

Aspen #01633068
 OREGON HOUSING AGENCY
 STATE OF OREGON

LOAN AGREEMENT

THIS AGREEMENT is made this 2nd day of February, 1989, by and between Klamath County, a subdivision of the State of Oregon, located at 316 Main Street, Klamath Falls OR 97601 (hereinafter referred to as "Borrower"), and the State of Oregon, acting by and through the Oregon Housing Agency, having its principal office at 1600 State Street, Suite 100, Salem, Oregon 97310 (hereinafter referred to as the "Agency").

RECITALS:

Borrower has requested the Agency to make a loan to Borrower in the principal amount of Fifty Five Thousand Six Hundred Ninety Dollars (\$55,690) for the long-term financing of a housing project for elderly and disabled persons. The Agency is willing to make this loan on the terms and conditions of this Agreement. Accordingly, the parties agree as follows:

Section 1. Definitions.

As used in this Agreement, the following terms shall have the following meanings:

- (a) "Act" shall mean ORS 456.515 to 456.720.
- (b) "Administrator" shall mean the administrative officer of the Oregon Housing Agency appointed pursuant to ORS 456.554.
- (c) "Allocable Portion" shall mean an amount equal to the ratio of the principal amount of the Loan to the aggregate principal amount of all loans made from the proceeds of the bonds.
- (d) "Bonds" shall mean the Agency's General Obligation Elderly and Disabled Housing Bonds, 1988 Series A (501(c)(3)).
- (e) "Financing Securities" shall mean the Allocable Portion of the Bonds.
- (f) "Loan" shall mean the loan made to the Borrower under this Agreement in the principal amount of \$55,690.
- (g) "Occupant" shall mean people who meet the requirements of Section 5 hereof and occupy rental space in the Project.
- (h) "Operating Expenses" shall mean all federal, state, county, and local government taxes, assessments, or charges; water and sewer charges; operating costs incurred in maintaining and operating the Project, including without limitation costs of utilities, supplies, insurance, compensation of all persons who perform duties connected with the operation, maintenance, and repair of the Project, management of the Project, legal, accounting, and other professional fees incurred in

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connection with the operation, maintenance, and management of the Project; and any other costs or expenses incurred by Borrower or its agent with respect to the Project and not otherwise reimbursed by Occupants of the Project, which are properly allocable to the operation or maintenance of the Project in accordance with generally accepted accounting principles.

- (i) "Operating Receipts" shall mean rents paid by Occupants and all other receipts of the Project.
- (j) "Operating Receipts and Expense Account" shall mean the account established under Section 4(a) hereof.
- (k) "Project" shall mean the Property plus all assets of whatsoever nature used in and owned by Borrower on the Property.
- (l) "Property" shall mean the Property as defined in the Trust Deed.
- (m) "Trust Deed" shall mean the Trust Deed securing this Loan Agreement and the Trust Deed Note.

Notice to Borrower: Do not sign this Agreement before you read it. This Agreement authorizes the Agency to refuse to accept repayment of the Loan before maturity of the Loan and provides for payment of a penalty if you repay the Loan with the Agency's permission before that date.

Section 2. Payments of Principal and Interest, Prepayments.

- (a) Borrower promises to repay the principal of and accrued interest on the Loan made hereunder in equal monthly installments of \$450, payable for 29 years, beginning on April 15, 1989 at the rate of 8.97%.
- (b) The amounts payable by the Borrower under this Loan Agreement and Trust Deed Note are payable solely from legally appropriated funds and from money received by the Borrower from the Mental Health Division, Department of Human Resources, State of Oregon.
- (c) The Loan may not be prepaid without the prior written consent of the Agency. The Agency may consent to a prepayment of the principal provided that the sum to be prepaid, computed as of the date of prepayment, shall equal the unpaid principal balance of the Loan plus accrued interest, plus a premium for the privilege of prepayment equal to:
 - (1) The difference between the unpaid principal balance of the Loan and the amount of the Financing Securities, each as of the date of such prepayment; plus
 - (2) Interest on the amount of the Financing Securities at the same rate as interest is payable on the Loan from the date of prepayment to the earliest date on which the Financing Securities may be redeemed, other than by reference to Special or extraordinary redemption provision, at the option of the Agency; plus

- (3) The aggregate premium payable upon the redemption of the Financing Securities on the earliest redemption date; plus
- (4) The amount determined by the Agency as necessary to reimburse the Agency for fees and expenses of the trustee, paying agents, and counsel as may be necessary in connection with the redemption of such Financing Securities (such amount in no event to exceed 2% of the amount of the Financing Securities).
- (d) In the event of default which results in the Borrower paying the entire amount of the Loan prior to the date set forth in section 2(a) hereof, the Borrower shall pay a default penalty equal to the amount set forth in section 2(c) hereof. Notice to Borrower: Do not sign this Agreement before you read it. This Agreement provides for the payment of a penalty if Borrower defaults and repays the Loan prior to the date set out in section 2(a) hereof.
- (e) All other payments and prepayments of principal and other amounts payable to the Agency hereunder will be made to the Agency at its office located at 1600 State Street, Suite 100, Salem, Oregon 97310, or at such other place designated by the Agency to Borrower in writing.

Section 3. Rental Rates and Operating Expenses.

Borrower shall operate the Project in such a manner so as to maintain the Project in good condition. All Operating Expenses shall be paid by Borrower during the life of this Agreement even if an operating deficit occurs.

Section 4. Accounts and Funds.

- (a) Operating Receipts and Expense Account: Borrower shall establish and maintain a Project Operating Receipts and Expense Account. All Operating Receipts shall be immediately deposited in the account, and Borrower shall promptly pay all Operating Expenses out of this account.
- (b) Escrow for Taxes, Insurance, and Other Charges:
- (1) Borrower shall pay, in addition to the monthly payments required by the Trust Deed Note, a sum equal to the premiums that will next become due and payable on the policy or policies of fire and extended coverage and other property insurance covering the Property, plus taxes and assessments next due on the Property, minus all sums already paid for these items, divided by the number of months to elapse before one month prior to the date when such premiums, taxes, and assessments will become delinquent or due. These sums shall be held by the Agency or the Agency's agent in escrow to pay said premiums, taxes, and special assessments at such time as such obligations become due.

- (2) All payments required to be made by Borrower pursuant to this section and all payments to be made under the Trust Deed Note shall be added together and the aggregate amount thereof shall be paid each month in a single payment by Borrower to the Agency or the Agency's agent. Agency shall apply the payments to the following items in the following order of priority: (a) taxes, special assessments, fire and other insurance premiums; (b) interest on the Note; and (c) amortization of the principal of the Note.

Section 5. Occupant Qualifications.

Borrower covenants and agrees that no occupant of the Project shall be approved by Borrower unless the following conditions shall have been met at the time of such approval, unless any requirement has been waived by the Administrator as allowed by the Act:

- (a) The Occupant is a low or below median-income person or family as defined by the Act and the Agency's Rules and the head of the household is 58 years of age or older at the time the person or family occupies the dwelling unit; or
- (b) The Occupant meets the definition of a disabled person under the Act and Agency Rules;

Section 6. Borrower's Representations and Warranties.

Borrower represents and warrants to the Agency that:

- (a) Borrower is a subdivision of the State of Oregon duly organized, validly existing, in good standing under the laws of Oregon, or is a qualified 501(c)(3) non-profit organization as determined by the Internal Revenue Service; and Borrower has full power and authority to transact the business in which it is engaged, and full power, authority, and legal right to make this Agreement, the Trust Deed, and the Trust Deed Note and to incur and perform its obligations hereunder and under the Trust Deed and Trust Deed Note.
- (b) The making and performance by Borrower of this Agreement, the Promissory Note and the Trust Deed and the borrowing by Borrower hereunder (i) have been duly authorized by all necessary action of the Borrower, (ii) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Borrower's articles of incorporation or bylaws (articles of partnership) and (iii) do not and will not result in the breach of, or constitute a default or require any consent under, or result in the creation of any lien upon any properties or assets of Borrower pursuant to any other indenture, bank, or other credit agreement, mortgage or other agreement or instrument to which Borrower is a party or by which Borrower or any of its properties may be bound or affected.

- (c) This Agreement, the Trust Deed Note, and the Trust Deed have been duly executed and delivered by Borrower and will constitute the legal, valid, and binding obligation of Borrower, enforceable in accordance with their terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
 - (d) No authorization, consent, license, or approval of, or filing or registration with, or notification to, any governmental body or regulatory or supervisory authority is required for the execution, delivery, or performance by Borrower of this Agreement, the Trust Deed Note, or the Trust Deed or for the borrowing hereunder.
 - (e) Since Borrower applied to Agency for the Loan, there has been no material adverse change in the financial condition of Borrower.
 - (f) No representation or warranty by Borrower in this Agreement or on any written statement, including information, data, exhibits, and other materials submitted in connection with the Loan, furnished to the Agency pursuant to this Agreement or in connection with the transactions contemplated by this Agreement, when taken together, contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make the statements not misleading.
- Section 7. Affirmative Covenants of Borrower.

Borrower covenants and agrees to all of the following:

- (a) It shall abide by the terms of the Trust Deed and Trust Deed Note dated the date hereof and by this reference incorporated herein.
- (b) The Project shall be open to all persons without discrimination as to race, color, creed, religion, national origin, sex, marital status, or status with regard to public assistance or local residency, unless otherwise specified by law or this Agreement.
- (c) No commercial facilities will be located in the Project.
- (d) Payment for services, supplies, or materials for the Project shall not exceed the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials are furnished.
- (e) Borrower shall at all times maintain books, contracts, records, documents, and other papers relating to the Property and the Project in reasonable condition for proper audit, and all such books, contracts, records, documents, and other papers shall be subject to inspection by the Agency or its authorized agents upon reasonable notice.
- (f) Borrower shall submit financial statements as requested by the Agency.
- (g) At the request of the Agency, Borrower shall furnish to the Agency monthly occupancy reports and provide specific information relating to the income and assets of the Occupants.

- (h) Effective at the time of closing on any land and/or building purchase approved by the Agency, the Borrower shall maintain fire and extended coverage insurance with vandalism and malicious mischief endorsements on the property and improvements in the amount of the full replacement value thereof. The Borrower shall maintain public liability and property damage insurance with limits of not less than: \$50,000 to any claimant for any number of claims for damage to or destruction of property, including consequential damages, arising out of a single accident or occurrence; \$100,000 to any claimant for all other claims arising out of a single accident or occurrence; \$300,000 for any number of claims arising out of a single accident or occurrence. If self-insured, the Borrower, in accepting this agreement, certifies that its self-insurance guarantees coverages at a minimum of the amounts specified above. If the Borrower discontinues its self-insurance program, the Borrower shall notify the Agency immediately, and furnish the Agency as its interest may appear with certificates evidencing all required insurance coverage. Those certificates will name the Agency as additional insured, and will contain an agreement that the coverage will not be canceled or diminished without 30 days' advance notice to the Agency.
- (i) The Agency or its agents may enter upon the Property or the Project for the purpose of inspection during Borrower's normal business hours.
- (j) Borrower shall comply with the requirements of all applicable laws, rules, regulations, and orders of any governmental authority, except where contested in good faith and by proper proceedings.

Section 8. Negative Covenants of the Borrower.

Borrower covenants and agrees that it shall not, without the express prior written approval of the Agency:

- (a) Sell, lease (except individual units to Occupants), convey or otherwise transfer or encumber any of the Project or the Property, or permit such sale, lease, conveyance, or other transfer or encumbrance of the Project or the Property or any portion thereof, except as provided in this Agreement and in the Trust Deed.
- (b) Sell, assign, dispose of, or otherwise transfer or encumber any personal property of the Project, including rents, or pay out any money except for reasonable Operating Expenses and necessary repairs as provided herein.
- (c) Remodel, add to, reconstruct, or demolish any part of the Property or the Project.
- (d) Transfer, assign, or pledge any right to, interest in, or title to any funds deposited by Borrower with the Agency or reserved by the Agency for Borrower.

Section 9. Further Provisions Applicable to Borrower.

- (a) No amendments will be made to a Borrower's articles of incorporation or other documents establishing the legal status of Borrower which would affect the Agency's rights under this Agreement, the Trust Deed, or Trust Deed Note, without the Agency's prior written approval.
- (b) At the option of the Agency, the Loan may be reamortized within the original term of the Loan if a partial prepayment results from an award in condemnation, or from an insurance payment resulting from a loss on the Property.
- (c) Borrower shall save and hold harmless the State of Oregon and the Agency and their officers, agents, employees, and members from all claims, suits, or actions of whatsoever nature resulting from or arising out of the activities of Borrower or its subcontractors, agents, or employees in connection with this Loan or the Project.

Section 10. Special Covenants Related to Tax-Exempt Status of Bonds Issued to Finance the Loan.

The Loan is being funded, in part, with the proceeds of the Bonds, the interest on which is excludable from gross income under Section 103 of the Internal Revenue Code of 1986 (the "Code"). The Bonds are "qualified private activity bonds" under Section 141 of the Code, and are "qualified 501(c)(3) bonds" under Section 145 of the Code. The Borrower agrees to comply with all reasonable requirements of the Agency which it may subsequently impose in order to ensure that interest on the Bonds remains excludable from gross income under the federal income tax laws under Section 103 of the Code. In addition, the Borrower specifically covenants:

- (a) All property financed with the Loan will be owned by the Borrower.
- (b) The Borrower is a governmental unit of the State of Oregon, or is an organization qualified under Section 501(c)(3) of the Code, which is using all property financed with the Loan in activities which do not constitute unrelated trades or business, determined by applying Section 513(a) of the Code.
- (c) If the Borrower is a 501(c)(3) organization, and if the Borrower owns or uses any other facilities which have been financed with tax-exempt bonds, the total amount of tax-exempt bonds outstanding which are allocable to facilities owned or used by the borrower, or any related person, does not exceed \$150,000,000.
- (d) The Borrower will not permit the facilities to be used under a lease, sublease, rental agreement, or any other agreement, by a service provider or other entity other than an Occupant, unless:
 - (1) the entity is a city, county, housing authority or other governmental unit of the State of Oregon; or

- (2) the entity is an organization qualified under Section 501(c)(3) of the Code, which is using the facilities financed with the Loan for activities which do not constitute unrelated trades or businesses, determined by Section 513(a) of the Code, and there are not more than \$150,000,000 of tax-exempt obligations outstanding which are allocable to any facilities owned or used by the entity or any related person; or
- (3) The use is pursuant to a "qualified management contract" approved in advance and in writing by the Agency.
- (e) Neither the Borrower, nor any entity or person related to the Borrower in any way, has or will enter into any arrangement, whether formal or informal, to purchase the bonds used to finance the Loan in an amount which is related to the amount of the Loan.
- (f) The average maturity of the Note executed in connection with this Loan Agreement does not exceed 120 percent of the average reasonably expected economic life of the facilities being financed with the net proceeds of the Loan.
- (g) No portion of the facilities financed with the Loan will be used to provide any airplane, skybox, or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off-premises.
- (h) The Borrower agrees that any agreement it executes with any service provider or other entity for use of the facilities financed with the Loan (and any agreement any user executes with another user of the facilities), other than a rental agreement with an Occupant, shall (unless the agreement is a "qualified management contract" approved in writing and in advance by the Agency) contain the following certifications of the user:
 - (1) The user is an organization qualified under Section 501(c)(3) of the Code, which is using the facilities financed with the Loan for activities which do not constitute unrelated trades or businesses, determined by applying Section 513(a) of the Code, and there are not more than \$150,000,000 of tax-exempt obligations outstanding which are allocable to any facilities owned or used by the user or any related person.
 - (2) The agreement for use of the facilities may be terminated immediately if the Agency reasonably determines that termination of the agreement is required to ensure that interest paid on the Bonds remains excludable from gross income under the Code.

Section 11. Events of Default.

If any of the following events occurs and is continuing, namely:

- (a) Borrower defaults in the performance or observation of any of its covenants or agreements contained herein or in the Trust Deed Note and Trust Deed, and the default continues for 30 days after the Agency gives written notice thereof; or
- (b) any representation or warranty with respect to current or historical information made to Agency herein or in any certificate, notice, report, financial statement, or other instrument or document furnished to Agency hereunder or in connection herewith proves to have been incorrect in any material respect when made; or
- (c) any authorization, consent, license, approval, filing, or registration now or hereafter necessary to enable Borrower to comply with its obligations hereunder or under the Trust Deed or Trust Deed Note or incurred pursuant hereto or thereto fails to be timely issued or granted, or expires or lapses and is not forthwith renewed or extended, or is revoked, withdrawn, withheld, or modified so as to materially interfere with such compliance; or
- (d) Borrower (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) is adjudicated as bankrupt or insolvent, (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under such Bankruptcy Code, or (viii) takes any corporate action for the purpose of effecting any of the foregoing; or
- (e) a proceeding or case is commenced, without the application or consent of Borrower, in any court of competent jurisdiction, seeking (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Borrower, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Borrower or of all or any substantial part of its assets, or (iii) similar relief in respect to Borrower under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of 60 consecutive days, or an order for relief against Borrower is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect); or
- (f) Borrower effects a change or ownership, a change of control of the business, or transfers any interest in properties securing the Loan without the prior written consent of the Agency; or

- (g) Borrower fails to terminate the management agreement after request by the Agency or fails to make satisfactory arrangements for a new management agent.

Thereupon, and in each such case, if such violation is not corrected to the satisfaction of the Agency within thirty (30) days after the date the Agency gives written notice to Borrower or within such additional time as the Agency allows Borrower to correct the violation, the Agency may, without further notice, declare a default under this Agreement, effective on the date of such declaration, and thereupon the Agency may (in addition to those actions permitted under the Trust Deed or Trust Deed Note in the event of default) apply to any appropriate court, state or federal, for specific performance of the covenants and agreements contained herein, or for an injunction against any violation of such covenants and agreements, or for the appointment of a receiver to take over and operate the Project, or for such other relief as may be appropriate and allowed by law, since the injury to the Agency arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain. All such remedies shall be cumulative and the Agency's election to pursue any one or more of the above remedies shall not be construed to preclude or to be a waiver of the Agency's right to pursue any other remedy. The Agency may also take possession of the Project, bring any action necessary to enforce the rights of the Agency growing out of the operation of the Project and to collect the rents and operate the Project until such time as the Agency, in its discretion, determines that Borrower is again in a position to operate the Project in accordance with the terms of this Agreement and in compliance with the requirements of the Trust Deed Note and Trust Deed evidencing and securing the Loan.

It is expressly understood and agreed that the provision for thirty (30) days' notice to Borrower for violation of the terms of this Agreement contained in this section is inapplicable to the provisions for disbursement by the Agency from the accounts described in sections 5(c) and (d) of this Agreement.

Section 12. Mutual Covenants and Agreements.

Both parties covenant and agree that:

- (a) If any term, covenant, or condition of this Agreement, the Trust Deed, or Trust Deed Note shall be finally determined by a court of competent jurisdiction to be invalid, the term, covenant, or condition so determined to be invalid is hereby declared severable and shall not affect the validity of the remaining portions of this Agreement;
- (b) No waiver by either party of any term, covenant, or condition of this Agreement shall be binding unless in writing and signed by both parties hereto;
- (c) No amendment, modification, or termination of this Agreement or any provision hereof shall be effective unless in writing and signed by both parties;

- (d) Except as otherwise provided, whenever any approval or notice by the Agency is required under this Agreement, or whenever any action by the Agency is required or permitted, the Administrator of the Agency or the Administrator's successor or authorized agent shall have the power and right to approve, give notice, or act on behalf of the Agency, as the case may be; and
- (e) This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns.
- (f) The prevailing party in any dispute arising from this Agreement shall be entitled to recover from the other its reasonable attorney's fees and costs at trial and on appeal.
- (g) This Agreement constitutes the entire agreement between the parties.
- (h) Any and all notices by the Agency to Borrower, or by Borrower to the Agency, shall be in writing and shall be deemed to have been duly given or made when deposited in the mails, certified and postage prepaid addressed to the parties at the addresses stated on page one, or at such other address of which such party shall have notified in writing the other parties hereto.
- (i) This Agreement shall be governed by the laws of the State of Oregon.
- (j) Whenever used, the singular number should include the plural, and the plural the singular; and the use of any gender shall apply to all genders.
- (k) All covenants and agreements of Borrower shall be joint and several.
- (l) The captions and headings of the sections of this Agreement are for convenience only and are not to be used to interpret or define the provisions hereof.
- (m) Time is of the essence in the performance of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

BORROWER: KLAMATH COUNTY, A SUBDIVISION
OF THE STATE OF OREGON

By: Ted Lindow by Ron M. Cutchman
Title: Attorney in fact

By: _____
Title: _____

STATE OF OREGON, acting by and through
OREGON HOUSING AGENCY

By: Larry Dowd
Larry Dowd, Manager,
Multi-Family Housing Programs

STATE OF OREGON)
County of Klamath) ss.

The foregoing instrument was acknowledged before me this 2nd day
of February, 19 89, by Ron McCutcheon, on
behalf of Klamath County, a Subdivision of the State of Oregon

W. Darlene V. Aldington
Notary Public for Oregon
My Commission Expires: 3-22-89

STATE OF OREGON)
County of Marion) ss.

The foregoing instrument was acknowledged before me this 26th day
of January, 19 89, by LARRY DOWD, Manager, Multi-Family
Housing Programs, Oregon Housing Agency, on behalf of the Agency.

Reverine Wade
Notary Public for Oregon
My Commission Expires: 5/29/92

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EXHIBIT "A"

Lot 5, Block 300, DARROW ADDITION TO THE CITY OF KLAMATH FALLS,
in the County of Klamath, State of Oregon.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Aspen Title Co. the 2nd day
of Feb. A.D., 19 89 at 3:02 o'clock P.M., and duly recorded in Vol. M89,
of Mortgages on Page 2098.

FEE \$68.00

Evelyn Biehn, County Clerk

Return: A.T.C.

By Pauline Mulendore