

2016-013597

Klamath County, Oregon

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COVER SHEET

After recording return to:

Rural Development

Attn: Sherryl Gleason

1220 SW 3rd Ave

Suite 1801

Portland, OR 97204

Document Title – by ORS 205.234(a):

Restrictive Use Covenant

Grantor/Direct Party – by ORS 205.125(1)(b) and ORS 205.160:

Klamath Housing Authority, an Oregon Public corporation

Grantee/Indirect Party – by ORS 205(1)(a) and ORS 205.160:

United States of America, acting through the Rural Housing Service in Rural
Development (Agency), U.S. Department of Agriculture

First American Title- NCS-714757-OR1

Merrill Apartments

RESTRICTIVE USE COVENANT - 30-YEARS
(7 CFR 3560.72(a))

WHEREAS, Klamath Housing Authority, an Oregon public corporation "Owner", or a predecessor in interest, received a loan from the United States of America, acting through the Rural Housing Service in Rural Development (Agency), U.S. Department of Agriculture which was evidenced by a promissory note ^{and/} or assumption agreement dated December 15, 2016 in the original amount of \$89.68 & \$448,658.00 and secured by a certain Deed of Trust or Mortgage dated December 15, 2016, and recorded in the land records for the ~~City or~~ County of Klamath for the purpose of providing housing in accordance with Section 42 U.S.C. 1484 (Section 514) or 1485 (Section 515), whichever is applicable, and Title V of the Housing Act of 1949, as amended "Program"; and

NOW, THEREFORE, in consideration of the restrictions on the Property as further described in Exhibit A, the sum of Ten Dollars (\$10) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, for themselves and for their respective successors and assigns, hereby covenant and agree as follows:

- (1) **Term.** The period of the restriction will be for 30 years, from the date this Restrictive Use Covenant was signed.
- (2) **Use Requirement.** The Owner, and any successors in interest, agree to use the Property in compliance with 42 U.S.C. § 1484 or § 1485, whichever is applicable, and 7 CFR part 3560, and any other applicable regulations and amendments, for the purpose of housing program eligible very low-, low-, or moderate-income tenants.
- (3) **Enforcement.** The Agency and program eligible tenants or applicants may enforce these restrictions as long as the Agency has not terminated the Restrictive Use Agreement pursuant to paragraph 7 below.
- (4) **Displacement Prohibition.** The Owner agrees not to refuse to lease a dwelling unit offered for rent, or otherwise discriminate in the terms of tenancy, solely because any tenant or prospective tenant is the recipient of housing assistance from the Agency or any other Federal agency.
- (5) **Owner's Responsibilities.** The Owners agrees to: set rents, other charges, and conditions of occupancy in a manner to meet the restrictions required in this Restrictive Use Covenant; post an Agency approved notice of these restrictions for the tenants of the property; to adhere to applicable local, State, and Federal laws; and to obtain Agency concurrence for any rental procedures that deviate from those approved at the time of prepayment, prior to implementation.
- (6) **Civil Rights Requirements.** The Owner will comply with the provisions of any applicable Federal, State or local law prohibiting discrimination in housing on the basis of race, color, religion, sex, national origin, handicap or familial status, including but not limited to: Title VI of the Civil Rights Act of 1964 (Public Law 90-284, 82 Stat. 73), the Fair Housing Act, Executive Order 11063, and all requirements imposed by or pursuant to Agency regulations implementing these authorities, including, but not limited to, 7 CFR 3560.10.4.
- (7) **Release of Obligation.** The Owner will be released from these obligations before the termination period set in paragraph 1 only when the Agency determines that there is a no longer a need for the housing or that HUD Section 8 vouchers provided the residents of the housing will no longer be provided due to no fault, action or lack of action on the part of the Owner.
- (8) **Violations; the Agency's Remedies.** The parties further agree that upon any default under this covenant, the Agency may apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against violation of this covenant or for such other equitable relief as may be appropriate, since the injury to the Agency arising from a violation under any of

the terms of this covenant would be irreparable and the amount of damage would be difficult to ascertain.

(9) Covenants to Run with Land. The Owner hereby subjects the Property to the covenants, reservations and restrictions set forth in this covenant. The Owner hereby declares its express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land to the extent permitted by law and shall pass to and be binding upon the successors in title to the Property throughout the term. Each and every contract, deed, mortgage or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. The Agency hereby agrees that, upon the request of the Owner made on or after the term of this covenant, the Agency shall execute a recordable instrument approved by the Agency for purposes of releasing this covenant of record. All costs and expenses relating to the preparation and recording of such release shall be paid by the Owner.

(10) Superiority. The document hereto constitutes a restrictive covenant that is filed of record, with all other Deeds of Trusts or Mortgages, and that, notwithstanding a foreclosure or transfer of title pursuant to any other instrument or agreement, the restrictive covenants and provisions hereunder shall remain in full force and effect.

(11) Subsequent Modifications and Statutory Amendments. The Agency may implement modifications necessitated by any subsequent statutory amendment without the consent of any other party, including those having the right of enforcement, to require that any third-party obtain prior Agency approval for any enforcement action concerning preexisting or future violations of this covenant.

(12) Other Agreements. The Owner represents and warrants that it has not and will not execute any other agreements with provisions contradictory or in opposition to the provisions of this covenant and that, in any event, the provisions of this covenant are paramount and controlling as to the rights and obligations set forth herein and supersede any other conflicting requirements.

(13) Binding Effect. Upon conveyance of the Property during the term, the Owner shall require its successor or assignee to assume its obligations under this covenant. In any event, this covenant shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and/or assigns.

(14) Amendment. This covenant may not be modified except by an instrument in writing executed by each of the parties that are signatories hereto.

(15) Severability. Notwithstanding anything herein contained, if any one or more of the provisions of this covenant shall for any reason whatsoever be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision of this covenant, but this covenant shall be construed as if such illegal, invalid or unenforceable provision had never been contained herein.

(16) Headings. The headings and titles to the sections of this covenant are inserted for convenience only and shall not be deemed a part hereof nor affect the construction or interpretation of any provisions hereof.

(17) Governing Law. This covenant shall be governed by all applicable Federal laws.

IN WITNESS WHEREOF, the parties hereto have caused this Restrictive Use Covenant to be executed and made effective as of the date first above written.

OWNER: Klamath Housing Authority, an Oregon public corporation

Date: 12-19-2016

By: [Signature]

Name: Diana Otera

Title: Executive Director

WITNESS/ATTEST:

STATE OF OREGON)
COUNTY OF Klamath) SS:



This instrument was acknowledged before me on December 19, 2016, by ~~Angelique Kaber~~
Diana Otera as Executive Director of Klamath Housing Authority.

[Signature]
Notary Public - State of Oregon

EXHIBIT A
LEGAL DESCRIPTION

[attached]

Exhibit "A"

Legal Description of Merrill Apartments Parcel's

Real property in the County of Klamath, State of Oregon, described as follows:

PARCEL 1:

THE FOLLOWING DESCRIBED REAL PROPERTY IN KLAMATH COUNTY, OREGON;

A TRACT OF LAND SITUATED IN TRACT 18, "MERRELL TRACTS", IN THE SW $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 2, TOWNSHIP 41 SOUTH, RANGE 10 EAST OF THE WILLAMETTE MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A ONE-HALF INCH IRON PIN ON THE WESTERLY EXTENSION OF THE NORTH LINE OF THIRD STREET, "HODGES ADDITION TO MERRILL" SAID POINT BEING WEST A DISTANCE OF 120.00 FEET FROM THE ONE-HALF INCH IRON PIN MARKING THE SOUTHEAST CORNER OF BLOCK 4, "HODGES ADDITION TO MERRILL"; THENCE WEST ALONG SAID WESTERLY EXTENSION A DISTANCE OF 120.00 FEET TO A ONE-HALF INCH IRON PIN; THENCE NORTH $00^{\circ}25'$ WEST A DISTANCE OF 112.50 FEET TO A ONE-HALF INCH IRON PIN; THENCE EAST PARALLEL WITH THE SOUTH LINE OF SIAD TRACT 18, "MERRILL TRACTS" A DISTANCE OF 120.00 FEET TO A ONE-HALF INCH IRON PIN; THENCE SOUTH $00^{\circ}25'$ EAST A DISTANCE OF 112.50 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

A TRACT OF LAND SITUATED IN TRACT 18, MERRILL TRACTS, IN THE SW $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 2, TOWNSHIP 41 SOUTH, RANGE 10 EAST OF THE WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A ONE-HALF INCH IRON PIN ON THE WESTERLY EXTENSION OF THE NORTH LINE OF THIRD STREET, HODGES ADDITION TO MERRILL, SAID POINT BEING WEST A DISTANCE OF 240.00 FEET FROM THE ONE-HALF INCH IRON PIN MARKING THE SOUTHEAST CORNER OF BLOCK 4, HODGES ADDITION TO MERRILL; THENCE WEST ALONG SAID WESTERLY EXTENSION A DISTANCE OF 117.37 FEET TO A ONE-HALF INCH IRON PIN ON THE WEST LINE OF SAID TRACT 18, MERRILL TRACTS AND ON THE EAST LINE OF THE DRAIN DITCH EASEMENT AS DESCRIBED IN DEED VOLUME 43 AT PAGE 239, KLAMATH COUNTY DEED RECORDS; THENCE NORTH $00^{\circ}01'10''$ WEST ALONG SAID LINE A DISTANCE OF 112.50 FEET TO A ONE-HALF INCH IRON PIN; THENCE EAST PARALLEL TO THE SOUTH LINE OF SAID TRACT 18 A DISTANCE OF 116.60 FEET TO A ONE-HALF INCH IRON PIN; THENCE SOUTH $00^{\circ}25'$ EAST A DISTANCE OF 112.50 FEET TO THE POINT OF BEGINNING.