

WTC 84012-KR

2010-008738

Klamath County, Oregon



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TRUST DEED

07/22/2010 09:40:17 AM

Fee: \$72.00

**Grantor's Name & Address**

Klamath Family Head Start,  
An Oregon not-for-profit Corporation  
1940 South 6<sup>th</sup> Street  
Klamath Falls, OR 97601

**Beneficiary's Name & Address**

City of Klamath Falls  
500 Klamath Avenue  
Klamath Falls, OR 97601  
Attn: Chief Finance Officer

**After Recording Return To:**

City Recorder  
City of Klamath Falls  
500 Klamath Avenue  
Klamath Falls, OR 97601

**THIS TRUST DEED**, made this 21 day of July, 2010, between Klamath Family Head Start as Grantor, Joanna Lyons-Antley, City Attorney for Klamath Falls, as Trustee, and City of Klamath Falls, an Oregon municipal corporation, as Beneficiary.

Grantor irrevocably grants, bargains, sells and conveys to Trustee in trust, with power of sale, the following described property in Klamath County, Oregon:

Parcel 1 of Land Partition 23-09 being a replat of Land Partition 116-06 situated in the SW  $\frac{1}{4}$  of Section 33, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon recorded July 28, 2009 in Volume 2009-010180, Microfilm Records of Klamath County, Oregon,

together with all and singular the tenements, hereditaments and appurtenances and all other rights thereunto belonging or in any wise now or hereafter attached to or used in connection with the said real estate.

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of Grantor contained herein and in the conditions of Oregon Community Development Block Grant, Project #C09016, attached hereto as Exhibit A, and payment of the sum of Eight Hundred Thousand and no/100 Dollars (\$800,000), with interest thereon according to the terms of a promissory note of even date herewith, payable to Beneficiary and made by Grantor, the final payment of principal and interest hereof, if not sooner paid, to be due and payable in full according to the terms of said promissory note.

The date of maturity of the debt secured by this instrument is the date, stated above, on which the final installment of the note becomes due and payable. Should the Grantor either agree to,

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attempt to, or actually sell, convey, or assign all (or any part) of the property to all (or any part) of Grantor's interest in it without first obtaining the written consent or approval of the Beneficiary, then, at the Beneficiary's option, all obligations secured by this instrument, irrespective of the maturity dates expressed therein, or herein, shall become immediately due and payable. The execution by Grantor of an earnest money agreement does not constitute a sale, conveyance or assignment.

This deed is subject to all covenants, restrictions, and agreements of record that are made a part of this deed by reference, which by this reference is incorporated herein, as though such covenants, restrictions and agreements were fully set forth in this deed. Should any mortgage or this trust deed be foreclosed on the property to this instrument refers, then the title acquired by such foreclosure, and the persons or persons who thereby and thereafter become the owner or owners of such property, shall be subject to and bound by all the restrictions, conditions, and covenants set forth in this deed.

To protect the security of this trust deed, Grantor agrees:

1. To protect, preserve and maintain Subject Property in good condition and repair, not to remove or demolish any building or improvement thereon, not to commit or permit any waste of the property.
2. To complete or restore promptly and in good and habitable condition any building or improvement which may be constructed, damaged or destroyed thereon, and pay when due all costs incurred therefore.
3. To comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting Subject Property, including all applicable building codes.
4. To provide and continuously maintain insurance on the buildings now or hereafter erected on the Subject Property against loss or damage by fire and such other hazards as the Beneficiary may require, in an amount not less than the evaluated assessment of the building including the renovation costs with Beneficiary designated on said policies. Such beneficiary policies of insurance shall be delivered to the Beneficiary to insert in Grantor's file; if Grantor shall fail for any reason to procure any such insurance and to deliver the policies to the Beneficiary at least within fifteen (15) days of signing this Trust Deed, Beneficiary may procure the same at Grantor's expense. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at the option of Beneficiary, the entire amount so collected, or any part thereof, may be released to Grantor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
5. To keep the Subject Property free from construction liens and to 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 set forth in the note secured hereby, together with

the obligations described in paragraph 6 of this trust deed, shall be added to and become a part of the debt secured by this trust deed, without waiver of any rights arising from breach of any of the covenants hereof and for such payments, with interest as aforesaid, the Subject Property, as well as the Grantor, shall be bound to the same extent that they are bound for payment of the obligation herein described, and all such payments shall be immediately due and payable without notice, and the nonpayment 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.

6. To appear in and defend any action or proceeding purporting to affect the security rights or powers of Beneficiary or Trustee and in any suit, action or proceeding in which the Beneficiary or Trustee may appear, including any suit for the foreclosure of this deed or any suit or action related to this instrument, including, but not limited, to its validity and/or enforceability, to pay all costs and expenses, including evidence of title and the attorney fees of Beneficiary or Trustee; the amount of attorney fees mentioned in this paragraph 6 in all cases shall be fixed by the trial court and in the event of an appeal from any judgment or decree of the trial court, Grantor further agrees to pay such sums the appellate court shall adjudge reasonable as the attorney fees of Beneficiary or Trustee on such appeal.

It is mutually agreed that:

7. In the event that any portion or all Subject 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 reasonable costs, expenses and attorney fees necessary paid or incurred by Grantor in such proceedings, shall be paid to Beneficiary.
8. At any time upon written request of beneficiary, payment of its fees and presentation of this deed and the note for endorsement (in case of full reconveyances, for cancellation), without affecting the liability of any person for the payment of the indebtedness, trustee may; (a) join in any subordination or other agreement affecting this deed or the lien or charge thereof and (b) reconvey, without warranty, all or any part of the property. This grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof.
9. Upon any default by Grantor hereunder, Beneficiary may at any time without notice, either in person, by agent or by a receiver to be appointed by a court, and without regard to the adequacy of any security of the indebtedness hereby secured, enter upon and take possession of the Subject Property and any part thereof, in its own name sue or otherwise collect the rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney fees upon any indebtedness secured hereby, and in such order as Beneficiary may determine operation and collection, including reasonable attorney's fees upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of the property, the collection of such rents, issues and profits, or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the property, and the application or release thereof as

aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

10. Upon default by Grantor in payment of any indebtedness secured or in Grantor's performance of any agreement hereunder, time being of the essence with respect to such payment and/or performance, the Beneficiary may declare all sums secured hereby immediately due and payable. In such an event, the Beneficiary may elect to proceed to foreclose this trust deed in equity as a mortgage or direct the Trustee to foreclose this trust deed by advertisement and sale, or may direct the Trustee to pursue any other right or remedy, either at law or in equity, which the Beneficiary may have. In the event the Beneficiary elects to foreclose by advertisement and sale, the Beneficiary or the Trustee shall execute and cause to be recorded a written notice of default and election to sell the Subject Property to satisfy the obligation secured hereby, whereupon the Trustee shall fix the time and place of sale, give notice thereof as then required by law and proceed to foreclose this trust deed in the manner provided in ORS 86.735 to 86.795.
11. After the Trustee has commenced foreclosure by advertisement and sale, and at any time prior to 5 days before the date the Trustee conducts the sale, the Grantor or any other person so privileged by ORS 86.753, may cure the default or defaults. If the default consists of a failure to pay, when due, sums secured by the trust deed, the default may be cured by paying the entire amount due or at the time of the cure other than such portion as would not then be due had no default occurred. Any other default that is capable of being cured may be cured by tendering the performance required under the obligation of trust deed. In any case, in addition to curing the default or defaults, the person effecting the cure shall pay to the Beneficiary all costs and expenses actually incurred in enforcing the obligation for the trust deed together with Trustee's fees and attorney fees not exceeding the amounts provided by law.
12. Otherwise, the sale shall be held on the date and at the time and place designated in the notice of sale or the time to which the sale may be postponed as provided by law. The Trustee may sell the Subject Property either in one parcel or in separate parcels and shall sell the parcel or parcels at auction to the highest bidder for cash, payable at the time of sale. Trustee shall deliver to the purchaser its deed in form as required by law conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters of fact shall be conclusive proof of the truthfulness thereof. Any person, excluding the Trustee, but including the Grantor and Beneficiary, may purchase at the sale.
13. When Trustee sells pursuant to the powers provided herein, Trustee shall apply the proceeds of sale to payment of (1) the expenses of sale, including the compensation of the Trustee and a reasonable charge by Trustee and a reasonable charge by Trustee's attorney, (2) to the obligation secured by the trust deed, (3) to all persons having recorded liens subsequent to the interest of the Trustee in the trust deed as their interests may appear in the order of their priority, and (4) the surplus, if any, to the liens subsequent to the Grantor or to any successor in interest entitled to such surplus.
14. 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, which when recorded in the mortgage records of the county in which the property is situated, shall be conclusive proof of property appointment of Successor Trustee.

15. Trustee accepts this trust when this deed, duly executed and acknowledged is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or any action of proceeding in which Grantor, Beneficiary or Trustee shall be a party unless such action or proceeding is brought by Trustee.

The Grantor covenants and agrees to and with the Beneficiary, and those claiming under him, that he is lawfully seized in fee simple of Subject Property and has a valid, unencumbered title thereto, and that he will warrant and forever defend the same against all persons whomsoever.

*WARNING: Unless Grantor provides Beneficiary with evidence of insurance coverage as required by the contract or loan agreement between them, Beneficiary may purchase insurance at Grantor's expense to protect Beneficiary's interest. This insurance may, but need not also protect Grantor's interest. If the collateral becomes damaged, the coverage purchased by Beneficiary may not pay any claim made by or against Grantor. Grantor may later cancel the coverage by providing evidence that Grantor has obtained property coverage elsewhere. Grantor is responsible for the cost of any insurance coverage purchased by Beneficiary, which cost may be added to Grantor's contract or loan balance. If it is so added, the interest rate on the underlying contract or loan will apply to it. The effective date of coverage may be the date Grantor's prior coverage lapsed or the date Grantor failed to provide proof of coverage. The coverage Beneficiary purchases may be considerably more expensive than insurance Grantor might otherwise obtain alone and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.*

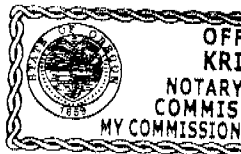
The Grantor warrants that the proceeds of the loan represented by the above described note and this trust deed are primarily for business or commercial purposes, to-wit: aid to children.

This deed applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns. The term "Beneficiary" shall mean the holder and owner, including pledges, of the contract secured hereby, whether or not named as a Beneficiary herein. In construing this deed and whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural, and that generally all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to corporations and to individuals.

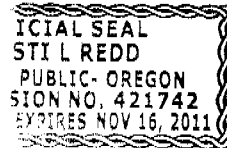
IN WITNESS WHEREOF, said Grantor has hereunto set his hand the day and year first above written.

Grantor:  
Klamath Family Head Start  
An Oregon not-for-profit Corporation  
1940 South 6<sup>th</sup> Street  
Klamath Falls, OR 97601

By: Vern D. Kenfield  
Chairman ~~Chief Executive Officer~~



STATE OF OREGON )  
 )  
 ) :SS  
County of Klamath )



This instrument was acknowledged before me on July 21, 2010, by Terry D. Kenfield  
~~Chief Executive Officer~~ of Klamath Family Head Start, an Oregon ~~not for~~ profit corporation. Chairman



Notary Public for Oregon:  
My Commission Expires:

Kristi L. Redd  
11/16/2011

### REQUEST FOR RECONVEYANCE

(To be used only when obligations have been paid)

To: City Attorney Joanna Lyons-Antley, Trustee

The undersigned is the legal owner and holder of all indebtedness secured by the foregoing trust deed. All sums secured by the trust deed have been fully paid and satisfied. You are hereby directed, on payment to you of any sums owing to you under the terms of the trust deed, or pursuant to statute, to cancel all evidences of indebtedness secured by the trust deed (which are delivered to you herewith together with the trust deed) and to recovery, without warranty, to the parties designated by the terms of the trust deed the estate now held by you under the same.

Mail reconveyance documents to: \_\_\_\_\_

DATED: \_\_\_\_\_

CITY OF KLAMATH FALLS, Beneficiary

By: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT "A"

The following conditions shall be in effect for sixty (60) months following the date of issuance by the State of Oregon of a Certificate of Completion for the Project or the closure of any audit, controversy or litigation arising out of or related to the Project or the Obligations, whichever is later:

(1) The performance of the "continued use" requirement under that certain Oregon Community Development Block Grant No. C09016 between the State of Oregon, acting by and through its Economic and Community Development Department ("State"), and City.

(2) The property, known as the "Klamath Falls Head Start Facility," located at 1940 South Sixth Street in the City of Klamath Falls ("Facility") shall be operated and maintained for the purpose of operation of the Head Start Program for the residents of Klamath County, with emphasis on assuring services are available to low and moderate income and uninsured persons, or for another purpose which meets at least one of the national objectives of the Community Development Block Grant Program and which is eligible under Section 105 of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. §5305 (1994). Any change in use of the Property must be made in accordance with the standards provided in 24 C.F.R. 570.489(j)(1997).

(3) Promisor shall do the following or cause the following to be done:

a) collect income and family size information from all users of the Facility using the most recent Low and Moderate Income limits established by U.S. Department of Housing and Urban Development ("HUD"); and

b) collect information on the number of people, other than those described in (a) above, who use the Facility; a person may only be recorded once during a one-year reporting period, as described in (c) below; and

c) on or about each anniversary of the issuance by the State of the Certificate of Completion for the Project (including but not limited to the fifth anniversary), calculate the percentage of users of the Facility during the past year who were Low and Moderate Income; and

d) in the event the percentage of users of the Facility who are Low and Moderate Income, calculated in accordance with (c) above, is below 51%, Promisor will place, or will cause to be placed, any new non-Low and non-Moderate Income applicants for Facility services on a waiting list until such time as the percentage calculated is at least 51%.

e) Upon issuance by U.S. Department of Housing and Urban Development of updated Low and Moderate Income Limits (usually in April of each year), Promisor will update the income and family size limits used to collect the information described in (a) above.

(4) Promisor shall place a sign indicating the involvement of Community Development Block Grant Funds in the Project in a clearly visible location on or near the construction sites of facilities that will be available for use by the public.

