

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

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172980 Am*

2017-011128
Klamath County, Oregon
10/02/2017 11:45:01 AM
Fee: \$82.00

SPACE ABOVE FOR RECORDERS USE

STATE OF OREGON
HOUSING AND COMMUNITY SERVICES DEPARTMENT
OPPORTUNITY PURCHASE PROGRAM
SUBORDINATION AGREEMENT

THIS Subordination Agreement (this “**Agreement**”) is made and entered into this 1st day of September, 2017 by and among the State of Oregon, acting by and through its Housing and Community Services Department, together with its successors and assigns (the “**Subordinator**”), Umpqua Bank, an Oregon Corporation (the “**Construction Lender**”), and Network for Affordable Housing, an Oregon nonprofit corporation (“the “**Mortgage Lender**”). The Construction Lender and the Mortgage Lender are hereinafter collectively referred to as the “**Lender**”.

RECITALS

A. Construction Lender intends to make a construction loan in the amount of **Five Million Dollars (\$5,000,000)** to Sky Meadows, LLC, an Oregon limited liability company (“**Borrower**”), that will convert (to the extent not repaid) to a mortgage loan of **twenty (20)** years, the Construction Lender’s interest in which will be assigned to Mortgage Lender. The construction loan and the mortgage loan are hereinafter collectively referred to as the “**Loan**.”

B. The purpose of the Loan is to partially finance the development and operation of a scattered-site affordable multifamily rental housing development in Klamath County, Oregon on three parcels of property more fully described in Exhibit A, attached hereto and made a part hereof by this reference (the “**Property**”).

C. Klamath Housing Authority, an Oregon public body corporate and politic (“**Lessor**”), owns fee title to the Property and will or has leased the Property to Borrower, which will have a leasehold interest in the Property (the “**Leasehold**”) for a period of time in excess of the duration of the Loan. The Property, the Leasehold, and the improvements thereon are hereinafter collectively referred to as the “**Project**.”

D. As a condition of the Loan, Lender requires that the **Fee and Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing**, executed by Borrower, as the holder of the leasehold interest, and Lessor, as the holder of the fee interest, dated September 29, 2017 and recorded in the official records of Klamath County, Oregon on September 29, 2017 as Instrument No. 2017-011103 (the

“**Lender’s Security Interest**”) that will secure repayment of the Loan constitute a first lien against the Property and be binding upon the Borrower and upon all future owners of the Leasehold and Property.

E. Subordinator has made an Opportunity Purchase Program grant (the “**OPP Grant**”) to Lessor, the terms of which, as more fully described below, create a recorded encumbrance (the “**OPP Covenants**”) against, *inter alia*, Parcel 3 of the Property as described in Exhibit A.

F. Subordinator is willing to subordinate the OPP Covenants with respect to Parcel 3 of the Property to the Lender’s Security Interest consistent with the terms of this Agreement in order to induce Lender to make the Loan.

AGREEMENT

WHEREFORE, for good and valuable consideration, including the inducement of Lender to make the Loan, the parties hereto agree as follows:

1. **Subordination.** The OPP Covenants with respect to Parcel 3 of the Property described in Paragraph 2 below (but only with respect to Parcel 3 of the Property) shall be subject, subordinate, and junior to the Lender’s Security Interest and any extensions, renewals or amendments thereof. The parties hereto acknowledge and agree that upon the conversion of the Loan from a construction loan to a permanent loan and the assignment of Lender’s Security Interest from Construction Lender to Mortgage Lender, Lender’s Security Interest shall be and remain in the same lien position with respect to the OPP Covenants with respect to Parcel 3 of the Property.

2. **OPP Covenants.** The OPP Covenants, incorporated herein by this reference, include the following:

Grant Agreement Special Purpose Grant OR16SPG23, Oregon Housing and Community Services Department Opportunity Purchase Program, dated November 16, 1994 and recorded November 28, 1994 in the official records of Klamath County, Oregon as Instrument No.91677, Vol M94, Page 36194, including as amended September 8, 2000, which amendment of that date was recorded on September 19, 2000 in the official records of Klamath County, Oregon as Instrument No. N/A, Vol MOO, Page 34288,

together with any other instrument executed by the Lessor or Borrower in favor of the Subordinator concerning the OPP Grant and affecting Parcel 3 of the Property.

3. **Notice; Right to Cure.** Subordinator agrees, covenants, and consents to and with Lender, its successors and assigns, that Subordinator shall provide Lender with at least six (6) months’ written notice of any default by Borrower or Lessor under the OPP Covenants in favor of the Subordinator with respect to Parcel 3 of the Property and the Subordinator does hereby grant Lender six (6) months to cure any said default by the Borrower or Lessor. Lender shall have no obligation to effect such a cure, but may do so or not at its sole discretion. During such cure period, so long as Lender is reasonably acting to accomplish a cure, Subordinator will not demand repayment of the OPP Grant from Borrower or exercise any other remedy for monetary relief concerning the OPP Grant with respect to Parcel 3 of the Property. This limitation does prevent or in any way impair Subordinator’s right to demand repayment of the OPP Grant from Lessor or otherwise to exercise any remedy for monetary relief concerning the OPP Grant.

4. **Limitation.** It is expressly understood, covenanted, and agreed that nothing herein contained does or shall be construed to change, alter, impair, or limit Subordinator’s remedies with respect to the OPP Covenants except as hereinabove expressly set forth. Notwithstanding any foregoing provision, this Agreement does not affect the OPP Covenants except with respect to Parcel 3 of the Property.

5. **Governing Law; Venue; Consent to Jurisdiction.** Lender, Subordinator and each person now or at any time hereafter liable, whether primarily or secondarily, hereby agree that this Agreement (including incorporated documents) shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or other proceeding (collectively "**Claim**") arising out of or related in any way to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon wherever possible or otherwise within the necessary Circuit Court for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. Construction Lender and Mortgage Lender hereby consent to the *in personam* jurisdiction of said courts. Neither this section nor any other provision of this Agreement may 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.

6. **Severability.** A determination that any term or provision of this Agreement is invalid or otherwise not enforceable will not affect the validity of the remaining terms and provisions of this Agreement, which will remain in full force and effect.

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

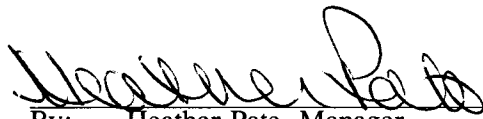
8. **No Impairment of Governmental Powers.** Nothing in this Agreement is intended, nor will it be construed, to in any way limit the actions of Subordinator or State of Oregon in the exercise of their governmental powers. It is the express intention of the parties hereto that Subordinator and State of Oregon will retain the full right and ability to exercise their governmental powers with respect to the Project, the OPP Grant, the OPP Covenants, Lessor, Lessee, Construction Lender, and Mortgage Lender, and the transactions contemplated by this Agreement (including incorporated documents) to the same extent as if Subordinator were not a party to this Agreement (including incorporated documents) or the transactions contemplated thereby, and in no event will Subordinator or the State of Oregon have any liability in contract arising under this Agreement by virtue of any exercise of their governmental powers.

[Signature Pages Follow]

IN WITNESS WHEREOF, this instrument has been duly executed as of the date and year first above written.

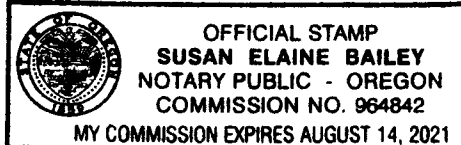
SUBORDINATOR:


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 26th day of September, 2017 by Heather Pate, Manager, Multifamily Housing Finance Section, on behalf of Subordinator, Housing and Community Services Department.




NOTARY PUBLIC FOR OREGON
My Commission Expires: 8/14/21

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CONSTRUCTION LENDER:

UMPQUA BANK,
an Oregon banking corporation

By: _____

Name: Gina León

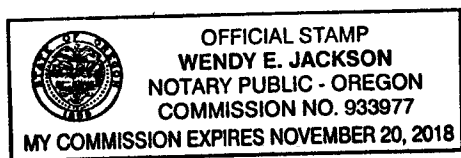
Title: Vice President

STATE OF OREGON)

: ss

County of Multnomah)

The foregoing instrument was acknowledged before me this 27 day of September, 2017, by Gina León, Vice President of Umpqua Bank, an Oregon banking corporation, on behalf of such banking corporation.



Wendy E. Jackson
NOTARY PUBLIC FOR Oregon
My Commission Expires: 11-20-18

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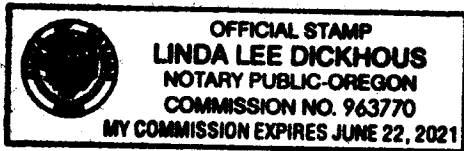
NETWORK FOR AFFORDABLE HOUSING,
an Oregon nonprofit public benefit corporation

By: William A. Van Vliet
William A. Van Vliet, Executive Director

By: Ann Gray, Director of Lending

STATE OF OREGON)
) SS
COUNTY OF MULTNOMAH)

This instrument was acknowledged before me on September 27th, 2017, by William A. Van Vliet as executive director and Ann Gray as Director of Lending on behalf of Network for Oregon Affordable Housing, an Oregon nonprofit public benefit corporation, who executed the instrument, for and on behalf of the corporation.



Lindsey Lee Dickbons
Notary Public for Oregon
My commission expires: 6/22/21

EXHIBIT A

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

Parcel 1

The North half of Lots 7 and 8, Block 59, Buena Vista Addition to the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

Parcel 2

A portion of Lots 7 and 8 in Block 54, of Nichols Addition to the City of Klamath Falls, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, more particularly described as follows:

Beginning at the most Northerly corner of Lot 8, Block 54, Nichols addition to the City of Klamath Falls, Oregon, and running thence Southwesterly along Lincoln Street, a distance of 87 feet; thence Southeasterly parallel with 8th street a distance of 60 feet; thence Northeasterly parallel with Lincoln street a distance of 87 feet; thence Northwesterly along 8th street a distance of 60 feet to the place of beginning; being the Northwesterly 60 feet of the Northeasterly 22 feet of Lot 7, and the Northwesterly 60 feet of Lot 8 in Block 54, Nichols Addition to the City of Klamath Falls, Oregon.

Parcel 3

Parcel 1 of Land Partition 2-17 Replat of Parcel 2 of Land Partition 8-00, situated in SE1/4 NE1/4 Section 14, Township 39 South, Range 09 East of the Willamette Meridian, Klamath County, Oregon and recorded May 8, 2017 as Instrument No. 2017-004773, Klamath County Records.