

RIGHT OF FIRST OFFER AND SHARED APPRECIATION AGREEMENT

This Right of First Offer Agreement (“Agreement”), dated _____ (the “Effective Date”), is made and entered into by and between _____ (“Owner”), whose address is _____ and Bend Area Habitat for Humanity, an Oregon nonprofit corporation (“Grantee”), whose address is 1860 NE 4th Street, Bend, Oregon 97701.

SECTION 1. DEFINITIONS

Unless defined elsewhere in this Agreement, capitalized terms used in this Agreement will have the meanings ascribed to them in the attached Schedule 1.

SECTION 2. GRANT; CONSIDERATION

Contemporaneously with the signing and delivery of this Agreement, in consideration of Grantee’s agreement to sell the Property to Owner pursuant to the Purchase and Sale Agreement, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Owner grants to Grantee the Right of First Offer and Shared Appreciation Agreement.

SECTION 3. RESTRICTION ON TRANSFER

Until the first to occur of the Closing or termination of this Agreement pursuant to Section 15 below, Owner will not Transfer the Property or any interest in the Property unless the Transfer is expressly permitted by this Agreement.

SECTION 4. RIGHT OF FIRST OFFER

4.1 Transfer Notice. If Owner desires to Transfer the Property or any interest in the Property to a transferee other than Grantee, Owner will deliver a Transfer Notice to Grantee.

4.2 Grantee’s Option to Buy. For 60 days after the delivery of the Transfer Notice, Grantee will have the option to buy the Property from Owner. Grantee may exercise the option by delivering to Owner a notice stating that the option is exercised (“Option Notice”).

4.3 Sale to Grantee. If Grantee provides the Option Notice within the 60-day period after delivery of the Transfer Notice: (a) Grantee will buy the Property from Owner and Owner will sell the Property to Grantee, subject to the terms and conditions of this Agreement; (b) Grantee will pay the Purchase Price; and (c) the Closing will occur in accordance with Section 12, subject to the terms and conditions of this Agreement.

4.4 Right to Sell to Others. If Grantee does not exercise the Right of First Offer within the 60-day period after delivery of the Transfer Notice, Owner may Transfer the Property, but only if the Transfer is: (a) the type of Transfer set forth in the Transfer Notice; (b) made at no less than the price set forth in the Transfer Notice; (c) made on the other terms and conditions set forth in the Transfer Notice; and (d) completed within 30 days after the date that the Right of First Offer expires.

SECTION 5. PURCHASE PRICE; PAYMENT; SHARED APPRECIATION AGREEMENT

5.1 Purchase Price. If Grantee exercises its rights to purchase the Property by providing a timely Option Notice, the purchase price for the Property (the "Purchase Price") will be determined as provided in this Section 5.1. During the thirty (30) years after the Effective Date, the Purchase Price will be calculated as follows: (a) the amount of principal and interest repaid by Owner under the Note as of the Closing Date (the "Repaid Amount"), plus (b) the Grantee Percentage multiplied by any Appreciation in Value. For purposes of this Agreement, "Appreciation in Value" equals the Property's real market value on the date of Option Notice less [REDACTED] (the real market value as set forth from the Summary Appraisal of Real Property as determined on [REDACTED]). If the parties are unable to agree on the real market value within thirty (30) days of the date of the Option Notice, the Property's real market value will be determined by an independent property appraisal within the following thirty (30) day period. The appraiser shall be selected by Grantee and the costs of said appraisal will be shared equally by both Grantee and Owner. The "Grantee Percentage" equals 100% for the first five year period from the Effective Date. Following the initial five-year period from the Effective Date, the Grantee Percentage is defined according to Exhibit B.

5.2 Payment. The Purchase Price will be payable, in Grantee's sole discretion, either by (i) cash in the amount of the Purchase Price, (ii) a promissory note in the principal amount of the Purchase Price payable without interest over the amount of time Owner owned the Property, or (iii) a combination of cash and a promissory note.

5.3 Prorated Expenses. Any utilities, property taxes, and other similar expenses with respect to the Property will be prorated between Owner and Grantee as of the Closing Date to the extent possible. The proration of any remaining expenses will be made as soon as practicable thereafter.

5.4 Shared Appreciation Agreement. If Grantee does not to exercise its right to purchase the Property pursuant to the Right of First Refusal, the Grantee shall continue to be entitled to Grantee Percentage of the Appreciation in Value, as described in Section 5.1, plus any remaining amounts due on promissory notes held by Grantee and any other obligations owed from Owner to Grantee.

SECTION 6. REPRESENTATIONS AND WARRANTIES OF OWNER

Owner represents and warrants to Grantee as follows:

6.1 Authority. Owner has full power and authority to sign and deliver this Agreement and to perform all of Owner's obligations under this Agreement.

6.2 Binding Obligation. This Agreement is the legal, valid, and binding obligation of Owner, enforceable against Owner in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, or other similar laws of general application or by general principles of equity.

6.3 No Conflicts. The signing and delivery of this Agreement by Owner and the performance by Owner of all of Owner's obligations under this Agreement will not: (a) breach any agreement to which Owner is a party, or give any person the right to accelerate any obligation of Owner; (b) violate

any law, judgment, or order to which Owner is subject; or (c) require the consent, authorization, or approval of any person, including but not limited to any governmental body.

6.4 Title to Property. Immediately before the Closing, Owner will have good title to the Property, free from all liens, mortgages, pledges, security interests, and other encumbrances except Permitted Closing Encumbrances.

6.5 Non-foreign Person. Owner is not a “foreign person” for purposes of Section 1445 of the Internal Revenue Code.

SECTION 7. REPRESENTATIONS AND WARRANTIES OF GRANTEE

Except for the express representations and warranties in this Agreement, Grantee expressly excludes all warranties with respect to the Transaction, express and implied. Grantee represents and warrants to Owner as follows:

7.1 Organization. Grantee is duly organized and validly existing under the laws of the State of Oregon.

7.2 Authority. Grantee has full power and authority to sign and deliver this Agreement and to perform all of Grantee’s obligations under this Agreement.

7.3 Binding Obligation. This Agreement is the legal, valid, and binding obligation of Grantee, enforceable against Grantee in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, or other similar laws of general application or by general principles of equity.

7.4 No Conflicts. The signing and delivery of this Agreement by Grantee and the performance by Grantee of all of Grantee’s obligations under this Agreement will not: (a) conflict with Grantee’s articles of incorporation or bylaws; (b) breach any agreement to which Grantee is a party, or give any person the right to accelerate any obligation of Grantee; (c) violate any law, judgment, or order to which Grantee is subject; or (d) require the consent, authorization, or approval of any person, including but not limited to any governmental body.

SECTION 8. COVENANTS OF OWNER BEFORE CLOSING

Owner covenants to Grantee as follows:

8.1 Evidence of Title to Real Property. Within 15 days after Grantee exercises the Right of First Offer, Owner will deliver to Grantee: (a) a title commitment issued by a title insurer reasonably satisfactory to Grantee, in which the title insurer agrees to issue to Grantee, subject to specified requirements, a standard form ALTA Owner’s Policy of title insurance covering the Property in the amount of the Purchase Price; and (b) copies of all recorded documents that give rise to any exception in the title commitment for the Property.

8.2 Title Insurance. If Grantee exercises the Right of First Offer, Owner will use Owner’s best efforts to: (a) satisfy the title insurer’s requirements for issuing the policy that are specified in the applicable title commitment; and (b) eliminate as an exception to the applicable title commitment any exception that is not a Permitted Closing Encumbrance.

8.3 Filings and Notices. If Grantee exercises the Right of First Offer, Owner will make all filings and give all notices that Owner is required to make and give to close the Transaction. Owner will cooperate with Grantee with respect to all filings and notices that Grantee is required to make and give to close the Transaction.

8.4 Consents. If Grantee exercises the Right of First Offer: (a) Owner will use Owner's best efforts to obtain all consents, authorizations, and approvals that Owner is required to obtain to close the Transaction; and (b) Owner will cooperate with Grantee with respect to all consents, authorizations, and approvals that Grantee is required to obtain to close the Transaction and to own and use the Property and perform all of Owner's obligations under all contracts relating to the Property immediately after the Transaction.

8.5 Conditions. If Grantee exercises the Right of First Offer, Owner will use Owner's best efforts to cause the conditions in Section 10 to be satisfied.

8.6 Inspection. If Grantee exercises the Right of First Offer, upon Grantee's request, Owner will permit Grantee and/or Grantee's agents and employees to enter onto and inspect the Property.

SECTION 9. COVENANTS OF GRANTEE BEFORE CLOSING

Grantee covenants to Owner as follows:

9.1 Filings and Notices. If Grantee exercises the Right of First Offer, Grantee will make all filings and give all notices that Grantee is required to make and give to close the Transaction. Grantee will cooperate with Owner with respect to all filings and notices that Owner is required to make and give to close the Transaction.

9.2 Consents. If Grantee exercises the Right of First Offer: (a) Grantee will use Grantee's best efforts to obtain all consents, authorizations, and approvals that Grantee is required to obtain to close the Transaction; and (b) Grantee will cooperate with Owner with respect to all consents, authorizations, and approvals that Owner is required to obtain to close the Transaction.

9.3 Conditions. If Grantee exercises the Right of First Offer, Grantee will use Grantee's best efforts to cause the conditions in Section 11 to be satisfied.

SECTION 10. CONDITIONS TO GRANTEE'S CLOSING OBLIGATIONS

If Grantee exercises the Right of First Offer, Grantee's obligation to close the Transaction is subject to the satisfaction of the following conditions:

10.1 Accuracy of Representations and Warranties. Each of Owner's representations and warranties in Section 6 must have been accurate in all respects as of the date of this Agreement, and each of Owner's representations and warranties in Section 6 must be accurate in all respects as of the Closing Date.

10.2 Performance of Covenants. Owner must have performed and complied with each of Owner's covenants in Section 8 in all respects.

10.3 Closing Documents. Owner must have caused the following items to be delivered to Grantee: (a) the items set forth in Section 12.3; (b) an unconditional and binding commitment from a title insurer reasonably satisfactory to Grantee to issue to Grantee a standard form ALTA Owner's Policy of title insurance that: (1) covers the Property in the amount of the Purchase Price; (2) does not contain any exception that is not a Permitted Closing Encumbrance; and (3) is otherwise in form and substance reasonably satisfactory to Grantee; and (c) any other documents that Grantee may reasonably request to evidence: (1) the accuracy of Owner's representations and warranties in Section 6; (2) Owner's performance of and compliance with Owner's covenants in Section 8; or (3) the satisfaction of any condition in this Section 10.

SECTION 11. CONDITIONS TO OWNER'S CLOSING OBLIGATIONS

If Grantee exercises the Right of First Offer, Owner's obligation to close the Transaction is subject to the satisfaction of the following conditions:

11.1 Accuracy of Representations and Warranties. Each of Grantee's representations and warranties in Section 7 must have been accurate in all respects as of the date of this Agreement and must be accurate in all respects as of the Closing Date.

11.2 Performance of Covenants. Grantee must have performed and complied with each of Grantee's covenants in Section 9 in all respects.

11.3 Closing Documents. Grantee must have caused the following items to be delivered to Owner: (a) the items set forth in Section 12.2; (b) any other documents that Owner may reasonably request to evidence: (1) the accuracy of Grantee's representations and warranties in Section 7; (2) Grantee's performance of and compliance with Grantee's covenants in Section 9; or (3) the satisfaction of any condition in this Section 11.

SECTION 12. CLOSING

12.1 Closing. The Closing will take place at the offices of Grantee on or before the Drop-Dead Date, or at any other place or time that the parties may agree.

12.2 Obligations of Grantee. At the Closing, Grantee will deliver to Owner cash and/or a promissory note, pursuant to Section 5.2 above.

12.3 Obligations of Owner. Owner will deliver the following items to Grantee at the Closing: (a) a warranty deed signed by Owner for the transfer of the Property, in form and substance reasonably satisfactory to Grantee; (b) such other deeds, bills of sale, assignments, and other documents that Grantee may reasonably request for the Transaction, in form and substance reasonably satisfactory to Grantee; (c) a certified check signed by Owner for prorated expenses with respect to the Property, to the extent that the prorations can be made at the Closing.

SECTION 13. TITLE INSURANCE

Within 15 days after the Closing Date, Owner will deliver to Grantee a standard form ALTA Owner's Policy of title insurance issued to Grantee that: (a) covers the Property in the amount of the

real market value of the Property as set forth on the Deschutes County tax assessment role on the Closing Date, (b) does not contain any exception that is not a Permitted Closing Encumbrance, and (c) is otherwise in form and substance reasonably satisfactory to Grantee.

SECTION 14. SURVIVAL

14.1 Survival. All representations, warranties, covenants, and other obligations in this Agreement and all other agreements and documents relating to the Transaction will survive the Closing and the termination of this Agreement.

14.2 No Merger. If the Closing occurs, the representations, warranties, covenants, and other obligations of Owner in this Agreement and all other agreements and documents relating to the Transaction will not merge with or into the deed described in Section 12.3(a).

SECTION 15. TERMINATION

This Agreement will terminate upon the earliest to occur of the following: (a) Owner's satisfaction in full of Owner's obligations under the Note, (b) upon the Transfer of the Property to a transferee other than Grantee in accordance with Section 4.4; (c) upon the written agreement of Grantee and Owner; (d) upon notice by Owner to Grantee before the Closing Date if: (1) Grantee materially breaches this Agreement and fails to cure the breach within 20 days after Owner notifies Grantee of the breach; (2) the satisfaction of any condition set forth in Section 11 on or before the Drop-Dead Date becomes impossible, unless the satisfaction of the condition became impossible because Owner breached this Agreement; or (3) the Closing has not occurred on or before the Drop-Dead Date, unless the Closing has not occurred because Owner breached this Agreement.

SECTION 16. WARNING

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

SECTION 17. EQUITABLE RELIEF

Owner acknowledges that the remedies available at law for any breach of this Agreement by Owner will, by their nature, be inadequate. Accordingly, Grantee may obtain injunctive relief or other

equitable relief to restrain a breach or threatened breach of this Agreement or to specifically enforce this Agreement, without proving that any monetary damages have been sustained.

SECTION 18. EXPENSES

Except as otherwise provided in this Agreement, each party will bear the party's own fees, costs, and expenses incurred in connection with this Agreement and the Transaction, including but not limited to the preparation, negotiation, signing, and performance of this Agreement and the other agreements and documents relating to the Transaction.

SECTION 19. RECORDING

Contemporaneously with the signing and delivery of this Agreement, Owner and Grantee will sign a memorandum of this Agreement for recording in the Official Records of Deschutes County, Oregon. The memorandum will be in form and substance reasonably satisfactory to Grantee. Grantee will pay all of the fees, costs, and expenses of recording the memorandum.

SECTION 20. GENERAL

20.1 Notices. All notices or other communications required or permitted by this Agreement: (a) must be in writing; (b) must be delivered to the parties at the addresses set forth above, or any other address that a party may designate by notice to the other parties; and (c) are considered delivered: (1) upon actual receipt if delivered personally, by fax, or by a nationally recognized overnight delivery service; or (2) at the end of the third business day after the date of deposit in the United States mail, postage pre-paid, certified, return receipt requested.

20.2 Governing Law; Venue. This Agreement is governed by the laws 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. Any action or proceeding arising out of this Agreement will be litigated in courts located in Deschutes County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Deschutes County, Oregon.

20.3 Attorney's Fees. If any arbitration or litigation is instituted to interpret, enforce, or rescind this Agreement, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind, including but not limited to the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

20.4 Miscellaneous. Time is of the essence with respect to all dates and time periods in this Agreement. Owner may not assign or delegate any of Owner's rights or obligations under this Agreement to any person without the prior written consent of Grantee, which Grantee may withhold in Grantee's sole discretion. This Agreement will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit. This Agreement may be amended only by a written document signed by the party against whom enforcement is sought. If a provision of this Agreement is determined to be unenforceable in any

respect, the enforceability of the provision in any other respect and of the remaining provisions of this Agreement will not be impaired. The parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Agreement. Any exhibits, schedules, and other attachments referenced in this Agreement are part of this Agreement. The parties will have all remedies available to them at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently. This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement. If Owner consists of more than one party each representation, warranty, covenant and obligation of Owner in this Agreement is made on a joint and several basis.

IN WITNESS WHEREOF, the parties have entered into this Agreement and caused it to be effective for all purposes as of the Effective Date.

GRANTEE:

Bend Area Habitat for Humanity,
an Oregon nonprofit corporation

By: _____
Scott Rohrer, Executive Director

OWNER:

OWNER:

SCHEDULE 1 Definitions

“Closing” means the closing of the Transaction.

“Closing Date” means the date on which the Closing takes place.

“Drop-Dead Date” means the 60th day after Owner receives notice from Grantee that Grantee has exercised the Right of First Offer.

“Note” means the Promissory Note of even date herewith in the principal amount of [REDACTED] made by Owner in favor of [REDACTED].

“Permitted Closing Encumbrance” means: (a) any lien, mortgage, pledge, security interest, or other encumbrance in favor of Owner; (b) with respect to the Property, any exception that is disclosed on the title commitment delivered to Grantee under Section 8.1, if Grantee fails to deliver a written objection of the exception to Owner within 15 days after the delivery of the title commitment to Grantee; (c) any lien, mortgage, pledge, security interest, or other encumbrance arising by operation of law for taxes, assessments, or government charges not yet due; (d) and any statutory lien or encumbrance for services or materials arising in the ordinary course of Owner’s business for which payment is not yet due.

“Property” means the real property, together with all fixtures and improvements, located at [REDACTED] more particularly described in the attached Exhibit A.

“Purchase and Sale Agreement” means the purchase and sale agreement of even date herewith between Owner and Grantee.

“Right of First Offer” means Grantee’s option to buy the Property under Section 4.2, subject to the terms and conditions of this Agreement.

“Transaction” means the purchase and sale of the Property provided for in this Agreement.

“Transfer” means: (a) any transfer other than a Permitted Closing Encumbrance, including but not limited to any sale, exchange, gift, other encumbrance, foreclosure of an encumbrance, or attachment, regardless of whether the transfer occurs voluntarily or involuntarily, by operation of law, or because of any act or occurrence; and (b) any contract involving the lease or use of the Property that may not be terminated by Owner upon 30 or fewer days’ notice for any or no reason without any additional liability arising out of or resulting from the termination.

“Transfer Notice” means a notice delivered under Section 4 that sets forth: (a) the type of proposed Transfer; (b) the proposed purchase price for the Property; (c) the proposed other terms and conditions of the Transfer, including but not limited to the payment terms, if applicable; and (d) a complete list of – and, if written, a complete and accurate copy of – each contract involving the ownership, lease, use, or operation of the Property other than the Note, Purchase and Sale Agreement, Trust Deed, and this Agreement.

“Trust Deed” means the trust deed of even date herewith made by Owner in favor of Grantee.

EXHIBIT A

Real Property Legal Description



EXHIBIT B

**PERCENTAGE OF BEND AREA HABITAT FOR HUMANITY'S AND OWNER'S SHARE
IN APPRECIATION OF PROPERTY**

Anniversary of Purchase	Owner Percentage	Grantee Percentage
1st	0.00%	100.00%
2nd	0.00%	100.00%
3rd	0.00%	100.00%
4th	0.00%	100.00%
5th	0.00%	100.00%
6th	0.00%	100.00%
7th	0.00%	100.00%
8th	0.00%	100.00%
9th	0.00%	100.00%
10th	33.34%	66.66%
11th	36.67%	63.33%
12th	40.00%	60.00%
13th	43.34%	56.66%
14th	46.67%	53.33%
15th	50.00%	50.00%
16th	53.34%	46.66%
17th	56.67%	43.33%
18th	60.00%	40.00%
19th	63.34%	36.66%
20th	66.67%	33.33%
21st	70.00%	30.00%
22nd	73.34%	26.66%
23rd	76.67%	23.33%
24th	80.00%	20.00%
25th	83.34%	16.66%
26th	86.67%	13.33%
27th	90.00%	10.00%
28th	93.34%	6.66%
29th	96.67%	3.33%
30th	100.00%	0.00%