

AmeriTitle  
MTC 83235AM

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

**2016-003179**  
Klamath County, Oregon  
03/25/2016 02:51:46 PM  
Fee: \$182.00

SPACE ABOVE FOR RECORDER'S USE

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

**GENERAL HOUSING ACCOUNT PROGRAM  
ASSIGNMENT AND ASSUMPTION AGREEMENT  
AND DECLARATION OF RESTRICTIVE COVENANTS**

This General Housing Account Program Assignment and Assumption Agreement and Declaration of Restrictive Covenants (this "Assignment") is made and entered into this 8th day of February, 2016 by and among:

**PARTIES:**

**Grantee:** Klamath Housing Authority, an Oregon public corporation.

**Owner:** Victory Commons, LLC, an Oregon limited liability company

**OHCS:** State of Oregon, acting by and through its  
Housing and Community Services Department,  
together with its successors and assigns.

**RECITALS**

A. Grantee, as Recipient, received a General Housing Account Program ("GHAP") conditional grant (the "Grant") from OHCS as described in a General Housing Account Program Grant Agreement and Declaration of Restrictive Covenants executed between itself and OHCS dated February 8th, 2016 (the "Grant Agreement"), for the purpose of partially reimbursing the construction costs of an **Eleven (11)** -unit low income multifamily rental housing development in **Klamath** County, Oregon, known as **Victory Commons** (the "Project"). The real property for said Project is more particularly described in **Exhibit A** attached hereto.

B. Grantee undertook in the Grant Agreement certain performance obligations, representations, and warranties in favor of OHCS, including, *inter alia*, to rehabilitate or construct the Project improvements (the "Project Work") and further agreed to certain restrictive covenants and equitable servitudes governing, *inter alia*, the habitability, maintenance, and operation of the Project throughout the Affordability Period described in the Grant Agreement. A copy of the Grant Agreement is attached hereto as **Exhibit B**.

C. The terms and conditions of the Grant 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 are hereinafter referred to collectively as the "Program Requirements."

D. Owner is the owner of the Project without material encumbrances except as allowed under this Assignment.

E. The parties desire to execute this Assignment to evidence and confirm the terms by which OHCS hereby consents to Grantee loaning the funds received from the Grant to the Owner for the purposes described in the Grant Agreement and to document Owner's assumption of the rights and obligations of Grantor with respect to the Grant from OHCS. Owner also is willing to commit to operate the Project in conformance with the Grant Agreement, this Assignment, and other applicable Program Requirements.

F. The parties also desire that this Assignment be recorded in the relevant county records and that certain terms herein constitute restrictive covenants and equitable servitudes that will run with the land of the Project and govern, *inter alia*, the maintenance, habitability, and operation of the Project.

## AGREEMENT

NOW, THEREFORE, for sufficient value received, including the terms and conditions of this Assignment, Grantee and Owner hereby agree with OHCS as follows:

**1. Incorporation of Recitals and Documents.** The foregoing Recitals, Exhibit A, and the original of Exhibit B are incorporated herein by reference. Notwithstanding this incorporation, the foregoing Recitals, Exhibit A, and Exhibit B do not modify the express terms of this Assignment.

**2. Definitions.** The words and phrases in this Assignment will have the same meanings as used in the Grant Agreement or Program Requirements, unless the context clearly requires otherwise.

**3. Provision of Grant to Owner; Assumption of Grant Agreement Obligations; Consent.**

**(a) Loan of Grant.** Grantee has loaned or is loaning the Grant to Owner, pursuant to documented terms, copies of which have been delivered to OHCS. OHCS hereby approves of the loan of the Grant to Owner.

**(b) Assignment; Assumption of Obligations.** Owner unconditionally accepts assignment to it by Grantee of Grantee's interests, rights, and obligations under the Grant Agreement and, hereby, unconditionally assumes, jointly and severally with Grantee, those interest, rights, and obligations, including but not limited to all obligations owed to OHCS. Owner will timely perform all such obligations to OHCS in a manner satisfactory to OHCS. Owner will, at its own expense, record and deliver this Assignment to OHCS. Grantee and Owner also will execute and deliver to OHCS such other documents reasonably requested by OHCS to give effect to the terms and conditions of this Assignment, including to give effect to and maintain its restrictive covenants and equitable servitude interests in and rights against the Project.

(c) **Consent.** OHCS hereby consents to and approves of Grantee loaning the Grant to Owner without OHCS undertaking any obligations thereby to Owner and without affecting in any manner the restrictions and requirements of the Grant Agreement with respect to any further or additional transfers or third-party beneficiaries. Additionally, nothing in this Assignment or in the Grant Agreement will be construed as restricting or impairing any right of OHCS to resort to, proceed against, or otherwise exercise its rights with respect to any property in accordance with the rights granted to OHCS by this Assignment or by any other agreement.

(d) **Ratification.** The parties expressly ratify the Grant Agreement as herein assigned and assumed.

#### 4. **Representations, Warranties and Covenants of Owner.**

Owner agrees, represents, covenants, and warrants as follows:

(a) **Adoption; Assumption; Ratification.** Owner, jointly and severally with Grantee, hereby adopts, assumes and ratifies the representations, warranties and covenants of Grantee in the Grant Agreement, including (i) with respect to responsibility to OHCS for proper use of the Grant, (ii) with respect to the affordability, maintenance, habitability, and operation of the Project, (iii) with respect to reporting and record keeping with respect to the Grant and Project, and (iv) with respect to compliance with all other Program Requirements (collectively, the “Obligations”). Owner will timely perform all Grant Agreement Obligations and all obligations owed by it to OHCS under this Assignment in a manner satisfactory to OHCS.

(b) **Validity.** Owner is an **Oregon Limited Liability 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 Assignment, including all Obligations.

(c) **Authority; No Impairment.** The making and performance of this Assignment, including all Obligations, by Owner has been duly authorized by all necessary action of Owner; 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 Owner’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 Owner is a party or by which Owner 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.

(d) **Enforceability.** This Assignment (including all incorporated documents), when executed and delivered, is a valid and binding obligation of Owner enforceable in accordance with its terms;

(e) **Program Requirements.** Owner will timely satisfy all requirements of this Assignment, including all Obligations, 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;

**(f) Completion Date.** Owner 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 Assignment; and

**(g) Responsibility.** Owner 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.

**5. Notice to OHCS.** Owner will promptly notify OHCS in writing of (i) any material adverse change in the financial condition of Owner, or (ii) any suit, governmental action, claim or other proceeding pending or threatened in writing which may have a material adverse effect on Owner or their business operations, condition (financial or otherwise) or involving the Grant or Project. Owner will promptly provide to OHCS on request such credit reports, current financial statements and information, prepared by certified public accountant and certified by Owner, and other documents and information pertaining to the financial condition and obligations of Owner, in reasonable detail and certified where appropriate, as OHCS may reasonably require from time to time, including a detailed statement of income and expenditures (including debt service obligations) and supporting schedules, and updated financial statements.

**6. Further Documentation and Assurance.** Owner will execute upon request of OHCS such additional instruments and provide such further assurances as OHCS may consider reasonably desirable or necessary to evidence or carry out the parties' intent and agreement under this Assignment or to complete, perfect, continue and preserve the obligations, restrictive covenants and equitable servitudes created under the Grant Agreement or this Assignment. Owner will be responsible for all costs incurred in this transaction, including the cost of obtaining a title insurance endorsement acceptable to OHCS, if requested, insuring that the restrictive covenants and equitable servitudes arising under this Assignment are created and continue as valid encumbrances, in the original priority of title of the Grant Agreement, against the Project.

**7. Restrictive Covenants and Equitable Servitudes to Run with the Land.**

**(a) Inducement.** Owner represents and warrants that the consent to Grantee loaning it the Grant by OHCS is an inducement to the Owner to do the Project Work, to assume and comply with the Grant Agreement, and to operate the Project in accordance with and otherwise comply with this Assignment. In consideration of such consent, the Owner has entered into this Assignment and has agreed to restrict the uses to which the Project can be put on the terms and conditions set forth herein. Therefore, the Owner covenants, agrees and acknowledges that OHCS has relied on this Assignment in determining to consent to Grantee loaning the Grant to Owner.

**(b) Covenants; Equitable Servitudes.**

**(1)** The parties hereby declare their express intent that throughout the Affordability Period described in the Grant Agreement 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 Owner'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.

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(2) 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.

(3) Any and all legal requirements for the provisions of this Assignment 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.

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

**(c) Burden and Benefit.**

(1) The Owner 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 Owner's legal interest in the Project is rendered less valuable thereby.

(2) The Owner 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.

**(d) Right of Modification.** OHCS may compromise, waive, amend or modify the terms of this Assignment including, but not limited to the restrictive covenants and equitable servitudes created hereby, with the written consent of Owner 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 Assignment must be in writing, signed by an authorized OHCS representative.

**(e) No Right of Action.** Tenants and other third-party beneficiaries under this Assignment (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 Assignment (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 Assignment (including incorporated documents and the described restrictive covenants and equitable servitudes), the Grant, or the Project arising from their rights, if any, under this Assignment or otherwise.

**(f) No Attorney Fees.** Tenants and other third-party beneficiaries under this Assignment (including incorporated documents), if any, have no right to attorney fees under this Assignment 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.

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

**(a) Transfer of Any Interest in Project.** Except as provided otherwise in Section 9 of this Assignment or in relation to leases for the residential units in the Project, if the Owner transfers or attempts to transfer any interest in the Project (other than by leasing or renting for individual tenant use as contemplated hereunder), 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 Assignment and the Grant Agreement and the remedies provided in such documents, 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 Owner 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 Owner under this Assignment (including incorporated documents) as well as under the Program Requirements, and that this Assignment and the Grant Agreement are legal, valid and binding obligations of the transferee;
- (3) an opinion of counsel for OHCS to the effect that the sale, transfer or disposition of the Project, Owner, or Grant or any portion thereof will not adversely affect compliance with this Assignment, the Grant 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 Assignment, the Grant Agreement, Program Requirements, and also including but not limited to the Owner 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 Owner or Investor.** If the Owner 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 Owner or in the Investor without obtaining the prior written consent of OHCS, OHCS may declare an Event of Default under the terms of this Assignment and under the Grant 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 Owner 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 Owner 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 Owner 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 Owner'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 Owner to an affiliate of the Investor, may be made to an affiliate of the holder of the Investor interest in the Owner 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 Owner must

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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 Owner allowed above or transfers of Investor Membership Interests among resultant Investor members, OHCS may impose a transfer fee or charge on the Owner 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 Owner 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 Owner and may impose a transfer fee or charge on the Owner 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 Owner (a "Post Conversion Transfer of Owner 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 Owner 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 Owner 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 Owner for a qualifying Post Conversion Transfer of 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 Owner for cause pursuant to the terms of the Ownership Agreement in effect as of the date of this Assignment, 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 Owner directly manages the Project, OHCS may require the appointment of a management agent for the Project in lieu of the Owner. The Owner 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 Grantee or Owner and OHCS.

**(e) Unapproved Transfers Are Void.** Any sale, transfer or other disposition of the Project, Owner, or Investor in violation of this Section will be ineffective to relieve the Owner, any transferee or the Project of any continuing obligations under this Assignment or the Grant Agreement. OHCS' consent hereunder will not be deemed continuing and the Owner 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, Owner, or Investor.

**9. 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 Owner, 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 Assignment will be reinstated if, at any time during the Affordability Period subsequent to the early termination of this Assignment as the result of an event under this section, any person or entity that was an obligor under the Grant Agreement or this Assignment prior to such early termination event, including the Grantee or Owner or any related person to them (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 the Grant Agreement.

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



**11. Indemnity.** Owner and Grantee, jointly and severally, 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 Project or resulting from or arising out of their acts, omissions, neglect or misconduct or the acts, omissions, neglect or misconduct or their subcontractors, agents, or employees under this Assignment (including all incorporated documents) or related to the Grant or Project.

**12. Termination.** OHCS may terminate this Assignment (including incorporated documents) in whole or in part, without further liability and without impairment of its remedies, effective upon delivery of written notice to Owner, 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 Assignment 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 Owner to complete the Project ends for any reason; or

(d) If Owner is unable or fails to commence the Project within the time provided in the Grant Agreement; or

(e) If Owner breaches or fails to timely perform any of its obligations under this Assignment, 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 Owner, whether in whole or in part, is false, invalid, or in default; or

(g) If Owner (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 Assignment does not terminate or otherwise impair or invalidate any remedy available to OHCS, Recipient, or Owner hereunder, at law, or otherwise.

### **13. Remedies.**

(a) **Repayment.** If this Assignment or any part hereof, terminates prior to the term of the Affordability

Period, Owner will, within thirty (30) days of written demand for repayment, repay to OHCS all Grant funds disbursed to it or to Recipient, 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 Assignment by Recipient or Owner, 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 Owner or Grantee specifically to perform its obligations under this Assignment or enjoin any acts or things that may be unlawful or in violation of the rights of OHCS under this Assignment;

(2) Withhold from Owner, suspend or terminate, all or part of any undisbursed Grant funding under this Assignment;

(3) Demand repayment of all Grant funding provided by OHCS to Owner or Grantee under this Assignment, and such amount will be immediately due and payable following thirty (30) days from such written demand, jointly and severally, by Owner and Grantee to OHCS;

(4) Declare Owner and Grantee, their 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 Owner or Grantee;

(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 Owner or Grantee pertaining to the Project and to inspect the Project itself.

**(c) Remedies Nonexclusive.** The rights and remedies of OHCS provided for in this Assignment will not be exclusive and are in addition to any other rights and remedies available at law, in equity or otherwise. No failure of or delay by OHCS to enforce any provision of this Assignment 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 Assignment preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

**14. Time of the Essence.** Time is of the essence in the performance of this Assignment.

**15. No Discrimination; Marketing.** Owner 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. Owner will use its reasonable efforts to advertise and market the Project dwelling units, particularly the Qualified Units, within the county and, if applicable, the city in which the Project is located.

**16. Notice.** Except as otherwise expressly provided in this Assignment, any notices required or permitted to be given under this Assignment will be given in writing, by personal delivery, or mailing the same, postage prepaid, to OHCS or Owner (or Grantee if applicable) 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

Owner: Victory Commons, LLC  
1052 NW 17<sup>th</sup> Street  
Redmond, Oregon 97756  
Attn: Lisa Drayton

Grantees: Klamath Housing Authority  
1445 Avalon  
Klamath Falls, Oregon 97601  
Attn: Diana Otero

or to such other address a party or the Investor may indicate to the others 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.

**17. No Third-Party Beneficiaries.** Unless and only to the degree expressly provided otherwise in this Assignment, OHCS, Owner and Grantee are the only parties to this Assignment and are the only parties entitled to rely on and enforce the terms of this Assignment. Nothing in this Assignment 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 Assignment and only to the degree they are expressly described as intended beneficiaries of particular terms of this Assignment and only with such remedies as expressly given herein with respect to such interests.

**18. Owner Status.**

**(a) Independent Contractor.** Owner will perform all obligations under this Assignment, including all Obligations, and will timely satisfy all Program Requirements as an independent contractor. Owner 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 Assignment.

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

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

**(d) Good Standing Certification.** Owner certifies to the best of its knowledge and belief that neither the Owner 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 Assignment 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 Assignment had one or more public transactions (federal, state or local) terminated for cause or default.

#### **19. Further Assurances.**

**(a) Additional Acts.** Grantee or Owner, 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 to assure OHCS of its rights under this Assignment.

**(b) Reliance.** OHCS may rely upon statements and certificates of Grantee or Owner and persons or families of very low income believed to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of Grantee or Owner pertaining to occupancy on the Project.

**(c) Consultation.** OHCS may consult with legal counsel, and the opinion of such counsel will be full and complete authorization and protection in respect of any action taken or suffered by OHCS hereunder in good faith and in conformity with the opinion of such counsel.

**20. Severability.** If any term or provision of this Assignment 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 Assignment did not contain the particular term or provisions held to be invalid.

**21. Survival of Obligations.** The obligations of Grantee (and of Owner by assignment and assumption herein) as set forth in the Application and Reservation, will survive the reservation of any Grant funds and will not be deemed to terminate or merge with the awarding of the funds. Provisions of this Assignment which by their nature are intended to survive termination of this Assignment will survive.

**22. Attorney Fees.** In the event a lawsuit is instituted regarding this Assignment, the prevailing party in any dispute arising under this Assignment 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 and on appeal. Reasonable attorney fees will not exceed those rates charged to OHCS by its counsel. This section 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.

**23. Construction.** The parties to this Assignment acknowledge that each party and its counsel have participated in the drafting and revision of this Assignment. 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 Assignment or any amendment, modification, supplementation or restatement of the foregoing or of any exhibit to this Assignment.

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

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

**26. Governing Law; Venue: Consent to Jurisdiction.** This Assignment 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") among two or more of the parties related to this Assignment will be conducted exclusively within the Circuit Court of Marion County, Oregon (unless Oregon law requires that it be brought and conducted where the Project 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 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. GRANTEE AND OWNER, BY EXECUTION OF THIS ASSIGNMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

**27. Merger Clause.** This Assignment, including the Grant Agreement, Application, Reservation, and any exhibits, schedules, appendices and attachments hereto or thereto constitute the entire agreement among the parties on the subject matter hereof. Owner hereby acknowledges that the Application, the Reservation, and the Grant Agreement survive the execution and delivery of this Assignment. In the event of any inconsistencies between the body of this Assignment, the Grant Agreement, the Application, the Reservation, and any of the attachments to this Assignment, the Grant Agreement, the Application, or the Reservation, the following is the descending order of precedence in which the various provisions are to be interpreted: the Assignment without any attachment or any incorporated provisions, the Grant Agreement without any attachments or any incorporated provisions, the Management Plan, the Plan, the Reservation, the Application, the Property Description (Exhibit A), and then any other attachments. No modification or amendment of this Assignment affecting any party will bind that party unless in writing and signed by OHCS and that party (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 Assignment.

**28. No Limitations on Actions of OHCS in Exercise of Its Governmental Powers.** Nothing in this Assignment 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/Grantee, the Owner, the Project, the Grant Agreement, this Assignment, and the transactions contemplated by this Assignment and applicable Program Requirements to the same extent as if it were not a party to this Assignment or the transactions contemplated hereby, and in no event will OHCS have any liability in contract arising under this Assignment, the Application, the Award, the Grant Agreement, the Program Requirements, or otherwise by virtue of any exercise of its governmental powers.

## 29. CERTIFICATIONS AND SIGNATURE OF OWNER'S AUTHORIZED REPRESENTATIVE.

THIS ASSIGNMENT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF OWNER.

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

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

(b) By signature on this Assignment for Owner, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Owner and that Owner 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, Owner 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) Owner and Owner'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) Owner is bound by and will comply with all requirements, terms and conditions contained in this Assignment.

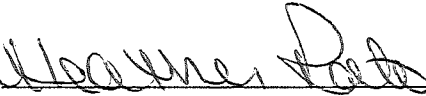
(f) Owner further certifies to having a formal statement of nondiscrimination in employment policy.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, the parties have caused this Assignment to be signed by their duly authorized officers as of the first day written above.

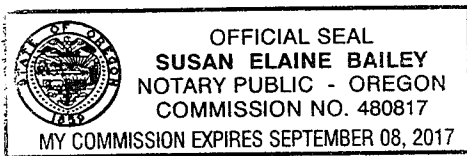
OHCS:


State of Oregon, acting by and through its  
Housing and Community Services

By:   
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.




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

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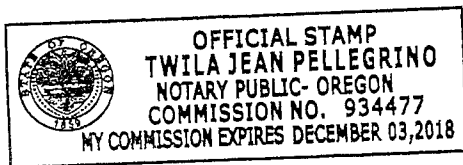
GRANTEE:

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

By:   
Diana Otero,  
Executive Director

STATE OF OREGON                    )  
  : ss  
County of                            )

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 Grantee.



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

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



OWNER:

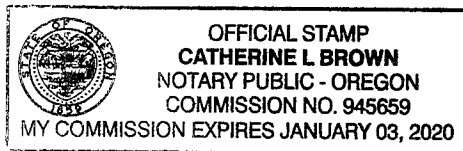
**Victory Commons, LLC,**  
An Oregon limited liability company  
Tax ID: 47-5582120

By: Luckenbill-Drayton & Associates, LLC,  
An Oregon limited liability company, Managing Member

By: *Lisa Drayton*  
Lisa Drayton, Manager

STATE OF OREGON                    )  
County of Deschutes           : ss

The foregoing instrument was acknowledged before me this 19 day of February, 2016 by Lisa Drayton, Manager of Luckenbill-Drayton & Associates, LLC, Managing Member of Victory Commons, LLC an Oregon limited liability company, who executed the foregoing instrument for and on behalf of the Owner.



*Catherine Brown*  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 1-3-20

*[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 ADDTION 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.

**Exhibit B**  
**(copy of Grant Agreement attached)**

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

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.

**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:

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.

(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

## **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.



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

- (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;

**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:

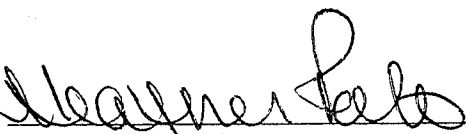
(a) The undersigned is a duly authorized representative of Recipient, has been authorized by Recipient to make all representations, attestations, and certifications contained in this Agreement and to execute this Agreement on behalf of Recipient.

(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

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.

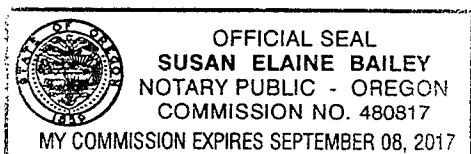
OHCS:

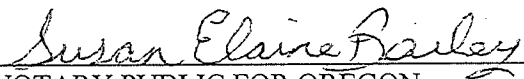
STATE OF OREGON, acting by and through its  
Housing and Community Services Department

By:   
Heather Pate, 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.



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

*[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.

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