

RECORDING REQUESTED BY:

Hayden Enterprises Giving Fund  
dba First Story  
963 SW Simpson Ave, Ste 110  
PO Box 1359  
Bend, OR 97708

Deschutes County Official Records		<b>2014-027959</b>
<b>D-CCR</b>		<b>08/25/2014 02:34:20 PM</b>
Stn=4 BN		
\$50.00	\$11.00	\$10.00 \$6.00 \$21.00
		<b>\$98.00</b>
<small>I, Nancy Blankenship, County Clerk for Deschutes County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.</small>		
Nancy Blankenship - County Clerk		

WHEN RECORDED MAIL TO:

Hayden Homes, LLC, an Oregon limited liability company  
Attn: Amy Sandoval  
2464 SW Glacier Place, Suite 110  
Redmond, OR 97756

Recorded by AmeriTitle as an accommodation only. No liability is accepted for the condition of title or for the validity, sufficiency, or effect of this document.

Cold Springs South: Lots 1-12

**COVENANT FOR AFFORDABLE HOUSING CHARITABLE FEE**

This Covenant for Affordable Housing Charitable Fee (this “**Covenant**”) is made between Hayden Enterprises Giving Fund, dba First Story , an Oregon non-profit corporation (“**HEGF**”), whose address is 963 SW Simpson Avenue, Suite 110, Bend, OR 97702 and Hayden Homes, LLC, an Oregon Limited Liability Company (“**Builder**”), whose address is 2464 SW Glacier Place, Suite 110, Redmond, OR 97756.

**RECITALS**

- A. The Builder owns the Property and plans to develop it into a residential community of single family dwellings (individually and collectively “**Dwelling(s)**”).
- B. Builder desires to assist HEGF, a non-profit public benefit corporation whose primary purpose is to establish affordable housing grants.
- C. The purpose of this Covenant is to assist HEGF in creating and retaining affordable housing. Through housing grants, HEGF makes the dream of house ownership a reality for low and moderate income families by providing no interest loans and other requests associated therewith and to assist in financing a new home. HEGF’s mission is to ensure the continued availability of affordable rental and owner-occupied housing for low or moderate income individuals, it is the intent of Builder and HEGF that this Covenant is an affordable housing covenant as defined in ORS 456.270, as amended, and to the maximum extent provided by any other applicable law.



D. The Builder believes the services and activities of HEGF will provide and will benefit the community where all of the Lots and homes now existing or hereafter created in the Property since HEGF will provide housing grants and/or financial assistance in the community in which the Property is located. Therefore, in support of HEGF and its mission, the Builder 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 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 **Affordable Housing Charitable Fee.** The fee to be paid to HEGF in connection with each Transfer. The Affordable Housing Charitable Fee shall be equal to one-eighth (0.125) of one percent of the Purchase Price for each Transfer.

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

1.3 **Builder.** Hayden Homes, LLC, an Oregon 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 **HEGF.** Means Hayden Enterprises Giving Fund, dba First Story, an Oregon non-profit corporation, and any successors or assigns permitted by Section 6.2.

1.6 **Initial Sale.** A transfer of the Lot with a new Dwelling constructed thereon by the Builder 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 within the County of Deschutes, County Oregon Recorder.

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

1.11 **Person.** The word “person” means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity.

1.12 **Property.** That certain real property described on **Exhibit “A”** and any improvements or fixtures located therein.

1.13 **Purchase Price.** The total purchase price or other consideration given by the transferee to the transferor in an 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 Builder) to a transferee. None of the following transactions shall constitute a “**Transfer**” under this Covenant:

- (a) The transfer as a result of the Initial Sale.
- (b) 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.
- (c) 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.
- (d) 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.
- (e) Any inter-spousal transfer or transfer between parents and any of their children, which is not for any monetary consideration, and/or a transfer pursuant to a probate proceeding.

2. **ACKNOWLEDGMENT OF BENEFIT.** HEGF will use the Affordable Housing Charitable Fees for the purposes described in Paragraphs C of the Recitals. Decisions regarding all aspects of HEGF’s use of the Affordable Housing Charitable Fees provided shall be made by HEGF in its sole discretion. The services and activities to be provided by HEGF will enhance the community where each Lot now exists. This Agreement and acknowledgement of

benefits of this Covenant is binding on the current Owner and each subsequent and future Owner of the Property. Each Owner who acquires a Lot or a portion of the Property evidences the Owner's agreement with the statements in this Covenant and the conveyance of the Property is expressly subject to this Covenant.

### 3. AFFORDABLE HOUSING CHARITABLE FEE.

3.1 **When Due and Paid.** An Affordable Housing Charitable Fee shall be paid to HEGF as specified below:

(a) **Initial Sale.** For each Initial Sale, the Builder will pay HEGF a fee in the amount of 0.125 percent 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 Transfer and for the Initial Sale. 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 for each 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 the time of a Transfer, HEGF shall have an automatic lien against the Lot. The cost of preparing and 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 Transfer, as applicable, and/or any successors or assigns in title who expressly

assume them. No Owner may waive liability for payment of the Affordable Housing Charitable Fee by abandonment of the Lot. The Owner is only responsible for the Affordable Housing Charitable Fee associated with a Transfer occurring associated with the Owner and not for any past Transfer(s).

4. **BINDING EFFECT.** Subject to the terms of this Covenant, Builder 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. Subject to the terms of this Covenant, 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 Builder and HEGF, and their respective successors-in-interests, each Owner and each Owner's successors in interests; and (d) may be enforced by Builder and/or 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.

5.3 **Effect of Foreclosure.** This Affordable Housing Charitable Fee is junior and subordinate to any Mortgage granted by an Owner. To the extent a foreclosure occurs, this Affordable Housing Charitable Fee will be foreclosed and no longer valid with respect to the applicable portion of the Property foreclosed only.

#### 6. **MISCELLANEOUS**

6.1 **Amendment.** HEGF has the right to unilaterally amend this Covenant by recording an amendment in the Official Records for the following reasons: (i) to correct typographical errors; (ii) to conform this Covenant to applicable law, including without limitation any lender guidelines, rules, and/or regulations as determined necessary by the reasonable judgment of HEGF, and/or (iii) terminate this Covenant for all or any portion of the Property. Except as provided herein, any other amendments to this Covenant require the written consent of HEGF and at least fifty-one percent (51%) of the Owners of Lots in the Property.

6.2 **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, as amended.

6.3 **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.

6.4 **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.

6.5 **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.

6.6 **Notices.** All notices required or allowed shall be in writing and shall be sent to the addresses set forth above. 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.

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

6.8 **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.

6.9 **Governing Law.** This Covenant shall be governed by the law of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement.

6.10 **Severability.** The invalidity or illegality of any provision of this Covenant will not affect the remainder of this Covenant.

7. **ENFORCEMENT.**

7.1 **Suspension of Privileges.** If a dispute arises regarding the terms of this Covenant (“**Dispute**”), 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.

7.2 **Attorney Fees.** Except as provided in Section 3 regarding liens, if any Dispute arises concerning this Covenant, each party shall bear its own attorney fees and court costs.

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

7.4 **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, any 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.

7.5 **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 lien.

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

Date: August 25<sup>th</sup>, 2014

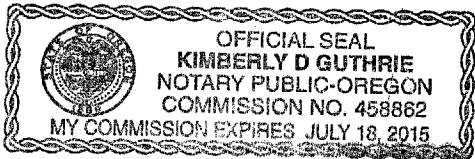
HAYDEN ENTERPRISES GIVING FUND,  
dba First Story an Oregon non-profit  
corporation

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

By: *C Duncan*  
Name: Claire Duncan  
Title: Executive Director

STATE OF OREGON        )  
  ) ss.  
County of Deschutes     )

This instrument was acknowledged before me this 25<sup>th</sup> day of August, 2014,  
by Claire Duncan, Executive Director of Hayden Enterprises Giving Fund, dba First Story an  
Oregon non-profit corporation.



*Kimberly D. Guthrie*  
Notary Public for Oregon  
My Commission Expires: 7.18.2015

Date: August 25<sup>th</sup>, 2014

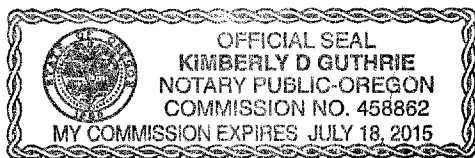
BUILDER: HAYDEN HOMES, LLC., an Oregon  
Limited Liability Company

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 25<sup>th</sup> day of August, 2014,  
by Dennis P. Murphy, President of Hayden Homes, LLC., an Oregon Limited Liability  
Company, on behalf of the company.



*Kimberly D. Guthrie*  
Notary Public for Oregon  
My Commission Expires: 7.18.2015



## **Exhibit "A"**

### **Property subject to the Covenant for Affordable Housing Charitable Fee**

The property is known as Lots 1-12 as shown on the plat of Cold Springs South recorded on August 15, 2014 in the Deschutes County Official Records, #2014-26771 in the City of Bend, Deschutes County, Oregon.

## Exhibit "B"



### Charitable Fee Escrow Calculation Instructions

Hayden Enterprises Giving Fund, DBA First Story is a 501(c)(3) non-profit. All donations are tax deductible. Please keep a copy for your records. Tax ID number 911755886

Title Company: \_\_\_\_\_  
Close Date: \_\_\_\_\_  
Sellers Name: \_\_\_\_\_  
Buyers Name: \_\_\_\_\_  
Community: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City, State, Zip Code: \_\_\_\_\_

Sales Price: \$ \_\_\_\_\_  
Times 1/8 of 1%: x .00125

Charitable Fee Due: \$ \_\_\_\_\_  
(Seller pays Charitable fee)

Example Calculation: Sales price: \$100,000 <u>x .00125</u> \$125
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Please email form with a copy of the deposit slip to:

[info@firststory.org](mailto:info@firststory.org)

Please deposit charitable fees to:

OR

wire charitable fees to:

**US Bank**  
Account # 1536-9514-5885  
Routing# 541210032

OR

**US Bank**  
ABA# 123000220

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541-728-0830 ext 105  
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