

NOT 83211

2009-002851

Klamath County, Oregon



00061473200900028510060069

02/24/2009 11:28:40 AM

Fee: \$46.00

After Recording Return to:

State of Oregon, DHS
Attn: Housing Coordinator
500 Summer Street NE, E-86
Salem, OR 97301-1118

Grant Award #118993

(This space reserved for recorders use)

TRUST DEED WITH ASSIGNMENT OF RENTS

THIS TRUST DEED, made this 23rd day of February 2009, between Klamath County, a Political Subdivision of the State of Oregon (hereinafter "Grantor"), AmeriTitle (hereinafter "Trustee"), and the State of Oregon, acting by and through its Department of Human Services (DHS) (hereinafter "Beneficiary").

WITNESSETH:

Grantor irrevocably grants, bargains, sells and conveys to trustee in trust for the benefit and security of Beneficiary, with power of sale and right of entry and possession, all of Grantor's right, title and interest in and to the real property located in Klamath County, Oregon, described as follows ("the Property"):

See legal description attached as Exhibit A, and made a part hereof by reference.

TOGETHER WITH all interests, estates, and rights that Grantor now has or may acquire in (1) the Property; (2) any and all options, agreements, and contracts for the purchase or sale of all or any part or parts of the Property or interests in the Property; (3) all easements, rights-of-way, and rights used in connection with the Property or as a means of access to the Property; and (4) all tenements, hereditaments, and appurtenances in any manner belonging, relating, or appertaining to the Property; and

TOGETHER WITH all rights, titles, and interests of Grantor, now owned or hereafter acquired, in and to any and all buildings and other improvements of every nature now or hereafter located on the Property and all fixtures located on the Property or attached to, contained in, or used in any such buildings and other improvements, and all appurtenances and additions to and substitutions and replacements of the Property (all of the foregoing being collectively referred to below as the "Improvements"); and

TOGETHER WITH all rights, title, and interest of Grantor in, to, and under all present and future plans, specifications, and contracts relating to the design, construction, management, or inspection of any Improvements; all rights, titles, and interests of Grantor in and to all present and future licenses, permits, approvals, and agreements relating to the development, improvement, division, or use of all or any portion of the Property or Improvements; and

TOGETHER WITH all rights of Grantor in and to any escrow or withhold agreements, title insurance, surety bonds, warranties, management contracts, leasing and sales agreements, and service contracts that are in any way relevant to the ownership, development, improvement, management, sale, or use of all or any portion of the Property or any of the Improvements; and

TOGETHER WITH Grantor's rights under any payment, performance, or other bond in connection with construction of any Improvements, and all construction materials, supplies, and equipment delivered to the Property or intended to be used in connection with the construction of any Improvements; and

TOGETHER WITH all rights, interests, and claims that Grantor now has or may acquire with respect to any damage to or taking of all or any part of the Property or the Improvements, including without limitation any and all proceeds of insurance in effect with respect to the Improvements, any and all awards made for taking by eminent domain or by any proceeding or purchase in lieu thereof, of the whole or any part of the Property or the Improvements, and any and all awards resulting from any other damage to the Property or the Improvements, all of which are assigned to Beneficiary, and, subject to the terms of this Trust Deed. Beneficiary is authorized to collect and receive such proceeds, to give proper receipts and acquaintances for the proceeds, and to apply them to the Obligations secured by this Trust Deed.

46 Amt

Section I.
Secured Obligations

This Trust Deed secures the following obligations (collectively referred to as "the Obligations"):

- A. Grantor's obligations as Maker of that certain Note dated **February 23, 2009**, with Beneficiary as Payee, in the maximum principal amount of **One Hundred Thousand and No/100 Dollars *** (\$100,000.00)** which terminates on **February 23, 2039** (the "Housing Development Note"); and
- B. Grantor's obligations under the Housing Development Grant Agreement (the "Agreement") dated **September 24, 2008**.

Unless otherwise agreed in writing by Beneficiary, the Housing Development Note is due and payable in full upon sale or transfer of the property or when the Grantor ceases to use the property exclusively as community housing, in accordance with the terms of the Agreement.

Section II.
Grantor's Obligations

To protect the security of this Trust Deed, Grantor agrees to the following terms and conditions:

1. Grantor shall protect, preserve and maintain said property in good condition and repair; not to remove or demolish any building or improvement thereon; not to commit or permit any waste of said property.
2. Grantor shall complete or restore promptly and in good and workmanlike manner any building or improvements, which may be constructed, damaged or destroyed thereon, and pay when due all costs incurred therefore.
3. Grantor shall comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting said property.
4. If the Beneficiary so requests, Grantor shall join in executing such financing statements pursuant to the Uniform Commercial Code as the Beneficiary may require and to pay for filing same in the proper public office or offices, as well as the cost of all lien searches made by filing officers or searching agencies as may be deemed desirable by the Beneficiary.
5. Grantor shall obtain and maintain insurance as follows:
 - A. **Property and Other Insurance.** Grantor shall obtain and maintain in full force and effect during the term of this Trust Deed: (a) all risk property insurance together with endorsements for replacement cost, inflation adjustment, malicious mischief, and sprinkler damage coverage (if applicable), all in amounts not less than the full replacement cost of all Improvements, without reduction for co-insurance; and (b) comprehensive general liability insurance, including liabilities assumed under contract, with limits, coverage, and risks insured acceptable to Beneficiary, and in no event less than **\$1,000,000.00** combined single limit coverage.
 - B. **Insurance Companies and Policies.** All insurance shall be written by a company or companies reasonably acceptable to Beneficiary; shall contain a long form mortgagee clause in favor of Beneficiary with loss proceeds under any policy payable to Beneficiary, subject to the terms of this Trust Deed; shall require 30 days prior written notice to Beneficiary of cancellation or reduction in coverage; shall contain waivers of subrogation and endorsements that no act or negligence of Grantor or any occupant will affect the validity or enforceability of such insurance as against Beneficiary. Beneficiary shall be named as additional insured on all property and liability policies. Grantor shall forward to

Beneficiary, upon request, certificates evidencing the coverage required under this Trust Deed and copies of all policies.

- C. **Casualty/Loss Restoration.** After the occurrence of any casualty to the Property or Improvements, Grantor shall give prompt written notice of the casualty to Beneficiary, specifically describing the nature and cause of such casualty and the extent of the damage or destruction to the Trust Property. In the event of any casualty to any Improvement, Grantor shall immediately take such action as is necessary to make the site safe and legal, including, if necessary, demolition of the improvement, removal of debris, and/or grading the site. Grantor assigns to Beneficiary all insurance proceeds that Grantor may be entitled to receive with respect to any casualty. In the event that Grantor desires to rebuild or restore the Property, insurance proceeds shall be placed in escrow, with escrow instructions to release funds for invoices related to such reconstruction. Beneficiary shall have the right to review and approve of reconstruction plans, and may require the release of liens as condition of escrow payments. No proceeds shall be released if Grantor is in default under this Trust Deed or under the Obligations secured by this Trust Deed. If Grantor i) does not elect to restore the property, or ii) is in default under this Trust Deed or the Obligations secured by this Trust Deed, Beneficiary may apply the insurance proceeds to satisfy the Obligations.
6. Grantor shall keep said premises free from construction and all other liens and pay all taxes, assessments, and other charges that may be levied or assessed upon or against the Property before any part of such taxes, assessments, and other charges become past due or delinquent and promptly deliver receipts therefore to Beneficiary; should the Grantor fail to make payment of any taxes, assessments, insurance premiums, liens or other charges payable by Grantor, either by direct payment or by providing Beneficiary with funds with which to make such payment, Beneficiary may, at its option, make payment thereof, and the amount so paid with interest at the rate 10%, shall be added to and become a part of the debt secured by this Trust Deed, and all such payments shall be immediately due and payable, and the non-payment thereof shall, at the option of the Beneficiary, render all sums secured by this Trust Deed immediately due and payable and constitute a breach of this Trust Deed.
7. Grantor shall not place any consensual lien on the Property, including without limitation any mortgage, trust deed or security interest, without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld.
8. Grantor shall pay all costs, fees, and expenses of Trustee and Beneficiary in enforcing their rights under this Trust Deed, including attorney's fees.
9. In the event that any portion or all of the Property shall be taken under the right of eminent domain or condemnation, Beneficiary shall have the right, if it so elects, to require that all or any portion of the monies payable as compensation for such taking, which are in excess of the amount required to pay all amounts due the Beneficiary under the Trust Deed, shall be paid to Beneficiary and applied by it first upon any reasonable costs and expenses, and attorney's fees, both in the trial and appellate courts, necessarily paid or incurred by Beneficiary in such proceedings, and the balance applied upon the Obligations secured hereby; and Grantor agrees, at its own expense, to take such actions and execute such instruments as shall be necessary in obtaining such compensation, promptly upon Beneficiary's request.

Section III.

Default and Remedies

1. **Events of Default.** Each of the following shall constitute an event of default under this Trust Deed if remaining uncured 60 days after written notice from Beneficiary of such default:
- A. **Nonpayment.** Failure of Grantor to pay any of the Obligations on or before the due date thereof or within any applicable grace period.

- B. **Breach of Other Covenants.** Failure of Grantor to perform or abide by any other covenant included in the Obligations, including without limitation those covenants in the Note, or in this Trust Deed.
2. **Remedies in Case of Default.** If an Event of Default shall occur, Beneficiary or Trustee may exercise any one or more of the following rights and remedies, in addition to any other remedies that may be available by law, in equity, or otherwise:
- A. **Acceleration.** Beneficiary may declare all or any portion of the Obligations immediately due and payable.
- B. **Receiver.** Beneficiary may have a receiver appointed for the Property. Beneficiary shall be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the Property exceeds the amount of the indebtedness secured by this Trust Deed.
- C. **Possession.** Beneficiary may, either through a receiver or as lender-in-possession, enter and take possession of all or any part of the Property and use, operate, manage, and control it as Beneficiary shall deem appropriate in its sole discretion. Upon request after an Event of Default, Grantor shall peacefully relinquish possession and control of the Property to Beneficiary or any receiver appointed under this Trust Deed.
- D. **Rents.** Beneficiary may revoke Grantor's right to collect the Rents, and may either itself or through a receiver, collect the same. Beneficiary shall not be deemed to be in possession of the Property solely by reason of exercise of the rights contained in this subsection (D). If Rents are collected by Beneficiary under this subsection (D), Grantor hereby irrevocably appoints Beneficiary as Grantor's attorney-in-fact, with power of substitution, to endorse instruments received in payment thereof in the name of Grantor and to negotiate such instruments and collect their proceeds. After payment of all Obligations, any remaining amounts shall be paid to Grantor and this power shall terminate.
- E. **Power of Sale.** Beneficiary may direct Trustee, and Trustee shall be empowered, to foreclose the Property by advertisement and sale under ORS 86.705 et. seq.
- F. **Foreclosure.** Beneficiary may judicially foreclose this Trust Deed and obtain a judgment foreclosing Grantor's interest in all or any part of the Property and giving Beneficiary the right to collect any deficiency remaining due after disposition of the Property.
3. **Sale.** In any sale under this Trust Deed or pursuant to any judgment, the purchaser at any such sale shall take title to the Property free and clear of the estate of Grantor. Any person, including Beneficiary, may purchase at any such sale. Beneficiary and each of its officers are irrevocably appointed Grantor's attorney-in-fact, with power of substitution, to make all appropriate transfers and deliveries of the Property or any portions thereof so sold and, for that purpose, Beneficiary and its officers may execute all appropriate instruments of transfer. Nevertheless, Grantor shall ratify and confirm, or cause to be ratified and confirmed, any such sale or sales by executing and delivering, or by causing to be executed and delivered, to Beneficiary or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of Beneficiary, for such purpose.
4. **Cumulative Remedies.** All remedies under this Trust Deed are cumulative and not exclusive. Any election to pursue one remedy shall not preclude the exercise of any other remedy. No delay or omission in exercising any right or remedy shall impair the full exercise of that or any other right or remedy or constitute a waiver of the default.

Section IV.
General Provisions

1. This Trust Deed applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns. If the authority and responsibility to administer and regulate community housing programs under ORS 426.502 are transferred from DHS to another agency, division or government unit, the term "Beneficiary" hereunder shall refer to such agency, division or governmental unit.
2. On the date this Trust Deed is executed, the mailing address of Beneficiary is:

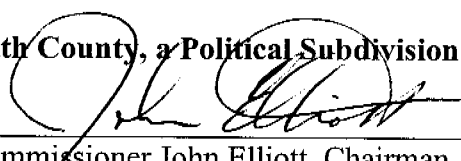
State of Oregon, DHS
Attn: Housing Investments Coordinator
500 Summer Street NE, E-86
Salem, OR 97301-1118

3. For any reason permitted by law, Beneficiary may from time to time appoint a successor or successors to any trustee named herein or to any successor trustee appointed hereunder. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers and duties conferred upon any trustee herein named or appointed hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Trust Deed and its place of record, which when recorded in the office of the County Clerk or Recorder of the county in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee.

Notice. Except as otherwise provided in this Trust Deed, all notices pertaining to this Trust Deed shall be in writing and may be delivered by hand, or mailed by first class, registered, or certified mail, return-receipt requested, postage prepaid, and addressed to the appropriate party at its address set forth below. Any party may change its address for such notices from time to time by notice to the other parties. Notices given by mail in accordance with this paragraph shall be deemed to have been given upon the date of mailing; notices given by hand shall be deemed to have been given when actually received.

IN WITNESS WHEREOF said Grantor has hereunto set his hand the day and year first above written.

Klamath County, a Political Subdivision of the State of Oregon

By: 
Commissioner John Elliott, Chairman
Klamath County Board of Commissioners

STATE OF OREGON }
 } ss.
County of Klamath }

On this 23rd day of **February 2009**, before me personally appeared **Commissioner John Elliott**, who being duly sworn, stated that he is the **Chairman** of the **Klamath County Board of Commissioners**, and acknowledged the foregoing instrument to be the voluntary act and deed thereof, and on oath stated that he was authorized to execute said instrument.



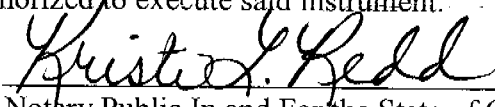
By: 
Notary Public In and For the State of Oregon
My commission expires: 11/16/2011

Exhibit A

Legal Description of Property

Parcel 2 of Land Partition 69-07 being a re-plat of Tract 40C of ENTERPRISE TRACTS situated in the NW ¼ of Section 34, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.