

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

Hayden Homes
Attn: Tammy Harty
2464 SW Glacier Place, Suite 110
Redmond, OR 97756

BENTON FRANKLIN TITLE CO. 71

fmo

First Place, Phase 1 lots 35-38

Parcel: 117-250-075; 117-250-076; 117-250-077; 117-250-078

**AMENDED AND RESTATED COVENANT FOR AFFORDABLE HOUSING
CHARITABLE FEE**

This Amended and Restated Covenant for Affordable Housing Charitable Fee (this "Covenant") is made between Hayden Enterprises Giving Fund, an Oregon non-profit corporation ("HEGF") and Hayden Homes, LLC., a Limited Liability Company ("Builder"). The capitalized terms used in the Recitals are defined in Section 1.

RECITALS

- A. Builder and HEGF executed and recorded that certain Covenant for Community Charitable Fee in the Deed Records of Franklin County on 9-24- 2009 as Document No. AFN 1740377 (the "Original Covenant"), which creates a charitable fee to be paid to HEGF in connection with Initial Sales and subsequent Transfer of Lots or houses in the Property.
- B. Builder and HEGF now desire to amend and restate the Original Covenant in its entirety as provided herein.
- C. The Builder owns the Property and plans to develop it into a residential community of single family dwellings ("Dwelling").
- D. Builder desires to assist HEGF, a non-profit public benefit corporation whose primary purpose is to establish Hayden Housing Grants.
- E. Through Hayden Housing Grants, HEGF makes the dream of house ownership a reality for low and moderate income families by providing low interest loans, down payments and other requests associated therewith and to assist in financing a new home. Because HEGF ensures the continued availability of affordable rental and owner-occupied housing for low or moderate income individuals, it is the intent of Builders and HEGF that this Covenant is an affordable housing covenant as defined in ORS 456.270.

F. Although the primary purpose of HEGF is sponsoring affordable housing and assisting low income families in purchasing a home, HEGF has been organized to provide donations to help community-based organizations and local governments to provide essential human services and housing for those persons who lack the financial capacity. HEGF has worked with local organizations to help individuals find employment. HEGF has supplied food baskets to the needy, bought holiday gifts for disadvantaged children and offers financial assistance to families experiencing a medical crisis. It has also granted college scholarships, subsidized school lunch programs and funds parks and community programs.

G. HEGF expects to receive the funds it needs to operate from a variety of sources, including the Affordable Housing Charitable Fees established in this Covenant.

H. The Builders believes the services and activities of HEGF will provide and will benefit all of the Lots and homes now existing or hereafter created in the Property since HEGF will provide Hayden Housing Grants in the community in which the Property is located. Therefore, in support of HEGF and its goals and purposes, the Builders and HEGF have agreed that some of the funds HEGF requires will be provided by committing contributions of Affordable Housing Charitable Fees to HEGF in connection with Initial Sales and subsequent Transfer of Lots or houses in the Property.

THEREFORE, the parties agree as follows:

1. **DEFINITIONS.** When the following words and phrases are used in this Covenant, they will have the meanings given in this Section and be subject to the limits described in this Section.

1.1 **Beneficiary.** A beneficiary under a Mortgage and the assignees of such beneficiary.

1.2 **Benefited Area.** The Property and all other real property within the City of Pasco or Franklin County.

1.3 **Builder.** Hayden Homes, LLC, a Limited Liability Company, or its successors and assigns who acquire a Lot without a Dwelling located thereon.

1.4 **Close of Escrow.** The date on which the deed conveying a Lot recorded in a transaction that transfers title of the Lot or the date on which a land sale contract is recorded for the sale of the Lot, whether or not such transaction utilized the services of an escrow company.

1.5 **Affordable Housing Charitable Fee.** The fee to be paid to HEGF in connection with each Initial Sale and each Transfer. The Affordable Housing Charitable Fee shall be equal to (a) one-eighth (0.125) of one percent of the Purchase Price for an Initial Sale

transaction and (b) one-eighth (0.125) of one percent of the Purchase Price for each subsequent transaction resulting in a Transfer.

1.6 **Initial Sale.** A transfer of the Lot with a new Dwelling constructed thereon by the Builders to a third party.

1.7 **Lot.** Any lot or parcel of land shown on any Recorded subdivision plat or Recorded partition plat of any portion of the Property.

1.8 **Mortgage.** Any recorded mortgage or deed of trust or other conveyance of one or more Lots or other portions of the Property to secure performance of an obligation, which will be reconveyed upon completion of such performance. A "**First Mortgage**" is any Mortgage with lien priority over all other Mortgages.

1.9 **Official Records.** The official records of Franklin County, Washington Recorder.

1.10 **Owner.** The Person or Persons, including the Builders, holding fee simple interest of record to any Lot or Condominium. The term "**Owner**" includes a seller under an executory contract of sale but excludes Beneficiaries.

1.11 **Person.** A human being or any entity with the legal right to hold title to real property.

1.12 **Property.** That certain real property described on **Exhibit "A."**

1.13 **Purchase Price.** The total purchase price or other consideration given by the transferee to the transferor in an Initial Sale transaction or a transaction resulting in a Transfer, including any portion of the purchase price represented by a loan or loans, exchange property, or other forms of non-cash consideration, but excluding any third-party transactional cost or charge incurred by the transferor or the transferee in connection with the transaction.

1.14 **Record.** Filing or entry of a document in the Official Records.

1.15 **Transfer.** The sale or exchange of a Lot by an Owner (other than the Builders) to a transferee. None of the following transactions shall constitute a "**Transfer**" under this Covenant:

(a) The transfer of an interest in a Lot to secure the performance of an obligation, such as a Mortgage or a lien, which will be reconveyed or released upon the completion of such performance.

(b) A transfer resulting from a foreclosure (by judicial foreclosure or trustee's sale) by the Beneficiary of a First Mortgage or a transfer in lieu thereof.

(c) A transfer of a Lot to a transferor or the transferor's spouse into a trust, which is for the transferor's and/or transferor's spouse's own estate planning purposes.

(d) Any inter-spousal transfer or transfer between parents and any of their children, which is not for any monetary consideration.

2. **ACKNOWLEDGMENT OF BENEFIT.** HEGF represents that it will use the Affordable Housing Charitable Fees for the purposes described in Paragraphs E and F of the Recitals. Decisions regarding all aspects of events and activities to be provided shall be made by HEGF in its sole discretion; nonetheless, the services and activities to be provided by HEGF will enhance the value of and benefit each Lot now existing or hereafter created in the Property. Each Owner who acquires a Lot or Condominium Unit in the Property by such acquisition evidences the Owner's agreement with the statements made in this Section.

3. **AFFORDABLE HOUSING CHARITABLE FEE.**

3.1 **When Due and Paid.** An Affordable Housing Charitable Fee shall be paid to HEGF in connection with each Initial Sale and each subsequent Transfer at the times and in the amounts specified below:

(a) **Initial Sales.** For each Initial Sale, an Affordable Housing Charitable Fee in the amount determined as provided in Section 1.5(a) shall be paid by the Builders to HEGF on or before the Close of Escrow.

(b) **Transfers.** For each Transfer of a Lot, if Section 3.2 does not apply, an Affordable Housing Charitable Fee in the amount determined as provided in Section 1.5(b) shall be paid by the transferor to HEGF on or before the Close of Escrow or effective date of the Transfer.

3.2 **Exchange Transfer.** If a particular transaction involves more than one Transfer solely because the Lot is held for an interim period (not to exceed 24 hours) by an accommodation party as a part of a tax-deferred exchange under the Internal Revenue Code, and provided there is no increase in consideration given, then for the purpose of this Covenant, only one Transfer shall be deemed to have occurred and only one Affordable Housing Charitable Fee must be paid by the transferor in connection therewith.

3.3 **Escrow Demand.** HEGF is authorized to place a demand for payment of the Affordable Housing Charitable Fee with the escrow agent for each Initial Sale and in the escrow (if any) for each subsequent Transfer. The demand shall state (a) either the amount of the Affordable Housing Charitable Fee due or the formula for calculating the Affordable Housing Charitable Fee, and (b) that the Affordable Housing Charitable Fee is due on or before Close of Escrow.

3.4 **Fee Payor.** The obligation to pay the Affordable Housing Charitable Fee in each Initial Sale and each subsequent Transfer is the obligation of the transferor in each transaction for a Lot and not an obligation of an Owner of any other Lot subject to this Covenant. If the transferor fails to pay the Affordable Housing Charitable Fee, HEGF may take all actions authorized under law and this Covenant to collect the Affordable Housing Charitable Fee from the transferor or the Owner of the affected Lot, including, without limitation, filing suit.

3.5 **HEGF Lien.** If the Affordable Housing Charitable Fee is not paid at time of Initial Sale or a subsequent transfer, HEGF shall have an automatic lien against the Lot. The cost of recording the HEGF lien shall be paid or reimbursed by the Owner of the Lot against which the HEGF lien is recorded. Each such obligation for payment of the Affordable Housing Charitable Fee together with interest, costs, expenses and reasonable attorneys' fees, shall also be the personal obligation of the person or persons who own such Lot at the time of the Close of Escrow of the Initial Sale or Transfer, as applicable, and/or any successors in title who expressly assume them. No Owner may waive liability for payment of the Affordable Housing Charitable Fee by abandonment of the Lot.

4. **BINDING EFFECT.** Builders and HEGF declare that the Property will be held, leased, transferred, encumbered, used, occupied and improved subject to the reservations, rights, covenants, conditions and equitable servitudes contained in this Covenant, all of which are for the purpose of enhancing the attractiveness and desirability of the Property, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property. The reservations, rights, covenants, conditions and equitable servitudes set forth in this Covenant shall (a) run with and burden the Property and will be binding upon all Persons having or acquiring any interest in the Property or any part thereof, their heirs, successors and assigns; (b) inure to the benefit of every portion of the Property and any interest therein; (c) inure to the benefit of and be binding upon Builders and HEGF, and their respective successors-in-interest, each Owner and each Owner's successors in interests; and (d) may be enforced by Builders and HEGF.

5. MORTGAGES

5.1 **Rights of Beneficiaries.** Nothing in this Covenant nor any amendment to or breach of this Covenant defeats or renders invalid, the rights of the Beneficiary under any Recorded Mortgage encumbering any Lot made in good faith and for value.

5.2 **Subordination of First Mortgages.** The rights and obligations of the parties hereunder concerning any Lot shall be subject and subordinate to the lien of any Recorded First Mortgage encumbering the Lot, provided that after the foreclosure or a transfer in lieu of foreclosure of any such Mortgage, such Lot will remain subject to this Covenant with regard to any Transfer occurring thereafter.

5.3 **Effect of Foreclosure.** No foreclosure of a Mortgage on a Lot or a transfer in lieu of foreclosure shall impair or otherwise affect HEGF's right to pursue payment of any Affordable Housing Charitable Fee due in connection with the Initial Sale or subsequent Transfer of that Lot from the transferor or a transferee obligated to pay it.

6. **EFFECT OF COVENANT.** This Amended and Restated Covenant for Affordable Housing Charitable Fee amends and restates the Original Covenant in its entirety. Accordingly, upon execution and recordation of this Covenant, the Original Covenant shall terminate and shall be of no further force or effect.

7. **MISCELLANEOUS**

7.1 **Amendment.** HEGF has the right to unilaterally amend this Covenant for the following reasons: (i) to correct typographical errors; (ii) to conform this Covenant to applicable law, including without limitation lender guidelines, (iii) to reduce the Affordable Housing Charitable Fee or return it to the percent established when this Covenant was initially recorded, or (iv) terminate this Covenant. HEGF and at least fifty-one percent (51%) of the Owners of Lots or Condominium Units in the Property may amend this Covenant as it applies to all of the Property.

7.2 **Assignment.** HEGF may, by written assignment, assign its rights and delegate its duties under this Covenant to any entity that is both exempt from federal taxation pursuant to the Internal Revenue Code Section 501(c)(3) or 501(c)(4), and is a public benefit corporation, religious corporation or foreign corporation as defined in ORS 65.001, whose purposes include providing affordable housing for low income households and moderate income households as those terms are defined in ORS 456.270.

7.3 **Authority.** Each individual signatory hereto represents and warrants that he or she is duly authorized to sign this Covenant and is personally bound, or if signing on behalf of another, is authorized to do so and that the other is bound.

7.4 **Disclaimers.** Nothing herein (a) creates any right or remedies for the benefit of any Person not a party hereto, or (b) creates a fiduciary relationship, an agency, or partnership.

7.5 **Interpretation.** The invalidity of any provision shall not affect the validity of any other provision. Except for the definitions in Section 1 where the heading in each subsection is the word being defined, section headings are for convenience only and may not be used in interpretations.

7.6 **Notices.** All notices required or allowed shall be in writing and shall be sent to the addresses shown beside the signatures of the parties. A party may change its address for notice by giving notice to the other party. Notice may be delivered by personal delivery, facsimile transmission or e-mail (receipt enabled) during normal business hours of the recipient,

an overnight delivery service, or U.S. Mail sent certified with return receipt requested. Notices are effective on the earlier of the date received, the date of the delivery receipt, or the third day after postmarked, as applicable. Each Owner who transfers a Lot/Dwelling shall immediately send the name and mailing address of the transferee to HEGF.

7.7 **Time.** Time is of the essence of all provisions hereof where time is a factor.

7.8 **Waiver.** No right or remedy will be waived unless the waiver is in writing and signed by the party claimed to have made the waiver. One waiver will not be interpreted as a continuing waiver.

7.9 **Governing Law.** This Covenant shall be governed by the law of the State of Oregon.

8. ENFORCEMENT.

8.1 **Suspension of Privileges.** Until a Dispute is resolved, HEGF may, by written notice to the Owner who is the other party in the Dispute, exclude the Owner from all activities and events which HEGF sponsors.

8.2 **Attorney Fees.** In any dispute concerning this Covenant, each party shall bear its own attorney fees and court costs.

8.3 **Small Claims Court.** Any Dispute which is within the jurisdiction of a small claims court shall be resolved by a small claims court proceeding. Either party may submit the Dispute to such court.

8.4 **Jurisdiction.** Any Dispute which is beyond the jurisdiction of a small claims court shall be submitted to a state Circuit Court in Oregon in the county where the Property is located. In the event of a Dispute not subject to small claims jurisdiction, the parties shall initially attempt to resolve the Dispute in good faith and may, if necessary, select a mediator in order to mediate such dispute. If the parties are unable to mediate successfully any such Dispute within thirty (30) days of the day that the Dispute originally occurs, either party may file suit to resolve the Dispute. The foregoing negotiation and mediation requirement shall not apply to foreclosure of HEGF's lien in accordance with Section 7.5.

8.5 **Foreclosure.** HEGF's lien, pursuant to Section 3.5, may be foreclosed in the manner provided in Chapter 88 of the Oregon Revised Statutes (or its successor statutes) for the foreclosure of liens generally. In addition, any such unpaid Affordable Housing Charitable Fee amounts shall bear interest at the rate of twelve percent (12%) per annum from the date of Close of Escrow of the sale of such affected Lot until paid in full. The owner of any such Lot upon which a lien is imposed shall also be personally liable for any deficiency remaining unpaid after any foreclosure of the foregoing line.

The parties have signed this Covenant to be effective upon Recordation.

Date: Feb 4, 200~~9~~¹⁰

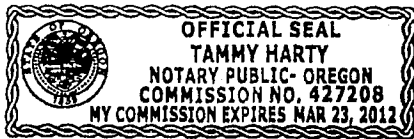
HAYDEN ENTERPRISES GIVING FUND,
an Oregon non-profit corporation

Address:
963 SW Simpson Ave., Suite 110
Bend, Oregon 97702

By: [Signature]
Name: Shon Rae
Title: Executive Director

STATE OF OREGON)
) ss.
County of Deschutes)

This instrument was acknowledged before me this 4th day of Feb, 200~~9~~¹⁰,
by Shon Rae, Executive Director of Hayden Enterprises Giving Fund, an Oregon non-profit
corporation.



[Signature]
Notary Public for Oregon
My Commission Expires: Mar 23, 2012

Date: Feb 4, 200~~9~~¹⁰

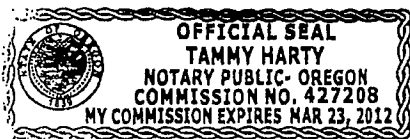
BUILDER: HAYDEN HOMES, LLC., an Oregon
Limited Liability Company

Address:
2464 SW Glacier Place, Suite 110
Redmond, Oregon 97756

By: [Signature]
Name: Dennis P. Murphy
Title: President

STATE OF OREGON)
) ss.
County of Deschutes)

This instrument was acknowledged before me this 4th day of Feb, 200~~9~~¹⁰,
by Dennis P. Murphy, President of Hayden Homes, LLC., an Oregon Limited Liability
Company, on behalf of the company.



[Signature]
Notary Public for Oregon
My Commission Expires: Mar 23, 2012

Exhibit "A"

**Property subject to the Covenant For Affordable Housing
Charitable Fee**

The property is known as Lots 35 through 38 inclusive, according to the Plat for First Place, Phase 1, thereof recorded in Volume D of Plats, Page 335, records of Franklin County, Washington. Located in the City of Pasco, Washington. Recorded December 5, 2007

SUBORDINATION

The undersigned, as Beneficiary in and under that certain Trust Deed dated _____, _____, and Recorded on _____, 200__, as Instrument No. _____, in the Official Records of _____ County, Oregon (the "Trust Deed"), which Trust Deed is by and between

_____, as Trustor,
_____, as Trustee, and
_____, as Beneficiary, expressly subordinates the Trust Deed and its beneficial interest thereunder to the foregoing Covenant for Affordable Housing Charitable Fee, as amended or restated ("Fee Agreement"). By executing this Subordination, the undersigned agrees that should the undersigned acquire title to all or any portion of the Properties by foreclosure (whether judicial or non-judicial), deed-in-lieu of foreclosure or any other remedy in or relating to the Trust Deed, the undersigned will acquire title subject to the provisions of this Covenant, which shall remain in full force and effect.

Date: _____, 200__

BENEFICIARY:

Address:

By: _____
Its: _____

STATE OF OREGON)
) ss.
County of _____)

This instrument was acknowledged before me this _____ day of _____, 20__,
by _____ of _____,
an _____.

Notary Public for Oregon
My Commission Expires: _____