

MTC 293302

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Klamath County, Oregon
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Fee: \$177.00

After Recording Return to:
Housing and Community Services
Attn: Affordable Rental Housing Division
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 (this "Agreement") is made and entered into this ~~30~~ **30** day of **September**, 2020 by and between Klamath Housing Authority, an Oregon public body corporate and politic, (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 an affordable multifamily residential housing development in **Klamath** County, Oregon on land described in Exhibit A, attached hereto (the "**Property**"). The development, any other improvements, as well as other real and personal property on the Property are collectively hereinafter referred to as the "**Improvements.**" The Property and Improvements are collectively hereinafter referred to as the "**Project**".

B. In response to the Application by Recipient, OHCS has conditionally made a GHAP grant reservation to Recipient up to the principal amount of **One Million Two Hundred Seventy-Nine Thousand Six Hundred nineteen and no/100 Dollars (\$1,279,619)** (the "**Grant**") for the purpose of partially reimbursing the **new construction** and related activities (collectively, "**Work**") costs associated with **eight (8)** income and rent-limited rental unit (the "**Qualified units**") and related common areas in the **four (4)** -building, **eight (8)** -unit Project, which is to be known as **Bridgeway Apartments**.

C. The Grant conditionally reserved to Recipient as described above is subject, among other things, 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 **February 26, 2020** (the "**Reservation**").

AGREEMENT

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

#1

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.
2. The foregoing Recitals, Exhibit A, the OHCS approved Management Agreement, the OHCS approved Resident Services Plan, the Application, and the Reservation are incorporated herein by reference. However, the incorporated items do not modify the express provisions of this Agreement.

PART II: GRANT ISSUANCE.

1. Grant.

(a) Authority; Amount. Subject to the availability of GHAP funds, OHCS having continued funding, appropriation, limitation, allotment, or other expenditure authority sufficient to allow it, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement, and conditioned upon the terms and conditions of this Agreement, OHCS will make the Grant to the Recipient up to the maximum principal amount stated above and perform under this Agreement.

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

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

3. Appropriateness of Charges. Grant funds may only be used for reimbursement of eligible Work costs. OHCS may review all receipts and other evidence, as well as require and obtain such other information as it determines appropriate, concerning the eligibility, appropriateness, and amount of Work activities and costs prior to and after disbursing Grant moneys to Recipient under this Agreement. OHCS' determination as to the eligibility, appropriateness and amount of such Work activities and costs, and the appropriate amount of any reimbursement for same will be at OHCS' sole discretion.

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

PART III: REPRESENTATIONS, WARRANTIES AND COVENANTS OF RECIPIENT.

The Recipient represents, warrants and covenants that:

1. Validity. Recipient is an Oregon **public body corporate and politic**, duly organized, validly existing under the laws of Oregon, is authorized to do business in Oregon, and it has the power and authority to transact the business in which it is engaged and to enter into and perform this Agreement;

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

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

4. Single-Asset, Fee-Simple Ownership; Assignment. Recipient will own the Project in fee-simple title satisfactory to OHCS and operate the Project as a single-asset entity or, if required by OHCS, assign its rights and obligations hereunder to a single-asset, fee-simple owner of the Project on terms and conditions satisfactory to OHCS in its sole discretion. Hereinafter, the term “Owner” will mean, collectively, the Recipient and any such assignee owner of the Project or, as context requires when the term is used in conjunction with the term “Recipient,” the assignee owner individually. Obligations of Recipient hereunder will be construed, jointly and severally, as obligations of any assignee owner and rights and remedies of OHCS with respect to Recipient hereunder will be construed as rights and remedies of OHCS not just with respect to the Recipient, but also with respect to any such assignee owner.

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

6. Completion Date. Recipient will complete the Project Work no later than **December 31, 2021** 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.

7. 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.

8. Preservation. Recipient acknowledges and agrees that the Project is a “participating property” as defined in ORS 456.250 and, as such, is subject to the requirements, among other things, of ORS 456.250 through 456.265. Recipient, its successors and assigns, and any owner of the Project (or any party thereof) are bound by and will comply with the terms of ORS 456.250 through 456.265 and other related Program Requirements with respect to the Project.

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 reimbursement of its actual and appropriate costs of eligible costs related to Work with respect to the **eight (8) Qualified 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 Award.

(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 December 31 of the year that any building in the Project is first placed in service or until December 31, **2081** whichever is later (the “**Affordability Period**”), Recipient will continuously rent or hold vacant for rent the following Qualified Unit(s) 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:

Unit Type	Number of Units	Maximum Percent of Median Family Income As Determined by HUD	Maximum Rent Standards As Determined by HUD
1 bdrm	4	30%	30 %
1 bdrm	2	60%	60%
1 bdrm	2	80%	80%

* The **maximum restricted-incomes** for the Qualified Units reflected in the above table are based upon the rent-restriction election made by Recipient in the Application as approved in the Reservation. Maximum restricted-incomes consistent with the foregoing standards are published by HUD, adjusted for family size and Project location.

** The **maximum restricted-rents** for the Qualified Units, as published by HUD, correspond to the elected income limits and Maximum Rent Standards payable by Qualified Tenants reflected in the table, but actual rents for the Project payable by Qualified Tenants may be lower depending on the terms of other applicable rent subsidies or OHCS rent-approval requirements. Under no circumstances will tenants be required to pay more rent than that allowed by applicable rent-subsidy programs or Program Requirements, the most conservative restrictions having precedence.

*** The table shows maximum income and rent standards rounded up to the nearest percentile. The Recipient

has represented to OHCS in its Application that the rent payable by Qualified Tenants and income levels of Qualified Tenants will not exceed the maximums identified in the foregoing table and will otherwise comply with Program Requirements.

(b) Rent Restrictions. Throughout the Affordability Period, Recipient will ensure that the Project owner (“Owner”) will restrict gross rents with respect to the Qualified Unit(s) in compliance with Program Requirements, with not-to-exceed limits as reflected in the above table. The not-to-exceed limits are indicated as a percentage of the applicable area (county) median family income determined by OHCS based upon information from HUD or other applicable source.

(i) Actual Unit Rents. Net rents allowable to the Owner are not more than allowable gross rents, less an appropriate utility allowance. Actual approved Rents for Qualified Units, as determined by OHCS in its sole discretion, may be lower than allowable net rents, but not in excess of allowable net rents. OHCS has sole authority and discretion in the determinations of what is an appropriate utility allowance and what other charges by Owner must be subsumed within approved rents as normal or standard charges for Project occupancy.

(ii) Limitation of Unit Rents and Other Project Fees. OHCS also may limit other Unit rents and Project fees as it determines, in its sole discretion, is necessary or appropriate to ensure the affordability of or access to Qualified Units. Unit rents and fees limited under this subparagraph may only be increased subject to prior written approval by OHCS in accordance with the procedures of subparagraph (iii) of this paragraph.

(iii) Prior Approval of Rents. Owner must obtain prior written approval from OHCS for setting or increasing Qualified Unit rents. The Owner may request an increase in rents annually in writing, together with supporting documentation (including a schedule of rents for all Project Units), all satisfactory to OHCS, which request will be deemed approved if not in excess of Program Requirements limits and not denied or modified by OHCS within ninety (90) days of its receipt by OHCS. Subject to Program Requirements limits, OHCS may approve, deny or modify such rent increase requests at its sole discretion. OHCS, at its sole discretion, also may approve, deny or modify other requests by the Owner for rent increases, subject to Program Requirements limits.

(iv) Most Restrictive Income and Rent Limitations. Where Qualified Unit rents are subject to limitations from multiple OHCS funding sources, the most restrictive limitations will govern not-to-exceed limits for rents with respect to such Units.

3. Habitability; Other Compliance. Throughout the Affordability Period, Recipient will ensure that the Owner will maintain the Project in a safe, sanitary, and habitable condition satisfactory to OHCS and in accordance with Program Requirements, including applicable zoning and code requirements. To that end, the Recipient hereby represents, covenants, warrants, and agrees as follows:

(a) Dwelling Unit Characteristics. Each of the Dwelling Units in the Project will contain complete and separate facilities for living, sleeping, eating, cooking and sanitation for a single person or a family, within the meaning of the regulations of the U.S. Department of the Treasury Regulations (“**Treasury Regulations**”) Section 1.103-8(b)(8), as supplemented and amended, promulgated under the Internal Revenue Code of 1986, as amended (the “**IRC**” or “**Code**”); and

(b) Project Characteristics. The Project constitutes a “scattered site project” as defined in IRC section 42 and is being financed pursuant to a “common plan” together with Functionally Related and Subordinate Facilities in accordance with Section 142(d) of the Code and related Treasury Regulations.

4. Resident Service Programs.

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

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

5. Management Oversight.

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

(b) **Management Performance.** Recipient will provide timely and suitably perform Project management responsibilities directly or through a management agent approved in writing by OHCS consistent with the Management Plan, including as the Management Plan may be revised from time to time.

6. 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) Charges. Recipient will timely pay an annual compliance monitoring charge to OHCS as and when OHCS will from time to time determine consistent with Program Requirements. Recipient will timely pay other charges by OHCS in conformance with Program Requirements.

(e) 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 Project tenants. The reasonableness of such corrective actions is subject to OHCS in its sole discretion.

PART V. INSURANCE.

The Recipient also represents, warrants, and covenants that:

1. Coverage. Recipient will obtain and maintain in full force and effect during the term of this Agreement: (a) Causes of Loss – Special Form property insurance together with endorsements for replacement cost, inflation adjustment, malicious mischief, and sprinkler damage coverage (if applicable), all in amounts not less than the full replacement cost of all Improvements, without reduction for co-insurance; (b) commercial general liability insurance, including liabilities assumed under contract, with limits, coverage, and risks insured acceptable to OHCS, and in no event less than **\$2,000,000.00** combined, single-limit coverage; and appropriate workers' compensation insurance coverage in satisfaction of Oregon law.

2. Insurance Companies and Policies. All insurance will be written by a company or companies reasonably acceptable to OHCS; will require reasonable, but not less than **five (5)** days prior written notice to OHCS of cancellation or non-renewal; will contain waivers of subrogation and endorsements that no act or negligence of Recipient or any occupant will affect the validity or enforceability of such insurance as against OHCS. Recipient will forward to OHCS, upon request, certificates evidencing the coverage required under this Agreement and copies of all policies. Recipient will forward to OHCS copies of any significant changes, including, but not limited to, cancellations and non-payment, to the policy that would affect the coverage.

3. Casualty/Loss Restoration. After the occurrence of any casualty to the Property or Improvements, Recipient will give prompt written notice of the casualty to OHCS, specifically describing the nature and cause of such casualty and the extent of the damage or destruction to the Property. In the event of any casualty to any Improvement, Recipient will immediately take such action as is necessary to make the site safe and legal, including, if necessary, demolition of the improvement, removal of debris, and/or grading the site. Recipient, subject to the rights of the approved senior mortgage lender, assigns to OHCS all insurance proceeds that Recipient may be entitled to receive with respect to any casualty. In the event that Recipient desires to rebuild or restore the Property, insurance proceeds will be placed in escrow, with escrow instructions to release funds for invoices related to such reconstruction. OHCS will have the right to review and approve of reconstruction plans, and may require the conditional release of liens as condition of escrow payments. No proceeds will be released if Recipient is in default under this Agreement or under the Obligations secured by this Agreement. If Recipient (i) does not elect to restore the property, or (ii) is in default under this Agreement or the Obligations secured by this Agreement, OHCS may apply the insurance proceeds to satisfy the Obligations.

PART VI. 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 Unit(s), including as to accuracy, genuine nature, and proper execution of such statements, certificates, and other records.

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

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

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

6. Prevailing Wage Compliance. Recipient will, prior to undertaking the Work, provide OHCS with a copy of a determination letter by BOLI as to the application of Oregon's prevailing wage laws to the Work. Recipient will comply with all applicable requirements arising under any state or federal prevailing wage law with respect to the Work.

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

PART VII: SUBORDINATION.

<RESERVED>

PART VIII: NO UNAPPROVED TRANSFERS; REMOVAL OF GENERAL PARTNER/MANAGING MEMBER OR MANAGEMENT AGENT; CONSENTS.

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

(a) Transfer of Any Interest in Project. Except in relation to leases to tenants (“Tenants”) for the residential units in the Project, if the Recipient or Owner transfers or attempts to sell, assign, bequeath, dispose or otherwise transfer (collectively, “Transfer”) any interest in the Project to any person, entity or other assignee (collectively, “Transferee”), without obtaining the prior written consent of OHCS, OHCS may declare an Event of Default under the terms of this Agreement and exercise the remedies provided for in this Agreement or otherwise available at law. OHCS’ consent will not, however, be unreasonably withheld or delayed, but may be conditioned upon:

(i) reasonable evidence satisfactory to OHCS that the Recipient or Owner are not then in default hereunder beyond any applicable grace period or cure period;

(ii) the execution and recording of documents satisfactory to OHCS;

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

(iv) any other conditions that may be imposed by OHCS, in its complete discretion, to assure, among other things, compliance with federal or state law or other 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 management agent packet for any existing or proposed management agent (“**Management Agent**”).

(b) Transfer of Any Interest in the Recipient or Owner. If the Recipient or Owner sells, Transfers or otherwise disposes of any interest in the Recipient or Owner without obtaining the prior written consent of OHCS, OHCS may declare an Event of Default under the terms of this Agreement and exercise the remedies provided for in this Agreement or otherwise available at law. The parties agree, however, that, so long as the Recipient or Owner is not then in default hereunder beyond any applicable cure period, a Transfer of an interest in the Recipient or Owner made in full compliance with clause (b)(i) below will constitute a permitted Transfer of an interest in the Recipient or Owner.

(i) Transfers of Interests in General Partner or Managing Member of Owner. To assure that any party having an ownership interest in the general partner or managing member of the Owner is suitable for such purpose, appropriate for the operational integrity of the general partner or managing member, and sufficiently limited in its capacity to direct or control actions by the general partner or managing member, a party proposing to acquire an ownership interest in the general partner or managing member (a “**Member**”) may not acquire an ownership interest in the general partner or managing member without the prior written consent of OHCS. Such consent will be conditioned on (A) OHCS receiving evidence reasonably satisfactory to OHCS establishing the suitability of the Member, and (B) payment to OHCS of a transfer fee or charge consistent with the Program Requirements.

2. Removal and Replacement of Management Agent. OHCS may, for cause, 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’ approval, remove and replace a Management Agent in accordance with this Agreement, the terms and conditions of the Ownership Agreement, or any agreement with respect to Project management required by OHCS (at its sole discretion). Any then current, executed agreement with respect to Project management (including as amended) will be deemed to be incorporated herein by this reference.

3. Unapproved Transfers Are Void. Any Transfer of the Project, Recipient, or Owner in violation of this Agreement will be ineffective to relieve the Recipient, the Owner, any Transferee, or the Project of any continuing obligations under this Agreement. OHCS’ consent hereunder will not be deemed continuing and the Owner and each permitted Transferee will continue to be bound by this Agreement unless OHCS has consented in writing to the Transfer of the Project, Recipient, or Owner.

4. Consents by OHCS to Security Interest. OHCS consents to the managing member/general partner of the Owner granting a security interest in its interest in the Owner as security for performance of obligations under its operating agreement and under any document evidencing or securing construction or permanent financing of the Project.

5. Sale of Project to Managing Member or General Partner. Absent (1) a change in the managing member or general partner in Owner, or in the composition thereof, or (2) an uncured Event of Default under this Agreement, OHCS consents to the sale of the Project to the current managing member or general partner of the Owner provided (1) OHCS is given adequate notice prior to the Transfer, (2) the terms of such sale are reasonable as determined by OHCS, and (3) Owner and the managing member or general partner will have each complied with all other

requirements of OHCS, including provision of requested information, execution of required documents satisfactory to OHCS, and payment of an appropriate transfer fee as established by OHCS.

PART IX. FORECLOSURE.

Except with respect to government lenders, in the event the primary construction or primary 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 or 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 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, Owner, or any related person (within the meaning of IRC section 42) 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 Unit tenants (“**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 X: 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 complete the Project Work and to operate the Project in accordance with this Agreement. In consideration of the issuance of the Grant, the Recipient has entered into this Agreement and has agreed to restrict the operation of and uses to which the Project can be put on the terms and conditions set forth herein. Therefore, the Recipient covenants, agrees and acknowledges that OHCS has relied on this Agreement in determining to issue the Grant.

2. Covenants; Equitable Servitudes.

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

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

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

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

3. Burden and Benefit.

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

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

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

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

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

PART XI: GENERAL PROVISIONS.

1. Compliance with Applicable Laws and Requirements.

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

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

(c) Endurance of Obligations. Recipient will remain fully obligated under the provisions of the Agreement notwithstanding its designation of any third-party or parties for the undertaking of all or any part of the Project with respect to which Grant funding is being provided by OHCS or Plan compliance is being required by OHCS.

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

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

2. Indemnity. Recipient assumes sole liability for breach of the conditions of the Grant or other applicable Program Requirements (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 other Program Requirements, 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, Project, or other Program Requirements.

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. Except as permitted by law, Recipient will not inappropriately 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 Unit(s), 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: Portfolio Administration Section
725 Summer St NE, Suite B
Salem, OR 97301-1266

Recipient: Klamath Housing Authority
1445 Avalon St
Klamath Falls, Oregon 97603
Attention: Diana Otero
Email: doteero@klmathhousing.org

With a copy to: Luckenbill-Drayton & Assoc LLC
1007 NW Rimrock Dr
Redmond, Oregon 97756
Attention: Lisa Drayton
Email: ldrayton@qwestoffice.net

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

6. No Third-Party Beneficiaries. Unless and only to the degree expressly provided otherwise in this Agreement, OHCS and Recipient are the only parties to this Agreement and are the only parties entitled to rely on and enforce the terms of this Agreement. Nothing in this Agreement gives, is intended to give, or will be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly indirectly or otherwise, to third persons unless such third persons are expressly identified in this Agreement and only to the degree they are expressly described as intended beneficiaries of particular terms of this Agreement and only with such remedies as expressly given herein with respect to such interests.

7. Recipient Status.

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

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

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

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

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

(ii) Has within a three (3) year period preceding this Agreement been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract related to a public transaction; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;

(iii) 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)(ii);

(iv) Has within a three (3) year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default; and

(v) Is 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:

<https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

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

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

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

(c) If any authority required by law or regulation to be held by Recipient to complete the Project ends for any reason; or

(d) If Recipient is unable or fails to commence the Project within six (6) months from the date of this Agreement; or

(e) If Recipient breaches or fails to timely perform any of its obligations under this Agreement, or any other applicable Grant document and such breach is not cured within the grace period, if any, provided for cure in the applicable document; or

(f) If OHCS determines that any representation, warranty or covenant of Recipient, whether in whole or in part, is false, invalid, or in default; or

(g) If Recipient (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all or substantially all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) is adjudicated a bankrupt or insolvent, (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect), or (viii) takes any action for the purpose of effecting any of the foregoing.

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

9. Remedies.

(a) **Repayment.** If this Agreement or any part hereof, terminates prior to the term of the Affordability Period, Recipient will, within thirty (30) days of written demand for repayment, repay to OHCS all Grant funds disbursed to it under this Agreement, together with any earnings on such funds.

(b) **Deficiencies.** OHCS may, from time to time, identify and direct Recipient to correct deficiencies (including deficiencies by Owner) in its compliance with this Agreement (including all Program Requirements), which it shall correct as so directed.

(c) Required Training. OHCS may require Recipient, its owners, principals, officers, employees, and agents to undertake training, at Recipient's expense, as directed by OHCS.

(d) Extension of Affordability Period. OHCS may by written notice extend the Affordability Period described in this Agreement for periods of time matching corresponding periods of time during which OHCS determines the Recipient (including material noncompliance by Owner) to be in material noncompliance with any of the terms of this Agreement (including applicable Program Requirements).

(e) Additional Remedies. If the Owner defaults in the performance or observance of any covenant, agreement or obligation set forth in this Agreement (including correction of deficiencies), and if such default remains uncured by Owner for a period of **thirty (30)** days or less (depending upon the requirements of the notice, lesser notice periods being reserved for matters that OHCS determines relate to material health or safety needs of Project occupants) after notice thereof shall have been given by OHCS, or if such default runs for a period of **thirty (30)** days from the date the Owner should, with due diligence, have discovered such default, then OHCS may declare an "Event of Default" to have occurred hereunder provided, however, If a default is not reasonably capable of being cured within thirty days or any lesser notice period provided by OHCS, OHCS may, in its sole discretion, extend the correction period for up to **six (6)** months, but only if OHCS determines there is good cause for granting the extension; and provided further, however, in the event of a foreclosure, deed in lieu of foreclosure, or similar event with respect to the Project or the Property, the correction period for the successor for an existing default shall be no less than **thirty (30)** days from the earlier of the date the successor obtains control or becomes the owner of the Project. To the extent that the default is not corrected within the above-described period including extensions, if any, granted by OHCS, an Event of Default shall be deemed to occur and OHCS may exercise its rights and remedies under this Section. Following the occurrence of an Event of Default hereunder OHCS may, at its option, take any one or more of the following steps, in addition to all other remedies provided in this Agreement, by law, or in equity:

- (i) 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;
- (ii) Obtain the appointment of a receiver to operate the Project in compliance with this Agreement;
- (iii) Require a change in the General Partner or Managing Member of Owner to its satisfaction (and, for the duration of the Primary Lender's Loan, reasonably satisfactory to Primary Lender);
- (iv) Require termination of the Management Agent and its replacement to OHCS' satisfaction;
- (v) Require Owner to cease management of the Project and to engage a Management Agent acceptable to OHCS;
- (vi) Withhold from Recipient, suspend or terminate, or (upon 30-days written demand) require the repayment of all or part of any undisbursed GHAP or other funding assistance provided by OHCS to Recipient with respect to the Project;
- (vii) 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;

(viii) Declare Recipient, its Owners, principals, employees, and agents ineligible to receive further GHAP or other OHCS financial assistance, including with respect to other projects or requests for same, for such period as OHCS determines in its sole discretion;

(ix) Offset amounts due from repayment of the Grant against other funding awarded or to be awarded to Recipient;

(x) Have access to, and inspect, examine and make copies of, all of the books and records of Recipient pertaining to the Project and to inspect the Project itself;

(xi) Enter onto the Property and correct Events of Default with respect to the Project at Recipient's expense, which expense Recipient will repay to OHCS within ten (10) days of any presentment of charges for same; and

(xii) Take such other action under this Agreement, at law, in equity, or otherwise as may be available to OHCS.

(f) Survival of Remedies; Remedies Not Exclusive; Non-Waiver. The rights and remedies of OHCS provided for in this Agreement, which by their nature are intended to survive termination of this Agreement, will survive the termination of the Affordability Period and of this Agreement. Furthermore, such remedies 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 Agreement will constitute a waiver by OHCS of that or any other provision, nor will any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

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

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

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

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

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

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

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

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

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

[Signature Pages Follow]

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:

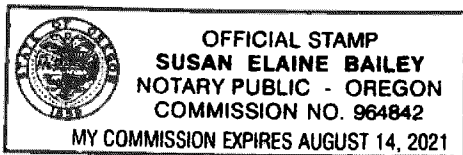
STATE OF OREGON, acting by and through its HOUSING AND COMMUNITY SERVICES DEPARTMENT

Roberto Franco

By: Roberto Franco, Assistant Director
Development Resources and Production
Affordable Rental Housing Division

STATE OF OREGON)
) : ss.
COUNTY OF MARION)

The foregoing instrument was acknowledged before me this 14th day of September, 2020, by Roberto Franco, Assistant Director of Development Resources and Production of Housing and Community Services Department, for and on behalf of the State of Oregon.




Susan Elaine Bailey
Notary Public for the State of Oregon
My Commission Expires: 8-14-21

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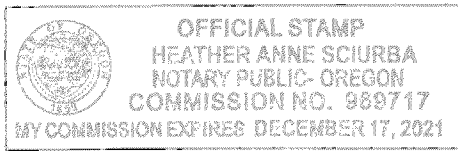
RECIPIENT:

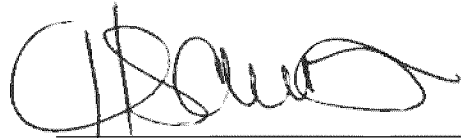
Klamath Housing Authority,
an Oregon public body corporate and politic
Tax ID: 93-0637235

By: 
Diana Otero,
Executive Director

STATE OF OREGON)
County of Klamath) ss
County

The foregoing instrument was acknowledged before me this 30 day of Sept, 2020 by Diana Otero, an Oregon public body corporate and politic, who executed the foregoing instrument for and on behalf of the Recipient.




NOTARY PUBLIC FOR OREGON
My Commission Expires: Dec. 17 2021

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

EXHIBIT A
[Legal Description]

Parcels 1 and 2 of Land Partition No. 8-20, a replat of Parcel 3 Land Partition 2-17, situate in SE1/4 NE1/4 Section 14, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon recorded September 14, 2020 in 2020-011662, Records of Klamath County, Oregon.

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