

**VOL: 1999    PAGE: 26847**  
**RECORDED DOCUMENT**

**STATE OF OREGON**  
**COUNTY OF DESCHUTES**



\*1999-26847    \* Vol-Page

Printed: 05/28/1999 15:55:07

**DO NOT REMOVE THIS CERTIFICATE**

(This certificate constitutes a part of the original instrument in accordance with ORS 205.180(2). Removal of this certificate may invalidate this certificate and affect the admissibility of the original instrument into evidence in any legal proceeding.)

I hereby certify that the attached instrument was received  
and duly recorded in Deschutes County records:

DATE AND TIME:        May. 28, 1999; 3:43 p.m.

RECEIPT NO:            6592

DOCUMENT TYPE:        Covenants,  
                                 Conditions & Restrictions

FEE PAID:                \$55.00

NUMBER OF PAGES:    10

A handwritten signature in cursive script, reading "Mary Sue Penhollow".

**MARY SUE PENHOLLOW**  
**DESCHUTES COUNTY CLERK**

45  
Return Recorded Document to:  
Key Title Company  
3040 Commercial Street SE, #240  
Salem, Oregon 97302-4133

99-26847-1

27-31202  
KEY TITLE & ESCROW COMPANIES  
1245 SE 3RD ST. STE A-1 • P.O. BOX 6178  
BEND, OREGON 97708

**OREGON HOUSING AND COMMUNITY SERVICES DEPARTMENT  
AND  
MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES DIVISION  
STATE OF OREGON**

**REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS  
AND EQUITABLE SERVITUDE**

THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS AND EQUITABLE SERVITUDE (the "Regulatory Agreement") is made and entered into this 24th day of May, 1999, by and between, Mainstream Housing, Inc. having its principal office at 45 W Broadway, Eugene, Oregon 97401 hereinafter referred to as the "Borrower"), and the State of Oregon, acting by and through the Oregon Housing and Community Services Department (OHCS), having its principal office at 1600 State Street, Salem, Oregon 97301-4246, and the Mental Health and Developmental Disabilities Division (MHDDSD), having its principal office at 2575 Bittern St. NE, Salem, Oregon 97310-0520 (hereinafter collectively referred to as the "State").

**RECITALS**

- A. The MHDDSD funds and regulates community-based services for individuals with developmental disabilities, including residential services in homes which are located in neighborhood communities.

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- B. The Oregon State Legislature has found and declared that a significant number of persons with mental or developmental disabilities currently reside in state operated hospitals and training centers because appropriate community-based services, including residential facilities, do not exist.
- C. The MHDDSD has determined that homes in which appropriate community-based services are provided should be developed, owned and maintained by organizations which specialize in property management and development, or who have expertise in the housing requirements of persons with developmental disabilities, and that these homes should be utilized by organizations which specialize in service delivery under a lease arrangement with the owner.
- D. The MHDDSD has entered into an Interagency Agreement with Oregon Housing and Community Services Department in order to finance development of this housing and to facilitate the creation of community-based residential facilities.
- E. Borrower is a non-profit entity, one of whose purposes is to develop housing opportunities for populations such as those served by the MHDDSD.
- F. The Borrower proposes to develop or renovate a home which is to be licensed by or under the authority of the MHDDSD as a group home or residential facility for individuals with developmental disabilities pursuant to ORS 443.400 through 443.455 or 443.705 through 443.825, in order to provide residential care alone or in conjunction with treatment or training or a combination thereof (hereafter referred to as the "Project") located within the State of Oregon.
- G. It is the parties' intention that the use of the Project be maintained as a group home or residential facility for the duration of this agreement and that this agreement shall be binding on Borrower's heirs, successors and assigns.

### AGREEMENT

In consideration of the above premises and of the mutual covenants and undertakings set forth herein, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows in order to ensure that the Project will be financed, used and operated in accordance with the purposes for which funding has been allocated for the Project:

- Section 1. Definitions. Capitalized terms not defined in this Regulatory Agreement shall have the meanings defined for such terms in other Loan Documents. Unless the context clearly requires otherwise, the following terms shall have the meanings set forth below:

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Borrower. The term "Borrower" means the Borrower identified in the first paragraph of this Regulatory Agreement, its successors and assigns, and any owner of the Project during the Qualified Project Period.

Loan Documents. The term "Loan Documents" means any Loan Agreement, any Trust Deed, any Trust Deed Note or Note, this Regulatory Agreement, the Disbursement Agreement, the Borrower Tax Certificate and any other documents associated with the loan of Bond Proceeds or State funds extended to the Borrower for the Project.

Project. The term "Project" means that real property described in Exhibit "A" attached hereto which is to be developed or renovated with financial assistance from OHCS and MHDDSD, and is synonymous with residential facility or group home.

Qualified Project Period. The term "Qualified Project Period" means the period of time beginning on the date this Regulatory Agreement is executed and continuing for sixty (60) years, unless this Regulatory Agreement is terminated earlier as provided herein.

Section 2. Project. The State and the Borrower hereby declare their understanding and intent, and the Borrower hereby specifically agrees with the State, that the Project shall be established and maintained as a group home or residential facility for individuals with mental or developmental disabilities pursuant to MHDDSD's rules. The provisions of this agreement shall remain in effect during the Qualified Project Period and shall not terminate upon the satisfaction of any obligation evidenced by the Loan Documents.

Section 3. Covenants to Run With the Real Property and to Constitute an Equitable Servitude. The Borrower hereby subjects the Project, including the real property described in Exhibit "A" hereto, to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The State and the Borrower hereby declare their specific intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the real property as well as constituting an equitable servitude with respect to the real property in favor of the State and shall pass to and be binding upon the Borrower's successors in title to the Project; provided, however, that on the termination of this Regulatory Agreement said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument executed together with this Regulatory Agreement or hereafter covering or conveying the Project or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, as well as the equitable servitude regarding same, regardless of whether such covenants, reservations, restrictions or equitable servitude are set forth in such contract, deed or other instruments.

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Section 4. Burden and Benefit. The State and the Borrower hereby declare their understanding and intent that the burden of the covenants and equitable servitude set forth herein touch and concern the real property in that the Borrower's legal interest in the Project is rendered less valuable hereby. The State and Borrower hereby further declare their understanding and intent that the benefit of such covenants and equitable servitude touch and concern the real property by enhancing and increasing the enjoyment and use of the Project by individuals with mental or developmental disabilities, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purpose for which funds to develop the Project were extended. This section is not intended to create any private right of action under this Regulatory Agreement in said beneficiaries as residents or occupants of the Project. Any private right of enforcement which might subsequently be deemed to exist in said beneficiaries shall be enforced solely by the State at the State's discretion.

Section 5. Term. This Regulatory Agreement shall become effective upon its execution and delivery. Except as provided in Section 6 hereof, this Regulatory Agreement shall remain in full force and effect for the Qualified Project Period, without regard to whether or not the obligations or documents executed in connection with the Loan have expired.

Section 6. Mutual Termination. Notwithstanding any other provision of this Regulatory Agreement, this entire Agreement, or any of the provisions or Sections hereof, may be terminated upon mutual agreement:

- (a) If Division funding from federal, state or other sources is not obtained and continued at levels sufficient to allow for the adequate maintenance and repair of the Project; or,
- (b) If federal or state laws or regulations are enacted or modified, or if a court of competent jurisdiction interprets such laws or regulations so that the use of the premises, consistent with the purpose of this agreement, is no longer allowable or appropriate under this agreement; or,
- (c) If the Project is no longer eligible for funding for the stated use authorized by this agreement.

If this agreement is terminated as provided by this section, the termination of this agreement shall in no way affect any other restriction on the use of the Project established by any other provision in the Loan Documents.

Section 7. Events of Default; Enforcement. If the Project is not constructed and operated as required by this Regulatory Agreement, or if the Borrower defaults in the performance or observance of any covenant, agreement or obligation of the Borrower set forth in this Regulatory Agreement or the other Loan Documents, then the State may declare that an Event of Default has occurred hereunder and may exercise any or all remedies provided in the Trust Deed, Loan Documents, or as otherwise provided by law, including but not limited to any one or more of the following steps, at its option:

(a) By mandamus or other suit, action or proceeding at law or in equity, require the Borrower to perform its obligations and covenants hereunder, or enjoin any acts or things which may be unlawful or in violation of the rights of the State hereunder;

(b) Take whatever other action at law or in equity may appear necessary or desirable to enforce, or to recover damages for any breach or default by Borrower of, the obligations, covenants, equitable servitude and agreements of the Borrower hereunder; or,

(c) Declare a default under the Loan Documents, accelerate the amount due thereunder, and proceed with foreclosure and the exercise of all other rights and remedies under the Loan.

No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the same or to obtain relief against or recover for the continuation or repetition of such breach or violation thereof at any later time or times.

The selection of one or more remedies by the State under the Loan Documents or Regulatory Agreement shall not constitute a waiver of any other remedies available to the State.

Section 8. Governing Law. This Regulatory Agreement shall be governed, enforced and interpreted by the laws of the State of Oregon. Any litigation with respect to this Agreement shall be brought in the Circuit Court of the State of Oregon for the County of Marion, or if necessary, in the United States District Court for the District of Oregon, except for any foreclosure action, determination of an interest in real property or specific performance of an agreement in relation thereto shall be brought in the county in which the real property is located.

Section 9. Amendments. Except as provided in the next succeeding paragraph, this Regulatory Agreement shall be amended only by a written instrument executed by the parties hereto and duly recorded in the county where the Project is located.

Section 10. Severability. If any one or more of the provisions of this Regulatory Agreement shall be declared by any court of competent jurisdiction to be contrary to law, then such

provisions shall be deemed separable from, and shall in no way affect the validity of, any of the other provisions of this Regulatory Agreement.

- Section 11. Cross Default. An Event of Default hereunder also shall constitute an Event of Default under the Loan Documents. An Event of Default under the other Loan Documents shall constitute an Event of Default hereunder.
- Section 12. Recording and Filing. The Borrower shall cause this Regulatory Agreement and all amendments and supplements hereto to be recorded and filed in the real property records in the office of the County Recorder of the county (or counties) in which the Project is located and in such manner and in such place as the State may reasonably request, and shall pay all fees and charges incurred in connection therewith. Upon the latest to occur of the termination of this Agreement or the expiration of the Qualified Project Period, if applicable, the State shall cooperate with the Borrower, at the sole expense of the Borrower, in the recording, of such instrument or instruments of release or termination with respect to this Agreement as the Borrower may reasonably request.
- Section 13. Notice. Notice required under this Regulatory Agreement shall be in writing, mailed, faxed or delivered in a manner consistent with that required in the Trust Deed.
- Section 14. Expenses and Attorney Fees. The prevailing party in any dispute arising from this Regulatory Agreement shall be entitled to recover from the other its reasonable attorney's fees and costs incurred preliminary to and at trial, on appeal and in bankruptcy and arbitration proceedings.
- Section 15. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument, and, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

IN WITNESS WHEREOF, the State and the Borrower have caused this Agreement to be signed, acknowledged and attested on their behalf by duly authorized representatives, all as of the date first written hereinabove.

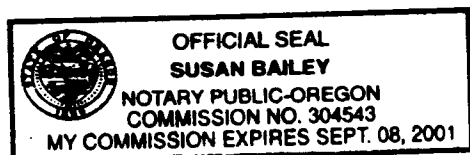
99-26847-7

OREGON HOUSING AND COMMUNITY SERVICES  
DEPARTMENT, STATE OF OREGON

By: John L. Wahrgren, Jr.  
John L. Wahrgren, Jr., Manager  
Housing Finance Section

STATE OF OREGON           )  
  ) ss  
County of Marion        )

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of May, 1999 by John L. Wahrgren, Jr., Manager, Housing Finance Section of the Oregon Housing and Community Services Department, on behalf of the State.



Susan Bailey  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 9/8/2001

MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES  
DIVISION, STATE OF OREGON

By: Jack A. Morgan

STATE OF OREGON           )  
  ) ss  
County of Marion        )

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of May, 1999 by Jack A. Morgan, Deputy Asst Administrator, Mental Health and Developmental Disabilities Division, on behalf of the State.

REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS  
AND EQUITABLE SERVITUDE  
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99-26847-9

**EXHIBIT A**

REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS  
AND EQUITABLE SERVITUDE  
2952 NE Yellow Ribbon, Bend, Oregon

99-26847-10

**EXHIBIT A**

**Lots Six (6) and Seven (7), OAK TREE, PHASE III, City of Bend, Deschutes County, Oregon**