

Amorita  
MTC 83235AM

After Recording Return to:  
Housing and Community Services  
Attn: Multifamily Housing Finance Section  
725 Summer Street, Suite B  
Salem, OR 97301-1266

2016-003178  
Klamath County, Oregon  
03/25/2016 02:51:46 PM  
Fee: \$132.00

SPACE ABOVE FOR RECORDER'S USE

STATE OF OREGON  
HOUSING AND COMMUNITY SERVICES DEPARTMENT  
GENERAL HOUSING ACCOUNT PROGRAM  
GRANT AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

This General Housing Account Program Grant Agreement and Declaration of Restrictive Covenants and Equitable Servitudes (this "Agreement") is made and entered into this 8th day of February, 2016 by and between Klamath Housing Authority, an Oregon Public Corporation (the "Recipient"), and the State of Oregon, acting by and through its Housing and Community Services Department (together with its successors and assigns, ("OHCS")).

RECITALS

- A. The Recipient has completed and submitted to OHCS an application (the "Application") for a reservation of General Housing Account Program ("GHAP") funds to be used in the development of a low-income multifamily residential housing project.
- B. In response to the Application by Recipient, OHCS has conditionally made a GHAP grant reservation to Recipient in the principal amount of **Two Million Fifty-Eight Thousand Three Hundred Eighteen Dollars (\$2,058,318.00)** (the "Grant") for the purpose of partially reimbursing the construction ("Work") costs of a **Eleven-unit** low-income multifamily rental housing development in Klamath Falls, Klamath County, Oregon, more particularly described in Exhibit A hereto, and known as Victory Commons (the "Project").
- C. The Grant conditionally reserved to Recipient as described above is subject, *inter alia*, to the terms and conditions of this Agreement, including the terms and conditions of the Application as modified by OHCS' conditional GHAP reservation letter dated **November 9, 2015** (the "Reservation").

AGREEMENT

WHEREFORE, for good and sufficient consideration, including the terms and conditions herein, OHCS and Recipient mutually agree as follows:

**PART I: DEFINITIONS; INCORPORATION OF RECITALS AND DOCUMENTS.**

1. Words and terms used in this Agreement, when applicable, will have the meanings given herein (including incorporated documents), in OHCS administrative rules, guidelines, and directives, or in other applicable law, unless the context clearly requires otherwise.

GHAP Grant Agreement and Declaration of Restrictive Covenants  
Victory Commons, LLC – Project #3191  
Klamath Falls and Klamath County, Oregon 97601

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2. The foregoing Recitals, Exhibit A, Exhibit B (as later described), Exhibit C (as later described), the Application, and the Reservation are incorporated herein by reference. However, the incorporated items do not override the express provisions of this Agreement.

## **PART II: GRANT ISSUANCE.**

### **1. Grant.**

**(a) Authority; Amount.** Subject to the availability of GHAP funds, OHCS having continued funding, appropriation, limitation, allotment, or other expenditure authority sufficient to allow it, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement, and conditioned upon the terms and conditions of this Agreement, OHCS will make the Grant to Recipient up to the maximum principal amount of **Two Million Fifty-Eight Thousand Three Hundred Eighteen Dollars (\$2,058,318)** and perform under this Agreement.

**(b) Limitations.** Nothing in this Agreement may be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of OHCS.

**2. Grant Disbursement.** OHCS will disburse the Grant to Recipient after satisfaction of Reservation conditions at its sole discretion and after execution and recording of this Agreement and delivery to OHCS of information satisfactory to it that Project Work will commence within a reasonable time period. OHCS may disburse the Grant prior to recording of this Agreement, at its sole discretion, upon placement of the executed Agreement in escrow with binding instructions to record this Agreement upon notice to the escrow officer by OHCS or upon Recipient's establishment of fee simple title to the Project.

**3. Grant Expiration.** OHCS' Reservation commitment will expire **Six (6)** months from the date of this Agreement if the Borrower fails to timely satisfy the requirements above in Part II, Section 2 unless the Grant or this Agreement are sooner terminated by OHCS. Approval of any extension of the Reservation commitment, and the length of any approved extension, is at OHCS' sole discretion and must be in writing and signed by an authorized representative of OHCS.

## **PART III: REPRESENTATIONS, WARRANTIES AND COVENANTS OF RECIPIENT.**

The Recipient represents, warrants and covenants that:

**1. Validity.** It is an Oregon domestic limited liability company and Oregon public corporation, duly organized, validly existing under the laws of Oregon, is authorized to do business in Oregon, and it has the power and authority to transact the business in which it is engaged and to enter into and perform this Agreement;

**2. Authority; No Impairment.** The making and performance of this Agreement by Recipient has been duly authorized by all necessary action of Recipient; do not and will not violate any provision of any applicable law, rule, or regulation or order of any court, regulatory commission, board or other administrative agency or any provision of Recipient's organizing documents or authorizing statutes; and do not and will not result in the breach of, or constitute a default or require any consent under, any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties is bound or affected and does not and will not result in the creation or imposition of any prohibited encumbrance of any nature;

**3. Enforceability.** This Agreement, when executed and delivered, is a valid and binding obligation of Recipient enforceable in accordance with its terms;

**4. Program Requirements.** Recipient will timely satisfy all requirements of this Agreement, including all applicable OHCS administrative rules (including as such administrative rules are amended from time to time), all applicable Program handbooks (including as amended from time to time), all related OHCS directives (including, but not limited to corrective action notices), funding or other requirements set forth in the Application or Reservation, and all other applicable federal, state and local statutes, rules, regulations, ordinances and orders (all the foregoing, collectively, the "Program Requirements"), to the satisfaction of OHCS;

**5. Completion Date.** Recipient will complete the Project Work no later than **May 30, 2018** in accordance with Program Requirements, including but not limited to the plans and specifications for the Project approved by OHCS or modifications to those plans and specifications, which modifications must be approved by OHCS, and in accordance with the terms and conditions of this Agreement; and

**6. Responsibility.** Recipient assumes full responsibility for timely and appropriate completion of Project Work, for ownership of the Project, for its operation in accordance with Program requirements, and acknowledges that OHCS has no direct or contractual responsibility for the Project Work, for ownership of the Project, or for its operation.

#### **PART IV: ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF RECIPIENT.**

The Recipient also represents, warrants, and covenants that:

##### **1. Program Activities.**

**(a) Appropriate Costs.** Recipient will use Grant funds only for financing of eligible costs related to **construction of Ten (10) income-restricted residential rental unit(s)** (the "Qualified Unit(s)") of the **Eleven~]** (**11**) total units in the Project and such eligible common areas and other aspects of the Project, consistent with Program Requirements, including as described in the Application and approved in the Reservation.

**(b) Compliance.** Recipient will comply, and will cause its agents, employees, contractors, subgrantees and assigns, if any, to comply with the terms and conditions of this Agreement, including all applicable Program Requirements and all otherwise applicable laws (including, without limitation, all applicable federal, state and local statutes, rules, regulations, ordinances and orders affecting the Project or activities related thereto).

##### **2. Affordability.**

**(a) Income Limitations.** For a period of **Sixty (60)** years from the date that any building in the Project is first placed in service or until **May 30, 2078**, whichever is later (the "Affordability Period"), Recipient will continuously rent or hold vacant for rent the following Qualified Units to households whose incomes are at or below the following levels of the area median income, adjusted by family size, as determined by OHCS based upon information from the U.S. Department of Housing and Urban Development ("HUD") or other applicable source:

Number of Units	Bedroom Size	Not to Exceed Percentage of Medium Family Income Allowable for Occupancy	Not to Exceed Percentage of Median Family Income Allowable for Payment of Gross Rent
7	1 BR	30%	30%
2	1 BR	60 %	60%
1	1 BR	80%	80%
1	2 BR	N/A Mgr Unit	N/A

**(b) Rent Restrictions.** Throughout the Affordability Period, Recipient will restrict gross rents with respect to the Qualified Units in compliance with Program Requirements with not-to-exceed limits as reflected in the above table. The not-to-exceed limits are indicated as a percentage of the applicable area (county) median family income determined by OHCS based upon information from the U.S. Department of Housing and Urban Development (“HUD”) or other applicable source. Net rents allowable to the Project owner are not more than gross rents less an appropriate utility allowance. Recipient will obtain prior written approval from OHCS for setting or increasing Qualified Unit rents (accompanied by submittal of a schedule of rents for all Project dwelling units) not in excess of the foregoing table, which approvals OHCS may give or withhold at its reasonable discretion.

**3. Habitability; Other Compliance.** Throughout the Affordability Period, Recipient will maintain the Project in a safe, sanitary, and habitable condition satisfactory to OHCS and in accordance with Program Requirements, including applicable zoning and code requirements.

**4. Resident Service Programs.**

**(a) The Plan.** Recipient will file with OHCS a Project Resident Services Plan (the “Plan”), consistent with Program Requirements, satisfactory to OHCS, when required by OHCS. Any then current Plan, when approved by OHCS, will constitute Exhibit B to this Agreement. OHCS may require periodic revisions to the Plan from the Recipient. The Recipient may propose revisions to the Plan for approval by OHCS. All Plan revisions are subject to OHCS’ sole discretion and must be approved in writing by OHCS prior to becoming effective.

**(b) Resident Services.** Recipient will provide timely resident services appropriate to the Project population and consistent with the Plan, including as the Plan may be revised from time to time.

**5. Management Oversight.**

**(a) The Management Plan.** Recipient will file with OHCS a Project Management Plan and/or execute a Regulatory Agreement as to Project Management (the “Management Plan”), consistent with Program Requirements, satisfactory to OHCS, when required by OHCS. Any then current Management Plan, when approved by OHCS, will constitute Exhibit C to this Agreement. OHCS may require periodic revisions to the Management Plan from the Recipient. The Recipient may propose revisions to the Management Plan for approval by OHCS. All Management Plan revisions are subject to OHCS’ sole discretion and must be approved in writing by OHCS prior to becoming effective.

**(b) Management Performance.** Recipient will provide timely and suitably perform Project management responsibilities directly or through a management agent approved in writing by OHCS consistent with the

Management Plan, including as the Management Plan may be revised from time to time.

## **5. Records; Certifications; Monitoring; Corrective Action.**

**(a) Financial and Performance Reports.** Recipient will maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Recipient will maintain records satisfactory to OHCS documenting compliance with Program Requirements. Recipient will retain and keep accessible all such records, books, documents, papers, plans, records of shipments and payments and writings throughout the Affordability Period and for a minimum of **six (6) years**, or such longer period thereafter, as may be required by OHCS, which does include any period beyond the Affordability Period during which an audit, claim, or litigation with respect to the Project or Agreement remains outstanding, plus **two (2) years** thereafter.

**(b) Annual Certification; Additional Information.** Recipient will provide an annual certification, in a format and on a schedule approved by OHCS in its sole discretion, that the Recipient is fulfilling its obligations under this Agreement. OHCS may, from time to time, require additional information or reporting from Recipient.

**(c) Monitoring.** Recipient acknowledges and agrees that OHCS, the Oregon Secretary of State's Office, and the federal government, and their duly authorized representatives will have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of Recipient that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits, and make excerpts and transcripts, and take copies. Furthermore, the Recipient acknowledges and agrees that OHCS may inspect the Project, and any part thereof, upon reasonable notice to the Recipient and tenants. The Recipient, its agents, employees, and subcontractors will cooperate fully with OHCS in any requested inspection of the Project, its records, or other compliance monitoring.

**(d) Corrective Action.** As a consequence of its monitoring or otherwise, OHCS may identify deficiencies in Recipient's compliance with Program Requirements. OHCS may require action by Recipient (satisfactory to OHCS) to correct such deficiencies. Recipient will correct such deficiencies within thirty (30) days of notice by OHCS of such deficiencies unless earlier correction is required by OHCS to address material health or safety needs of tenants. Recipient may take longer than thirty (30) days to correct deficiencies not related to material health or safety needs of tenants if Recipient reasonably begins and continues corrective action as soon as practicable after notice by OHCS and such action reasonably requires more than thirty (30) days. The reasonableness of such corrective actions is subject to OHCS in its sole discretion.

## **PART V. FURTHER ASSURANCES.**

**1. Further Acts.** Recipient, at any time upon request of OHCS, will do, make, execute and deliver all such additional and further acts, instruments or papers as OHCS may require in its sole discretion to protect OHCS' rights under this Agreement.

**2. Reliance.** OHCS may rely upon statements, certificates, and other records of Recipient and its agents and assigns, as well as of occupants of Qualified Units, including as to accuracy, genuine nature, and proper execution of such statements, certificates, and other records.

**3. Consultation with Counsel.** OHCS may consult with counsel, and the opinion of such counsel will be full and complete authorization and protection as to any action taken or suffered by OHCS in good faith and in conformity with the opinion of such counsel with respect to this Agreement or the Project.

**4. Agent Compliance.** Recipient will comply, and will cause its agents, employees, contractors, subgrantees and assigns, if any, to comply with the terms and conditions of this Agreement, including all applicable Program Requirements.

**6. Single-Asset Entity.** Recipient is and at all times during the term of this Agreement, including but not limited to the Affordability Period, will be a single-asset entity, i.e., owning and operating only the Project and no other asset or will, within a period acceptable to OHCS, assign the Grant to a single-asset entity satisfactory to OHCS (and on documented terms satisfactory to and approved by OHCS), which entity will own and operate only the Project during the period of this Agreement, including but not limited to the Affordability Period.

**7. Limitation on Debt.** Except to the extent of debt to which OHCS agrees to be subordinated in Part VI of this Agreement, Recipient and any assignee under section 6 above, will have no other debt that does or may result in a lien against the Project without prior written consent from OHCS.

#### **PART VI: SUBORDINATION.**

This Agreement and the restrictive covenants and equitable servitudes created hereunder may be subordinated to the lien of Recipient's primary construction financing loan in a principal amount not to exceed N/A Dollars (\$ N/A) and of Recipient's primary convertible mortgage financing loan in a principal amount not to exceed N/A dollars (\$ N/A).

#### **PART VII: NO UNAPPROVED TRANSFERS.**

##### **1. Sale, Transfer, or Other Disposition of an Interest in the Grant, Recipient, or Project.**

**(a) Transfer of Any Interest in Project.** Except for a simultaneous assignment and assumption of the Grant and this Agreement by Recipient to an owner approved by OHCS (on terms and in a documented manner satisfactory to OHCS), or as provided otherwise in Part VIII of this Agreement, or in relation to leases for the residential units in the Project, if the Recipient transfers or attempts to transfer any interest in itself or the Project, without obtaining the prior written consent of OHCS, OHCS may elect to regard such action as an Event of Default under the terms of this Agreement and the remedies provided in this Agreement, or otherwise available at law, may be exercised by OHCS. OHCS' consent will not, however, be unreasonably withheld or delayed, but may be conditioned upon:

- (1) reasonable evidence satisfactory to OHCS that the Recipient is not then in default hereunder beyond any applicable grace period or cure period;
- (2) an opinion of counsel to the transferee, delivered to OHCS, to the effect that the transferee has assumed in writing all duties and obligations of the Recipient under this Agreement (including incorporated documents) as well as under the Program Requirements, and that this Agreement is a legal, valid and binding obligation of the transferee;
- (3) an opinion of counsel for OHCS to the effect that the sale, transfer or disposition of the Project, Recipient, or Grant or any portion thereof will not adversely affect compliance with this Agreement or the Program Requirements;
- (4) the execution and recording of documents satisfactory to OHCS;

(5) the payment to OHCS of an appropriate transfer fee; and

(6) any other conditions that may be imposed by OHCS in its discretion, to ensure compliance with this Agreement, Program Requirements, and also including but not limited to the Recipient providing OHCS with current financial information with respect to the transferee and a full description of the transferee and its principals' and other relevant members' experience in real property management.

**(b) Transfer of Any Interest in the Recipient or Investor.** If the Recipient or (if applicable) its limited partners or limited members (such limited partners or limited members, collectively, the "Investor") transfer or attempt to transfer any interest in the Recipient or in the Investor without obtaining the prior written consent of OHCS, OHCS may declare an Event of Default under the terms of this Agreement and the remedies provided for such default in such documents, or otherwise available at law, may be exercised by OHCS. The parties agree, however, that, so long as the Recipient is not then in default hereunder, including under the Grant Agreement, beyond any applicable grace period or cure period, a sale, assignment or transfer of an interest in the Recipient or the Investor made in full compliance with any of clause (1), (2), or (3) below will constitute a permitted transfer of an interest in the Recipient or the Investor.

**(1) Affiliate Transfers Made Prior to Making All Capital Contributions.** If applicable, prior to making all of the capital contributions required to be made by the Investor under the terms of the Recipient's Limited Liability Company Agreement or its Limited Partnership Operating Agreement (referred to hereafter as the "Ownership Agreement"), a one-time transfer of the Investor interest in the Recipient to an affiliate of the Investor, may be made to an affiliate of the holder of the Investor interest in the Recipient with advance written notice of such transfer. Furthermore, transfers of interests in the Investor (the "Investor Membership Interests") may be made among such Investor members, but the Recipient must provide prompt notice to OHCS of such transfers of Investor Membership Interests when it reasonably learns of such transfers. However, at all times prior to making all of the capital contributions required to be made by the Investor under the Ownership Agreement, no transfer of an Investor Membership Interest to other persons or entities beyond the foregoing Investor members will be made unless not less than 75% of the limited partners or members of the holder(s) of the Investor Membership Interests will be either (a) N/A or related affiliate, or (b) financial institutions or publicly held corporations with a credit rating at the time of such transfer of BBB- or better by Standard & Poor's or Baa3 or better by Moody's Investor Service, Inc., or wholly-owned subsidiaries of such entities or otherwise approved by OHCS. For purposes of this provision (b), the term "affiliate" means any corporation, partnership, limited partnership, limited liability company or other entity directly or indirectly controlling, controlled by or under common control with such entity. For this purpose, "control," "controlled" or "controlling" means (i) the ownership directly or indirectly of voting control of the corporation or other entity, (ii) control of the management through holding, directly or indirectly, a general partnership interest in a limited partnership or the managing member interest in a limited liability company, or (iii) if such entity has no stock or equity, control over a majority of the board of directors of such entity. No OHCS consent will be required for Affiliate Transfers pursuant to clause (i) above, but prior written notice of Affiliate Transfers will be provided to OHCS and, other than with respect to the one-time transfer of the limited partner or limited member interest in Recipient allowed above or transfers of Investor Membership Interests among resultant Investor members, OHCS may impose a transfer fee or charge on the Recipient for other transfers consistent with OHCS administrative rules, as amended from time to time.

**(2) Other Transfers Made Prior to Making All Capital Contributions.** Prior to making all capital contributions, other than Affiliate Transfers pursuant to clause (1) above, no interest in the Recipient or Investor, including any Investor Membership Interest, may be transferred without the written consent of

OHCS which may be given or withheld in its sole but reasonable discretion, taking into consideration those factors it determines to be relevant. OHCS will communicate its determination to consent or withhold consent to a transfer promptly to the Recipient and may impose a transfer fee or charge on the Recipient consistent with OHCS administrative rules, as amended from time to time.

**(3) Transfers After Making All Capital Contributions.** After all of the capital contributions to be made by the Investor under the Ownership Agreement have been made, the sale or other transfer of the limited partner or limited member interest in the Recipient (a “Post Conversion Transfer of Recipient Interest”), may be made subject to the following: OHCS must (A) be given advance written notice of the proposed sale or transfer; (B) give its written consent to the sale or transfer which consent will not be unreasonably withheld, conditioned or delayed; and (C) OHCS may impose a transfer fee or charge on the Recipient consistent with program administrative rules, as amended from time to time. The parties agree that a Post Conversion Transfer of Owner Interest will be presumed reasonable and that OHCS will promptly provide its consent to such a transfer upon confirmation that such transfer involves a transfer to an “affiliate” as described in clause (1) above. Further, after all of the capital contributions to be made by the Investor under the Ownership Agreement have been made, the sale or other transfer of the limited partner or limited member interest in the Investor, including any Investor Membership Interest (a “Post Conversion Transfer of Investor Interest”) may be made without prior notice to or approval by OHCS, provided that that Recipient will provide written notice to OHCS of any Post Conversion Transfer of Investor Interest within thirty (30) days of reasonable discovery of such transfer. Item (3) above, to the contrary notwithstanding, OHCS will not impose a transfer fee or charge on the Recipient for a qualifying Post Conversion Transfer of an Investor Interest.

**(c) Removal and Replacement of General Partner or Managing Member.** The Investor may seek to remove a General Partner or Managing Member of the Recipient for cause pursuant to the terms of the Ownership Agreement in effect as of the date of this Agreement, or pursuant to any revisions adopted by the parties to the Ownership Agreement and approved in writing by OHCS, subject to the following: (1) the Investor must notify OHCS in writing of its desire to remove the General Partner or Managing Member for cause; (2) the Investor must notify OHCS in writing of the successor General Partner or Managing Member, if any, and (3) OHCS must give its written consent to the removal and replacement of the General Partner or Managing Member, which consent will not be unreasonably withheld, conditioned or delayed. If the Ownership Agreement provisions related to the removal of the General Partner or Managing Member are amended without OHCS’ written approval (a “Removal Amendment”), and the Investor seeks to remove a General Partner or Managing Member for cause pursuant to the Removal Amendment, the prior written consent of OHCS must be obtained and OHCS may give or withhold its consent in its sole discretion.

**(d) Removal and Replacement of Management Agent.** OHCS, for cause, may require the removal and replacement of the management agent for the Project or, if the Recipient directly manages the Project, OHCS may require the appointment of a management agent for the Project in lieu of the Recipient. The Recipient also may, with OHCS’s approval, remove and replace a management agent in accordance with the terms and conditions of the Ownership Agreement and, if applicable any agreement with respect to Project management executed by Recipient and OHCS.

**(e) Unapproved Transfers Are Void.** Any sale, transfer or other disposition of the Project, Recipient, or Investor in violation of this Section will be ineffective to relieve the Recipient, any transferee or the Project of any continuing obligations under this Agreement. OHCS’ consent hereunder will not be deemed continuing and the Recipient and each permitted transferee will continue to be bound by this Section unless OHCS has consented to the sale, transfer or disposition of the Project, Recipient, or Investor.

## **PART VIII. FORECLOSURE.**

Except with respect to government lenders, in the event the construction or permanent lender, its successors or assigns, lawfully acquire title to the Project through foreclosure or deed in lieu of foreclosure, neither the lender nor any subsequent purchaser of the Project following such a foreclosure or deed in lieu of foreclosure will be deemed a "successor or assign" of the Recipient, and neither the lender nor such subsequent purchaser will have any obligation to repay the Grant to OHCS and all conditions and restrictions contained herein will terminate on the date, if any, that the Project is so acquired by foreclosure or deed in lieu of foreclosure provided, however, that (i) the preceding provisions of this sentence will cease to apply and the restrictive covenants and equitable servitudes contained in this Agreement will be reinstated if, at any time during the Affordability Period subsequent to the early termination of this Agreement as the result of an event under this section, any person or entity that was an obligor under this Agreement prior to such early termination event, including the Recipient or any related person (within the meaning of Section 42 of The Internal Revenue Code of 1984, as amended, obtains an ownership interest in the Project, and (ii) for three (3) years after the acquisition of title to the Project by the construction or permanent lender any Qualified Tenants in the Project may not be evicted except for cause and rents charged to such Qualified Tenants may not exceed the rent limits established in this Agreement.

## **PART IX: COVENANTS AND EQUITABLE SERVITUDES TO RUN WITH THE LAND.**

**1. Inducement.** The Recipient represents, covenants and warrants that the issuance to it of the Grant described herein by OHCS is an inducement to the Recipient to do the Project Work and to operate the Project in accordance with this Agreement. In consideration of the issuance of the Grant, the Recipient has entered into this Agreement and has agreed to restrict the operation of and uses to which the Project can be put on the terms and conditions set forth herein. Therefore, the Recipient covenants, agrees and acknowledges that OHCS has relied on this Agreement in determining to issue the Grant.

### **2. Covenants; Equitable Servitudes.**

(a) OHCS and the Recipient hereby declare their express intent that throughout the Affordability Period the covenants, restrictions, charges and easements set forth herein will be deemed covenants running with the land of the Project and will create equitable servitudes running with the land of the Project, and will pass to and be binding upon OHCS' and the Recipient's successors in title including any purchaser, grantee or lessee of any portion of the Project and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee or lessee of any portion of the Project and any other person or entity having any right, title or interest therein.

(b) Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein (other than a rental agreement or lease for a dwelling unit) will contain an express provision making such conveyance subject to the covenants, restrictions, charges and easements contained herein; provided, however, that any such contract, deed or other instrument will conclusively be held to have been executed, delivered and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed or other instrument.

(c) Any and all legal requirements for the provisions of this Agreement to constitute restrictive covenants running with the land of the Project and applying to the Project as a whole, or to create equitable servitudes with respect to same in favor of OHCS, are deemed satisfied in full.

(d) The consent of any recorded prior lien holder on the Project, including the Property, is not required in connection with recording this Agreement, or if required, such consent has been or will be obtained by the Recipient.

### 3. **Burden and Benefit.**

(a) The Recipient hereby declares its understanding and intent that the burdens of the covenants and equitable servitudes set forth herein touch and concern the land of the Project, and the Project as a whole, in that the Recipient's legal interest in the Project is rendered less valuable thereby.

(b) The Recipient hereby further declares its understanding and intent that the benefits of such covenants and equitable servitudes touch and concern the land of the Project, and the Project as a whole, by enhancing and increasing the enjoyment and use of the Project by tenants, intended beneficiaries (in addition to OHCS) of such covenants, reservations and restrictions, and by furthering the public purposes for which the Grant was issued.

4. **Right of Modification.** OHCS may compromise, waive, amend or modify the terms of this Agreement including, but not limited to the restrictive covenants and equitable servitudes created hereby, with the written consent of Recipient or subsequent Project owners, as it so determines to be to the benefit of OHCS, the Project, the Program, or OHCS efforts to provide or maintain safe, sanitary, and affordable housing in the State of Oregon. To be effective, any compromise, waiver, amendment or modification of this Agreement must be in writing, signed by an authorized OHCS representative.

5. **No Right of Action.** Tenants and other third-party beneficiaries under this Agreement (including incorporated documents), if any, have no right of action to enforce the restrictive covenants or equitable servitudes created hereunder. OHCS retains the exclusive right to enforce such covenants and servitudes. Tenants and other third-party beneficiaries under this Agreement (including incorporated documents), if any, have no claim, cause of action or other right of recourse against OHCS with respect to any action or lack of action taken by OHCS with respect to this Agreement (including the described covenants and servitudes) or the Project arising from their rights, if any, under this Agreement or otherwise.

6. **No Attorney Fees.** Tenants and other third-party beneficiaries under this Agreement (including incorporated documents), if any, have no right to attorney fees under this Agreement for claims asserted as third-party beneficiaries hereunder nor will parties hereto have a right to attorney fees against tenants and other third-party beneficiaries, if any, hereunder.

## **PART XI: GENERAL PROVISIONS.**

### 1. **Compliance with Applicable Laws and Requirements.**

(a) **Compliance.** Recipient will comply with all Program Requirements, including but not limited to all federal, state and local laws, regulations, codes, ordinances, and orders applicable to the Project.

(b) **Contracts; Subcontracts.** Recipient will ensure that all contracts and subcontracts related to the Project or this Agreement comply with all applicable Program Requirements, including containing a provision to that effect therein.

(c) **Endurance of Obligations.** Recipient will remain fully obligated under the provisions of the Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the

Project with respect to which Grant funding is being provided by OHCS or Plan compliance is being required by OHCS.

**(d) Tenant Certification; Verification.** Recipient will obtain and maintain on file for each person residing in the Project a certification of tenant eligibility and income verification in the form required by OHCS, updated periodically according to the requirements of OHCS, and submitted to OHCS at its request.

**(e) Inspections.** Recipient will permit OHCS to inspect housing units and common areas within the Project assisted by funding under this Agreement, including all Qualified Units, at reasonable times and under reasonable conditions.

**2. Indemnity.** Recipient assumes sole liability for breach of the conditions of the Grant (including all terms and conditions of this Agreement) by Recipient or any of its officers, agents, employees, and assigns. Recipient will save, hold harmless, indemnify and (subject to ORS chapter 180) defend the State of Oregon, OHCS and their officers, agents, employees, members and assigns, from all suits, actions, claims, losses or damages of whatsoever nature, kind or description related to the Grant, the Project, this Agreement, or resulting from or arising out of the acts, omissions, neglect or misconduct of Recipient or its subcontractors, agents, or employees under this Agreement or related to the Grant or Project.

**3. Time of the Essence.** Time is of the essence in the performance by Recipient of the terms of this Agreement.

**4. No Discrimination; Marketing.** Recipient will not discriminate in the provision of housing on the basis of race, creed, color, sex, national origin, religion, marital status, sexual orientation, family status, age, disability or the receipt of public assistance. Recipient will use its reasonable efforts to advertise and market the Project dwelling units, particularly the Qualified Units, within the County and, if applicable, City in which the Project is located.

**5. Notice.** Except as otherwise expressly provided in this Agreement, any notices required or permitted to be given under this Agreement will be given in writing, by personal delivery, or mailing the same, postage prepaid, to OHCS or Recipient at the following addresses:

OHCS: Oregon Housing and Community Services Department  
Attn: Multifamily Housing Finance Section Manager  
725 Summer Street N.E., Suite B  
Salem, Oregon 97301-1266

Recipient:  
Klamath Housing Authority  
1445 Avalon  
Klamath Falls, Or 97601  
Attn: Diana Otero

or to such other address a party may indicate to the other pursuant to this Section. Any notice so addressed and mailed will be effective five (5) days after mailing. Any notice by personal delivery will be deemed to be given when actually delivered.

**6. No Third-Party Beneficiaries.** Unless and only to the degree expressly provided otherwise in this Agreement, OHCS and Recipient are the only parties to this Agreement and are the only parties entitled to rely on

and enforce the terms of this Agreement. Nothing in this Agreement gives, is intended to give, or will be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly indirectly or otherwise, to third persons unless such third persons are expressly identified in this Agreement and only to the degree they are expressly described as intended beneficiaries of particular terms of this Agreement and only with such remedies as expressly given herein with respect to such interests.

## 7. Recipient Status.

**(a) Independent Contractor.** Recipient will perform all obligations under this Agreement and will timely satisfy all Program Requirements as an independent contractor. Recipient is not an officer, employee or agent of the State, as those terms are used in ORS 30.265, with respect to performance under this Agreement.

**(b) Recipient Responsible for Insurance Coverage.** Recipient agrees that insurance coverage, whether purchased or by self-insurance, for Recipient's agents, employees, officers and/or subcontractors is the sole responsibility of Recipient.

**(c) Non-federal Employment Certification.** Recipient certifies that it is not employed by or contracting with the federal government for performance covered by this Agreement.

**(d) Good Standing Certification.** Recipient certifies to the best of its knowledge and belief that neither the Recipient nor any of its principals, officers, directors or employees:

(1) Is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any state or federal department or agency;

(2) Has within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract related to a public transaction; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;

(3) Is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in subsection (d)(2); and

(4) Has within a three-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

**8. Termination.** OHCS may terminate this Agreement in whole or in part, without further liability and without impairment of its remedies, effective upon delivery of written notice to Recipient, under any of the following conditions:

**(a)** If OHCS funding from federal, state, or other sources is not obtained or is not continued at levels sufficient to allow for delivery of full Grant funding; or

**(b)** If federal or state laws, regulations, rules or other requirements are modified or interpreted in such a way that the intended use of Grant funding for the Project is no longer allowable or appropriate or the Project is no longer eligible for the Grant funding identified in this Agreement from the planned funding source(s) or if OHCS is determined by its legal counsel or otherwise to lack or to have lost the authority to administer the Program; or

- (c) If any authority required by law or regulation to be held by Recipient to complete the Project ends for any reason; or
- (d) If Recipient is unable or fails to commence the Project within six (6) months from the date of this Agreement; or
- (e) If Recipient breaches or fails to timely perform any of its obligations under this Agreement, or any other applicable Grant document and such breach is not cured within the grace period, if any, provided for cure in the applicable document; or
- (f) If OHCS determines that any representation, warranty or covenant of Recipient, whether in whole or in part, is false, invalid, or in default; or
- (g) If Recipient (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all or substantially 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 a bankrupt or insolvent, (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, 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 the federal Bankruptcy Code (as now or hereafter in effect), or (viii) takes any action for the purpose of effecting any of the foregoing.

Termination of this Agreement does not terminate or otherwise impair or invalidate any remedy available to OHCS or to Recipient hereunder, at law, or otherwise.

## 9. Remedies.

- (a) **Repayment.** If this Agreement or any part hereof, terminates prior to the term of the Affordability Period, Recipient will, within thirty (30) days of written demand for repayment, repay to OHCS all Grant funds disbursed to it under this Agreement, together with any earnings on such funds.
- (b) **Additional Remedies.** Upon the occurrence of an event listed in the section immediately above, or upon any other material breach of this Agreement by Recipient, OHCS may, at its option upon thirty (30) days written notice or such shorter written notice as OHCS may determine to be appropriate, deem such event or other material breach as an Event of Default hereunder and exercise one or more of the following remedies:
  - (1) By mandamus or other suit, action or proceeding at law or in equity, require Recipient specifically to perform its obligations under this Agreement or enjoin any acts or things that may be unlawful or in violation of the rights of OHCS under this Agreement;
  - (2) Withhold from Recipient, suspend or terminate, all or part of any undisbursed Grant funding under this Agreement;
  - (3) Demand repayment of all Grant funding provided by OHCS to Recipient under this Agreement, and such amount will be immediately due and payable following thirty (30) days from such written demand, by Recipient to OHCS;

- (4) Declare Recipient, its owners, principals, employees, and agents ineligible to receive further Program or other OHCS financial assistance for such period as OHCS determines in its sole discretion;
- (5) Offset amounts due from repayment of the Grant against other funding awarded or to be awarded to Recipient;
- (6) Take such other action at law, in equity, or otherwise as may be available to OHCS; or
- (7) Have access to, and inspect, examine and make copies of, all of the books and records of Recipient pertaining to the Project and to inspect the Project itself.

**(c) Remedies Nonexclusive.** The rights and remedies of OHCS provided for in this Agreement will not be exclusive and are in addition to any other rights and remedies available hereunder, at law, in equity or otherwise. No failure of or delay by OHCS to enforce any provision of this Agreement will constitute a waiver by OHCS of that or any other provision, nor will any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

**10. Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Agreement did not contain the particular term or provisions held to be invalid.

**11. Survival of Obligations.** The obligations of Recipient as set forth in this Agreement, including in the Application and the Reservation, will survive the reservation of any Grant funds and will not be deemed to terminate or merge with the Reservation or disbursement of the funds. Provisions of this Agreement which by their nature are intended to survive termination of this Agreement (including, but not limited to remedies and record-keeping) will survive.

**12. Attorney Fees.** In the event a lawsuit or other proceeding is instituted regarding this Agreement, the prevailing party in any dispute arising under this Agreement will, to the extent permitted by law, be entitled to recover from the other(s) its reasonable attorney fees and all costs and disbursements incurred at trial, in mediation, and on appeal. Reasonable attorney fees will not exceed the rate charged to OHCS by its attorneys. This provision does not apply to lawsuits or other proceedings instituted or maintained by or against tenants or other third-party beneficiaries hereunder, if any, for which lawsuits or other proceedings no award of attorney fees is permitted.

**13. Construction.** The parties to this Agreement acknowledge that each party and its counsel have participated in the drafting and revision of this Agreement. Accordingly, the parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply in the interpretation of this Agreement or any amendment, modification, supplementation or restatement of the foregoing or of any exhibit to this Agreement.

**14. Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.

**15. Execution and Counterparts.** This Agreement may be executed in several counterparts, each of which will be an original, all of which will constitute but one and the same instrument.

**16. Governing Law; Venue: Consent to Jurisdiction.** This Agreement will be governed by the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") related to this Agreement will be conducted exclusively within the Circuit Court of Marion County, Oregon (unless Oregon law requires that it be brought and conducted where the real property is located) or, if necessary, the United States District Court for the District of Oregon. In no event will this provision be construed as a waiver by OHCS or the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. OHCS and the State of Oregon expressly reserve all sovereignty rights. RECIPIENT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

**17. Merger Clause; Order of Precedence.** This Agreement, including the Application, Reservation, and any exhibits, schedules, appendices and attachments hereto (which are by this reference incorporated herein), constitutes the entire agreement between the parties on the subject matter hereof. Recipient hereby acknowledges that the Application and the Reservation survive the execution and delivery of this Agreement. In the event of any inconsistencies between the body of the Agreement, the Application, the Reservation, and any of the attachments to the Agreement, the following is the descending order of precedence in which the various provisions are to be interpreted: the Agreement without any attachments or any incorporated provisions, the Management Plan, the Plan, the Reservation, the Application, the Property Description (Exhibit A), any other attachments. No modification or amendment of this Agreement will bind either party unless in writing and signed by both parties (and the necessary approvals obtained), and no waiver or consent will be effective unless signed by the party against whom such waiver or consent is asserted. Such waiver or consent, if given, will be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement.

**18. No Limitations on Actions of OHCS in Exercise of Its Governmental Powers.** Nothing in this Agreement is intended, nor will it be construed, to in any way limit the actions of OHCS in the exercise of its governmental powers. It is the express intention of the parties hereto that OHCS will retain the full right and ability to exercise its governmental powers with respect to the Recipient, the Project, this Agreement, and the transactions contemplated by this Agreement and applicable Program Requirements to the same extent as if it were not a party to this Agreement or the transactions contemplated hereby, and in no event will OHCS have any liability in contract arising under this Agreement, the Application, the Reservation, the Program Requirements, or otherwise by virtue of any exercise of its governmental powers.

**19. CERTIFICATIONS AND SIGNATURE OF RECIPIENT'S AUTHORIZED REPRESENTATIVE.**

THIS AGREEMENT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF RECIPIENT.

The undersigned certifies under penalty of perjury both individually and on behalf of Recipient that:

(a) The undersigned is a duly authorized representative of Recipient, has been authorized by Recipient to make all representations, attestations, and certifications contained in this Agreement and to execute this Agreement on behalf of Recipient.

(b) By signature on this Agreement for Recipient, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Recipient and that Recipient is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS

chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.

(c) To the best of the undersigned's knowledge, Recipient has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts.

(d) Recipient and Recipient's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at

<http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>; and

(e) Recipient is bound by and will comply with all requirements, terms and conditions contained in this Agreement.

(f) Recipient further certifies to having a formal statement of nondiscrimination in employment policy.

*[Signature Pages Follow]*

Unofficial Copy

IN WITNESS WHEREOF, OHCS and Recipient have caused this Agreement to be signed by their duly authorized officers as of the first day written above.

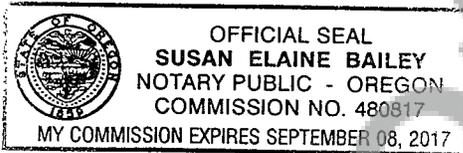
OHCS:

STATE OF OREGON, acting by and through its  
Housing and Community Services Department

By: Heather Pate  
Heather Pate, Manager  
Multifamily Housing Finance Section

STATE OF OREGON            )  
  : ss  
County of Marion            )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of February, 2016 by Heather Pate, who is the Manager of the Multifamily Housing Finance Section, for and on behalf of OHCS.



Susan Elaine Bailey  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 9/8/17

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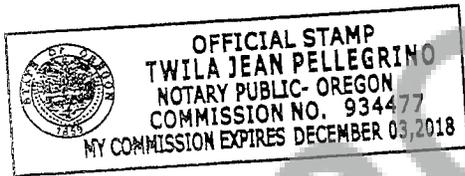
RECIPIENT:

**Klamath Housing Authority**  
An Oregon public corporation  
Tax ID: 93-0637235

By:   
**Diana Otero**  
Its: Executive Director

STATE OF OREGON            )  
  : ss  
County of Oregon    )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of February, 2016 by Diana Otero, Executive Director of Klamath Housing Authority, an Oregon Public Corporation, who executed the foregoing instrument for and on behalf of the Recipient.



  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 12-3-2018

*[The balance of this page is intentionally left blank.]*

**EXHIBIT A**

*[Legal Description]*

All of Lots 2, 3, 4, 5 and 6, Except the Southerly 35 feet of Lot 6, Block 53, HOT SPRINGS SECOND ADDITION TO THE CITY OF KLAMATH FALLS, according to the official plat thereof on file in the office of the County Clerk, Klamath County, Oregon. TOGETHER WITH that portion of vacated alley adjoining said property on the Northeast, said alley vacated by vacation order recorded April 15, 1965, in Book 360 at page 596, Deed Records of Klamath County, Oregon.

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