

RECORDING COVER SHEET (Please print or type)

This cover sheet was prepared by the person presenting the instrument for recording. The information on this sheet is a reflection of the attached instrument and was added for the purpose of meeting first page recording requirements in the State of Oregon, and does NOT affect the instrument. ORS 205.234

2016-010344**Klamath County, Oregon**

00192995201600103440060068

09/29/2016 10:36:35 AM

Fee: \$67.00

After recording return to: ORS 205.234(1)(c)

Allison Bryson, CFO and Vice President for Administrative Service

Klamath Community College

7390 South 6th Street

Klamath Falls, OR 97603

1. Title(s) of the transaction(s)

ORS 205.234(1)(a)

Agreement and Mortgage (Mortgage Agreement, ORS 205.130(1))

2. Direct party(ies) / grantor(s)

Name(s)

ORS 205.234(1)(b)

Klamath Community College

3. Indirect party(ies) / grantee(s)

Name(s)

ORS 205.234(1)(b)

United States Department of Commerce, Economic Development Administration

4. True and actual consideration:

ORS 205.234(1) Amount in dollars or other

\$

Other: Grant Award of \$3,000,000 US Dollars

5. Send tax statements to:

ORS 205.234(1)(e)

Not Applicable

6. Satisfaction of lien, order, or warrant:

ORS 205.234(1)(f)



FULL



PARTIAL

7. The amount of the monetary obligation imposed by the lien, order, or warrant:

ORS 205.234(1)(f)

\$ 3,000,000.00

8. Previously recorded document reference: None**9. If this instrument is being re-recorded complete the following statement:**

ORS 205.244(2)

"Rerecorded at the request of

to correct

previously recorded in book _____ and page _____, or as fee number _____."

AGREEMENT AND MORTGAGE

WHEREAS, Klamath Community College (hereinafter "Mortgagor"), whose address is 7390 S. 6th St. Klamath Falls, OR 97603, has applied to, received and accepted from the United States Department of Commerce, Economic Development Administration (hereinafter "EDA") an award in the amount of Three Million Dollars (\$3,000,000) (hereinafter "Award Amount") pursuant to a Financial Assistance Award (hereinafter "Award Agreement") entered into by the parties on August 26, 2015, and bearing EDA Project Number 07-01-07208 (the "Project"); and

WHEREAS, pursuant to the application (hereinafter "Award Application") filed by Mortgagor requesting said award and pursuant to the Award Agreement, the Award Amount is to be used for the purpose of making improvements consisting of new construction of a building entitled "Work Skills Technology Center"

on the real property described in Exhibit "A," attached hereto and made a part hereof (hereinafter the "Property"); and

WHEREAS, any transfer or conveyance of a project by a recipient of a Financial Assistance Award must have the prior written approval of EDA. However, EDA, under authority of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3121 *et seq.*) is not authorized to permit transfer or conveyance of a project to parties which are not eligible to receive EDA Financial Assistance Awards unless EDA is repaid its share of the fair market value of the project or unless the authorized purpose of the EDA Financial Assistance Award was to develop land in order to lease it for a specific use, in which case EDA may authorize the lease(s) of the project if certain conditions are met; and

WHEREAS, the aforesaid Award Agreement from EDA provides the authorized purpose for which the Award Amount may be used while further providing, inter alia, that Mortgagor will not sell, mortgage, or otherwise use or alienate any right to, or interest in the Property, (other than by a lease permitted by the Award Agreement), or use the Property for purposes other than, and different from, those purposes set forth in the Award Agreement and the Award Application made by Mortgagor, such alienation or use being prohibited by 13 C.F.R. part 314, or by 2 CFR 200 (hereinafter the "Regulations") as may be amended from time to time; and

WHEREAS, the value of said right to repayment under the terms of the Regulations is difficult to establish; and

WHEREAS, at this time, Mortgagor and EDA desire to establish a value for EDA's share of the Project in the event that the Property is used, transferred or alienated in violation of the Award Agreement, or the Regulations;

NOW THEREFORE, Mortgagor does hereby mortgage, warrant, grant and convey unto EDA, its successors and assigns, a mortgage on said Property to secure a debt that shall become due and payable by Mortgagor to EDA upon the use, transfer, or alienation of the Property, or interest therein, in violation of the Award Agreement or in violation of the Regulations, as such Award Agreement or Regulations may be amended from time to time, provided, however, that the lien and encumbrance of this AGREEMENT AND MORTGAGE shall terminate and be of no further force and effect 20 years from the date hereof, which period of years has been established as the useful life of the improvements to

the Property. The amount of the lien, encumbrance and debt created by this Agreement shall be the amount determined by EDA, pursuant to the Regulations. Mortgagor does hereby acknowledge that said debt shall accrue and be due and payable upon any use, transfer, or alienation prohibited by the Award Agreement or the Regulations, as such may be amended from time to time, and does, moreover, agree that such debt shall be extinguished only through the full payment thereof to the United States.

Mortgagor further covenants and agrees as follows:

1. Lease of Property:

If the Award Application and Award Agreement authorize Mortgagor to lease the Property, all lease arrangements must be consistent with the authorized general and special purpose of the Award, said lease arrangements will provide adequate employment and economic benefits for the area in which the Property is located; said lease arrangements must be consistent with EDA policies concerning, but not limited to, nondiscrimination and environmental requirements, and that the proposed Lessee is providing adequate compensation to Mortgagor for said lease. Any lease agreements entered into by Mortgagor of the Property shall be subordinate, junior and inferior to this AGREEMENT AND MORTGAGE.

2. Charges; Liens:

Mortgagor shall protect the title and possession of the Property, pay when due all taxes, assessments, and other charges, fines and impositions now existing or hereafter levied or assessed upon the Property and preserve and maintain the priority of the lien hereby created on the Property including any improvements hereafter made a part of the realty.

3. Hazard Insurance:

Mortgagor shall insure and keep insured all improvements now or hereafter created upon the Property against loss or damage by fire and windstorm and any other hazard or hazards included within the term "extended coverage." The amount of insurance shall be the full insurable value of said improvements. Any insurance proceeds received by Mortgagor due to loss shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Mortgage would be impaired, Mortgagor shall use said insurance proceeds to compensate EDA for its fair share. EDA's fair share shall be a percentage of said insurance proceeds equal to its award percentage in the total cost of the award program for which the damaged or destroyed real property was acquired or improved.

4. Preservation and Maintenance of the Property:

Mortgagor shall keep the Property in good condition and repair and shall not permit or commit any waste, impairment, or deterioration of the Property.

5. Inspection:

EDA may make or cause to be made reasonable entries upon and inspection of the Property.

6. Condemnation:

The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taxing of the Property, or part thereof, or for any conveyance in lieu of condemnation shall be used by Mortgagor to compensate EDA for its fair share. EDA's fair share shall be the percentage of said condemnation proceeds equal to its award percentage in the total cost of the award program for which the condemned property was acquired or improved.

7. Forbearance by EDA Not a Waiver:

Any forbearance by EDA in exercising any right or remedy hereunder, or otherwise affordable by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy hereunder.

8. Recording of Mortgage – Mortgagee's Copy:

Mortgagor shall record this AGREEMENT AND MORTGAGE in the County where the Property is located, thereby securing to EDA an estate in the Property and any other place where recording is required under applicable law. Mortgagee shall be furnished a conformed copy of this Mortgage at the time of execution, and after recordation thereof.

9. Remedies Cumulative:

All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.

10. Notice:

Any Notice from EDA to Mortgagor provided for in this Mortgage shall be mailed by certified mail to Mortgagor's last known address or at such address as Mortgagor may designate to EDA by certified mail to EDA's address, except for any Notice given to Mortgagor in the manner as may be prescribed by applicable law as provided hereafter in this Mortgage.

11. Remedies:

Upon Mortgagor's breach of any covenant or agreement herein, EDA, its designees, successors or assigns may declare the entire indebtedness secured hereby immediately due, payable and collectible. This AGREEMENT and MORTGAGE may be enforced by the Secretary of Commerce of the United States of America, the Assistant Secretary of Commerce for Economic Development or their designees, successors or assigns, by and through a foreclosure action brought either in a United States District Court, or in any State Court having jurisdiction, but such action shall not be deemed to be a waiver of the aforesaid debt or of any possible further or additional action to recover repayment thereof.

After any breach on the part of Mortgagor, EDA, its designees, successors or assigns shall, upon bill filed or the proper legal proceedings being commenced for the foreclosure of this Mortgage, be entitled, as a matter of right, to the appointment by any competent court, without notice to any party, of a receiver of the rents, issues and profits of the Property, with power to lease and control the Property, and with such

other powers as may be deemed necessary.

12. Governing Law; Severability:

This AGREEMENT AND MORTGAGE shall be governed by applicable Federal law and nothing contained herein shall be construed to limit the rights the EDA, its designees, successors or assigns is entitled to under applicable Federal law. In the event that any provision or clause of this instrument conflicts with applicable law, such conflict shall not affect other provisions of this instrument, which can be given effect without the conflicting provision, and to this end the provisions of this instrument are declared to be severable.

IN WITNESS WHEREOF, Mortgagor has hereunto set its hand and seal on this the 29 day of September, 20 16.

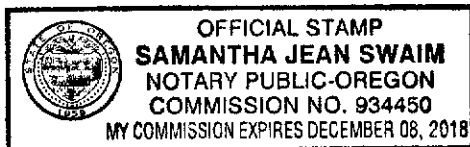
A completed duly recorded copy of this Agreement and Mortgage shall be forwarded to EDA.

Klamath Community College
Mortgagor
By: Anthony J. Rosalez
Its: Vice President and Legal Counsel

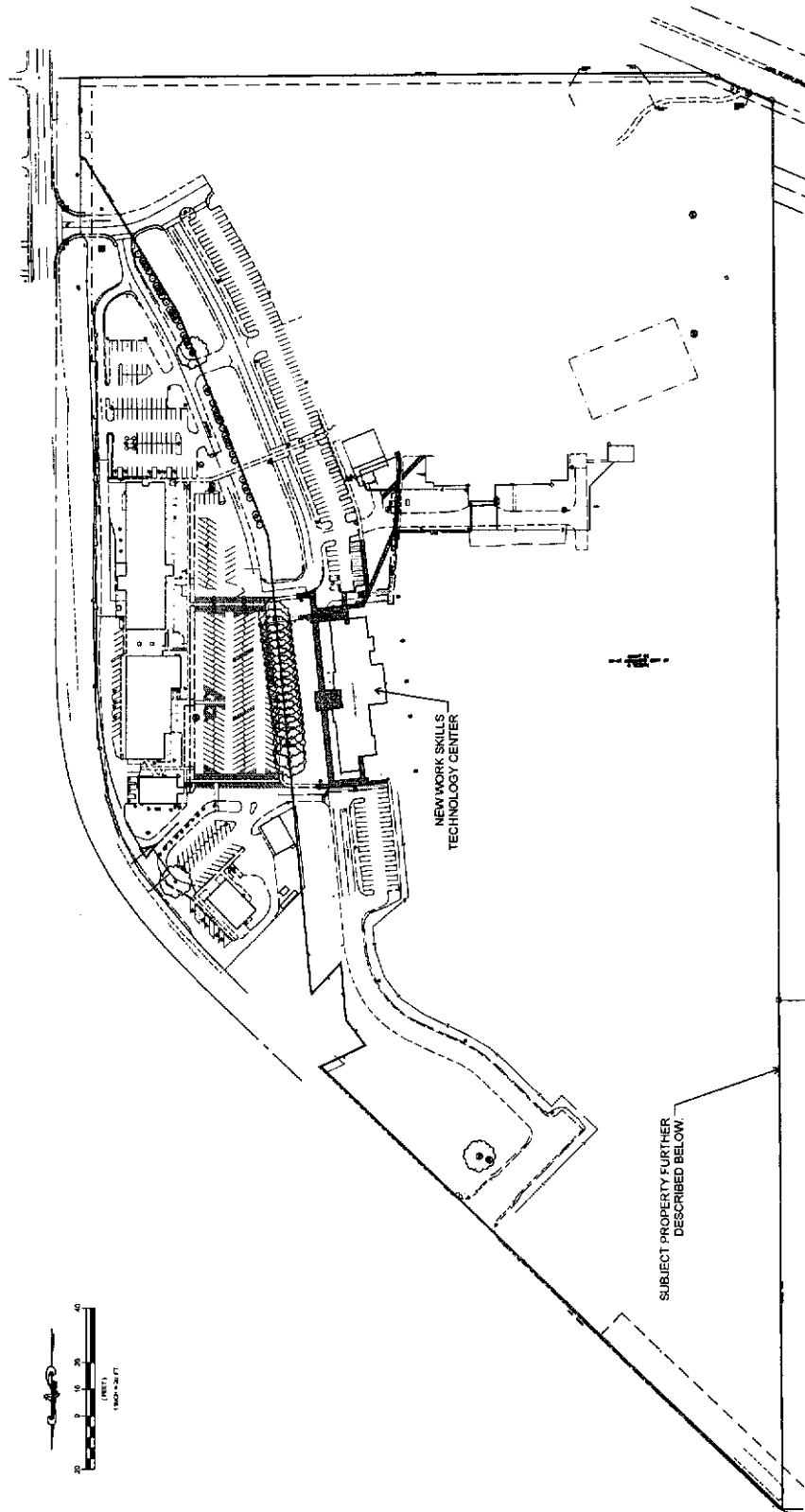
(The appropriate acknowledgment must be included for recording in the Mortgagor's jurisdiction.)

STATE OF Oregon)
COUNTY OF Klamath)

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THIS 29th day of September, 20 16, by Anthony J. Rosalez.



Samantha Jean Swaim
Notary Public, State of



Parcel 2 of LAND PARTITION 10.99 being a portion of Parcel 3 of Minor Land Partition 25.87 situated in the E1/2 NW1/4 of Section 12, Township 39 South, Range 9 East of the Willamette Meridian, Clatsop County, Oregon.

EXCEPTING THEREFROM that portion devoted to the State of Oregon by instrument recorded as 2012-013208, records of Clatsop County, Oregon.