

RECORDING REQUESTED BY
AND WHEN RECORDED, MAIL TO:

Oregon Housing and Community
Services Department

PO Box 14508

Salem, Oregon 97309-0409

Attn: Betty Markey Housing Resources Section

mtc 1396 - 2485

SPACE ABOVE FOR RECORDER'S USE

**OREGON HOUSING AND COMMUNITY SERVICES DEPARTMENT
STATE OF OREGON**

**PROJECT USE AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS
AND EQUITABLE SERVITUDE**

THIS PROJECT USE AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS AND EQUITABLE SERVITUDE (the "Agreement") is made and entered into this 9th day of February 2001, by and between Klamath Housing Authority (the "Recipient") and the State of Oregon, acting by and through its Housing and Community Services Department (the "Department").

The Department has made or will make available to the Recipient a conditional grant in the amount of Twenty Thousand and 00/100 Dollars (\$20,000) (the "Grant") to partially finance the cost of constructing a twenty five unit rental housing development (24 affordable and one manager's unit) known as Country Village Apartments (the "Project") located in Klamath Falls, Oregon with a legal property description as set forth in the attached Exhibit A, which is incorporated herein by reference.

The Recipient desires to receive the Grant, one of the conditions of which is the execution of a project use agreement and declaration of restrictive covenants and equitable servitude, and the Recipient is willing to execute this Agreement in fulfillment of that condition

In consideration of the purposes set forth herein, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Recipient agrees as follows:

**SECTION 1. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE
RECIPIENT CONCERNING MAINTENANCE OF PROJECT AS HOUSING FOR MIGRANT
AGRICULTURAL LABORS.** Recipient hereby represents, warrants, covenants and agrees that:

- a. It will use the Grant solely for the construction of two units (the "Designated Units") in the Project that will house migrant agricultural laborers during the term of this Agreement. "Migrant agricultural laborers" is defined in 7 CFR 1944.153 as agricultural laborers and family dependents who establish a temporary residence while performing agricultural work at one or more locations away from the place he/she calls home or home base.
- b. Each Designated Unit must include separate and complete facilities for living, sleeping, eating, cooking and sanitation, except that in the case of dormitory housing, each Designated Unit must provide a minimum of 50 square feet of living space for each laborer, in addition to communal eating, cooking and sanitary facilities.
- c. Residency in the Designated Units will be limited to a maximum of nine months per year for each migrant agricultural laborer.
- d. The rental charge (including tenant-paid utilities) for a Designated Unit shall not exceed the 50% median income rents (which is 30% of the monthly income of a migrant worker earning 50% of the area median income adjusted for family size).

MIGRANT MILLION GRANT PROGRAM PROJECT USE AGREEMENT

Country Village Apartments

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- e. The Recipient shall accept tenants in a nondiscriminatory manner in the rental of the units in the Project.
- f. The Recipient shall operate and maintain the Project in compliance with all applicable laws, regulations, codes, and ordinances, including but not limited to building code, zoning, labor, health, habitability and handicap accessibility standards and requirements. If the Project is a labor camp, it shall be registered with Oregon OSHA.

SECTION 2. COVENANTS TO RUN WITH THE LAND; EQUITABLE SERVITUDES.

The Recipient represents, warrants, covenants and agrees that:

- a. The Grant is made by the Department to the Recipient as an inducement to the Recipient to continue to operate the Project in accordance with the terms of this Agreement. In consideration of the receipt of the Grant, the Recipient has entered into this Agreement and has agreed to restrict the uses to which the Project can be put on the terms and conditions set forth herein.
- b. The covenants, restrictions, and charges set forth herein shall be deemed covenants running with the land and shall be deemed an equitable servitude running with the land, and shall pass to and be binding upon the Recipient's successors in title including any purchaser, grantee or lessee of any portion of the Project, upon the respective heirs, executors, administrators, devisees, successors and assigns of the Recipient or any purchaser, grantee or lessee of any portion of the Project and upon any other person or entity having any right, title or interest therein. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein shall contain an express provision making such conveyance subject to the covenants, restrictions, and charges contained herein; provided, however, that any such contract, deed or instrument shall conclusively be held to have been executed, delivered and accepted subject to such covenants, restrictions and charges regardless of whether or not such covenants, restrictions and charges are set forth or incorporated by reference in such contract, deed or instrument.

SECTION 3. BURDEN AND BENEFIT. The Recipient hereby declares its understanding and intent that the burdens of the covenants, restrictions, and charges set forth herein touch and concern the land in that the Recipient's legal interest in the Project is rendered less valuable thereby. The Recipient further declares its understanding and intent that the benefits of such covenants, restrictions, and charges touch and concern the land by enhancing and increasing the enjoyment and use of the Designated Units in the Project by migrant agricultural laborers, the intended beneficiaries of such covenants, restrictions, and charges and by furthering the public purposes for which the Grant was made.

SECTION 4. COMPLIANCE REPORTING. The Recipient shall provide an annual certification, in a format and on a schedule approved by the Department in its sole discretion, that the Recipient is fulfilling its obligations under this Agreement. The Department may inspect the Project and may inspect and copy all records of the Project upon reasonable notice to the Recipient. The Recipient and its agents and employees shall cooperate fully with the Department in any requested inspection or compliance monitoring.

SECTION 5. SUBORDINATION. This Agreement shall be subordinate only to the lien of Recipient's primary financing loan in a principal amount not to exceed \$1,500,000. The Department may, at its sole discretion, subordinate this Agreement to other financing on the Project.

SECTION 6. TERM OF AGREEMENT. As indicated by the Recipient in its Grant application materials submitted to the Department, the term of this Agreement shall commence upon the date hereof and shall remain in full force and effect for 33 years from the date of completion of the construction of the Project. Notwithstanding any other provision of this Agreement, this Agreement shall terminate and be of no further force and effect in the event of a foreclosure by the primary financing lender or a lender to whom the Department has subordinated this Agreement or its successors or assigns or delivery of a deed in lieu of foreclosure by the Recipient to the primary financing lender or a lender to whom the Department has subordinated this Agreement or its successors or assigns.

SECTION 7. REMEDIES. If the Recipient defaults in the performance or observance of any covenant, agreement, or obligation set forth in this Agreement and if such default remains uncured for a period of 30 days (or such shorter period as the Department may indicate in its notice) after the notice thereof shall have been given by the Department to the Recipient, then the Department, at its option, may take any one or more of the following steps:

- a. By mandamus or other suit, action or proceeding at law or in equity, require the Recipient to perform its covenants, agreements and obligations hereunder or enjoin any acts or things that may be unlawful or in violation of the rights of the Department hereunder;
- b. Have access to and inspect, examine and make copies of all of the books and records of the Recipient pertaining to the Project;
- c. Demand repayment of the full amount of the Grant in which event the amount thereof shall be immediately due and payable by the Recipient or its successors or assigns to the Department;
- d. Take such other action at law or in equity as may appear necessary or desirable to enforce the covenants, agreements and obligations of the Recipient hereunder.

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

SECTION 8. RECORDING AND FILING. The Recipient shall cause this Agreement and all amendments and supplements hereto to be recorded and filed in the real property records of the county in which the Project is located and in such other places as the Department may reasonably request. The Recipient shall pay all fees and charges incurred in connection with any recording.

SECTION 9. GOVERNING LAW; VENUE. This Agreement shall be governed by the laws of the State of Oregon. The courts of the State of Oregon (and to the degree possible, the courts of the State of Oregon in Marion County) shall have exclusive jurisdiction over any action brought by or against the Department under this Agreement. The Recipient hereby consents to such exclusive jurisdiction and waives any and all objections it might have thereto.

SECTION 10. AMENDMENTS. This Agreement may be amended only by a written instrument executed by the parties hereto or by their successors and duly recorded in the real property records of the County.

SECTION 11. NOTICES. Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery or first class mail, postage prepaid, at the addresses specified below, or at such other addresses as may be specified in writing by the Department or the Recipient:

5371

To the Department: Oregon Housing and Community Services Department
PO Box 14508
Salem, Oregon 97309-0409
Attention: Housing Resources Section

To the Recipient: Klamath Housing Authority
1410 S Avalon
PO Box 5110
Klamath Falls, Oregon 97601

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

KLAMATH HOUSING AUTHORITY

STATE OF OREGON acting by and through its
HOUSING AND COMMUNITY SERVICES
DEPARTMENT

By: Wayne Connors
Title: Executive Director

By: [Signature]
Title: Housing Division Administrator

STATE OF OREGON

County of Klamath)
)ss:

The foregoing instrument was acknowledged before me this 9th day of February, 2001,
by Wayne Connors, who is a Executive Director of Klamath Housing Authority, on behalf of
the Recipient.



Kristil L. Redd
Notary Public for the State of Oregon
My commission expires: 11/16/2003

STATE OF OREGON

County of Marion)
)ss:

The foregoing instrument was acknowledged before me this 7th day of February, 2001,
by Bob Gillespie, who is a Housing Administrator of the Oregon Housing and Community
Services Department, on behalf of the Department.



Donna L. Crawford
Notary Public for the State of Oregon
My commission expires: 10/26/01

GEN74392

EXHIBIT A

5372

LEGAL DESCRIPTION OF THE PROJECT

Parcel 1 of Land Partition No. 8-00 on file in the office of the Klamath County Clerk, being a partition of Parcel 2 of Land Partition 58-94, on file in the office of the Klamath County Clerk, situated in the SE ¼ NE ¼ of Section 14, Township 39 South, Range 9 East, Willamette Meridian , Klamath County, Oregon.

State of Oregon, County of Klamath
Recorded 02/09/01, at 3:17 P.m.
In Vol. M01 Page 5368
Linda Smith,
County Clerk Fee\$ 41.00