

Parks & Rattiff

2023-002270

Klamath County, Oregon



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04/03/2023 09:56:00 AM

Fee: \$137.00

After Recording Return to:

Oregon Housing and Community Services
 Attn: Asset and Preservation Management
 725 Summer Street NE, Suite B
 Salem, Oregon 97301-1266

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**STATE OF OREGON
 HOUSING AND COMMUNITY SERVICES DEPARTMENT**

HOUSING DEVELOPMENT GRANT PROGRAM

**CONSENT TO ASSIGNMENT, TRANSFER, ASSUMPTION AGREEMENT,
 DECLARATION OF LAND USE RESTRICTIVE COVENANTS**

THIS Consent to Assignment, Transfer, Assumption Agreement, Declaration of Land Use Restrictive Covenants (this "**Assignment**") is made and entered into this 1st day of April 2023, by and among **SOCO Development Inc.**, an Oregon nonprofit public benefit with members (the "**Recipient**" or "**Owner**"), **Klamath Housing Authority**, an Oregon public body corporate and politic (the "**Successor Owner**"), 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 Owner is or was the owner of a **four (4) building, eight (8) unit**, affordable multifamily residential housing development (collectively, the "**Improvements**"), located on certain real property in the City of **Klamath Falls**, County of **Klamath**, State of Oregon, as more particularly described in Exhibit A hereto (the "**Property**"). The Property, the Improvements, as well as other real and personal property on the Property are collectively referred to herein as the "**Project**" and is commonly known as "**The Haven** (fka Sails Housing Project)".

B. Linkville Health Foundation, an Oregon nonprofit public benefit (the "**Original Recipient**"), received a Housing Development Grant Program ("**HDGP**") grant from OHCS to partially assist in the financing of the Project in a final not-to-exceed amount of **ONE HUNDRED THOUSAND DOLLARS (\$100,000)** (the "**Grant**"). The documents giving effect to the Grant are more fully described below as the "**Grant Documents**".

C. Certain performance obligations, representations, and warranties with respect to the Project arising under the Grant were made in that certain Project Use Agreement executed by the Original Recipient in favor of OHCS on or about **October 12, 1999**, and recorded **October 12, 1999**, in the official records of **Klamath County, Oregon** at **Vol. M99, Page, 40484** (the "**Grant Agreement**"). The Grant Agreement was later assigned and assumed by that certain Assignment of Lien Consent to Assignment, Transfer and Assumption by and among Original Recipient, Owner, and OHCS on or about **January 24, 2000**, and recorded **April 24, 2000**, in the official records of **Klamath County, Oregon** at **Vol. M00, Page 13989** (the "**Grant Agreement Assignment**"). The Grant Agreement was

further modified by that certain Amendments to Project Use Agreement by and between the Owner and OHCS on or about **May 14, 2002** and recorded **May 23, 2002** in the official records of **Klamath County, Oregon** at **Vol M02, Page 30759** (the "Grant Agreement Amendment") The Grant Agreement, the Grant Agreement Assignment, and the Grant Agreement Amendment together with the terms of the Grant award by OHCS to Recipient or other reservation letter with respect to the Grant, are collectively hereinafter referred to as the "**Grant Documents**".

D. The Owner has conveyed its interest in the Project to the Successor Owner by deed, dated and recorded on or about the date hereof.

E. The terms and conditions of the Grant Documents, this Assignment, applicable OHCS administrative rules and directives, applicable OHCS handbooks and manuals, and all other applicable laws, including federal, state, and local laws, codes, ordinances and orders (including all of the foregoing, as amended from time to time) are hereinafter collectively referred to as the "**Program Requirements**".

F. The parties desire to execute this Assignment to, among other things, evidence the terms by which OHCS consents to transfer of the Project from Owner to Successor Owner, and to confirm and covenant that Successor Owner is assuming the rights and obligations of the Owner with respect to the Project, and that Successor Owner will operate the Project in conformance with the Grant Documents, this Assignment, and the Program Requirements.

G. The Owner is willing to document the transfer of the Project to Successor Owner, and Successor Owner is willing to document its assumption of the rights and obligations of Owner in and with respect to the Project, and in and with respect to the Grant from OHCS. Successor Owner also is willing to commit to operate the Project in conformance with the Grant Documents, this Assignment, and the Program Requirements. OHCS is willing to consent to the transfer in ownership of the Project and to allow the assumption of the Grant Documents, consistent with the terms and conditions of this Assignment.

H. The parties also desire that this Assignment be recorded in the relevant county records at Owner's or Successor Owner's cost and that certain terms herein constitute restrictive covenants and equitable servitudes running with the Property and governing, among other things, the maintenance, monitoring, and operation of the Project.

AGREEMENT

NOW, THEREFORE, for good and sufficient consideration, including the agreements and covenants herein contained, Owner and Successor Owner hereby agree with OHCS as follows:

- 1. Incorporation of Recitals and Documents.** The foregoing Recitals, Exhibit A, and the Grant Documents, are incorporated herein by reference. Notwithstanding this incorporation, the foregoing Recitals, Exhibit A, and the Grant Documents do not modify the express terms of this Assignment.
- 2. Definitions.** Words and phrases used in this Assignment will have the same meanings as defined herein or as used in the Grant Documents or the Program Requirements, unless the context clearly requires otherwise.
- 3. Owner Assignment.** The Owner hereby assigns all of its rights, interest and obligations in and to the Program Documents and in and to the Project to the Successor Owner.

4. **Assumption.** Successor Owner hereby unconditionally assumes the rights, interests, and obligations of Owner in and with respect to the Grant Documents (including as modified herein), the Grant, and the Project, to the extent arising on or after the date of this assignment. Successor Owner also hereby unconditionally agrees, covenants, and warrants that to the extent arising on or after the date of this assignment it will perform all obligations arising under the Program Requirements, including but not limited to the Grant Documents and this Assignment. OHCS will have the right to resort to, proceed against, or otherwise exercise its rights with respect to any and all remedies, restrictive covenants, or equitable servitudes with respect to the Project, the Owner, or the Successor Owner, whether such rights arise under the Grant Documents, this Assignment, the Program Requirements, or are otherwise now or subsequently available at law or in equity. Successor Owner will execute and deliver to OHCS such other documents reasonably requested by OHCS to effect, exercise, enforce, or maintain its rights with respect to the Grant Documents and the Program Requirements, or otherwise, with respect to the Project.
5. **Consent.** OHCS hereby consents to and approves of the described transfer of the Project from the Owner to the Successor Owner. OHCS also hereby consents to and approves of the Successor Owner's assumption of all the rights, interests, and obligations of Owner in and with respect to the Project and of Owner in and with respect to the Grant Documents, the Grant, and the Project without affecting in any manner the restrictions and requirements of such Grant Agreement with respect to any further or additional transfer of ownership of the Project. This consent and approval by OHCS is conditioned, however, upon prior execution and recording of subordination agreements acceptable to OHCS by any and all current lien holders with respect to the Project or Owner.
6. **Limited Release.** OHCS hereby releases Owner from any obligations, claims, demands, or causes of action arising out of or by virtue of the Grant Documents or Program Requirements that are based upon facts and circumstances occurring after the date of this Assignment. OHCS expressly does not release Owner from any obligations, claims, demands, or causes of action arising out of or by virtue of the Grant Documents that are based on facts or circumstances occurring before the date of this Assignment. Owner's remaining liability will not be diminished or affected in any manner by Successor Owner's assumption of the obligations and liabilities of Owner under the Grant Documents, as amended, or under this Assignment. OHCS further agrees that the Successor Owner will only be obligated with regard to any obligations, claims, demands, or causes of action arising out of or by virtue of the Grant Documents, the Grant, or the Project that are based upon facts or circumstances occurring after the date of this Assignment.
7. **Additional Representations, Warranties and Covenants of Owner.** Successor Owner, jointly and severally with Owner, hereby adopts, assumes, and ratifies the representations, warranties, covenants, and agreements of Owner in the Grant Documents.
8. **Notice to OHCS.** Successor Owner must promptly notify OHCS in writing of (i) any material adverse change in the financial condition of Successor Owner, or (ii) any suit, governmental action, claim or other proceeding pending or threatened in writing which may have a material adverse effect on Successor Owner or its business operations, condition (financial or otherwise), or involving the Project. Successor Owner must promptly provide to OHCS on request such credit reports, current financial statements and information, prepared by certified public accountant and certified by Successor Owner, and other documents and information pertaining to the financial condition and obligations of Successor 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.

9. Notices Under the Program Documents. OHCS and the Successor Owner hereby designate the following addresses for subsequent notices.

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

To Successor Owner: Klamath Housing Authority
Attn: Executive Director
1455 Avalon Street
Klamath Falls, OR 97601

10. Further Documentation and Assurance. Successor 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 Documents or this Assignment. Successor 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, ensuring that the restrictive covenants and equitable servitudes arising under the Grant Documents and this Assignment continue as valid encumbrances, in their original priority, against the Project and are not impaired by execution of this Assignment.

11. Restrictive Covenants and Equitable Servitudes to Run with the Property.

11.1 Inducement. Successor Owner represents, covenants, and warrants that the consent to Owner loaning it the Grant by OHCS is an inducement to the Successor Owner to complete the Project, to assume and comply with the Grant Documents, and to operate the Project in accordance with and otherwise comply with this Assignment. In consideration of such consent, the Successor 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 Successor Owner covenants, agrees and acknowledges that OHCS has relied on this Assignment in determining to consent to Owner loaning the Grant to Successor Owner.

11.2 Covenants; Equitable Servitudes.

(a) The parties hereby declare their express intent that throughout the **Twenty-Five (25)** year period described in the Grant Documents or until **October 12, 2024**, whichever is later (the "**Affordability Period**"), the covenants, restrictions, charges and easements set forth herein, including by incorporation, will be deemed covenants running with the Property and will create equitable servitudes running with the Property, and will pass to and be binding upon OHCS' and the Successor Owner's successors in title including any purchaser, grantee or lessee of any portion of the Property 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 Assignment to constitute restrictive covenants running with the Property 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 Property, including the Project, is not required in connection with recording this Assignment and establishing the restrictive covenants herein, or if required, such consent has been or will be obtained by the Successor Owner.

11.3 Burden and Benefit.

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

(b) The Successor Owner hereby further declares, covenants, and warrants its understanding and intent that the benefits of such covenants and equitable servitudes touch and concern the Property, 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.

11.4 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 Successor Owner or subsequent Project owners, as it so determines to be to the benefit of OHCS, the Project, the Program, 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.

11.5 No Third-Party Beneficiaries. OHCS, Owner, and Successor Owner are the only parties to this Assignment and are the only parties entitled to enforce its terms. Nothing in this Assignment gives, is intended to give, or will be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Assignment.

11.6 No Third Party Right of Action or Claim. Third parties to this Assignment (including incorporated documents), including but not limited to past, present, or prospective tenants of the Project ("Tenants"), 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, the Grant Documents, or the Project arising from their rights, if any, under this Assignment or otherwise.

11.7 No Third Party Attorney Fees. Third parties to this Assignment (including incorporated documents), including but not limited to Tenants, have no right to attorney fees under this Assignment (including incorporated documents and the described restrictive covenants and equitable servitudes) for claims asserted as third parties nor will parties to this Assignment have a right to attorney fees against Tenants and other third parties.

12. General Provisions.

- 12.1 Representations of Successor Owner.** Successor Owner hereby ratifies, affirms, reaffirms, acknowledges, confirms, and agrees that: (i) the Grant Documents (as modified by this Assignment) represent the legal, valid, binding, and enforceable obligations of Owner; (ii) there are no existing claims, defenses, personal or otherwise, or right of set-off whatsoever available to Owner with respect to any of such Grant Documents; and (iii) no event has occurred and no condition exists which would constitute a default under such Grant Documents or this Assignment, either with or without notice or lapse of time, or both.
- 12.2 Survival; Ratification.** Except as specifically modified pursuant to this Assignment, all the terms and provisions of the Grant Documents remain in full force and effect. As modified by this Assignment, the Grant Documents are approved, and hereby ratified and reaffirmed.
- 12.3 No Relinquishment of Covenants.** This Assignment will in no way act as a release or relinquishment of the restrictive covenants, equitable servitudes, and encumbrances (collectively called the “**Covenants**”) recorded with respect to the Project protecting OHCS’s ability to enforce operation of the Project consistent with the terms of the Grant Documents except as expressly released or modified in this Assignment. The Covenants, as modified, are hereby ratified, and confirmed in all respects.
- 12.4 Full Force and Effect.** This Assignment and the Grant Documents, as amended, are in full force and effect and nothing contained in this Assignment will be construed as modifying such documents, except as specifically provided pursuant to this Assignment.
- 12.5 Severability.** A determination that any term or provision of this Assignment is invalid or otherwise not enforceable will not affect the validity of the remaining terms and provisions of this Assignment, which will remain in full force and effect.
- 12.6 Indemnity.** Owner 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 and resulting from or arising out of its breach, neglect or misconduct or the breach, neglect or misconduct of Owner’s subcontractors, agents, or employees arising under the Grant Documents, this Assignment, or the other Program Requirements, to the extent such breach, neglect or misconduct occurred during Owner’s period of ownership of the Project. Successor Owner 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 and resulting from or arising out of its breach, neglect, or misconduct or the breach, neglect, or misconduct of Successor Owner’s subcontractors, agents, or employees arising under the Grant Documents, this Assignment, or the other Program Requirements, to the extent such breach, neglect, or misconduct occurred during Successor Owner’s period of ownership of the Project.
- 12.7 Time of the Essence.** Time is of the essence in the performance of any and all obligations under this Assignment.
- 12.8 Attorney Fees.** In the event a lawsuit is instituted regarding this Assignment (including the incorporated Grant Agreement and the Program Requirements), the prevailing party in any dispute arising under this Assignment will, to the extent permitted by law, be entitled to recover from the other its reasonable attorney fees. Attorney fees will not exceed the rate charged to OHCS by its attorneys.

- 12.9 Counterparts.** This Assignment may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will constitute but one agreement. Any party may execute this Assignment by signing any such counterpart.
- 12.10 Governing Law; Venue; Consent to Jurisdiction.** This Assignment and the Grant Documents 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") between any parties hereto related to this Assignment and the Grant Documents will be conducted exclusively within the Circuit Court of Marion County, Oregon (unless Oregon law requires that it be brought and conducted where the 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 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. OWNER AND SUCCESSOR OWNER BY EXECUTION OF THIS ASSIGNMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS.
- 12.11 Waiver.** Notwithstanding any interests hereunder or otherwise inuring to the benefit of Tenants, OHCS may compromise, waive, amend, or modify this Assignment, the Grant Agreement, or the Program Requirements with the written consent of Successor Owner as OHCS determines to be to the benefit of OHCS, the Project, the Program Requirements, or OHCS efforts to provide or maintain safe and affordable housing in the State of Oregon. To be effective, any compromise, waiver, amendment, or modification of this Assignment or the Grant Documents must be in writing, signed by an authorized OHCS representative.
- 12.12 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.
- 12.13 No Transfer.** Notwithstanding any other provision in the Grant Documents, neither Owner nor Successor Owner may transfer any interest in the Grant Documents, the Project, or Property without the prior written consent of the Department. OHCS may give or withhold consent in its sole discretion. OHCS also may condition its consent upon the payment of a transfer fee and such other terms and conditions as it determines to be appropriate.
- 12.14 No Impairment of Governmental Powers.** Nothing in this Assignment is intended, nor will it be construed, to in any way limit the actions of OHCS or State of Oregon in the exercise of their governmental powers. It is the express intention of the parties hereto that OHCS and State of Oregon will retain the full right and ability to exercise their governmental powers with respect to the Owner, the Successor Owner, the Grant, the Project, the Grant Documents, this Assignment, and the transactions contemplated by this Assignment to the same extent as if OHCS were not a party to this Assignment or the transactions contemplated thereby, and in no event will OHCS or the State of Oregon have any liability in contract arising under this Assignment or the Grant Documents by virtue of any exercise of their governmental powers.
- 12.15 Preservation.** The Successor 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. The Successor Owner and any successors or assigns to it are bound by and will comply with the terms of ORS 456.250 through 456.265 and the Program Requirements with respect to the Project.

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

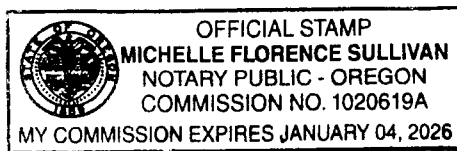
OHCS:

STATE OF OREGON, acting by and through its
Housing and Community Services Department

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

STATE OF OREGON)
 : ss
County of Marion)

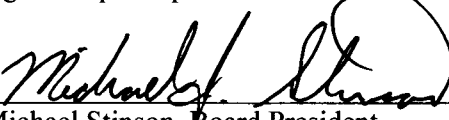
The foregoing instrument was acknowledged before me this 22nd day of March 2023, by Roberto Franco, Development Resources and Production, Affordable Rental Housing Division, Housing and Community Services Department, for and on behalf of the State of Oregon, acting by and through its Housing and Community Services (OHCS).



Michelle Sullivan
NOTARY PUBLIC FOR OREGON
My Commission Expires: 1/4/26

OWNER:

SOCO DEVELOPMENT, Inc.,
an Oregon nonprofit public benefit with members

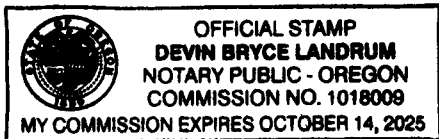
By: 
Michael Stinson, Board President

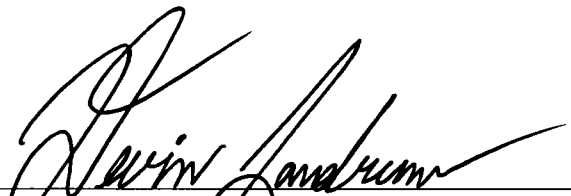
By: 
Jaime Kelly, Board Member

By: 
Stephen McKinley, Board Member

STATE OF OREGON)
 : ss
County of)

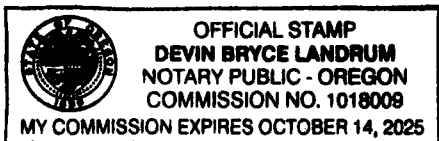
The foregoing instrument was acknowledged before me this 22nd day of March 2023, by Michael Stinson, Board President for SOCO Development, Inc., who executed the foregoing instrument for and on behalf of the Owner.

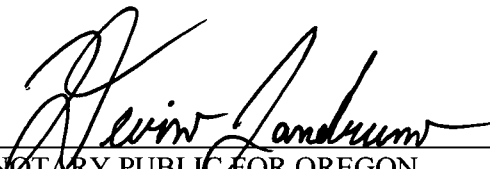



NOTARY PUBLIC FOR OREGON
My Commission Expires: 10-14-25

STATE OF OREGON)
 : ss
County of)

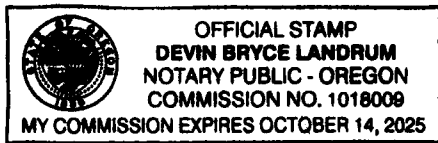
The foregoing instrument was acknowledged before me this 22nd day of March 2023, by Jaime Kelly, Board Member for SOCO Development, Inc., who executed the foregoing instrument for and on behalf of the Owner.





NOTARY PUBLIC FOR OREGON
My Commission Expires: 10-14-25

STATE OF OREGON)
 : ss
County of)

The foregoing instrument was acknowledged before me this 22nd day of March 2023, by Stephen McKinley, Board Member for SOCO Development, Inc., who executed the foregoing instrument for and on behalf of the Owner.

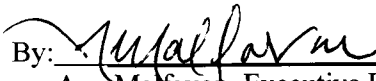




NOTARY PUBLIC FOR OREGON
My Commission Expires: 10-14-25

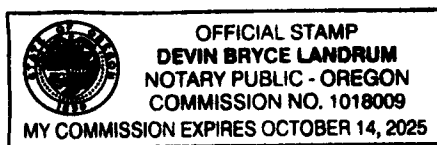
SUCCESSOR OWNER:

KLAMATH HOUSING AUTHORITY,
an Oregon public body corporate and politic
EIN #: 93-0637235

By: 
Ann Malfavon, Executive Director

STATE OF OREGON)
 : ss
County of)

The foregoing instrument was acknowledged before me this 21st day of ^{March}~~June~~ 2023, by, Ann Malfavon, Executive Director, of Klamath Housing Authority, who executed the foregoing instrument for and on behalf of the Successor Owner.





NOTARY PUBLIC FOR OREGON
My Commission Expires: 10-14-25

Exhibit A

(Legal Description of the Property)

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

Lots 10 and 11 of ELM PARK, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.