

**WHATCOM COUNTY CONTRACT  
INFORMATION SHEET**

Whatcom County Contract No.  
202207025

Originating Department:	Executive
Division/Program: <i>(i.e. Dept. Division and Program)</i>	Non Departmental
Contract or Grant Administrator:	K. Schott-Bresler/T.Helms
Contractor's / Agency Name:	Kulshan Community Land Trust

Is this a New Contract?	If not, is this an Amendment or Renewal to an Existing Contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #:	

Does contract require Council Approval?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	If No, include WCC:
Already approved? Council Approved Date:	(Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)		

Is this a grant agreement?	If yes, grantor agency contract number(s):	CFDA#:
Yes <input type="checkbox"/>		
Is this contract grant funded?	If yes, Whatcom County grant contract number(s):	ARPA Funding
Yes <input checked="" type="checkbox"/>		

Is this contract the result of a RFP or Bid process?	If yes, RFP and Bid number(s):	Contract	1388502.6610
Yes <input type="checkbox"/>		No <input checked="" type="checkbox"/>	Cost Center:

Is this agreement excluded from E-Verify?	No <input type="checkbox"/>	Yes <input checked="" type="checkbox"/>
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If YES, indicate exclusion(s) below:

<input type="checkbox"/> Professional services agreement for certified/licensed professional.	<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).
<input type="checkbox"/> Contract work is for less than \$100,000.	<input type="checkbox"/> Work related subcontract less than \$25,000.
<input type="checkbox"/> Contract work is for less than 120 days.	<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.
<input type="checkbox"/> Interlocal Agreement (between Governments).	

Contract Amount:(sum of original contract amount and any prior amendments):	Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b> , and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b> 1. Exercising an option contained in a contract previously approved by the council. 2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance. 3. Bid or award is for supplies. 4. Equipment is included in Exhibit "B" of the Budget Ordinance 5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.
\$ 1,250,746.60	
This Amendment Amount:	
\$	
Total Amended Amount:	
\$	

Summary of Scope: This agreement provides funding for the acquisition of land, to be developed for affordable housing for low and moderate-income households in Whatcom County.

Term of Contract:	Expiration Date:	12/31/2028
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Contract Routing:	1. Prepared by:	Kayla Schott-Bresler	Date:	7/27/22
	2. Attorney signoff:	Christopher Quinn	Date:	7/28/22
	3. AS Finance reviewed:	bbennett	Date:	7/28/22
	4. IT reviewed (if IT related):		Date:	
	5. Contractor approved:	Dean Fearing	Date:	7/29/22
	6. Submitted to Exec.:		Date:	
	7. Council approved (if necessary):		Date:	
	8. Executive signed:		Date:	
	9. Original to Council:		Date:	

## Thornton Road Kulshan Community Land Trust Agreement Qualified Affordable Housing

### I PARTIES

This Agreement is made by and between **Whatcom County** (hereinafter referred to as **the County**), and Kulshan Community Land Trust (hereinafter referred to as **Subrecipient**).

### II TERM

This Agreement takes effect on date of agreement, August 9, 2022, and shall continue in full force and effect until, December 31, 2028, unless extended by mutual written agreement of both Parties or terminated in accordance with Section VIII of this Agreement.

### III PURPOSE

The purpose of this Agreement is to provide funding support for the acquisition of 2039 Thornton Street, Ferndale (hereinafter referred to as **the "Property"**) using American Rescue Plan Act ("ARPA") funds designated for promoting long-term housing security through the creation of affordable housing. These County ARPA funds will be used to complete the purchase of the Property which will be developed to include a minimum of 50 affordable homes ("Units"). (The development and construction of the affordable homes on the Property is hereinafter referred to as the "Project".) The Project will serve households who otherwise qualify for the U.S. Department of Housing and Urban Development HOME Investment Partnership Program.

### IV PROJECT DESCRIPTION

The insufficient supply of affordable housing in Whatcom County has created housing instability for low and moderate-income households, which has been exacerbated by the COVID-19 pandemic. Under this Agreement, Subrecipient will purchase eight acres of land in the City of Ferndale as a site for the construction of 50 affordable homeownership and/or rental homes ("Units"). The site is located within a mile from an elementary, middle, and high school. Subrecipient is requesting \$1,250,746.60 from Whatcom County to fund the purchase price of the land. Subrecipient will maintain affordability of developed homes for a minimum of 50 years. A restrictive covenant will be recorded to ensure the long-term affordability of the Units.

### V RECITALS

The Parties make this Agreement based on and in recognition of certain relevant facts

and circumstances including:

- A. The County has received American Rescue Plan Act (ARPA) funding. One of the goals of the ARPA is to serve impacted and disproportionately impacted groups. One of the vehicles to do so is to invest in housing and neighborhoods through affordable housing development and preservation.
- B. Under this Agreement **Subrecipient** will purchase the Property and will construct housing using the community land trust model and other best practices to guarantee long-term affordability for at least 50 years.
- C. The County will fund Subrecipient's purchase of the Property through a grant of County ARPA funds in the amount of **\$1,250,746.60**.
- D. Home purchasers and renters of the Units must be income eligible, in accordance with ARPA requirements described in the State and Local Fiscal Recovery Fund Final Rule and defined in Exhibit E.
- E. Subrecipient must begin construction of the Project no later than December 31, 2026. The Property may not be developed for any other purpose until such time as the Project is completed, except as may be pre-authorized in writing by the County.
- F. The Parties agree that if Subrecipient does not begin construction of the Project on or before December 31, 2026, the Subrecipient will convey all interest in the Property to the County at no cost, unless the Parties agree in writing to alternative development plans to complete the goals of the American Rescue Plan Act. If required, Subrecipient's transfer of the Property under this provision shall be completed no later than March 1, 2027.
- G. The Project must be completed by December 31, 2028. Certificates of occupancy for all units at 2039 Thornton Road must be demonstrated no later than December 31, 2028. Should Subrecipient fail to complete the Project and receive certificates of occupancy for all Units on or before December 31, 2028, the County shall have the right to direct further development of the property and to negotiate alternative development arrangements and land leases to complete the goals of the American Rescue Plan Act. This timeline under this provision may be modified by mutual agreement in writing of the County and Subrecipient. Council approval shall be required to modify the timeline contained herein beyond December 31, 2030.
- H. The Whatcom County Council reviewed the intent of the project to provide affordable housing and approved a grant to **Subrecipient** from the ARPA Fund in the amount of \$1,250,746.60.
- I. This Agreement is contingent on approval by the Whatcom County Council.

## **VI MUTUAL CONSIDERATION**

The parties do not intend to create any new or separate legal or administrative entity by this Agreement but intend for this mutual Agreement to govern the County's financial

support for the Project. The terms and conditions contained herein reflect the voluntary participation of the parties.

**A. SUBRECIPIENT RESPONSIBILITIES:** Kulshan Community Land Trust hereby agrees as follows:

- (i) If after the purchase of the Property the scope of the Project or the Project budget has materially changed, the **Subrecipient** shall provide the County the following updated documents: 1) a detailed description of the Project ; 2) a Project budget itemizing major improvements together with the estimated cost of the improvements; and 3) a schedule showing sources and uses of funding for the Project, if any of the aforementioned documents materially varies from those that were submitted with the **Subrecipient's** application for funding.
- (ii) The **Subrecipient** shall be responsible for all aspects of the construction and administration of the Project.
- (iii) Subrecipient shall begin construction of the Project no later than December 31, 2026.
- (iv) Subrecipient shall complete the Project and ensure certificates of occupancy are issued for all Units no later than December 31, 2028.
- (v) ARPA ELIGIBLE EXPENSES – The **Subrecipient** agrees to use the County-granted ARPA funds solely for the purchase of the Property.
- (vi) The **SUBRECIPIENT** shall be responsible for all aspects of financing the Project. The County shall have no responsibility for the Project other than funding for the purchase of the Property.
- (vii) The **SUBRECIPIENT** shall provide the County with a final settlement statement for the Project, with sufficient detail, as determined solely by the County, to meet necessary audit requirements.
- (viii) The **SUBRECIPIENT** shall comply with all terms and conditions of the American Rescue Plan Act as presented in Exhibit A.
- (ix) At the time of closing for the Property, the **SUBRECIPIENT** shall record an Affordable Housing covenant to the deed in substantially the same form as attached hereto as Exhibit E.
- (x) Beginning in the first Quarter of 2023, the **SUBRECIPIENT** shall provide a quarterly report to the County Executive, including information on project funding, development timeline, and other information as deemed necessary by the County. Reports shall continue until certificates of occupancy have been received by the County for 50 affordable housing Units, or until such time as this requirement is terminated by the County.
- (xi) Subrecipient shall take all necessary steps to ensure completed Units are individually identified on Exhibit B of the Affordable Housing Covenant prior to occupancy.

**B. WHATCOM COUNTY'S RESPONSIBILITIES:** The County hereby agrees as follows:

- (i) COUNTY GRANT—Subject to approval of the Whatcom County Council, the County shall issue a grant to SUBRECIPIENT for up to One Million Two Hundred and Fifty Thousand and Seven Hundred and Forty-Six Dollars and Sixty Cents (\$1,250,746.60) for the purchase of the Property described herein.

This grant shall be reimbursed by County warrant drawn on American Rescue Plan Act Funds and payable to the **SUBRECIPIENT** upon approval of this agreement by the Whatcom County Council and the **SUBRECIPIENT**, and pursuant to the terms contained in (ii), Payout of Grant Funding, below, and in accordance with Exhibit B.

- (ii) PAYOUT OF GRANT FUNDING—The County shall pay out the grant funding to the **SUBRECIPIENT** up to a maximum of One Million Two Hundred and Fifty Thousand and Seven Hundred and Forty-Six Dollars and Sixty Cents (\$1,250,746.60) of the total Project costs. This amount shall be paid in accordance with Exhibit B. Disbursements of grant funding shall be made contingent upon the following:
  - (iii) Execution of an Affordable Housing Covenant in substantially the same form as attached hereto as Exhibit E.
  - (iii) Execution of a Deed of Trust, in substantially the same form as attached Exhibit F, to ensure compliance with terms of the Agreement and the restrictions imposed by the Affordable Housing Covenant (Exhibit E).
  - (iii) Submission of all requested reports, project information, and other documents as requested by the County.
- (iii) Unless the parties to this agreement mutually agree in writing to modify the consideration, the funding identified herein is all the County is obligated to pay towards this Project from these funding sources.

## VII RECORDS, REPORTS AND AUDITS

The **Subrecipient** agrees to maintain such records, make such reports and follow such procedures pertaining to this Agreement as may be reasonably required by the County and as are typically maintained and made by the **Subrecipient** in the undertaking of a project of this nature and in accordance with 2 CFR Part 200 Subpart F. All **Subrecipient** records pertaining to this Agreement and the Project work shall be retained by the **Subrecipient** for a period of five (5) years after final audit unless a longer period is required to resolve audit findings or litigation. The County and other authorized representatives of the State government shall have access to any books, documents, papers, and records of the **Subrecipient** which pertain to this Agreement or the Project work for the purpose of making audit, examination, excerpts, and transcriptions.

## VIII RELATIONSHIP OF PARTIES AND AGENTS

Neither the **Subrecipient** nor the County shall have authority to execute contracts or to make commitments on behalf of the other, and nothing contained herein shall be deemed to create the relationship of employer and employee or principal and agent between the County and the **Subrecipient**. This agreement does not create, either implicitly or explicitly, any right, duty or obligation that is not expressly provided for herein.

The **Subrecipient** represents that it has or will secure at its own expense all personnel, Subrecipients, and/or subcontractors required in order to perform any Project work. Such personnel shall not be employees of, or Subrecipients with the County for purposes

of the project described herein. All such personnel, Subrecipients, and/or subcontractors shall be fully qualified (as determined by the **Subrecipient** in its sole discretion) and authorized/permitted under State and/or local law to perform such services.

## **IX DEFAULT, REMEDIES UPON DEFAULT, AND TERMINATION**

**Event of Default-Subrecipient.** Under this Agreement, An event of default shall occur upon Subrecipient's failure to keep, observe or perform any of its respective duties or obligations under this Agreement, which Event of Default shall be a default hereunder, including, without limitation: failure of Subrecipient to meet any Project deadlines provided herein.

**Remedies Upon Default Including Termination of Restated Agreement.** If an Event of Default occurs, the non-defaulting Party shall have all cumulative rights and remedies under law or in equity. However, neither Party shall be entitled to an award of damages for a breach. The non-defaulting Party shall be entitled, at its sole election, to terminate this Agreement or obtain specific performance of each and every obligation under this Agreement without any requirement to prove or establish that it does not have an adequate remedy at law. The defaulting Party hereby waives the requirement of any such proof and acknowledges that the non-defaulting Party would not have an adequate remedy at law for an Event of Default hereunder. The non-defaulting Party shall be entitled to restrain, by injunction, the actual or threatened commission or attempt of a default and to obtain a judgment or order specifically prohibiting a violation or breach of this Agreement without, in either case, being required to prove or establish that the non-defaulting Party does not have an adequate remedy at law. The defaulting Party hereby waives the requirement of any such proof and acknowledges that the non-defaulting Party would not have an adequate remedy at law for the occurrence of a default hereunder. The non-defaulting Party shall be entitled to draw upon or foreclose all or any part of the bonds or security provided under this Agreement or commence an action for equitable or other relief. These remedies are cumulative and in addition to all other remedies provided herein and under law or equity.

## **X COMPLIANCE WITH LAWS**

The County and the **Subrecipient** shall comply with all applicable laws, ordinances, and codes of the Federal, State and local governments with regard to the performance of this Agreement.

## **XI NONDISCRIMINATION AND EQUAL OPPORTUNITY**

### **A. GENERAL PROVISIONS**

**Subrecipient** shall make the Project facilities available to the public in a manner that assures fair, equal, and non-discriminatory treatment to all persons without regard to race, creed, color, national origin, sex, honorable discharged veteran or military status, sexual orientation; the presence of any sensory, mental, or physical disability; or the use of a trained dog guide or service animal by a person with a

disability. No personnel shall be refused service, be given discriminatory treatment, be denied any privilege, use of facilities, or participation in activities on account of race, creed, color, national origin, sex, honorable discharged veteran or military status, sexual orientation; the presence of any sensory, mental, or physical disability; or the use of a trained dog guide or service animal by a person with a disability, nor shall any person be required to participate in any religious worship, exercise, or instruction. The funds provided under this Agreement shall not be used to fund religious worship, exercise, or instruction.

**B. EQUAL ACCESS TO HOUSING REGARDLESS OF SEXUAL ORIENTATION OR GENDER IDENTITY**

**Subrecipient** shall abide by all provisions of the Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identify, as set forth in 24 CFR, Parts 5 and 570. These provisions ensure that any qualified individual or family is not denied equal access to housing. In addition, the RECIPIENT shall not inquire about the sexual orientation or gender identity of an applicant for, or occupant of, housing assisted under this Agreement.

**C. HOUSING PREFERENCES**

Projects which have committed to limit eligibility or preference to a particular segment of the population may do so only if permitted by Fair Housing Act restrictions.

Any limitation or preference in housing must not violate nondiscrimination provisions in 24 CFR § 92.350. A limitation or preference does not violate nondiscrimination requirements if the housing also receives funding from a Federal program that limits eligibility to a particular segment of the population (e.g., the Housing Opportunity for Persons with AIDS program under 24 CFR part 574, the Shelter Plus Care program under 24 CFR part 582, the Supportive Housing program under 24 CFR part 583, supportive housing for the elderly or persons with disabilities under 24 CFR part 891), and the limit or preference is tailored to serve that segment of the population.

If the Project does not receive funding from a Federal program that limits eligibility to a particular segment of the population, the Project may have a limitation or preference for persons with disabilities who need services offered at a project only if:

- The limitation or preference is limited to the population of families (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain housing;
- Such families will not be able to obtain or maintain themselves in housing without appropriate supportive services; and
- Such services cannot be provided in a non-segregated setting. The families must not be required to accept the services offered at the project. In advertising the project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible persons with disabilities who may benefit from the services provided in the project.

D. TDD/TTY OR RELAY SERVICE REQUIRED

**Subrecipient** agrees to list a TDD/TTY or the Washington Relay telephone number on all of the written policies and documents that they make available to participants, beneficiaries, or employees, including their letterhead, materials used to market programs, and any other public document that lists a telephone number.

**XII INTEREST OF MEMBERS OF THE COUNTY AND THE SUBRECIPIENT**

No member of the governing body of either party and no other officer, employee, or agent of either party who exercises any functions or responsibilities in connection with the planning or carrying out of the Project shall have any personal financial interest, direct or indirect, in this Agreement.

**XIII HOLD HARMLESS AND INDEMNITY**

To the extent permitted by law and with the exception of events arising from the gross negligence or willful misconduct of the county, the **Subrecipient** shall indemnify and hold harmless the County, its officers, agents, and employees, from all liability, loss or damage, including costs of defense they may suffer as a result of third-party claims, demands, actions or judgments which result from the activities to be performed by the **Subrecipient**, its agents, employees, or subcontractors pursuant to this Agreement.

**XIV ASSIGNABILITY**

The **Subrecipient** shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment or novation) without prior written consent of the County thereto, provided, however, that claims for money by the Subrecipient from the County under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the County by the Subrecipient.

**XV NON-WAIVER**

The failure of either party to insist upon strict performance of any provision of this Agreement or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any right under this Agreement.

**XVI CONTRACT MODIFICATIONS**

No modification or waiver of any clause or condition of this Agreement shall be binding upon either party unless such modification or waiver is in writing and duly authorized and executed by the County and the **Subrecipient**.

**XVII SEVERABILITY**



If any Portion of this Agreement is changed per mutual agreement or any Portion is held invalid, the remainder of this Agreement shall remain in full force and effect.

## **XVIII NOTICES**

Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand-delivered to the parties to their addresses as follows:

### **TO SUBRECIPIENT:**

Kulshan Community Land Trust  
Attn. Dean Fearing  
PO Box 2351  
Bellingham, WA 98227

**TO COUNTY:** Tyler Schroeder, Deputy Executive  
c/o Whatcom County Executive's Office  
311 Grand Avenue, Suite 108  
Bellingham, WA 98225

or to such other addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand-delivered. Such notices shall be deemed effective when mailed or hand-delivered at the addresses specified above.

## **XIX INTEGRATION**

This Agreement contains all terms and conditions to which the County and the Subrecipient agreed, and this Agreement supersedes all of their previous understandings and agreements, written and oral, with respect to this grant transaction. There are no other oral or written agreements between the Subrecipient and County as to the grant terms contained herein. No changes or additions to this Agreement shall be valid or binding upon either party unless such change or addition be in writing, duly authorized and executed by both parties.

## **XX GOVERNING LAW AND VENUE**

All questions of the validity, construction, and application of this Agreement shall be governed by the laws of the State of Washington. Venue for any suit between the parties arising out of this Agreement shall be the Superior Court of the State of Washington in and for Whatcom County, Washington.

## **XXI RECORDING**

Upon execution of this agreement by the parties hereto, the County shall cause it to be posted on the county web site, or otherwise published pursuant to the requirement contained within RCW 39.34.040.

Each signatory below to this Contract warrants that he/she is the authorized agent of the respective party; and that he/she has the authority to enter into the contract and to bind the party hereto.

IN WITNESS WHEREOF, the County and the Subrecipient have executed this Agreement as of the date and year last written below.

EXECUTED, on 7/29/2022, 2022 for **Kulshan Community Land Trust**

By: Kulshan Community Land Trust, a Washington nonprofit corporation



Dean Fearing, Executive Director

EXECUTED, on \_\_\_\_\_, for **WHATCOM COUNTY:**

WHATCOM COUNTY

\_\_\_\_\_  
SATPAL SIDHU  
County Executive

APPROVED AS TO FORM



Christopher Quinn, Prosecuting Attorney

7/29/22  
Date

**Exhibit A**  
**SUBRECIPIENT AWARD**

Funding provided by U.S. Department of the Treasury grant assistance listing number 21.027 Coronavirus State and Local Fiscal Recovery Funds as authorized by Sections 602 and 603 of the Social Security Act as added by section 9901 of the American Rescue Plan Act of 2021, Public Law No. 117-2 (March 11, 2021)

SUBRECIPIENT will comply with all applicable terms and conditions for Coronavirus State and Local Fiscal Recovery Funds as issued by the U.S. Department of the Treasury.

SUBRECIPIENT will cooperate with the County concerning any requests for information related to this Project that may be needed for the County to fulfill its reporting obligations to U.S. Treasury.

**General information about this program can be found at:**

<https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>

**Specific compliance requirements can be found in:**

Compliance and Reporting Guidance

<https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds/recipient-compliance-and-reporting-responsibilities>

Final Rule (31 CFR 35)

<https://www.govinfo.gov/content/pkg/FR-2022-01-27/pdf/2022-00292.pdf>

FAQs (and all subsequent updates)

<https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-FAQ.pdf>

**These funds are subject to:**

**Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200 (the “Uniform Guidance”)**

**Single Audit Requirements.** Recipients and subrecipients that expend more than \$750,000 in Federal awards during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F regarding audit requirements.<sup>8</sup> Recipients and subrecipients may also refer to the Office of Management and Budget (OMB) Compliance Supplements for audits of federal funds and related guidance and the Federal Audit Clearinghouse to see examples and single audit submissions.

**Civil Rights Compliance.** Recipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions:**

- The lower tier Subrecipient certifies, by signing this contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- Where the lower tier Subrecipient is unable to certify to any of the statements in this contract, such Subrecipient will attach an explanation to this contract.
- The Subrecipient further agrees by signing this contract that it will not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.

**Clean Air Act**

- The Subrecipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- The Subrecipient agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to U.S. Treasury, and the appropriate Environmental Protection Agency Regional Office.
- The Subrecipient agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by ARPA funding.

**Federal Water Pollution Control Act**

- The Subrecipient agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- The Subrecipient agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to U.S. Treasury, and the appropriate Environmental Protection Agency Regional Office.

- The Subrecipient agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by ARPA funding.

**Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)**

- The Subrecipient shall review regulations of the URA and ensure all necessary steps are taken prior to and subsequent to acquisition of the Project to ensure compliance.

**Anti-Lobbying (certifications required for all awards and subawards of \$100,000 or more)**

“Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Subrecipients who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.”

Subrecipients must sign and submit the following certification to the NFE with each bid or offer exceeding \$100,000:

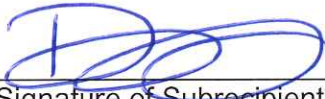
APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING  
 Certification for Contracts, Grants, Loans, and Cooperative Agreements The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

SUBRECIPIENT certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Subrecipient understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.



\_\_\_\_\_  
Signature of Subrecipient's Authorized Official

Dean Fearing, Executive Director, Kulshan Community Land Trust  
Name and Title of Subrecipient's Authorized Official

7/29/2022  
Date

**Prohibition on Contracting for Covered Telecommunications Equipment or Services**

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(b) Prohibitions.

- (1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
- (2) Unless an exception in paragraph (c) of this clause applies, the Subrecipient and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

- (1) This clause does not prohibit Subrecipients from providing—
  - (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or Contract Provisions Guide 28
  - (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- (2) By necessary implication and regulation, the prohibitions also do not apply to: (i) Covered telecommunications equipment or services that:
  - (i) Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system.
  - (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

- (1) In the event the Subrecipient identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Subrecipient is notified of such by a subcontractor at any tier or by any other source, the Subrecipient shall report the information in paragraph (d)(2) of this clause to the recipient or

subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

- (2) The Subrecipient shall report the following information pursuant to paragraph (d)(1) of this clause:
- (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
  - (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Subrecipient shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Subrecipient shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

### **Domestic Preference for Procurements**

As appropriate, and to the extent consistent with law, the Subrecipient should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.”



**Exhibit B**  
(Financial Commitment)

Funding, in the amount of \$1,250,746.60 will be disbursed to Kulshan Community Land Trust (Subrecipient) through escrow at land acquisition closing. Funding will be provided by the American Rescue Plan Act Fund assistance listing number 21.027.

Subrecipient will send final settlement statement to:

Whatcom County Executive Office  
311 Grand Ave, Suite 108  
Bellingham, WA 98225

Prior to closing, the County must approve a draft settlement statement with sufficient detail to meet County requirements.

Funds will be made available by immediately upon execution of this Agreement and will be disbursed into escrow on or before August 25, 2022, for use by Subrecipient for Project acquisition expenses only. This date may be amended by mutual agreement of the County and Subrecipient.

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## EXHIBIT C – FEDERAL REGULATIONS FOR ARPA GRANT FUNDING

### 1. Use of Funds.

- a. SUBRECIPIENT understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act), Treasury’s regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
- b. SUBRECIPIENT will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.

### 2. Maintenance of and Access to Records

- a. SUBRECIPIENT shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury’s regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
- b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of SUBRECIPIENT in order to conduct audits or other investigations.
- c. Records shall be maintained by SUBRECIPIENT for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.

### 3. Conflicts of Interest. SUBRECIPIENT understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. SUBRECIPIENT and subrecipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

### 4. Compliance with Applicable Law and Regulations.

- a. SUBRECIPIENT agrees to comply with the requirements of section 602 of the Act, regulations adopted by Treasury pursuant to section 602(f) of the Act, and guidance issued by Treasury regarding the foregoing. SUBRECIPIENT also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and SUBRECIPIENT shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
- b. Federal regulations applicable to this award include, without limitation, the following:
  - i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and

subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.

- ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
- iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
- iv. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
- v. SUBRECIPIENT Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
- vi. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
- viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
- ix. Generally applicable federal environmental laws and regulations.

**Exhibit D  
SUBAWARD INFORMATION**

	Item Description	Contract Information
1	<b>Subrecipient Name (Exactly as listed in DUNS):</b> <b>www.SAM.gov</b>	Kulshan Community Land Trust
2	<b>Subrecipient DUNS Number: www.SAM.gov or Unique Entity ID</b>	WSXQTCJYANF9
3	<b>Federal Award Identification Number (FAIN):</b>	SLFRP1195
4	<b>Federal Award Date (from Federal contract)</b>	March 3, 2021
5	<b>Start and End Date of the contract:</b>	August 9, 2022-December 31, 2028
6	<b>Amount of Federal Funds Obligated by this action:</b>	\$1,250,746.60
7	<b>Total Amount of Federal Funds Obligated to the subrecipient by Whatcom County for this subaward (current and past obligations):</b>	\$1,250,746.60
8	<b>Total Amount of the Federal Award <u>committed</u> to the subrecipient through Whatcom County:</b>	\$1,250,746.60
9	<b>Project description from Federal Award:</b>	Sections 602( b) and 603( b) of the Social Security Act ( the Act) as added by section 9901 of the American Rescue Plan Act, Pub. L. No. 117- 2 ( March 11, 2021) authorize the Department of the Treasury ( Treasury) to make payments to certain recipients from the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund.
10	<b>Name of the Federal awarding agency:</b>	United States Department of the Treasury
11	<b>Name of the pass-through entity/entities:</b>	n/a
12	<b>Contact information for awarding official- (Name of County project coordinator)</b>	Kayla Schott-Bresler / <a href="mailto:kschottb@co.whatcom.wa.us">kschottb@co.whatcom.wa.us</a>
13	<b>Contact information for awarding official- General Contact email or phone number:</b>	Whatcom County Executive / 360-778-5200
14	<b>CFDA Number</b>	21.027
15	<b>CFDA Name Program Name</b>	Coronavirus State and Local Fiscal Recovery Funds (CSLFRF), Coronavirus State Fiscal Recovery Fund (CDFRF) and Coronavirus Local Fiscal Recovery Fund (CLFRF)
16	<b>Is the award Research and Development?</b>	No
17	<b>Indirect Cost Rate per the Federal Award</b>	n/a
18	<b>Federal requirements imposed on the subrecipient by Whatcom County:</b>	See contract terms above
19	<b>Additional requirements imposed by Whatcom County to meet its own responsibilities to the awarding agency:</b>	See contract terms above
20	<b>Indirect Rate: Subrecipient approved rate or de minimis</b>	n/a
21	<b>Access to subrecipient's accounting records and financial statements as needed.</b>	Confirmed
22	<b>Closeout Requirements</b>	See contract terms above

**Exhibit E**

Form of Covenant

WHEN RECORDED, MAIL TO:

Whatcom County Executive's Office  
311 Grand Avenue, Suite 108  
Bellingham, WA 98225

ATTN: Kayla Schott-Bresler

**WASHINGTON STATE COUNTY AUDITOR/RECORDER/S INDEXING FORM**

<b>Document Title(s)</b> <i>(or transactions contained therein):</i>
<b>DECLARATION OF AFFORDABLE HOUSING COVENANTS</b>
<b>Reference Number(s) of Documents assigned or released:</b> <input type="checkbox"/> Additional reference numbers on page _____ of document.
<b>Grantor(s)</b> <i>(Last name first, then first name and initials):</i> 1. KULSHAN COMMUNITY LAND TRUST, a Washington nonprofit corporation <input type="checkbox"/> Additional names on page of document.
<b>Grantee(s)</b> <i>(Last name first, then first name and initials):</i> 1. WHATCOM COUNTY, WASHINGTON <input type="checkbox"/> Additional names on page of document.
<b>Legal Description</b> <i>(abbreviated form; i.e., lot, block, plat name, section-township-range):</i>  PTN of NW 1/4 NW 1/4, S20, T39N, R2E <input type="checkbox"/> Additional legal on Exhibit "A" of document.

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

390220 079514 0000 PID 187312

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

DECLARATION OF AFFORDABLE HOUSING COVENANTS

**PROJECT NAME**

SECTION 1 –	DEFINITIONS AND INTERPRETATION
SECTION 2 –	RESIDENTIAL 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
SECTION 8 –	TERM
SECTION 9 –	NO DISCRIMINATION AND
TENANT PROTECTIONS	SECTION 10 –
	COVENANTS RUN WITH LAND
SECTION 11 –	ENFORCEMENT
SECTION 12 –	ESTOPPEL CERTIFICATE
SECTION 13 –	AGREEMENT TO RECORD
SECTION 14 –	RELIANCE
SECTION 15 –	GOVERNING LAW
SECTION 16 –	NO CONFLICT WITH OTHER DOCUMENTS
SECTION 17 –	AMENDMENTS
SECTION 18 –	NOTICES
SECTION 19 –	SEVERABILITY
SECTION 20 –	CONSTRUCTION
SECTION 21 –	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 THORNTON STREET HOUSING**

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 KULSHAN COMMUNITY LAND TRUST, a Washington nonprofit corporation (the "Owner").

WITNESSETH:

This Covenant is predicated upon the following facts:

A. The Owner is the owner of property located at 2039 Thornton Street, in Ferndale, Washington. Owner intends to develop said property by constructing, selling, and renting 50 dwelling units (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 (50) affordable housing units for Moderate-/Low-Income Households ("Eligible Households", as the term is defined below). Such affordable 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 units in the Project.

C. The County finds that the Project will benefit the County by providing affordable 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 housing portion of the Project.

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 the maximum allowable rents under 24 CFR Part 92.252.

“Affordable Sales Price” means a purchase price that qualifies as an affordable homeownership opportunity under 24 CFR Part 92.254.

“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 maximum rent or purchase price, 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 KULSHAN COMMUNITY LAND TRUST, 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 PROPERTY

A. General Description. The Owner will acquire and construct the Project for purposes of providing housing, and the Owner shall own, manage, and operate (or cause the management and operation of) the Project to provide housing comprising a building or structure or several inter-related buildings or structures, 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. All of the dwelling units shall meet the housing quality standards under 24 CFR Part 92.

SECTION 3 – AFFORDABLE UNITS FOR ELIGIBLE HOUSEHOLDS

A. Number of Affordable Units. The Owner shall sell, lease or rent, or make available for sale, 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 sell or 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 50 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. Affordable Sales Price. The affordable sales price for the Affordable Units occupied by Eligible Households shall not exceed the applicable Affordable Sales Price.

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

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

G. Qualifying Eligible Household Income for Affordable Units at Initial Occupancy and Recertification. Qualifying Eligible Household Income at time of initial occupancy may not exceed applicable income limits under 24 CFR Part 92.

H. 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 homebuyer or 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 renters 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. Unless required by another public funder or Kulshan Community Land Trust, this provision does not apply to affordable homeownership units within the project.

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 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 31<sup>st</sup> 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 homebuyers and 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 purchase and sales agreements and/or leases for Affordable Units shall contain clauses wherein each individual homebuyer or 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 purchase agreement or 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.

#### SECTION 9 – NO DISCRIMINATION AND TENANT PROTECTIONS

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 sale, 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.

The owner shall abide by all tenant protection requirements of 24 CFR Part 92.



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. 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, and no later than 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, and for the Qualified Project Period, to sell or lease up to 50 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. Notwithstanding the foregoing, any right of the County to lease units in the Project shall commence only after the end of any applicable compliance period under Internal Revenue Code Section 42 and any applicable extended use period required pursuant to Internal Revenue Code Section 42 and the allocation of low-income housing tax credits to the Owner.

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 occupants of the Project), 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 – 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 13 – 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 14 – 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 15 – 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 16 – 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 17 – 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 Whatcom 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 18 – 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:                   Whatcom County  
  311 Grand Avenue, Suite 108  
  Bellingham, WA 98225  
  Attn: Kayla Schott-Bresler

If to the Owner:                   Kulshan Community Land Trust  
  Attn. Executive Director  
  PO Box 2351  
  Bellingham, WA 98227

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 19 – 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 20 – 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 21 – 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: County Executive

Approved as to Form:

County Attorney

\_\_\_\_\_

Owner:

**Kulshand Community Land Trust**  
a Washington nonprofit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF WASHINGTON            }  
  }  ss.  
COUNTY OF WHATCOM            }

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 \_\_\_\_\_

STATE OF WASHINGTON            }  
  }  ss.  
COUNTY OF WHATCOM            }

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me and acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of **Kulshan Community Land Trust**, a Washington nonprofit corporation, to be the free and voluntary act of such nonprofit corporation on behalf of such company on behalf of such company for the uses and purposes mentioned in the instrument.

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

A TRACT OF LAND SITUATED IN THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 2 EAST OF W.M., MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT:

COMMENCING AT THE SECTION CORNER BETWEEN SECTIONS 17, 18, 19 AND 20, SAID TOWNSHIP AND RANGE; THENCE FROM SAID SECTION CORNER RUN EAST ON SECTION LINE BETWEEN SECTIONS 17 AND 20 TO THE GREAT NORTHERN RAILROAD RIGHT-OF-WAY; THENCE SOUTH ALONG SAID RIGHT-OF-WAY ABOUT 495 FEET; THENCE WEST ALONG J.F. STOWELL'S NORTH LINE TO THE SECTION LINE BETWEEN SECTIONS 19 AND 20; THENCE NORTH ON SECTION LINE TO THE PLACE OF BEGINNING; EXCEPTING 3 ACRES OFF THE WEST END OF SAID DESCRIBED LAND; EXCEPT THOSE RIGHTS-OF-WAY LYING ALONG THE NORTHERLY AND WESTERLY LINES THEREOF, COMMONLY REFERRED TO AS THORNTON ROAD AND MALLOY ROAD, RESPECTIVELY.

EXCEPT THOSE THREE TRACTS MORE PARTICULARLY DESCRIBED, AS FOLLOWS, AS CONVEYED BY CONDEMNATION THROUGH WHATCOM COUNTY SUPERIOR COURT CASE NO. 19-2-02361-37:

**TRACT 1:**

THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 2 EAST OF W.M. IN WHATCOM COUNTY, WASHINGTON LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SECTION CORNER BETWEEN SECTIONS 17, 18, 19 AND 20, TOWNSHIP 39 NORTH, RANGE 2 EAST; THENCE FROM SAID SECTION CORNER AND ON THE NORTH SECTION LINE OF SAID SECTION 20, SOUTH 88°32'21" EAST 1277.57 FEET TO THE WESTERLY EDGE OF THE BURLINGTON NORTHERN RAILROAD RIGHT OF WAY; THENCE LEAVING SAID SECTION LINE AND COINCIDENT WITH SAID RAILROAD RIGHT OF WAY SOUTH 2°31'43" WEST 252.04 FEET TO THE TRUE POINT OF BEGINNING OF SAID DESCRIBED LINE; THENCE LEAVING SAID RAILROAD RIGHT OF WAY NORTH 88°32'21" WEST 305.00 FEET; THENCE NORTH 13°22'06" WEST 234.82 FEET; THENCE NORTH 88°32'21" WEST 94.32 FEET; THENCE SOUTH 1°27'39" WEST 5.00 FEET; THENCE NORTH 88°32'21" WEST 42.00 FEET; THENCE NORTH 1°27'39" EAST 10.00 FEET TO THE SOUTHERLY EDGE OF THORNTON ROAD RIGHT OF WAY AND THE END OF SAID DESCRIBED LINE; EXCEPT ANY PORTION OF THORNTON ROAD RIGHT OF WAY AND ANY PORTION OF BURLINGTON NORTHERN RAILROAD RIGHT OF WAY.

**TRACT 2:**

THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 2 EAST OF W.M. IN WHATCOM COUNTY, WASHINGTON LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SECTION CORNER BETWEEN SECTIONS 17, 18, 19 AND 20, TOWNSHIP 39 NORTH, RANGE 2 EAST; THENCE FROM SAID SECTION CORNER AND ON THE NORTH SECTION LINE OF SAID SECTION 20, SOUTH 88°32'21" EAST 657.58 FEET; THENCE LEAVING SAID SECTION LINE SOUTH 1°27'39" WEST 20.00 FEET TO THE SOUTH EDGE OF RIGHT OF WAY FOR THORNTON ROAD AND THE TRUE POINT OF BEGINNING OF SAID DESCRIBED LINE; THENCE LEAVING SAID RIGHT OF WAY SOUTH 46°28'14" WEST 35.36 FEET; THENCE NORTH 88°32'21" WEST 30.87 FEET; THENCE NORTH 43°32'57" WEST 31.12 FEET; THENCE 88°32'21" WEST 78.98 FEET; THENCE NORTH 1°27'39" EAST 3.00 FEET TO SAID SOUTH EDGE OF RIGHT OF WAY AND END OF DESCRIBED LINE; EXCEPT ANY PORTION OF THORNTON ROAD RIGHT OF WAY.

**TRACT 3:**

THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 2 EAST OF W.M. IN WHATCOM COUNTY, WASHINGTON LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SECTION CORNER BETWEEN SECTIONS 17, 18, 19 AND 20, TOWNSHIP 39 NORTH, RANGE 2 EAST; THENCE FROM SAID SECTION CORNER AND ON THE NORTH SECTION LINE OF SAID SECTION 20, SOUTH 88°32'21" EAST 407.28 FEET; THENCE LEAVING SAID SECTION LINE SOUTH 1°27'39" WEST 20.00 FEET TO THE SOUTH EDGE OF RIGHT OF WAY FOR THORNTON ROAD AND THE TRUE POINT OF BEGINNING OF SAID DESCRIBED LINE; THENCE LEAVING SAID RIGHT OF WAY SOUTH 1°27'39" WEST 5.00 FEET; THENCE NORTH 88°32'21" WEST 105.00 FEET; THENCE NORTH 1°27'39" EAST 5.00 FEET TO SAID SOUTH EDGE OF RIGHT OF WAY AND END OF SAID DESCRIBED LINE; EXCEPT ANY PORTION OF THORNTON ROAD RIGHT OF WAY.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

**EXHIBIT B**

DESIGNATION OF AFFORDABLE UNITS

<b>Unit Number</b>	<b>Unit Type</b>	<b>Unit Size (sq ft)</b>

**EXHIBIT C**

FORM OF CERTIFICATE OF HOUSEHOLD ELIGIBILITY

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**CERTIFICATION OF HOUSEHOLD ELIGIBILITY**

I, \_\_\_\_\_, and I, \_\_\_\_\_, as applicants for purchase/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 purchase and sale/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 purchase or 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 homeownership housing, as required in the Declaration of Affordable Housing Covenants, in the following manner:

- a) \_\_\_\_\_ units or \_\_\_\_\_ percent of units in the Project were purchased/owned by homeowners who did not exceed the applicable income limits of \_\_\_\_\_% or \_\_\_\_\_% of area median income;
- b) \_\_\_\_\_ units or \_\_\_\_\_ percent of units in the Project are being held vacant for eligible owners.

The undersigned hereby certifies that during the annual Reporting Period ending \_\_\_\_\_, \_\_\_\_\_ units or \_\_\_\_\_ percent of the residences in the Project were utilized as Affordable rental housing, as required in the Declaration of Affordable Housing Covenants, in the following manner:

- c) \_\_\_\_\_ 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;
- d) \_\_\_\_\_ 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;
- e) \_\_\_\_\_ 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;

f) \_\_\_\_\_ 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 RENTAL PROJECT CERTIFICATION (to be completed for rental units only)

PROJECT NAME \_\_\_\_\_

REPORTING PERIOD: \_\_\_\_\_ through \_\_\_\_\_.

Does Contract Rent include:										Are residents required to buy:		
Electricity & Gas?	Yes		No		Garbage?	Yes		No		One Parking Space?	Renter's insurance?	
	Yes	No	Yes	No		Yes	No	Yes	No			
<b>For each "No" enter the Allowance or Fee below (except Renter's Insurance, if it's not required).</b>												

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

\* 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).

ARCH Electric & Gas Allowances:

Studio

- 1- bedroom
- 2- bedroom
- 3- bedroom
- 4- bedroom
- 5- bedroom

Water & Sewer Allowances:

Studio

- 1- bedroom
- 2- bedroom
- 3- bedroom
- 4- bedroom
- 5- bedroom

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



**Exhibit F**  
**DEED OF TRUST**

**When Recorded Return to:**

Whatcom County – Executive’s Office  
311 Grand Avenue, Suite 108  
Bellingham, WA 98225

Attention: Kayla Schott-Bresler

↑ *Reserved for Recording Purposes Only* ↑

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**DEED OF TRUST**

(For use in the State of Washington only)

Grantor(s): Kulshan Community Land Trust, a Washington Non-Profit Corporation Grantee(s): Beneficiary-Whatcom County; Trustee -Whatcom Land Title Company, Inc. Abbreviated Legal: PTN OF NW1/4 NW1/4, S20, T39N, R2E Additional legal on page: 1-3 Assessor’s Tax Parcel Number(s): 390220 079514 0000 PID 187312
--

**THIS DEED OF TRUST**, is made as of the \_\_\_ day of \_\_\_\_\_, 2022, **BETWEEN** KULSHAN COMMUNITY LAND TRUST, a Washington Non-Profit Corporation (“**GRANTOR**”) whose address is PO Box 2351, Bellingham, WA 98227, and Whatcom Land Title Company, Inc., as **TRUSTEE**, whose address is 2011 Young Street, Bellingham, WA 98225, and Whatcom County, as **BENEFICIARY**, whose address is 311 Grand Avenue, Suite 108, Bellingham, WA 98225.

**WITNESSETH:** GRANTOR hereby bargains, sells and conveys to Trustee in Trust, with power of sale, the respective interests on the following real property:

A TRACT OF LAND SITUATED IN THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 2 EAST OF W.M., MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT:

COMMENCING AT THE SECTION CORNER BETWEEN SECTIONS 17, 18, 19 AND 20, SAID TOWNSHIP AND RANGE; THENCE FROM SAID SECTION CORNER RUN EAST ON SECTION LINE BETWEEN SECTIONS 17 AND 20 TO THE GREAT NORTHERN RAILROAD RIGHT-OF-WAY; THENCE SOUTH ALONG SAID RIGHT-OF-WAY ABOUT 495 FEET; THENCE WEST ALONG J.F. STOWELL'S NORTH LINE TO THE SECTION LINE BETWEEN SECTIONS 19 AND 20; THENCE NORTH ON SECTION LINE TO THE PLACE OF BEGINNING; EXCEPTING 3 ACRES OFF THE WEST END OF SAID DESCRIBED LAND; EXCEPT THOSE RIGHTS-OF-WAY LYING ALONG THE NORTHERLY AND WESTERLY LINES THEREOF, COMMONLY REFERRED TO AS THORNTON ROAD AND MALLOY ROAD, RESPECTIVELY.

EXCEPT THOSE THREE TRACTS MORE PARTICULARLY DESCRIBED, AS FOLLOWS, AS CONVEYED BY CONDEMNATION THROUGH WHATCOM COUNTY SUPERIOR COURT CASE NO. 19-2-02361-37:

**TRACT 1:**

THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 2 EAST OF W.M. IN WHATCOM COUNTY, WASHINGTON LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SECTION CORNER BETWEEN SECTIONS 17, 18, 19 AND 20, TOWNSHIP 39 NORTH, RANGE 2 EAST; THENCE FROM SAID SECTION CORNER AND ON THE NORTH SECTION LINE OF SAID SECTION 20, SOUTH 88°32'21" EAST 1277.57 FEET TO THE WESTERLY EDGE OF THE BURLINGTON NORTHERN RAILROAD RIGHT OF WAY; THENCE LEAVING SAID SECTION LINE AND COINCIDENT WITH SAID RAILROAD RIGHT OF WAY SOUTH 2°31'43" WEST 252.04 FEET TO THE TRUE POINT OF BEGINNING OF SAID DESCRIBED LINE; THENCE LEAVING SAID RAILROAD RIGHT OF WAY NORTH 88°32'21" WEST 305.00 FEET; THENCE NORTH 13°22'06" WEST 234.82 FEET; THENCE NORTH 88°32'21" WEST 94.32 FEET; THENCE SOUTH 1°27'39" WEST 5.00 FEET; THENCE NORTH 88°32'21" WEST 42.00 FEET; THENCE NORTH 1°27'39" EAST 10.00 FEET TO THE SOUTHERLY EDGE OF THORNTON ROAD RIGHT OF WAY AND THE END OF SAID DESCRIBED LINE;

EXCEPT ANY PORTION OF THORNTON ROAD RIGHT OF WAY AND ANY PORTION OF BURLINGTON NORTHERN RAILROAD RIGHT OF WAY.

**TRACT 2:**

THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 2 EAST OF W.M. IN WHATCOM COUNTY, WASHINGTON LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SECTION CORNER BETWEEN SECTIONS 17, 18, 19 AND 20, TOWNSHIP 39 NORTH, RANGE 2 EAST; THENCE FROM SAID SECTION CORNER AND ON THE NORTH SECTION LINE OF SAID SECTION 20, SOUTH 88°32'21" EAST 657.58 FEET; THENCE LEAVING SAID SECTION LINE SOUTH 1°27'39" WEST 20.00 FEET TO THE SOUTH EDGE OF RIGHT OF WAY FOR THORNTON ROAD AND THE TRUE POINT OF BEGINNING OF SAID DESCRIBED LINE; THENCE LEAVING SAID RIGHT OF WAY SOUTH 46°28'14" WEST 35.36 FEET; THENCE NORTH 88°32'21" WEST 30.87 FEET; THENCE NORTH 43°32'57" WEST 31.12 FEET; THENCE 88°32'21" WEST 78.98 FEET; THENCE NORTH 1°27'39" EAST 3.00 FEET TO SAID SOUTH EDGE OF RIGHT OF WAY AND END OF DESCRIBED LINE; EXCEPT ANY PORTION OF THORNTON ROAD RIGHT OF WAY.

**TRACT 3:**

THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 2 EAST OF W.M. IN WHATCOM COUNTY, WASHINGTON LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

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SITUATE IN WHATCOM COUNTY, WASHINGTON.

(the "Property").

which real property is not used principally for agricultural or farming purposes, together with all the tenements, hereditaments, and appurtenances now or hereafter thereunto belonging or in any wise appertaining, and the rents, issues, and profits thereof.

This Deed of Trust is for the purpose of securing performance of (a) each agreement of GRANTOR herein contained or referenced herein, (b) the Funding Agreement between the GRANTOR and BENEFICIARY dated the same date as this Deed of Trust, and (c) the Low-Income Housing Covenant executed by the GRANTOR and dated the same date as this Deed of Trust.

To protect the security of this Deed of Trust, Grantor covenants and agrees:

1. To keep the property in good condition and repair; to permit no waste thereof; to complete any building, structure or improvement being built or about to be built thereon; to restore promptly any building, structure or improvement thereon which may be damaged or destroyed; and to comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the property.
2. To pay before delinquent all lawful taxes and assessments upon the property; to keep the property free and clear of all other charges, liens or encumbrances impairing the security of this Deed of Trust.
3. To keep all buildings now or hereafter erected on the property described herein continuously insured against loss by fire or other hazards in an amount not less than the total debt secured by this Deed of Trust. All policies shall be held by the Beneficiary, and be in such companies as the Beneficiary may approve and have loss payable first to the Beneficiary, as its interest may appear, and then to the Grantor. The amount collected under any insurance policy may be applied upon any indebtedness hereby secured in such order as the Beneficiary shall determine. Such application by the Beneficiary shall not cause discontinuance of any proceedings to foreclose this Deed of Trust. In the event of foreclosure, all rights of the Grantor in insurance policies then in force shall pass to the purchaser at the foreclosure sale.
4. To defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses, including cost of title search and attorneys' fees in a reasonable amount, in any such action or proceeding, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

5. To pay all costs, fees and expenses in connection with this Deed of Trust, including the expenses of the Trustee incurred in enforcing the obligation secured hereby, including costs of title search, and Trustee's and attorneys' fees actually incurred, as provided by statute.

6. Should Grantor fail to pay when due any taxes, assessments, insurance premiums, liens, encumbrances or other charges against the property hereinabove described, Beneficiary may pay the same, and the amount so paid, with interest at the rate set forth in the note secured hereby, shall be added to and become a part of the debt secured in this Deed of Trust as of the date of such payment.

IT IS MUTUALLY AGREED THAT:

1. DUE ON SALE: The property described in this security instrument may not be sold or transferred without the Beneficiary's consent. Upon breach of this provision, Beneficiary may declare all sums due under the note and Deed of Trust immediately due and payable, unless prohibited by applicable law.

2. In the event any portion of the property is taken or damaged in an eminent domain proceeding, the entire amount of the award or such portion as may be necessary to fully satisfy the obligation secured hereby, shall be paid to Beneficiary to be applied to said obligation.

3. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right to require prompt payment when due of all other sums so secured or to declare default for failure to so pay.

4. The Trustee shall reconvey all or any part of the property covered by this Deed of Trust to the person entitled thereto on written request of the Grantor and the Beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the Beneficiary or the person entitled thereto.

5. Upon default by Grantor in the payment of any indebtedness secured hereby or in the performance of any agreement contained herein, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In such event and upon written request of Beneficiary, Trustee shall sell the trust property, in accordance with the Deed of Trust Act of the State of Washington, at public auction to the highest bidder. Any person except Trustee may bid at Trustee's sale. Trustee shall apply the proceeds of the sale as follows: (1) to the expense of the sale, including a reasonable Trustee's fee and attorneys' fees; (2) to the obligation secured by this Deed of Trust; (3) the surplus, if any, shall be distributed to the persons entitled thereto.

6. Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall convey to the purchaser the interest in the property which Grantor had or had the power to

convey at the time of his execution of this Deed of Trust, and such as he may have acquired thereafter, Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and of this Deed of Trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchaser and encumbrancers for value.

7. The power of sale conferred by this Deed of Trust and by the Deed of Trust Act of the State of Washington is not an exclusive remedy; Beneficiary may cause this Deed of Trust to be foreclosed as a mortgage.

8. In the event of death, incapacity, disability, or resignation of Trustee, Beneficiary may appoint in writing a successor trustee, and upon the recording of such appointment in the mortgage records of the county in which this Deed of Trust is recorded, the successor trustee shall be vested with all powers of the original trustee. The trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Grantor, Trustee or Beneficiary shall be a party unless such action or proceeding is brought by the Trustee.

9. This Deed of Trust applies to, inures to the benefit of, and is binding not only on the parties hereto, but on their heirs, devisees, legatees, administrators, executors and assigns. The term Beneficiary shall mean the holder and owner of the note secured hereby, whether or not named as Beneficiary herein. To protect the security of this Deed of Trust, GRANTOR covenants and agrees:

[Signatures on following Page]

Kulshan Community Land Trust, GRANTOR

Dated: \_\_\_\_\_

\_\_\_\_\_  
EXECUTIVE DIRECTOR



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**REQUEST FOR FULL RECONVEYANCE**

*Do not record. To be used only when note has been paid.*

**TO: TRUSTEE.**

The undersigned is the legal owner and holder of the note and all other indebtedness secured by the within Deed of Trust. Said note, together with all other indebtedness secured by said Deed of Trust, has been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note above mentioned, and all other evidence of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you thereunder.

Dated this the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

*Do not lose or destroy this Deed of Trust or the Note which it secures. Both must be delivered to the Trustee for cancellation before reconveyance will be made.*