposed purchaser, Habitat may give written notice to Owner specifying the nature of the violation. If the violation is not corrected to the satisfaction of Habitat within a reasonable period of time, not longer than thirty (30) days after the date the notice is mailed, or within such further time as Habitat determines is necessary to correct the violation, Habitat may declare a default under this Covenant. Upon the declaration of a default or if the Owner or Owner’s proposed purchaser makes any misrepresentation in connection with receiving any benefits under this Covenant, Habitat may apply to a court of competent jurisdiction for specific performance of this Covenant, for an injunction prohibiting a proposed sale or transfer in violation of this Covenant, for a declaration that a transfer in violation of this Covenant is void, or for any such other relief at law or in equity as may be appropriate. In the event of default by the Owner, and/or by the Owner’s transferee in those circumstances where a transfer has occurred in violation of this Covenant, the Owner or the Owner’s transferee shall hold Habitat and Habitat’s respective employees or other agents harmless and reimburse the expenses, legal fees and costs for any action the Habitat takes in enforcing the provisions of these Covenants.

7.2 Habitat’s Option to Purchase. Notwithstanding, and in addition to, the remedies provided in Section 7.1, Owner hereby grants to Habitat, the option to purchase the Property effective upon the declaration of a default. Said option to purchase is given in consideration of the economic benefits received by Owner resulting from ownership of the Property made possible by the assistance of Habitat in developing the Property.

7.3 Assignment of Rents. Owner hereby assigns to Habitat the right to receive the rents due or collected during the entire period the Property is occupied in violation of any of the terms of this Covenant.

SECTION VIII DEFAULT MORTGAGES

8.1 Notice of Default. The Owner covenants to cause to be filed for record in the Auditor’s Office of Thurston County a request for a copy of any notice of default and of any notice of sale under any deed of trust or mortgage with power of sale encumbering said Property pursuant to RCW 61.24.045. Such request shall specify that any such notice shall be mailed to Habitat.

8.2 Habitat’s Right to Purchase. Any notice of default and sale given to and received by the Habitat shall constitute a Notice of Intent to Sell hereunder and Habitat, its designee or assignee, may exercise its option to

purchase prior to any trustee's sale, judicial foreclosure sale, or transfer by deed in lieu of foreclosure; provided, however, the time by which Habitat, its designee or assignee, may complete the purchase of the Property, shall be limited by the period of foreclosure prescribed in the RCW 61.12 or 61.24, or forfeiture under RCW 61.30, and not the period allowed under Section III of this Covenant. In the event the Owner fails to file such request for notice, Habitat's option to purchase shall run from the date Habitat has actual knowledge of a sale or proposed sale, but Habitat's option to purchase shall not extend beyond the period of foreclosure prescribed in RCW 61.12 or 61.24, or forfeiture under RCW 61.30, and a mortgagee's or trust deed beneficiary's rights of foreclosure shall not be affected.

SECTION IX PRIORITY OF MORTGAGE

9.1 Lender's Rights Not Impaired. Notwithstanding any provisions herein, this Covenant shall not diminish or affect the rights (including the legal rights to take action following a default under an obligation secured by the Property) of HUD/FHA, FNMA, FHLMC, VA or the holder of any deed of trust or mortgage recorded on Property made, held, or insured by an institutional lender or an institutional investor which is neither a natural person nor directly or indirectly related to or affiliated with Owner or Owner's successors in interest.

9.2 Subordination. This Covenant shall be subordinate to any deed of trust or mortgage recorded on the Property made, held or insured by HUD/FHA, VA, FNMA, FHLMC or other institutional lender or an institutional investor which is neither a natural person nor directly or indirectly related to or affiliated with Owner or Owner's successors in interest. Any party, and its successors and assigns, receiving title to the Property through a trustee's sale, judicial foreclosure sale or deed in lieu of foreclosure, of such deed of trust or mortgage, and any conveyance or transfer thereafter, shall receive title free and clear of the provisions of the Covenant. Notwithstanding the foregoing, nothing shall prevent an Institutional Lender from selling the Property subject to this Covenant to an Eligible Buyer in any foreclosure proceeding or after acquisition of title to the Property.

9.3 Only Agreement. This Section IX shall be the whole and only agreement necessary with regard to the subjection and subordination of the provisions of the Covenant to a mortgage or deed of trust referred to in Section 9.2 above. In furtherance of the foregoing, the provisions of Section IX shall fully apply with respect to (and for the benefit of anyone holding, making, insuring, or title insuring) mortgages and deeds of trust recorded subsequent to the recording of the Covenant without necessity of any other or further agreement of subordination being required. Notwithstanding the foregoing, Habitat and Owner shall execute and record such additional agreement as may reasonably be necessary to cause any Mortgagees' ALTA Title Insurance Policy to insure that the Covenant is subordinate to any mortgage or deed of trust referred to in Section 9.2.

9.4 Intent of Habitat and Owner. In accordance with the conditions hereof, Habitat and the Owner intentionally waive, relinquish, subject and subordinate the provisions of the Covenant together with all rights and privileges of the Habitat thereunder in favor of the lien or charge of any mortgage or deed of trust referred to in Section 9.2 upon said Property and understand that in reliance upon, and in consideration of, this waiver, relinquishment, subjection and subordination, specific loans and advances will be or have been made and title insurance will be or has been issued and, as part and parcel thereof, specific monetary and other obligations have been entered into which would not have been made or entered into but for said reliance upon this waiver, relinquishment, subjection and subordination.

SECTION X SUPERIORITY OF AGREEMENT

10. The Owner covenants that he or she has not, and will not, execute any other agreement with provisions contradictory to or in opposition to the provisions hereof except for documents executed pursuant to the requirements of the lenders with a security of interest in the Property superior to the position of Habitat and that, with the exception of the aforementioned lender documents, this Covenant is controlling as to the rights and obligations between and among Owner, Habitat and their respective successors.

SECTION XI
MISCELLANEOUS

11.1 Notice. All notices required herein shall be served by United States mail, certified or registered, to South Puget Sound Habitat for Humanity, 711 Capitol Way South, #401, Olympia, WA, 98501, or at a place Habitat may later designate.

11.2 Number/Gender. The use of the singular or plural and the masculine and feminine or neuter pronouns shall be construed as interchangeable and such correct pronouns when referring to a particular person, persons, entity or entities shall be construed to have been used herein appropriately and correctly.

11.3 Applicable Law. This Covenant and the covenants, conditions and restrictions contained herein shall be construed under the laws of the State of Washington. References to statutes are construed to apply to later enactments on the same subject.

11.4 Owner’s Acceptance. By execution of this Covenant and the acceptance of any interest in the Property, the Owner accepts and agrees to be bound by the covenants contained herein.

11.5 Invalid Provision. If any one or more of the provisions contained in this Covenant shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Covenant, and this Covenant shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

11.6 Successors and Assigns. Unless otherwise limited and/or indicated herein, this Covenant shall constitute covenants that run with the land, as provided by law, and shall be binding upon and inure to the benefit of all parties and all persons who shall be or shall become the owner of, or otherwise have an interest in the Property.

11.7 Amendments. This Covenant may not be amended or terminated without the written consent of Habitat, unless otherwise specifically provided for in this Covenant.

Dated as of the date first above written.

- Owner

- Owner

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this ____ day of _____, 20__, before me, a Notary Public in and for the State of Washington, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument and acknowledged it to be _____ free and voluntary act and deed for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

NOTARY PUBLIC in and for the State of Washington,
residing at _____
My appointment expires _____
Print Name _____

South Puget Sound Habitat for Humanity's concurrence and approval:

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this ____ day of _____, 20__, before me, a Notary Public in and for the State of Washington, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument and acknowledged it to be _____ free and voluntary act and deed for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

NOTARY PUBLIC in and for the State of Washington,
residing at _____
My appointment expires _____
Print Name _____

EXHIBIT A
TO COVENANT RESTRICTING RESALE AND OPTION TO PURCHASE
Legal Description of Property

EXHIBIT B
TO COVENANT RESTRICTING RESALE AND OPTION TO PURCHASE
Owner's Assumption Agreement

Reference is made to that certain Covenant Restricting Resale and Option to Purchase ("Covenant") entered into and made effective as of the _____ day of _____, 20__, by _____ ("Owner") and Owner's successors and assigns in interest for the purpose of implementing South Puget Sound Habitat for Humanity's goal of creating, preserving, maintaining and protecting housing in the City of Lacey, Washington, for households of low incomes. Said Covenant governs and affects the Owner's right to sell, convey, encumber, transfer or dispose of in any way the Owner's interest in the real property described in Exhibit A attached hereto and incorporated herein by this reference ("Property"). The undersigned Owner has or intends to acquire an interest in the Property. Pursuant to Section 3 of said Covenant, and in order to obtain Habitat's approval of said Owner acquiring such interest in the Property, said Owner (on behalf of said Owner and said Owner's heir, successors and assigns) hereby assumes the obligations and duties and agrees to be bound by the

provisions set forth in said Covenant. This Assumption Agreement made effective as of the ____ day of _____, 20__, by _____ ("Owner") supersedes the prior Assumption Agreement made effective as of the ____ day of _____, 20__ by _____ ("Owner").

Dated as of the date first above written.

- Owner

- Owner

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this ____ day of _____, 20__, before me, a Notary Public in and for the State of Washington, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument and acknowledged it to be _____ free and voluntary act and deed for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

NOTARY PUBLIC in and for the State of Washington,
residing at _____
My appointment expires _____
Print Name _____

South Puget Sound Habitat for Humanity's concurrence and approval:

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

On this ____ day of _____, 20__, before me, a Notary Public in and for the State of Washington, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument and acknowledged it to be _____ free and voluntary act and deed for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

NOTARY PUBLIC in and for the State of Washington,
residing at _____
My appointment expires _____
Print Name _____