

NTC 293302

2020-012669

Klamath County, Oregon

10/02/2020 02:46:01 PM

Fee: \$167.00

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
ASSIGNMENT AND ASSUMPTION AGREEMENT
AND DECLARATION OF RESTRICTIVE COVENANTS**

This General Housing Account Program Assignment and Assumption Agreement and Declaration of Restrictive Covenants (this "**Assignment**") is made and entered into this 30 day of **September 2020** by and among:

PARTIES:

Grantee: Klamath Housing Authority,
an Oregon **public body corporate and politic**

Owner: Bridgeway Apartments LLC,
an Oregon **limited liability company**,
and

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

RECITALS

A. Grantee, as Recipient, received a General Housing Account Program ("**GHAP**") conditional grant (the "**Grant**") from OHCS as described in a General Housing Account Program Grant Agreement and Declaration of Restrictive Covenants executed between itself and OHCS dated 30 **September 2020** (the "**Grant Agreement**") for the purpose of partially reimbursing the new construction and related Work costs associated with **eight (8)** income and rent restricted rental units (the "**Qualified Units**") and related common areas in the **four (4)** -building, **eight (8)** -unit affordable multifamily rental housing development project 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**," which is to be known as **Bridgeway Apartments**.

B. Grantee undertook in the Grant Agreement certain performance obligations, representations, and warranties in favor of OHCS, including, among other things, to construct the Project improvements, and further agreed to

establish and abide by certain restrictive covenants and equitable servitudes governing, among other things, the affordability, habitability, maintenance, and operation of the Project throughout the Affordability Period described in the Grant Agreement. A copy of the Grant Agreement is attached hereto as Exhibit B.

C. The terms and conditions of this Assignment, the Grant Agreement, 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 orders (including, but not limited to corrective action notices and as amended from time to time), all funding or other requirements (including as set forth in the Application or Reservation and 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) are hereinafter referred to collectively as the “**Program Requirements**.”

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

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

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

AGREEMENT

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

1. **Incorporation of Recitals and Documents.** The foregoing Recitals, Exhibit A, and the original of Exhibit B are incorporated herein by reference. Notwithstanding this incorporation, the foregoing Recitals, Exhibit A, and Exhibit B do not modify the express terms of this Assignment.
2. **Definitions.** The words and phrases in this Assignment, as applicable, will have the same meanings given herein or as used in the Grant Agreement or Program Requirements, unless the context clearly requires otherwise.
3. **Provision of Grant to Owner; Assumption of Grant Agreement Obligations; Consent.**

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

(b) **Assignment; Assumption of Obligations.** Owner unconditionally accepts assignment to it by Grantee of Grantee’s interests, rights, and obligations in and with respect to the Grant and the Grant Agreement and, hereby, unconditionally assumes, jointly and severally with Grantee, those interest, rights, and obligations, including but not limited to all obligations owed to OHCS (collectively, “**Obligations**”). Owner will timely perform all such Obligations to OHCS in a manner satisfactory to OHCS. Owner will, at its own expense, record and deliver this Assignment to OHCS. Grantee and Owner also will execute and deliver to OHCS such

other documents reasonably requested by OHCS to give effect to the terms and conditions of this Assignment, including to give effect to and maintain its restrictive covenants and equitable servitude interests in and rights against the Project established hereunder.

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

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

4. Representations, Warranties and Covenants of Owner.

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

(a) Adoption; Assumption; Ratification. Owner, jointly and severally with Grantee, hereby adopts, assumes, and ratifies the representations, warranties and covenants of Grantee in and with respect to the Grant, the Project, and the Grant Agreement, including without limitation (i) with respect to responsibility to OHCS for proper use of the Grant, (ii) with respect to the affordability, maintenance, habitability, and operation of the Project, (iii) with respect to reporting and record keeping with respect to the Grant and Project, and (iv) with respect to compliance with all other Program Requirements. Owner will timely perform all terms and conditions of this Assignment (including all incorporated documents and other applicable Program Requirements) in a manner satisfactory to OHCS.

(b) Validity. Owner is an **Oregon limited liability company**, duly organized, validly existing under the laws of Oregon, is authorized to do business in Oregon, and it has the power and authority to transact the business in which it is engaged and to enter into and perform this Assignment.

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

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

(e) Program Requirements. Owner will timely satisfy all requirements of this Assignment (including all incorporated documents and other Program Requirements) all to the satisfaction of OHCS.

(f) Completion Date. Owner 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 Assignment.

(g) Responsibility. Owner assumes full responsibility for timely and appropriate completion of Project Work, for ownership of the Project, for its operation in accordance with Program Requirements, and acknowledges that OHCS has no direct or contractual responsibility for the Project Work, for ownership of the Project, or for operation of the Project.

(h) Preservation. Owner 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. Owner, 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.

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

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

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

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

(b) Covenants; Equitable Servitudes.

(1) The parties hereby declare their express intent that throughout the Affordability Period described in the Grant Agreement the covenants, restrictions, charges and easements set forth herein (including in incorporated documents) will be deemed covenants running with the land of the Project and will create equitable servitudes running with the land of the Project, and will pass to and be binding upon OHCS’ and the Owner’s successors in title including any purchaser, grantee or lessee of any portion of the Project and any other person or entity having any right, title or interest therein and upon the respective heirs, executors,

administrators, devisees, successors and assigns of any purchaser, grantee or lessee of any portion of the Project and any other person or entity having any right, title or interest therein.

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

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

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

(c) Burden and Benefit.

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

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

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

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

(f) No Third-Party Attorney Fees. Third-party beneficiaries under this Assignment (including incorporated documents), if any, have no right to attorney fees under this Assignment for claims asserted as third-party

beneficiaries hereunder nor will parties hereto have a right to attorney fees against tenants and other third-party beneficiaries, if any, hereunder.

8. No Sale, Transfer, or Other Disposition of an Interest in the Grant, Owner, or Project. Except for the transfer of interests accomplished by this Assignment, no transfers (“**Transfers**”) of any interest in the Project or Owner are permitted without prior written approval of OHCS except as provided in the Grant Agreement. Any limitations on Transfer of an interest in or by Recipient contained in the Grant Agreement similarly apply to Transfers of any interest in or by Owner.

9. Removal and Replacement of General Partner or Managing Member. [Reserved.]

10. 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 Assignment, the terms and conditions of the Ownership Agreement, or any agreement with respect to Project management required by OHCS (at its sole discretion), among other things, to be executed or amended by Owner. Any then current executed agreement with respect to Project management (including as amended) will be deemed to be incorporated herein by this reference.

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

12. 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 Owner, and neither the lender nor such subsequent purchaser will have any obligation to repay the Grant to OHCS and all conditions and restrictions contained herein will terminate on the date, if any, that the Project is so acquired by foreclosure or deed in lieu of foreclosure provided, however, that (i) the preceding provisions of this sentence will cease to apply and the restrictive covenants and equitable servitudes contained in this Assignment will be reinstated if, at any time during the Affordability Period subsequent to the early termination of this Assignment as the result of an event under this section, any person or entity that was an obligor under the Grant Agreement or this Assignment prior to such early termination event, including the Grantee or Owner or any related person to them (within the meaning of Section 42 of The Internal Revenue Code of 1986, as amended, obtains an ownership interest in the Project, and (ii) for three (3) years after the acquisition of title to the Project by the construction or permanent lender any Qualified 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 the Grant Agreement.

13. Subordination.

<Reserved>

14. Indemnity. Grantee and Owner, jointly and severally, assume sole liability for breach of the conditions of applicable Program Requirements (including all terms and conditions of this Assignment) by Grantee, Owner, or any of their officers, agents, employees, and assigns. Owner and Grantee, jointly and severally, will save, hold harmless, indemnify and (subject to ORS chapter 180) defend the State of Oregon, OHCS and their officers, agents,

employees, members and assigns, from all suits, actions, claims, losses or damages of whatsoever nature, kind or description related to the Project, the Grant, this Assignment or other Program Requirements, or resulting from or arising out of their acts, omissions, neglect or misconduct or the acts, omissions, neglect or misconduct or their subcontractors, agents, or employees under this Assignment (including all incorporated documents) or related to the Grant, Project, or other Program Requirements.

15. Termination. OHCS may terminate this Assignment (including incorporated documents) in whole or in part, without further liability and without impairment of its remedies, effective upon delivery of written notice to Owner, under any of the following conditions:

- (a) If OHCS' funding from federal, state, or other sources is not obtained or is not continued at levels sufficient to allow for delivery of full Grant funding; or
- (b) If federal or state laws, regulations, rules or other requirements are modified or interpreted in such a way that the intended use of Grant funding for the Project is no longer allowable or appropriate or the Project is no longer eligible for the Grant funding identified in this Assignment from the planned funding source(s) or if OHCS is determined by its legal counsel or otherwise to lack or to have lost the authority to administer the Program; or
- (c) If any authority required by law or regulation to be held by Owner to complete the Project ends for any reason; or
- (d) If Owner is unable or fails to commence the Project within the time provided in the Grant Agreement; or
- (e) If Owner breaches or fails to timely perform any of its obligations under this Assignment, or any other applicable Grant document and such breach is not cured within the grace period, if any, provided for cure in the applicable document; or
- (f) If OHCS determines that any representation, warranty or covenant of Owner, whether in whole or in part, is false, invalid, or in default; or
- (g) If Owner (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all or substantially all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) commences a voluntary case under the federal Bankruptcy Code (as now or hereafter in effect), (v) is adjudicated a bankrupt or insolvent, (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the federal Bankruptcy Code (as now or hereafter in effect), or (viii) takes any action for the purpose of effecting any of the foregoing.

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

16. Remedies.

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

(b) Deficiencies. OHCS may, from time to time, identify and direct Owner to correct deficiencies in its compliance with this Assignment (including incorporated documents and other Program Requirements), which it will correct as so directed.

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

(d) Extension of Affordability Period. OHCS may by written notice extend the Affordability Period described in this Assignment for periods of time matching corresponding periods of time during which OHCS determines the Recipient or Owner to be in material noncompliance with any of the terms of this Assignment (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 Assignment, 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 will 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 (30)** 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 Land, the correction period for the successor for an existing default will 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 will 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:

- (1) By mandamus or other suit, action or proceeding at law or in equity, require Owner specifically to perform its obligations under this Assignment or enjoin any acts or things that may be unlawful or in violation of the rights of OHCS under this Assignment;
- (2) Obtain the appointment of a receiver to operate the Project in compliance with this Assignment;
- (3) 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);
- (4) Require termination of the Management Agent and its replacement to OHCS' satisfaction;
- (5) Require Owner to cease management of the Project and to engage a Management Agent acceptable to OHCS;
- (6) Withhold from Recipient or Owner, suspend, terminate, or (upon 30-days written demand) require the repayment of all or any part of GHAP or other funding assistance provided by OHCS to Recipient or Owner with respect to the Project;

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

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

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

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

(11) Exercise of such other remedies as permitted or authorized under this Assignment, by law, or in equity.

(f) Survival of Remedies; Remedies Nonexclusive; Non-Waiver. The rights and remedies of OHCS provided for in this Assignment, which by their nature are intended to survive termination of this Assignment, will survive the termination of the Affordability Period and of this Assignment. The rights and remedies of OHCS provided for in this Assignment will not be exclusive and are in addition to any other rights and remedies available at law, in equity or otherwise. No failure of or delay by OHCS to enforce any provision of this Assignment will constitute a waiver by OHCS of that or any other provision, nor will any single or partial exercise of any right, power or privilege under this Assignment preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

17. Time of the Essence. Time is of the essence in the performance of this Assignment.

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

19. Notice.

(a) Except as otherwise expressly provided in this Assignment, any notices required or permitted to be given under this Assignment will be given in writing, by personal delivery, or mailing the same, postage prepaid, to OHCS or Owner (or Grantee if applicable) at the following addresses:

OHCS: Oregon Housing and Community Services Department
Attn: Portfolio Administration Section
725 Summer St NE, Suite B
Salem, OR 97301-1266

Owner: Bridgeway Apartments LLC
c/o Luckenbill-Drayton & Associates, LLC
1007 NW Rimrock Dr
Redmond, Oregon 97756
Attention: Lisa Drayton

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Grantee: Klamath Housing Authority
1445 Avalon St
Klamath Falls, Oregon 97603
Attention: Diana Otero

or to such other address a party may indicate to the other pursuant to this Subsection. 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.

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

21. Owner Status.

(a) Independent Contractor. Owner will timely perform all Obligations, including all applicable Program Requirements, as an independent contractor. Owner is not an officer, employee or agent of the State, as those terms are used in ORS 30.265, with respect to performance under this Assignment.

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

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

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

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

(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)(2);

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

(v) Owner and Owner's employees and agents are not included on the list titled "**Specially Designated Nationals and Blocked Persons**" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at:

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

22. Further Assurances.

(a) **Additional Acts.** Grantee or Owner, at any time upon request of OHCS, will do, make, execute and deliver all such additional and further acts, instruments or papers as OHCS may require to assure OHCS of its rights under this Assignment.

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

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

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

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

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

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

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

28. Governing Law; Venue: Consent to Jurisdiction. This Assignment will be governed by the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") among two or more of the parties related to this Assignment will be conducted exclusively within the Circuit Court of Marion County, Oregon (unless Oregon law requires that it be brought and conducted where the Project is located) or, if necessary, the United States District Court for the District of Oregon. In no event will this provision be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. GRANTEE AND OWNER, BY EXECUTION OF THIS ASSIGNMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

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

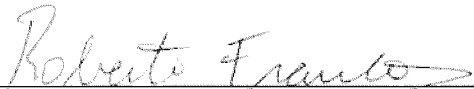
30. No Limitations on Actions of OHCS in Exercise of Its Governmental Powers. Nothing in this Assignment is intended, nor will it be construed, to in any way limit the actions of OHCS in the exercise of its governmental powers. It is the express intention of the parties hereto that OHCS will retain the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

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the day and year first above written.

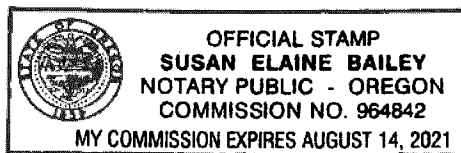
OHCS:


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


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 the Affordable Rental Housing Division of the Housing and Community Services Department, for and on behalf of the State of Oregon.




Notary Public for the State of Oregon
My Commission Expires: 8/14/21

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GRANTEE:

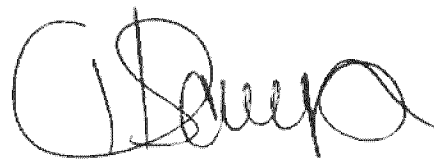
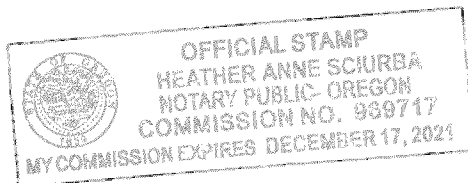
**Klamath Housing Authority,
an Oregon public body corporate and politic
Tax ID: 93-06372355**

By: 
Diana Otero
Executive Director

STATE OF OREGON

County of Klamath)
[County])

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



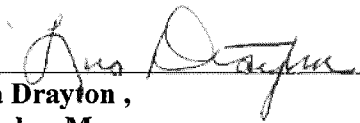
NOTARY PUBLIC FOR OREGON

My Commission Expires: Dec 17 2021

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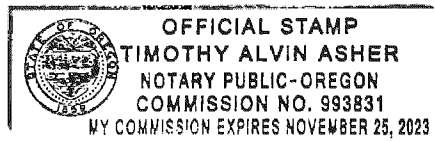
OWNER:


Bridgeway Apartments LLC,
an Oregon **limited liability company**
Tax ID: **84-3328577**

By: 
Lisa Drayton ,
Member Manager

STATE OF OREGON)
 : ss
County of Deschutes)

The foregoing instrument was acknowledged before me this 23rd day of Sept., 2020 by Lisa Drayton, the member manager of Bridgeway Apartments LLC, an Oregon limited liability company, who executed the foregoing instrument for and on behalf of the Owner.




NOTARY PUBLIC FOR OREGON
My Commission Expires: 11-25-2023

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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.

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

EXHIBIT B

[Copy of Original Executed GHAP Grant Agreement~]