

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (“Agreement”) is made this ___ day of _____ 2022, between WHATCOM COUNTY, a Washington municipal corporation (“Seller”), and LAUREL AND FOREST HOUSING, LLC, a Washington limited liability company (“Buyer”). The Agreement is made with reference to the following facts:

- a. Seller owns fee title to real property located in Whatcom County, Washington, at the following addresses: **1000 and 1010 North Forest Street**, are all located in Bellingham, Washington (“Property”), which are legally described in Exhibit A attached hereto, and are identified for illustrative purposes only by the map attached as Exhibit B.

1. AGREEMENT TO SELL AND PURCHASE. Subject to the terms and conditions contained in this Agreement, Buyer agrees to buy, and Seller agrees to sell, the Property.

2. PURCHASE PRICE AND PAYMENT.

- 2.1 Purchase Price. The total purchase price of the Property will be FIFTEEN and 00/100 DOLLARS (\$15.00) (the “Purchase Price”).

- 2.2 Terms of Payment. The total Purchase Price shall be paid in cash, in full on the date of Closing, subject to Buyer depositing purchase price in escrow with the Title Company.

3. TITLE AND RELATED MATTERS.

- 3.1 Use Restriction. At Closing, Seller and Buyer shall execute a Declaration of Affordable Housing Covenants imposing certain use restrictions on the Property (the “Use Restrictions”) in the substantially the same form as Exhibit C attached hereto (the “Use Restriction Covenant Agreement”). The Use Restriction Covenant Agreement shall be a Permitted Exception.

- 3.1.2 The Use Restriction Covenant Agreement shall be substantially in the form of Exhibit C attached hereto and, among other things, shall provide that if the County believes the Use Restriction has been violated, the County shall provide Buyer with written notice of such belief. Upon expiration of the fifty-year period Use Restriction, the terms in the Use Restriction Covenant Agreement shall automatically terminate without the execution or recording of any additional documentation.

4. DEED. Seller shall convey the Properties at the Closing by Bargain and Sale Deed (the “Deed”). The Deed shall not be subject to any monetary liens, excepting not yet due or payable property taxes and subject only to the Use Restriction Covenant Agreement.

5. CLOSING. This sale shall be closed on or before December 31, 2022, at the offices of Chicago Title, 1835 Barkley Blvd., Bellingham, Washington. Buyer and Seller agree to deposit with the Closing Agent all instruments and monies required to complete the purchase of the Properties in accordance with this Agreement. The date specified herein for closing (the “Closing” or “Closing Date”) shall be the date when all conveyance documents are recorded, and the sale proceeds are available to the Seller.

6. CLOSING OBLIGATIONS, COSTS AND PRORATIONS.

6.1 Buyer shall deliver to Closing Agent the Purchase Price, in immediately available funds.

6.2 Seller shall execute, acknowledge, and deliver to Buyer the Deed conveying title to the Property to Buyer.

6.3 Seller shall execute, acknowledge, and deliver to Buyer a certificate in the form required by applicable regulations under Section 1445 of the Internal Revenue Code of 1986, as amended, affirming that Seller is not a foreign person (as that term is defined therein) and containing such other information as may be required thereunder.

6.4 Seller shall cause Closing Agent to issue to Buyer a Standard Form Title Insurance Policy (“Policy”) for the Property issued by the Closing Agent in an amount of \$1,230,000, insuring fee title in Buyer subject only to the standard printed exceptions to such policies, the Permitted Exceptions, not yet due or payable property taxes, and any liens or encumbrances agreed to or incurred by Buyer. Buyer shall pay the standard policy title insurance premium for the Policy.

6.5 The parties shall execute and deliver a Real Estate Excise Tax Affidavit and take all other steps necessary to effect transfer of the Property to Buyer as contemplated by this Agreement. Buyer shall pay the real estate excise tax due in connection with transfer of the Property.

6.6 Property taxes and assessments for the current year shall be prorated as of the date of Closing.

6.7 The Buyer shall pay for escrow and closing fee or similar charge of the Closing Agent.

6.8 The Buyer shall reimburse Seller for its appraisal costs and fees incurred to date, totaling , at time of Closing.

6.9 Except as expressly provided in this Agreement, each party shall bear all other costs and expenses incurred by such party in connection with this transaction.

7. POSSESSION. Buyer shall be entitled to possession of the Property on Closing.

8. ACCESS. Upon mutual acceptance of this Agreement, the Buyer shall have reasonable access to the Property for the purpose of conducting inspections. Buyer hereby agrees to indemnify, defend, and hold harmless Seller from any and all cost, expense or liability, claims, damages or liens caused by or arising out of such inspections or activities of Buyer, its agents or employees on the Property. The obligations of the preceding sentence shall survive the Closing or termination of this Agreement.

9. WARRANTIES AND REPRESENTATIONS. Seller represents and warrants to Buyer as follows:

9.1 Seller's Authority. Seller, or the persons signing on behalf of the Seller, has full power and authority to execute this Agreement and perform Seller's obligations under this Agreement.

9.2 Leases or Contracts. The Property currently has no tenants to whom the Buyer intends to continue leasing after closing. All utilities are currently paid by the Seller and are in the Seller's name. After Closing, utilities will be paid by the Buyer and at Closing all utilities shall be transferred to the Buyer's name.

9.3 Legal Actions. There is neither pending nor threatened any legal action against Seller which could affect Buyer after its acquisition of the Property, or which could enjoin or restrict Seller's right or ability to perform obligations under this Agreement.

9.4 AS IS, WHERE IS. Other than the above representations and the hazardous waste warranty below, Buyers agrees to and shall take the Property "as is, where is" with all faults. By purchasing the Property, Buyer shall be irrevocably deemed to have fully inspected the Property and made itself fully aware and comfortable with any and all aspects of the Property, with the exception of the representations above and the warranty below.

10. HAZARDOUS WASTE WARRANTY. Seller represents and warrants to Buyer that, to the best of its knowledge without duty of inquiry: (i) there are no Hazardous Substances (as defined below) currently located on or under the Property in a manner or quantity that presently violates any Environmental Law (as defined below); (ii) there are no underground storage tanks located on the Property; and (iii) there is no pending or threatened investigation or remedial action by any governmental agency regarding the release of Hazardous Substances or the violation of Environmental Law at the Property. As used herein, the term "Hazardous Substances" shall mean any substance or material now or hereafter defined or regulated as a hazardous substance, hazardous waste, toxic substance, pollutant or contaminant under any federal, state or local law, regulation or ordinance governing any substance that could cause actual or suspected harm to human health or the environment ("Environmental Law"). The term "Hazardous Substances" specifically includes, but is not limited to, petroleum, petroleum by-products, and asbestos.

11. FEASIBILITY. Buyer shall have Fifteen (15) days after the effective date of this Agreement ("Due Diligence Period") in which to conduct its review of the Property to verify whether the Property is suitable for the Buyer's intended purposes.

12. CONTINGENCIES. This Agreement is subject to the following Seller's Contingencies.

a) Whatcom County Council approval to sell the Property.

13. DEFAULT

13.1 Default by Buyer. In the event that Buyer fails, without legal excuse, to complete the purchase of the Properties, then the Seller shall be entitled to terminate this Agreement as the sole and exclusive remedy available to Seller for such default.

13.2 Default by Seller. In the event that the Seller fails, without legal excuse, to complete the sale of the Property, then the Buyer shall have the right to initiate legal action against Seller to specifically enforce this Agreement.

14. MISCELLANEOUS.

14.1 Survival. All representations and warranties set forth in this Agreement and all provisions of the Agreement, the full performance of which are not required prior to Closing, shall survive Closing and be fully enforceable thereafter.

14.2 Time of the Essence. Time is of the essence in the performance of this Agreement.

14.3 Entire Agreement. There are no other verbal or other agreements, which modify or affect this Agreement.

14.4 Amendment. This Agreement may not be modified or amended except by the written agreement of the parties.

14.5 Benefit. The provisions in this Agreement shall inure to the benefit of and be binding upon the successors, assigns and personal representatives of the parties hereto.

14.6 Notices. All notices or demands to be given by each party to the other pursuant to this Agreement shall be deposited in the United States mails, postage prepaid, by certified or registered mail, return receipt requested, and addressed as follows:

SELLER:
Whatcom County
c/o Whatcom County Executive's Office
Attn: Tyler Schroeder and Tawni Helms
311 Grand Avenue, Suite 108
Bellingham, WA 98825-4082
(360) 778-5200

BUYER:
c/o Opportunity Council
Attn. Executive Director
1111 Cornwall Avenue
Bellingham, WA 98225

Notices and demands sent by mail shall be deemed to have been given and delivered when properly mailed and the postmark affixed by the United States Post Office shall be conclusive evidence of the date of mailing. Either party may, by notice to the other, change its address by notice.

14.7 Execution of Documents. The parties agree to execute any documents which may be necessary and appropriate to carry out the intent of the transaction contemplated by this Agreement.

14.8 Attorney's Fees. In the event either Buyer or Seller shall institute suit to enforce any rights, hereunder, the substantially prevailing party shall be entitled to court costs and reasonable attorney's fees, at trial and on appeal, and not just statutory fees, against the losing party.

14.9 Brokerage Commissions. Neither party has retained a broker, and each party shall hold the other harmless from any such claim.

14.10 Facsimile or Electronic. Facsimile or electronic transmission of any signed original document, and retransmission of any signed facsimile or electronic transmission, shall be the same as transmission of an original.

14.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which together will constitute a single agreement.

14.12 Governing Law. This Agreement shall be governed by the laws of the State of Washington.

14.13 Severability. If any provision of this Agreement is held illegal or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and the remainder of this Agreement shall remain operative and binding on the Parties, if possible.

IN WITNESS WHEREOF, the parties have signed this Agreement the date above first written.

SELLER:

WHATCOM COUNTY

By: _____

Its: _____

Date: _____

BUYER:

LAUREL FOREST HOUSING, LLC,
a Washington limited liability company

By: Laurel Forest Manager, LLC
Its: Managing Member

By: Opportunity Council
Its: Manager

By: _____

Its: _____

Date: _____

EXHIBIT A

Legal Description

1) 1000 North Forest Street

Lots 7 and 8, Block 80, "Map of the Town of New Whatcom, Whatcom Co., Wash. Terr. 1883" now part of the consolidated Coty of Bellingham, Whatcom County, Washington, as per the map thereof, recorded in Book 1 of plats, page 24, in the Auditor's office of said county and state.

and

2) 1010 North Forest Street

Lot 6, Block 80, "Map of the Town of New Whatcom, Whatcom Co., Wash. Terr. 1883" now part of the consolidated Coty of Bellingham, Whatcom County, Washington, as per the map thereof, recorded in Book 1 of plats, page 24, in the Auditor's office of said county and state.

EXHIBIT B
Form of Covenant

WHEN RECORDED, MAIL TO:

County

Mailing Address

ATTN: _____

WASHINGTON STATE COUNTY AUDITOR/RECORDER/S INDEXING FORM

<p>Document Title(s) <i>(or transactions contained therein):</i></p> <p style="text-align: center;">DECLARATION OF AFFORDABLE HOUSING COVENANTS</p>
<p>Reference Number(s) of Documents assigned or released:</p> <p><input type="checkbox"/> Additional reference numbers on page _____ of document.</p>
<p>Grantor(s) <i>(Last name first, then first name and initials):</i></p> <p>1. LAUREL AND FOREST HOUSING, LLC, a Washington limited liability company</p> <p><input type="checkbox"/> Additional names on page of document.</p>
<p>Grantee(s) <i>(Last name first, then first name and initials):</i></p> <p>1. WHATCOM COUNTY, WASHINGTON</p> <p><input type="checkbox"/> Additional names on page of document.</p>
<p>Legal Description <i>(abbreviated form; i.e., lot, block, plat name, section-township-range):</i></p> <p>Lot(s): 6, 7 & 8 Block: 80 New Whatcom</p> <p><input type="checkbox"/> Additional legal on Exhibit "A" of document.</p>

Assessor's Property Tax Parcel Account Number(s) :

76988, 380331 147557 0000, 77006 and 380331 152513 0000

***The Auditor/Recorder will rely on the information provided on the form.
staff will not read the document.***

The

DECLARATION OF AFFORDABLE HOUSING COVENANTS

PROJECT NAME

SECTION 1 —	DEFINITIONS AND INTERPRETATION
SECTION 2 —	RESIDENTIAL RENTAL PROPERTY
SECTION 3 —	AFFORDABLE UNITS FOR ELIGIBLE HOUSEHOLDS
SECTION 4 —	REPORTING REQUIREMENTS
SECTION 5 —	SECTION 8 CERTIFICATE HOLDERS
SECTION 6 —	LEASE PROVISIONS
SECTION 7 —	SALE OR TRANSFER OF THE PROJECT
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—	COVENANTS RUN WITH LAND
SECTION 11 —	ENFORCEMENT
SECTION 12 —	SUBORDINATION, TERMINATION, RIGHTS RESERVED BY HUD
SECTION 13 —	ESTOPPEL CERTIFICATE
SECTION 14 —	AGREEMENT TO RECORD
SECTION 15 —	RELIANCE
SECTION 16 —	GOVERNING LAW
SECTION 17 —	NO CONFLICT WITH OTHER DOCUMENTS
SECTION 18 —	AMENDMENTS
SECTION 19 —	NOTICES
SECTION 20 —	FEE WAIVER REQUIREMENTS
SECTION 21 —	SEVERABILITY
SECTION 22 —	CONSTRUCTION SECTION
23 —	TITLES AND HEADINGS

EXHIBITS

"A"	LEGAL DESCRIPTION OF PROPERTY "B"
	DESIGNATION OF AFFORDABLE UNITS
"C"	CERTIFICATE OF HOUSEHOLD ELIGIBILITY "D"
	ANNUAL PROJECT CERTIFICATION

DECLARATION OF AFFORDABLE HOUSING COVENANTS

THIS DECLARATION OF AFFORDABLE HOUSING COVENANTS (the "Covenant") is made and entered into as of this _____ day of _____, 20__, by and between the COUNTY OF WHATCOM, a Municipal Corporation of the State of Washington (the "County"); and LAUREL AND FOREST HOUSING, LLC, a Washington limited liability company (the "Owner").

WITNESSETH:

This Covenant is predicated upon the following facts:

A. The Owner is the owner of property located at 1000 AND 1010 North Forest Street, in Bellingham, Washington. Owner intends to develop said property by constructing and renting number dwelling units and constructing day care facilities (the "Project"), subject to County approval and such other approvals by State and local agencies as required.

B. The Owner's proposed Project shall include fifty-six (56) affordable rental units for Moderate-/Low-Income Households ("Eligible Households", as the term is defined below). Such affordable rental units shall be of such bedroom quantity and quality as are in proportion to the overall proportion of bedroom quantity and quality of all of the rental units in the Project.

C. The County finds that the Project will benefit the County by providing affordable rental housing for Eligible Households.

D. The Owner has indicated its willingness to accept certain conditions affecting the use of the Property. It is the purpose of this Covenant to set forth the conditions under which the County has approved the Project and to impose enforceable restrictions on the use and occupancy of the rental portion of the Project.

E. This Covenant is entered into pursuant to code chapter or section, which implements the Affordable Housing policies of the County.

NOW, THEREFORE, for and in consideration of the mutual promises aforesaid and made and relied upon by the parties hereto, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner and the County agree as follows:

SECTION 1 – DEFINITIONS AND INTERPRETATION

Capitalized terms used herein shall have the following meanings unless the context in which they are used clearly requires otherwise.

"Affordable Rent" means a monthly housing expense, including Utilities or an applicable Utility Allowance for tenant-paid utilities, and any expenses required by the Owner as a condition of tenancy (including but not limited to renter's insurance, pest control, sewer system capacity charges), that is no greater than 30% of gross household income for households earning no more than 60% of the area median income at initial occupancy. Household incomes are adjusted for housing size, as estimated from time to time by the United States Department of Housing and Urban Development ("HUD"). If HUD ceases to provide such estimates of median income, then median income shall mean such comparable figure for Whatcom County, Washington published or reported by a federal, state, or local agency as the County shall reasonably select.

"Affordable Units" means the number of units in the Project as selected by the Owner and as approved by the County or its Designee, as set forth in **Exhibit B**, and reserved for occupancy by Eligible Households pursuant to Section 3.

"County" means the County of Whatcom.

"Completion Date" means the date of the completion of the construction of the Project, as that date shall be certified as provided in Section 4.

"Covenant" means this Declaration of Affordable Housing Covenants between the County and the Owner.

"Eligible Household" means one or more adults and their dependents, which adults certify that they meet the qualifications for eligibility set forth below in this definition, in Section 3.F. of this Covenant, and as set forth in the Certificate of Household Eligibility attached hereto as **Exhibit C** and incorporated by reference herein, and who certify that their Household Income does not exceed the applicable percent of the Whatcom County Median Income, as set forth in this definition and Section 3.F of this Covenant, adjusted for Household Size.

"Household Income" means all income from all household members over the age of 18 residing in the household. Income consists of those items listed in **Exhibit C**, Certificate of Household Eligibility (e.g. wages, interest income, etc.). Income of dependents who reside within a household for less than four (4) months of the year will not be counted toward Household Income.

"Household Size" means the average household size assumed for purposes of calculating Affordable Rents as follows:

<u>UNIT TYPE</u>	<u>AVERAGE HOUSEHOLD SIZE</u>
Studio	1 Person
1 Bedroom	1.5 Persons
2 Bedroom	3 Persons
3 Bedroom	4.5 Persons

"Lender" means HUD/FHA, Veterans Administration ("VA"), Federal National Mortgage Association ("FNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), or another party acquiring such loan upon foreclosure of a deed of trust or mortgage ("Deed of

Trust") insured, made or held by HUD/FHA, VA, FNMA, FHLMC; or an institutional third-party lender or investor.

"Owner" means LAUREL AND FOREST HOUSING, LLC, a Washington limited liability company, and its successors and assigns, and any surviving, resulting, or transferee entity.

"Owner Representative" means the person or persons (who may be employees of the Owner) designated from time to time to act hereunder on behalf of the Owner in a written certification furnished to the County or its Designee, containing a specimen signature of such person or persons and signed by the Owner or on behalf of the Owner by a duly authorized representative of the Owner.

"Project" means the building, structures and other improvements to be constructed on the Property, and all equipment, fixtures and other property owned by the Owner and located on, or used in connection with, such buildings, structures and other improvements and all functionally related and subordinate facilities.

"Property" means the real property which will be devoted to the Project as more particularly described in **Exhibit A** which is attached hereto, and incorporated by reference herein, and all rights and appurtenances thereunto appertaining.

"Qualified Project Period" means fifty (50) years from the Completion Date.

"Utilities" means basic residential utility services, including heat, gas, electricity, water, sewer, and solid waste and recycling services, but excluding sewer system capacity charges and telephone, internet, and television services.

"Utility Allowance" means a deduction to Affordable Rent, established by the County or its Designee, for tenant-paid Utilities.

"Whatcom County Median Income" means the median family income for the Bellingham, Washington MSA as most recently determined by the Secretary of Housing and Urban Development ("HUD") under Section 8(f)(3) of the United States Housing Act of 1937, as amended. In the event that HUD no longer publishes median family income figures for Whatcom County, the Director may estimate the Whatcom County Median Income in such manner as the Director shall determine.

SECTION 2 – RESIDENTIAL RENTAL PROPERTY

A. General Description. The Owner will acquire and construct the Project for purposes of providing multi-family rental housing and childcare facilities, and the Owner shall own, manage, and operate (or cause the management and operation of) the Project to provide multi-family rental housing comprising a building or structure or several inter-related buildings or structures, each consisting of more than one dwelling unit and facilities functionally related and subordinate thereto. As used herein facilities functionally related and subordinate to the Project shall include facilities for use by the tenants, including, for example, recreational facilities, parking areas, and other facilities which are reasonably required for the Project, for example, heating and cooling equipment, trash disposal equipment, or units of resident managers or maintenance personnel.

B. Similar Quality Construction. All of the dwelling units in the Project shall be constructed of similar quality, and each dwelling unit in the Project shall contain facilities for living, sleeping, eating, cooking and sanitation for a single person or a household which are complete, separate and distinct from other dwelling units in the Project and will include a sleeping area, separate bathing facility, and a cooking range, refrigerator and sink.

C. Conversion to Condominium. In the event the Project is proposed for conversion to condominium, owner-occupied, or non-rental residential use, the Owner must submit to the County for its review a plan for preserving the Affordable Units. The County can consider options which would convert the Affordable Units to owner occupancy by Eligible Households. The Owner must receive

authorization from the County prior to conversion to condominium, owner-occupied, or non-rental residential use. This section does not waive the Owner's obligations to comply with any other law or regulations pertaining to conversion to ownership use.

SECTION 3 — AFFORDABLE UNITS FOR ELIGIBLE HOUSEHOLDS

A. Number of Affordable Units. The Owner shall lease or rent, or make available for lease or rental, to the general public, all of the Affordable Units in the Project.

B. Designation/Re-designation of Affordable Units. The Owner agrees to rent the dwelling units designated in **Exhibit B** as Affordable Units. Units so designated shall have substantially the same equipment and amenities as other dwelling units in the Project with the comparable number of rooms. The Affordable Unit(s) shall be intermingled with all other dwelling units and shall have a unit mix comparable to the overall mix of units in the Project. The County or its Designee shall approve or deny the proposed Affordable Units based upon the criteria set forth in this section.

The Owner, from time to time, may propose to change the particular units designated as Affordable Units, provided that at all times at least number of all of the residential units in the Project are designated as Affordable Units, and provided that at all times the same unit mix [and affordability mix] is retained. The Owner shall notify the County or its Designee of the proposed change in writing for the County's or its Designee's approval. The County or its Designee will review the proposed changes and shall approve or deny the proposed changes based upon the criteria set forth in this Section.

C. Affordable Units Rent Level. The monthly rent for the Affordable Units occupied by Eligible Households shall not exceed the applicable Affordable Rents, and for each specific tenant, shall be adjusted no more than once every twelve (12) months, and in no event within the first twelve months of occupancy.

D. Renting Affordable Units to Eligible Households. During the Qualified Project Period, the Owner shall rent or lease the Affordable Units to Eligible Households and, if at any time the Owner is unable to rent or lease the Affordable Units, the Affordable Units shall remain vacant pending rental or lease to

Eligible Households.

E. Equal Access to Common Facilities. Tenants in the Affordable Units shall have equal access to enjoyment of all common facilities of the Project.

F. Qualifying Eligible Household Income for Affordable Units at Initial Occupancy and Recertification. Qualifying Eligible Household Income at time of initial occupancy may not exceed sixty percent (60%) of Whatcom County Median Income, adjusted for housing size.

G. Household Size Limits for Affordable Units. The Owner shall utilize the following occupancy standards for Affordable Units:

<u>Unit Size</u>	<u>Household Size</u>
Studio	1-2 Persons
1 Bedroom	1-2 Persons
2 Bedroom	2-4 Persons
3 Bedroom	3-6 Persons

SECTION 4 — REPORTING REQUIREMENTS

A. Notice of Occupancy Permit. Within thirty (30) days of issuance of any final inspection or, if applicable, occupancy permits, the Owner shall notify the County's Health Department or its Designee of receipt of the first certificate of occupancy for the Project.

B. Completion of Certificate of Household Eligibility. Prior to allowing any household to occupy any Affordable Unit, the Owner shall require the prospective tenant to complete a Certificate of Household Eligibility that shall be substantially in the form set forth in **Exhibit C**. The Owner shall also undertake a good faith effort to verify the applicant's Household Income, as reported on the completed Certificate. The Owner's obligation to verify the reported Household Income shall be limited to requesting copies of and reviewing the applicant's federal income tax returns,

unless the Owner has actual knowledge, or reason to believe, that the information provided by the applicant is materially inaccurate. In the event federal income tax returns are not available, the Owner shall verify Household Income using wage or salary statements, or other income records that the County or its Designee may consider appropriate.

C. Annual Recertification of Residents. On an annual basis, the Owner shall require all households occupying Affordable Units to complete and return to the Owner an updated Certificate of Household Eligibility. The Owner shall undertake a good faith effort to verify the reported Household Income, as reported in the completed Certificate. The Owner's obligation to verify the Household Income shall be limited to obtaining a copy of and reviewing the tenant's federal income tax returns, unless the Owner has actual knowledge or reason to believe that the information provided by the household is materially inaccurate. In the event federal income tax returns are not available, the Owner shall verify Household Income using wage or salary statements, or other income records the County or its Designee may consider appropriate.

The Owner shall file certifications with the Web Based Annual Reporting System (WBARS) or the County or its Designee, by attachment to the Annual Project Certification required pursuant to Subsection E of this Section. The County or its Designee may investigate independently to verify certifications submitted by the Owner.

D. Annual Project Certification. After the Completion Date and until 90% of the rental units are occupied, the Owner shall, on a quarterly basis, file with the County or its Designee an Annual Project Certification, in substantially the form of **Exhibit D**. Thereafter, the Owner shall file an annual project certification through Web Based Annual Reporting System (WBARS) or, if WBARS is not available, shall file such certification annually on or before March 31st with the County, which must set forth the required information for the preceding year.

E. Maintain Complete Records. The Owner shall maintain complete and accurate records pertaining to the Affordable Units, and shall permit any duly authorized representative of the County, including, without limitation, its Designee, to inspect the books and records of the Owner pertaining to the Affordable Units, and if applicable, incomes of Eligible Households residing in the

Project. The Owner's failure to maintain such records or failure to allow examination by the County or any duly authorized representative shall constitute a default hereunder.

F. Form of Certification. Notwithstanding anything in this Section to the contrary, unless filing certifications through WBARS, the Owner shall submit all documentation required by this Section on the forms designated herein, which may be modified by the County or its Designee from time to time. Changes to forms by the County or its Designee shall not significantly enlarge the Owner's obligations hereunder.

SECTION 5 – SECTION 8 CERTIFICATE HOLDERS

The Owner shall accept as tenants for Affordable Units, on the same basis as all other prospective households, households who are recipients of Federal certificates for rent subsidies pursuant to the existing program under Section 8 of the United States Housing Act of 1937, as amended. The Owner shall not apply or permit the application of management policies or lease provisions with respect to the Project which have the effect of precluding occupancy of Units by holders of Section 8 certificates.

SECTION 6 – LEASE PROVISIONS

A. It is the Owner's responsibility to screen and select tenants for desirability and credit worthiness. Except as restricted in this Covenant, such selection is within the Owner's discretion. If written management policies exist, or exist in the future, with respect to the Project, the County or its Designee may review such written policies and may require changes in such policies, if necessary, so that they comply with the requirements of this Covenant.

B. All leases for Affordable Units shall contain clauses wherein each individual lessee: (i) certifies the accuracy of the statements made in the Certificate of Household Eligibility, (ii) agrees that the household income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy, and (iii) agrees that misrepresentation in the certification is a material breach of the lease, entitling the

Owner to terminate the lease for the Affordable Unit.

SECTION 7 – SALE OR TRANSFER OF THE PROJECT

The Owner hereby covenants and agrees not to sell, transfer or otherwise dispose of the Project or any portion thereof without first providing a written notice from the purchaser stating that the purchaser understands, and will comply with the Owner's duties and obligations under this Covenant. Such notice must be received by the County or its Designee at least 10 days prior to the close of escrow.

SECTION 8 – TERM

This Covenant shall become effective upon its execution and delivery and shall continue in full force and effect throughout the Qualified Project Period, unless sooner modified or terminated in accordance with Section 12 hereof.

SECTION 9 – NO DISCRIMINATION

The Owner shall not discriminate on the basis of race, creed, religion, color, sex, sexual orientation, age, national origin, marital status, or presence of any mental or physical handicap as set forth in RCW 49.60.030, as now existing and as may be amended, in the lease, use, or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project.

SECTION 10 – COVENANTS RUN WITH LAND

The County and Owner hereby declare their understanding and intent that the covenants, conditions, and restrictions set forth herein directly benefit the land (i) by enhancing and increasing the enjoyment and use of the Project by certain Eligible Households, and (ii) by furthering the public purposes of providing housing for Eligible Households.

The County and the Owner hereby declare that the covenants

and conditions contained herein shall bind and the benefits shall inure to, respectively, the Owner and their successors and assigns and all subsequent owners of the Project or any interest therein, and the County and its successors and assigns, all for the Qualified Project Period. Except as provided in Section 12 of this Covenant, each and every contract, deed or other instrument hereafter executed conveying the Project or any portion thereof or interest therein shall contain an express provision making such conveyance subject to the covenants and conditions of this Covenant, provided however, that any such contract, deed, or other instrument shall conclusively be held to have been executed, delivered and accepted subject to such covenants and conditions, regardless of whether or not such covenants and conditions are set forth or incorporated by reference in such contract, deed, or other instrument.

SECTION 11 – ENFORCEMENT

A. Enforcement Provisions. The Owner shall exercise reasonable diligence to comply with the requirements of this Covenant and shall correct any such noncompliance within sixty (60) days after such noncompliance is first discovered by the Owner or would have been discovered by the exercise of reasonable diligence, or within 60 days after the Owner receives notice of such noncompliance from the County or its Designee; provided however, that such period for correction may be extended by the County if the Owner is exercising due diligence to correct the noncompliance. If such noncompliance remains uncured after such period, then the Owner shall be in default and the County on its own behalf may take any one or more of the following steps:

1) By any suit, action or proceeding at law or in equity, require the Owner to perform its obligations under this Covenant, or enjoin any acts or things which may be unlawful or in violation of the rights of the County hereunder; it being recognized that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of the Owner's default;

2) Have access to, and inspect, examine and make copies of, all of the books and records of the Owner pertaining to the Project. Provided, however, the County or its Designee shall not divulge such information to any third party unless required by law or unless the same is necessary to enforce the County's rights

hereunder; and

3) Take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants, conditions and agreements of the Owner under this Covenant.

4) The Owner hereby grants to the County or the Designee the option, upon Owner's default under this Covenant, for the Qualified Project Period to lease up to number of the units in the Project as mutually selected by the County or its Designee and the Owner for the purpose of subleasing such units to Eligible Households, but only to the extent necessary to comply with the provisions of this Covenant. The County or its Designee may lease from the Owner the units at the Affordable Rent level less a reasonable management fee to reimburse the County or its Designee for any expenses incurred in connection with such sublease. The County or its Designee may terminate its lease of the units in the Project upon determination that the Owner is no longer in default pursuant to this Covenant.

B. Hold Harmless. The Owner shall defend, indemnify, and hold the County, its officers, officials, employees, volunteers and its Designee and any other party authorized hereunder to enforce the terms of this Covenant, harmless from any and all claims, injuries, damages, losses, or suits, including reasonable attorney fees, arising out of or resulting from Owner's breach of the Covenant.

C. No Third-Party Beneficiaries. The provisions of this Covenant and of the documents to be executed and delivered in connection herewith are and will be for the benefit of the Owner, the County and its Designee only and are not for the benefit of any third party (including, without limitation, any tenants or tenant organizations), and accordingly, no third party shall have the right to enforce the provisions of this Covenant or of the documents to be executed and delivered in connection herewith.

SECTION 12 – SUBORDINATION, TERMINATION, RIGHTS RESERVED BY HUD

A. Notwithstanding any provision in this Covenant to the contrary, 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:

(1) Foreclosure of a HUD/FHA insured loan is initiated under which the Project is held as a security.

(2) Title to the Project is acquired by Lender or HUD/FHA by deed in lieu of foreclosure of the Deed of Trust.

(3) Title to the Project 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 ("Deed of Trust") insured, made or held by HUD/FHA, VA, FNMA, FHLMC; or an institutional, third-party lender or investor (collectively, "Lender").

(4) The Deed of Trust, if insured by HUD/FHA, is assigned to HUD/FHA.

Notwithstanding anything in this Covenant to the contrary, enforcement of this Covenant shall not serve as a basis for (i) default under the Deed of Trust insured by HUD/FHA or any other Lender, or (ii) an acceleration of the loan secured by the Deed of Trust ("Loan"), or result in any claim against the Project, the Loan proceeds, any reserve or deposit required by HUD/FHA or any other Lender in connection with the Loan transaction or the rents or other income from the Project other than from available surplus cash as that term is defined by HUD/FHA or any other Lender.

B. Notwithstanding anything in this Covenant to the contrary:

(1) All of the provisions of this Covenant are subordinate and subject to the Deed of Trust, the Loan, and all documents relating to the Loan ("Loan Documents"), if any, as well as all applicable HUD/FHA mortgage insurance regulations, related HUD/FHA administrative requirements, Section 8 of the U.S. Housing Act of 1937, as amended, and the regulations thereunder, as amended, and the rights of the Lender thereunder. In the event of any conflict between this Covenant and the provisions of any applicable HUD/FHA mortgage insurance regulations, related HUD/FHA administrative requirements, Section 8 of the U.S. Housing Act of 1937, as amended, and the regulations thereunder, as amended, the applicable HUD/FHA mortgage insurance regulations, related HUD/FHA administrative requirements, Section 8 of

the U.S. Housing Act of 1937, as amended, and the regulations thereunder, as amended, will control.

(2) Lender shall take no role in monitoring compliance with state and federal use and occupancy requirements; nor shall Lender be required to provide notice to third parties of actions under the Deed of Trust, if any.

(3) No amendment to this Covenant will be effective without the prior written consent of Lender, if any.

(4) The Owner, its successors or assigns, will take all steps necessary to comply with this Covenant; provided that the Owner, its successors or assigns, shall not be required to take action prohibited by, or to refrain from action required by Lender, pursuant to the National Housing Act (as amended), applicable HUD/FHA mortgage insurance regulations, related administrative requirements, Section 8 of the Housing Act of 1937, as amended, and the regulations thereunder, as amended, or the Loan and the Loan Documents.

SECTION 13 - ESTOPPEL CERTIFICATE

The County agrees, upon the request of the Owner or its successor in interest, to promptly execute and deliver to the Owner or its successor in interest or to any potential or actual purchaser, mortgagor or encumbrance of the Project, a written certificate stating, if such is true, that the County has no knowledge of any violation or default by the Owner of any of the covenants or conditions of this Covenant, or if there are such violations or defaults, the nature of the same.

SECTION 14 - AGREEMENT TO RECORD

The Owner shall cause this Covenant to be recorded in the real property records of Whatcom County, Washington. The Owner shall pay all fees and charges incurred in connection with such recording and shall provide the County or its Designee with a copy of the recorded document.

SECTION 15 - RELIANCE

The County and the Owner hereby recognize and agree that the representations and covenants set forth herein may be relied upon by County and the Owner. In performing its duties and obligations hereunder, the County may rely upon statements and certificates of the Owner and Eligible Households, and upon audits of the books and records of the Owner pertaining to occupancy of the Project. In performing its duties hereunder, the Owner may rely on the Certificates of Household Eligibility unless the Owner has actual knowledge or reason to believe that such Certificates are inaccurate.

SECTION 16 – GOVERNING LAW

This Covenant shall be governed by the laws of the State of Washington, except to the extent such laws conflict with the laws of the United States or the regulations of federally insured depository institutions or would restrict activities otherwise permitted in relation to the operation of federally insured depository institutions.

SECTION 17 – NO CONFLICT WITH OTHER DOCUMENTS

The Owner warrants that it has not executed and will not execute, any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event the requirements of this Covenant are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

SECTION 18 – AMENDMENTS

This Covenant shall be amended only by a written instrument executed by the parties hereto or their respective successors in title, and duly recorded in the real property records of King County, Washington. Amendments to **Exhibit B** shall be considered to be approved in writing when the revised **Exhibit B** is signed by the Owner and the County or its Designee without the need for a further written document attaching the revised exhibit and striking prior versions of the exhibit. In the event of conflict between versions

of **Exhibits B**, the version maintained by the County or its Designee as the then-current version, signed by Owner and County or its Designee, shall prevail.

SECTION 19 – NOTICE

Any notice or communication hereunder, except legal notices, shall be in writing and may be given by registered or certified mail. The notice or communication shall be deemed to have been given and received when deposited in the United States Mail, properly addressed with postage prepaid. If given otherwise, it shall be deemed to be given when delivered to and received by the party to whom addressed. Such notices and communications shall be given to the parties hereto at their following addresses:

If to the County: County name

mailing address

city, WA zip

Attn: person name or title

Attn: Housing Planner

If to the Owner: Laurel Forest Housing, LLC

c/o Opportunity Council

Attn. Executive Director

1111 Cornwall Avenue

Bellingham, WA 98225

Any party may change its address for notices upon ten (10) days prior written notice to the other parties. Legal counsel for a party may deliver notices on behalf of the represented party and such notice shall be deemed delivered by such party.

If the Owner delivers written notice of the name and address of the investor member of Owner (the "Investor Member"), the County shall deliver a copy of any notices to Owner to the Investor Member. The Investor Member shall have the right, but not the obligation, to cure any default of Owner under this Covenant. The County hereby agrees that any cure of any default made or tendered

by the County shall be deemed to be a cure by the Owner and shall be accepted or rejected on the same basis as if made or tendered by the Owner. The County agrees that the Covenant will not be considered to be in default until the expiration of all contractual notice and cure periods provided to the Owner and, if applicable, to Owner's Investor Member.

SECTION 21 - SEVERABILITY

If any provision of this Covenant shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

SECTION 21 - CONSTRUCTION

Unless the context clearly requires otherwise, words of the masculine, feminine or neuter gender shall be construed to include each other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. All the terms and provisions hereof shall be construed to effectuate the purposes set forth in this Covenant and to sustain the validity hereof.

SECTION 22 - TITLES AND HEADINGS

The titles and headings of the sections of this Covenant have been inserted for convenience of reference only, are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this document or any provision hereof or in ascertaining intent, if any question of intent shall arise.

[Signature page follows.]

IN WITNESS WHEREOF, the Owner and County have each executed this Declaration of Affordable Housing Covenants on the Date first above written.

County:

name

Its: title

Approved as to Form:

County Attorney

Owner:

Laurel Forest Housing, LLC,
a Washington limited liability company

By: Laurel Forest Manager, LLC
Its: Managing Member

By: Opportunity Council
Its: Manager

By: _____
Name: _____
Title: _____

STATE OF WASHINGTON }
 }
COUNTY OF WHATCOM } SS .

On this _____ day of _____, 20_____, before me, a
Notary Public in and for the State of Washington, duly commissioned and sworn, personally
appeared _____,

known to me to be the _____ of the COUNTY OF
_____, who executed the foregoing document on behalf of said County, and
acknowledged the said document to be the free and voluntary act and deed of said County, for the uses
and purposes therein mentioned, and on oath stated that he or she was authorized to execute said
document.

IN WITNESS WHEREOF I have given under my hand and official seal

this _____ day of _____, 20_____.

Notary Public in and for the State
of Washington.

Print Name _____

Residing at _____

My commission expires _____

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT C

FORM OF CERTIFICATE OF HOUSEHOLD ELIGIBILITY

CERTIFICATION OF HOUSEHOLD ELIGIBILITY

I, _____, and I, _____, as applicants for rental of the following Affordable unit, do hereby represent and warrant that my/our adjusted annual income is

\$ _____

Project: _____ Project Address: _____

Unit # _____ No. of Bedrooms: _____ Household size *: _____ Disabled: Yes / No

Household Members:

_____, Age _____, _____, Age _____

_____, Age _____, _____, Age _____

_____, Age _____, _____, Age _____

The attached computation is \$ _____, and includes all income I/we received for the date I/we execute a rental agreement for an affordable unit, or the date on which I/we will initially occupy such unit, whichever is earlier.

This affidavit is made with the knowledge that it will be relied upon by the County to determine maximum income for eligibility. I/We warrant that all information set forth in this Certification of Household Eligibility is true, correct and complete based upon information I/We deem reliable, and that the estimate contained in the preceding paragraph is reasonable and based upon such investigation as the undersigned deemed necessary. I/we will assist the Owner in obtaining any information or documents required to verify the statements made in this Certification.

I/We acknowledge that I/we have been advised that the making of any misrepresentation or misstatement in this affidavit will constitute a material breach of my/our agreement with the Owner to lease the unit and will entitle the Owner to prevent or terminate my/our occupancy of this unit by institution of an action for eviction or other appropriate proceedings.

I/We do hereby swear under penalty of perjury that the foregoing statements are true and correct.

Applicant _____ Applicant _____

Date: _____

Date: _____

Mailing Address _____

Phone _____

INCOME COMPUTATION

"Household income" includes all items listed below, from all household members over the age of

18. Income of dependents over 18, who reside in the unit for less than four (4) months of the year will not be counted toward household income.

For the previous 12-month period, indicate income received from the following sources:

- a) The full amount, before any payroll deductions, of wages, salaries, overtime pay, commissions, fees, tips, bonuses and other compensation for personal services, and payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay and any earned income tax credit to the extent that it exceeds tax liability; a) _____
 - b) Net income from operations of a business or profession or net income of any kind from real or personal property; b) _____
 - c) Interest and dividends; c) _____
 - d) The full amount of periodic payments received from Social Security, pensions, retirement funds, annuities, insurance policies, disability or death benefits, alimony, child support, or any similar type of periodical payments, and any regular contributions or gifts from persons not residing in the unit; d) _____
 - e) Public assistance payments; e) _____
 - f) Regular and special allowances and pay of a member of the Armed Forces who is a spouse or head of the family. f) _____
- TOTAL \$ _____

(NOTE: The following are not considered income: occasional, infrequent gifts of money; one-time payments from insurance policies or an inheritance settlement; scholarships or student loans for tuition, fees or books; foster child care payments; the value of Food Stamp coupons; hazardous duty pay to a member of the Armed Forces; relocation payments; assistance received under the Low Income Home Energy Assistance Program or any similar program).

EXHIBIT D

FORM OF ANNUAL PROJECT CERTIFICATION

ANNUAL PROJECT CERTIFICATION

Project: _____

Address: _____

The undersigned hereby certifies that during the annual Reporting Period ending _____, _____ units or _____ percent of the

residences in the Project were utilized as Affordable housing, as required in the Declaration of Affordable Housing Covenants, in the following manner:

- a) _____ units or _____ percent of units in the Project were rented to Tenants who did not exceed the applicable income limits of _____% or _____% of area median income;
- b) _____ units or _____ percent of units in the Project were rented to Tenants who exceeded _____% or _____% of area median income but were below _____% or _____% of area median income;
- c) _____ units or _____ percent of units in the Project were rented to Tenants who now exceed _____% or _____% of area median income, and therefore can no longer be considered eligible for Affordable units;
- d) _____ units or _____ percent of units in the Project are being held vacant for eligible Tenants.

The above information and that on the attached sheet(s) has been verified as required by the Declaration of Affordable Housing Covenants between the County of _____ and Owner Organization Name: _____

Name of Owner

Signature of Owner

Date: _____, 20____

ANNUAL PROJECT CERTIFICATION

PROJECT NAME _____

REPORTING PERIOD: _____ through _____.

Does Contract Rent include:										Are residen	
Electricity & Gas?	Yes	Water & Sewer?	Yes	Garbage?	Yes	Renter's insurance?	Yes	One Parking Space?	Yes	Renter's insurance	
	No		No		No		No		No		

For each "No" enter the Allowance or Fee below (except Renter's Insurance, if it's not required).

Unit #	Tenant Name	Family Size	Move-in Date	Current Lease Date	Current HH Income*	Unit Type (BRs)	Affrd Level	Max Housing Expense**	Electric & Gas Allowance	Water & Sewer Allowance ***	Garbage Allowance (or Fee)	Insurance Allowance	Parking Fee

- * As of report date or when current lease was signed.
- ** Find on "Rental and Income Guidelines."
- *** Maximum Housing Expenses also include water, sewer, and garbage. If these are paid for directly by the tenant (in addition to rent), the maximum rent must be reduced by the typical costs to the tenant of such utilities, or a set allowance established by the city (or ARCH).

<u>ARCH Electric & Gas Allowances:</u>	<u>Water & Sewer Allowances:</u>
Studio	Studio
1- bedroom	1-bedroom
2- bedroom	2-bedroom
3- bedroom	3-bedroom
4- bedroom	4-bedroom
5- bedroom	5-bedroom

Vacancy Status: The following units are vacant as of _____ and are being held vacant for eligible Tenants.

