Habitat Oregon Permanent Affordability – Frequently Asked Questions
Ground Leases and Affordability Covenant Models

PERMANENT AFFORDABILITY BASICS and DEFINITIONS

Mechanisms for Preserving Affordability

For rental units, affordability is generally protected through a deed restriction or covenant which imposes both maximum rents and tenant eligibility standards for a fixed period of time.

For homeownership houses/units, most communities use some form of the shared equity homeownership model to protect affordability. Some shared equity programs rely on loan documents that require owners to repay a share of appreciation. Others record deed restrictions or covenants requiring homebuyers to resell for no more than an affordable price for a future lower-income homebuyer, which is determined by a shared equity resale formula. Similarly, some programs rely on ground leases utilized by community land trusts and/or a nonprofit partner. Ground leases with homebuyers also use a formula to restrict resale prices to preserve affordability. (See Grounded Solutions Website)

Shared Equity Homeownership:

Shared equity homeownership programs create affordable homeownership opportunities for households with modest incomes. The model ensures that the homes remain affordable permanently to help family after family purchase the homes.

Shared equity homeownership is a self-sustaining model that takes a one-time public investment to make a home affordable for a lower-income family and then restricts the home's sale price each time it is sold to keep it affordable for subsequent low-income households who purchase the home. The model balances wealth building for households who would otherwise be unable to afford owning a home with preserving the community's investment. (See Grounded Solutions Website)

Initial Affordable Base Sale Price:

The affordable base price is the price point that sets the basis for all future affordability of the home. For the initial (first) sale of the property the base price is set based on the pricing methodology spreadsheet that incorporates your community's AMI levels and the specifics about the property, including estimated taxes, insurance, lease fees and HOAs. If this base price were set too high to begin with, then it is possible the home would lose its affordability over time. For all subsequent sales of the property, the sale price will be determined based on the resale formula outlined in the affordability covenant or ground lease. This price will become the new homebuyer's base price (the contracted sales price between the home seller and the new income-qualified homebuyer). All subsequent sales will be directly linked to the initial affordable base sale price, which will only be calculated once.

Resale Formula:

The resale formula is the formula used to help set the affordable price to another income-qualified homebuyer when the home resells in the future. Today there are three types of formulas that seem to be most common, and that pass the test in terms of being both easy to understand and to administer. Those formulas are:

a. Fixed rate resale formulas,

b. Index based resale formulas, and
c. Appraisal based resale formulas.

For more information please request the Grounded Solutions' *Resale Formula Options for Long Term Affordable Homeownership Programs* from Habitat Oregon.

What is the difference between the Ground Lease and the Affordability Covenant permanent affordability Models?

With the Ground Lease Model:	**With the Affordability Covenant Model:**
• Legal documents to define permanent affordability: Master and Short Form Ground Lease Documents	• Legal documents to define permanent affordability: Affordability Covenant Document
• The lease is recorded both at the county before a sale begins (Master Form) and at the time of sale (Short Form); a Short Form signed by each owner must be recorded with each transfer of title or sale	• The covenant is recorded with the deed as a free standing document at the time of initial sale
• Ground Lease is usually for 99 years; a new term starts with each sale	• Covenant is forever attached to property, but is not re-recorded with each sale
• Requires Ground Lease landlord to carry additional liability insurance to cover land	• Ownership of land and home is fully conveyed to homebuyer, no additional liability insurance needed
• Property tax discounts may be available due to retention of land by a charitable organization (the affiliate or a Community Land Trust)	• Property taxes are paid by the homeowner; any discounts are subject to low-income owner programs available from county/state
• Resale restrictions apply: Affordable Base Price used at time of initial home sale; resale formula used for all subsequent sales	• Resale restrictions apply: Affordable Base Price used at time of initial home sale; resale formula used for all subsequent sales
• A modest monthly lease fee charged by the Lessor is recommended to cover lease administrative costs (usually $25-$75/mo).	• A modest monthly service fee charged by the covenant holder is recommended to cover stewardship administrative costs (usually $25-$75/mo)
• A resale fee may be charged to support the administrative costs associated with managing the resale of the property.	• A resale fee may be charged to support the administrative costs associated with managing the resale of the property.[1]
• Required with LIFT funding	• Depending on the form of the Ground Lease and its terms and the type of project, Affordability Covenant may accompany a Ground Lease and contain affordability restrictions required for LIFT funded projects (for example, with a leasehold condominium)

[1] If HOME funds from HUD are used in the project, transfer/resale fees are not allowed and they should be removed from the standard form of ground lease and affordable housing covenant.

DEFINITION OF DOCUMENTS

NEEDED WHEN USING THE GROUND LEASE MODEL (REQUIRED WITH LIFT)

Master Form Ground Lease (Master Form):

This is the Master Form Ground Lease Agreement that will be recorded in your county before the sale of any of your ground leased homes. The Master Form is only signed/acknowledged by you as the affiliate, if required by the recorder (the master form recording statute does not require signatures, but some recorders require them, anyway). It does not include a description of land. The Master Form is not technically an agreement; rather it is a 'dummy' document from which terms are incorporated in a Short Form. A Master Form includes the full ground lease agreement, exhibits, and any potential applicable lease riders that might be needed for a future sale. The homebuyers do NOT sign this document.

Short Form Ground Lease (Short Form):

This document is prepared prior to the sale of a ground leased home to the homebuyer. The Short Form incorporates all of the specifics about the homebuyer's specific purchase (name, address, legal description, appraised value, base price, etc.). This Short Form creates a contract and a conveyance of a leasehold estate. It is signed by both Habitat and the homebuyer at the homebuyer's closing. The Short Form incorporates, by reference, all provisions of the Master Form ground lease unless deviations are specified. The homebuyer should be aware that by signing the Short Form they are agreeing to all of the terms laid out in the already recorded Master Form. The Short Form will include two riders: one for the loan program they are using (Fannie Mae Form 2100, which also serves for USDA) and a second for the OHCS LIFT funds. This document is recorded on the specific property at the homebuyers closing.

NEEDED WHEN USING THE AFFORDABILITY COVENANT MODEL

Permanent Affordability Covenant Models

A Permanent Affordability Covenant Model is recorded on a property to ensure permanent affordability. The Covenant affects the land and the home in perpetuity and can be recorded once on the property at the time of initial sale. The Covenant outlines the resale formula and other stipulations to ensure the home is well-maintained and owner-occupied. Upon resale, the home must be sold to another income-qualified homebuyer. That new homebuyer is buying the home subject to the terms of the recorded, existing covenant. By taking ownership of the home, they are agreeing to all of the terms of the covenant.

NEEDED WHEN USING BOTH THE AFFORDABILITY COVENANT MODEL AND GROUND LEASE MODELS

Sales Agreement Addendum:

Each sales agreement on a home that has a ground lease or affordability covenant needs to include an addendum to ensure the homebuyer, the title company, and the lender are fully informed of the permanent affordability requirements prior to buying the home. This addendum's purpose (among other things) are as follows:

1. For ground lease properties, ensures the buyer, the title company and the buyer's lender know that the buyer is purchasing the house on top of the land for the duration of the ground lease, while the non-profit maintains ownership of the land and a reversionary interest in the home.

2. It ensures the buyer completes education of the ground lease/covenant documents with both the non-profit and reviews the documents with an attorney prior to closing.
3. Instructs the title company to write the warranty deed to ensure that only title to the home is being transferred to the homebuyer together with a tenant's interest in the ground lease, to which the deed should be made expressly subject (the right to have the home located there under the ground lease, but not ownership of the land). For a home with an affordability covenant, the warranty deed acknowledges that the buyer is aware that they are purchasing the home subject to the recorded covenant.
4. Requires that the homebuyer enter into the ground lease at closing. The sale cannot be closed without the buyer signing the Short Form ground lease. For homes with affordability covenants, the homebuyer signs the warranty deed acknowledging the restrictions outlined in the already recorded covenant on a resale purchase. At the initial sale of a home subject to an affordable housing covenant, the homebuyer will sign the free-standing affordable housing covenant.
5. Instructs the title company on the recording of required documents.

BASIC PROCESS

How are homes kept permanently affordable through the Ground Lease Model and the Affordability Covenant Model?

In exchange for a reasonable purchase price (generally anywhere from $60,000 to $200,000 below market value), homeowners agree to resale arrangements that provide a seller with a share of the home's appreciation while ensuring the home remains affordable for another low to moderate-income homebuyer. When using the Ground Lease Model, this arrangement is guaranteed through a legal agreement between the Habitat affiliate and the homeowner using a Master Form Ground Lease filed with the County, and a Short Form Ground Lease that has the property and sale specifics. When using the Affordability Covenant Model, this arrangement is guaranteed through a legal covenant filed with the County at the time of sale that has the property and sale specifics that will remain with the property even through transfers of title in perpetuity.

Homeownership through both the Ground Lease and Affordability Covenant Model is different in that…

The purchase price is much, much lower – usually about $60,000 to $100,000 less than a market-rate home. In exchange for an affordable purchase price, if a homeowner sells their home, they have agreed to sell at an affordable price (often below market value) to the next homeowner. In the Ground Lease Model, the homeowner does not own the land where the home is located, but has full rights to occupy that land as defined in the Master and Short Ground Lease Forms. In the Affordability Covenant Model, the homeowner does own the land in most scenarios, but has similar affordability initial sales price and resale restriction as defined in the covenant.

Homeownership through a Ground Lease or Affordability Covenant Model is similar to traditional homeownership in that…

You own your house.
You have a mortgage package through Habitat for Humanity.

You accumulate equity.
You enjoy the tax benefits of homeownership.
You pay property taxes, though they may be less.
You are free to remodel and improve your home and yard (subject to CCRs that may also affect the home).
Your home can be inherited.

Should we charge a resale fee when the home resells to another income-qualified buyer?
Yes. Because your affiliate will be involved in the resale of a home, both with the Ground Lease and the Affordability Covenant Models, you will want to charge a fee to cover the administrative time and support. According to both models, your affiliate will be required to calculate the new sale price using the permanent affordability document's resale formula and you will be involved in making sure that future homeowners are income-qualified to purchase. You will need a policy to define the fee and you will need to make sure that your initial homebuyer and the future homebuyer are aware of the fee upon resale. Be aware, however, that HOME (HUD) regulations prohibit the collection of a transfer fee at resale. Other funding or grant sources may have similar restrictions.
See "What are some of the administrative responsibilities of an affiliate at the time of resale using both the Ground Lease Model or Affordability Covenant Model?"

When are lease fees and resale fees determined while using the Ground Lease Model?
The lease fee is memorialized in the Short Form Ground Lease, which is signed at closing. The Master Form ground lease refers to a lease fee but does not have an exact monthly amount—there is a blank in the form. This is because the Master Form ground lease is intended to be utilized by the organization for years and over the years, the organization may decide to increase their ground lease fees.

The Master Form Ground Lease allows Habitat to take a transaction fee upon resale. That fee amount is not outlined in either the Master Form Ground Lease or the Short Form Ground Lease and is determined by policy within the organization. This allows the affiliate more flexibility over the years as costs increase. Proud Ground's transaction fee at resale has grown over the years from $4,000 to $8,000 to the current fee of 6% of the appraised value of the home. Proud Ground pays realtor commissions out of this transaction fee and covers the costs of marketing the home to another income-qualified homebuyer. This is unique, because Proud Ground is a licensed real estate brokerage and does not purchase homes back from their sellers. They enter into listing agreements with their sellers to market the home for sale to income-qualified buyers. Each Habitat affiliate will need to determine how this process works for them. If they choose to purchase the home back from the seller for the purchase option price, then upon resale to the new income-qualified buyer the affiliate could add their costs to the sales price, as long as it remains affordable to an income-qualified homebuyer.

What are some of the administrative responsibilities of an affiliate when using the Ground Lease Model or the Affordability Covenant Model?
There are a number of administrative responsibilities an affiliate may need to perform as the lease/covenant holder:

- Lease/Covenant Document and ownership training at times of transfer (in inheritance situations, for example)
- Foreclosure prevention support or foreclosure support
- Annual property inspection
- Ground leased homes only: Hold liability insurance on the leased land; legally defend “no responsibility” terms of lease agreement if claims are made
- Make sure that homebuyer’s insurance and property tax escrow accounts are current
- Support homeowner if home/land is taken for public use
- Educate any appraisers, escrow officers, title companies, tax assessors, attorneys, etc. as needed during the process
- Educate new owners about asset ownership, life insurance, and creating a will, when appropriate
- Reviewing and approving improvements on the home as needed
- Reviewing and approving requests for refinance or new loans on the property
- Monitoring owner-occupancy

What are some of the administrative responsibilities of an affiliate at the time of resale using either the Ground Lease Model or Affordability Covenant Model?
When a homeowner would like to sell their property the first thing they will need to do is notify the affiliate. The affiliate will be involved in the resale of the home whether they choose to buy back the home or not. Here are some of the responsibilities of the affiliate at the time of resale:

- Internal decision-making to decide whether to exercise the purchase option
- Order an appraisal which determines the market value of the home (with the land)
- Determining homebuyer income qualifications
- Determine resale price using the resale formula from documents
- Approving any mortgage loans of the new homebuyer
- Educate the new homebuyer on documents and resale limitations for future
- Make sure that new homebuyer understands documents’ insurance requirements
- Educate any appraisers, escrow officers, title companies, tax assessors, attorneys, etc. as needed during the process
- Educate new owners about asset ownership, life insurance, and creating a will, when appropriate
- Prepare escrow instructions and closing documents for the closing

What policies does the affiliate need to have in place as they move towards permanent affordability?
As your affiliate looks at using a permanent affordability model, you will need to have in place certain policies that will help as you customize your legal documents before home sales:

- Monthly Lease/Service Fees Policy
- Qualified Capital Improvements Policy
- Renting the Home/ Definition of Owner-Occupancy Policy
- Resale/Transfer Fees Policy

- Forgiveness provisions in Habitat mortgages documents
- Resale formula Policy

Do I need to have legal counsel look at the Master and Short Form Ground Lease Documents or the Affordability Covenant before use?

Yes. Habitat Oregon in partnership with Proud Ground has worked with attorneys to create these documents and make sure that they work with other lending products and programs, but when your affiliate makes any changes to them (like customizing them to fit your affiliate's policy) we recommend that you consult legal counsel to look the documents over again. Please keep in mind that changes to these documents can potentially limit your homeowner or future owners ability to access third party financing. Funding and grant sources may also impact what needs to be in these documents.

What numbers do I need to know to calculate the new home price when using an appraisal based resale formula?

Upon resale, you will need to make sure you have the following:

- Initial Affordable Base Price – Recorded in the seller's short form ground lease or warranty deed
- Initial Appraised Value (ordered by Lender) - Recorded in the seller's short form ground lease or warranty deed
- Resale Appraised Value (ordered by Habitat at the time the seller wishes to sell)
- Qualified Capital Improvement Credits (if any)
- Habitat purchase option price = initial affordable base price + 25% change in appraised values + Qualified Capital Improvement Credit(s)

The affordable price to the new qualified homebuyer will be calculated by adding any Habitat resale fees (according to your policy) to the Habitat purchase option price. *Request the Affordable Base Price Calculator from Habitat Oregon when needed.*

MASTER AND SHORT FORM GROUND LEASE DOCUMENTS

How often does the Master Form Ground Lease need to be filed with the county?

The Master Form Ground Lease is filed once in the County you served, prior to selling any ground leased homes. The Master Form Ground Lease does not have any property or project details; the Short Form Ground Lease "fills in" the blanks with each unit/property when filed at homebuyer closing. The Master Form generally needs to be filed with the County about 2-3 months ahead of unit sales. The goal is that the Master Form Ground Lease could be used for multiple projects over time. The only time you'd need to file a new Master Form Ground Lease is if you would like to make substantial changes to the Master Form.

When using the Master Form Ground Lease template from Habitat Oregon, what should I customize and what should I make sure to leave alone?

Items that you may want to customize to fit your affiliate policy within the Master Form Ground Lease:

- Section 10.4 - Capital Improvements – As an affiliate you need to decide if you want to provide some credits at resale for capital improvements made by the homeowners. The items for which you decide to provide credit should balance the goals of keeping the home affordable, while also encouraging homeowners to do necessary improvements to the home. For example, Proud Ground recommends that you do not provide credits for all improvements made to the home, because that will cause the home to become unaffordable over time.

- Section 4.4 - Definition of owner occupancy – The template defines owner occupancy as anyone living in the home for at least 8 months out of every calendar year. You may decide to increase the annual number of occupied months; many CLTs and affiliates use 9 months. It also allows the affiliate to count occupancy of the home by the Homeowner's child, spouse, domestic partner, or other persons like a homeowner's occupancy. The approval for such occupancy *in lieu* should be requested and granted or denied in writing, in advance of Homeowner's absence. If this the 8-month requirement does not comport with your practice/policy then you could require more months out of the year to meet the criteria of owner occupancy.

Items that you will want to leave alone in order for the Master Form Ground Lease to stay usable with other lenders and programs:

- Most all other provisions should be left as-is to ensure that it doesn't potentially violate the LIFT funding from OHCS or cause any future homeowner to be unable to access third party financing.

USDA AND THE GROUND LEASE MODEL DOCUMENTS

What extra paperwork is needed if the affiliate is using a USDA construction loan for the build?
Construction loan is completely separate from the lease process. Please consult your USDA contact for more details.

What extra paperwork is needed if the homeowner is using a USDA loan to purchase the house on the ground lease property?
There will be a USDA/Fannie Mae rider included in the Master Form Ground Lease. Upon sale to the homebuyer you would need to include that rider in the buyer's Short Form Ground Lease. You need to run that rider by your local USDA office to confirm it is sufficient.

ADDITIONAL PERMANENT AFFORDABILITY RESOURCES

More resources that are less specific to Habitat but worth exploring for more in-depth understanding:

- Basics about Community Land Trusts (which is what Proud Ground is): https://groundedsolutions.org/strengthening-neighborhoods/community-land-trusts
- Info about Grounded Solutions and Habitat in general: https://groundedsolutions.org/tools-for-success/resource-library/community-land-trusts-and-habitat-humanity
- A deeper dive with Grounded Solutions in baseline home sale price setting: https://www.youtube.com/playlist?list=PLb1rrbCdX1beJlkqFBDzTb7Nbz7_m2JwK
    - See the HFHO Affordable Base Price Calculator created for affiliates to use.

More information about permanent affordability through resale restrictions:

- Homes Affordable for Good: Covenants and Ground Leases as Long-Term Resale-Restriction Devices by James J. Kelly:

https://scholarship.law.nd.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1297&context=law_faculty_scholarship

ADDITIONAL HELPFUL DOCUMENTS/RESOURCES THAT HABITAT OREGON CAN PROVIDE FOR AFFILIATE USE AND ADAPTATION

- Habitat Oregon Permanent Affordability Portal Resources Webpage
- Land Trust Practicum event resource page
- Master Form Ground Lease Document Template
- Short Form Ground Lease Document Template
- Affordable Base Price Calculator
- Purchase and Sales Agreement Addendum Template
- Appraiser List from Proud Ground
- Title Company Information Sheet Template
- Escrow Instructions Template
- Property Tax Information Sheet Template
- Sample Qualified Capital Improvements Policy
- Sample Proud Ground Homebuyer Ground Lease Document Education Recording