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2024-008704

Klamath County, Oregon



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After Recording Return to:

Oregon Health Authority
Heath Systems Division
500 Summer St SE, E86
Salem, OR 97301

SPACE ABOVE FOR RECORDER'S USE

**STATE OF OREGON
OREGON HEALTH AUTHORITY**

**HEALTH SYSTEMS DIVISION
SOCIAL DETERMINANTS OF HEALTH PROGRAM
DECLARATION OF RESTRICTIVE COVENANTS**

This Declaration of Restrictive Covenants (this “**Declaration**”) is made and entered into this 5 day of September 2024 (the “**Effective Date**”) by and between Klamath Child and Family Treatment Center, Inc., an Oregon nonprofit public benefit corporation (“**Declarant**”) and the State of Oregon, acting by and through the Oregon Health Authority and its Health System Division OHA and Declarant may be referred to herein jointly as the “**Parties**” or individually as a “**Party**”.

RECITALS

A. The Oregon State Legislature’s Joint Committee on Ways and Means stated in the Budget Report and Measure Summary for House Bill 5202 that the OHA was appropriated funds for distribution to community mental health programs (CMHPs) and related administrative support in OHA (“**5202 Funds**”). 5202 Funds are to provide an array of Supportive Housing and residential treatment, relieve bottlenecks in the continuum of care, provide long-term rental assistance and address health inequities and housing access disparities, among others.

B. Declarant applied for and was awarded an amount not to exceed **TWO MILLION SIX HUNDRED THIRTY SEVEN THOUSAND EIGHT HUNDRED SEVENTY SIX DOLLARS (\$2,637,876.00)** in 5202 Funds (the “**Grant**”) pursuant to that certain Grant Agreement dated September 9, 2022 by and between the Parties (as may be amended from time to time, the “**Grant Agreement**”).

C. Declarant’s use of the Grant is for the purpose of constructing sixteen (16) beds in a Residential Treatment Facility, as that term is defined in ORS 443.400(11) and four (4) chairs in a Crisis Stabilization Center that will serve individuals with a SPMI (as hereinafter defined) (collectively, the “**Improvements**”) situated on certain real property located in the city of Klamath Falls, Klamath County (the “**County**”), State of Oregon, as more particularly described in Exhibit A attached hereto (the “**Property**”). The Property, together with the Improvements, is referred to herein as the “**Project**”.

D. The Grant Agreement requires Declarant to execute this Declaration as a condition of the Grant.

E. The Parties desire that this Declaration be recorded in the relevant records of the County at Declarant'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 terms, conditions, covenants, warranties, and undertakings set forth herein, the Parties agree as follows:

1. DEFINITIONS; INCORPORATION.

1.1. Definitions. Capitalized terms used herein without definition have the meaning ascribed to such term in the Program Requirements (as defined below), unless the context clearly requires otherwise.

1.2. Incorporation. The foregoing recitals and any exhibit(s) are incorporated into this Declaration by reference to the same extent and with the same force and effect as if fully set forth herein, provided, however, that the incorporated items do not modify the express provisions of this Declaration.

2. REPRESENTATIONS, WARRANTIES AND COVENANTS OF DECLARANT.

Declarant represents, warrants and covenants that:

2.1. Validity. Declarant is a nonprofit public benefit corporation duly organized, validly created and existing under the laws of Oregon, is authorized to do business in Oregon, and has the power and authority to transact the business in which it is engaged and to enter into and perform this Declaration.

2.2. Authority; No Impairment. The making and performance of this Declaration by Declarant has been duly authorized by all necessary action of Declarant; 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 Declarant'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 Declarant is a party or by which Declarant 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.

2.3. Enforceability. This Declaration, when executed and delivered, is a valid and binding obligation of Declarant enforceable in accordance with its terms.

2.4. Program Requirements. Declarant shall timely satisfy all requirements of this Declaration, including the program rules, all applicable OHA administrative rules, and all other applicable federal, state, and local statutes, rules, regulations, ordinances, and orders (all of the foregoing, as amended from time to time, collectively, the "**Program Requirements**") to the satisfaction of OHA.

2.5. Insurance. Declarant shall maintain insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by entities constructing, operating and maintaining similar properties/facilities, including as required under the Grant Agreement.

2.6. Completion Date. Declaration will complete the Project and obtain a certificate of completion, or similar authorization to occupy the Project, no later than November 30, 2025, unless extended by OHA in writing (the “**Completion Date**”) in accordance with the terms and conditions of this Declaration.

2.7. Use of Grant Funds. Declarant has used or will use the Grant funds only for the Project costs as provided for in the Grant Agreement.

2.8. Full Disclosure. Declarant has disclosed in writing to OHA all facts that may materially adversely affect the Project, or the ability of Declarant to perform any obligations required by this Declaration. Declarant has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading, regarding the Grant, the Project and this Declaration. The information contained in this Declaration is true and accurate in all respects.

2.9. Pending Litigation. Declarant has disclosed in writing to OHA all proceedings, environmental or otherwise, pending (or to the knowledge of Declarant, threatened) against or affecting Declarant, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Declarant to perform all obligations required by this Declaration.

2.10. No Defaults.

2.10.1. No Events of Default (as hereinafter defined) exist or occur upon authorization, execution or delivery of this Declaration.

2.10.2. Declarant has not violated and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Declarant to perform all obligations required by this Declaration.

2.11. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Declaration will not: (i) cause a breach of a material agreement, indenture, mortgage, deed of trust, or other instrument, to which Declarant is a party or by which the Project or any of Declarant’s property or assets may be bound; (ii) violate any provision of the applicable enabling statutes, code, charter, ordinances or other Oregon law pursuant to which Declarant was organized or established; or (iii) violate any laws, regulations, ordinances, resolutions, or court orders related to Declarant, the Project or Declarant’s properties or operations.

2.12. Governmental Consent. Declarant has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Declaration and undertaking and completion of the Project,

including without limitation, all land use approvals and development permits required under local zoning or development ordinances, state law and federal law for the use of the land on which the Project will be located.

2.13. Responsibility. Declarant assumes full responsibility for timely and appropriate completion of the Project, for ownership of the Project, for its operation in accordance with this Declaration and the Grant Agreement and acknowledges that OHA has no direct or contractual responsibility for the Project, for ownership of the Project, or for its operation.

3. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF DECLARANT.

Declarant also represents, warrants, and covenants that:

3.1. Fair Housing and Other Civil Rights Compliance. Declarant shall comply with all applicable state and federal nondiscrimination laws, including but not limited to the Fair Housing Act and the Americans with Disabilities Act.

3.2. Use Restrictions and Duration.

3.2.1. Use Restrictions. Upon completion of the Project and for the duration of the Use Restriction Period (as hereinafter defined), Declarant shall continuously operate the Project as a Residential Treatment Facility and shall fill or hold vacant and available within the Project, sixteen (16) beds and ~~four (4)~~ Crisis Stabilization Center chairs to serve individuals with a SPMI (collectively, the "Use Restrictions"). ~~five (5)~~ KPA

As used herein, "SPMI" as defined in OAR 309-036-0105(13), means the current Diagnostic and Statistical Manual of Mental Disorders diagnostic criteria for at least one of the following conditions as a primary diagnosis for an adult age 18 or older:

- (i) Schizophrenia and other psychotic disorders;
- (ii) Major depressive disorder;
- (iii) Bipolar disorder;
- (iv) Anxiety disorders limited to Obsessive Compulsive Disorder (OCD) and Post Traumatic Stress Disorder (PTSD);
- (v) Schizotypal personality disorder; or
- (vi) Borderline personality disorder.

3.2.2. Use Restriction Period. For a period of twenty (20) years from December 31st of the year that the Project is completed or until **December 31, 2044**, whichever is later (the "Use Restriction Period"), Declarant is required to provide and comply with the requirements of the Use Restrictions.

3.3. Habitability; Other Compliance. Throughout the Use Restriction Period, Declarant will manage the Project in a safe and sanitary condition that is satisfactory to OHA and in accordance with applicable zoning, code and habitability requirements.

3.4. Prevailing Wage Requirements. The prevailing wage rate requirements that may apply to the Project are set forth in ORS 279C.800 through 279C.870, the administrative rules promulgated thereunder (OAR Chapter 839, Division 25) and Oregon Laws 2021, chapter 678, section 17 (collectively, “PWR”), or, when applicable, 40 U.S.C. 3141 et seq. (“Davis-Bacon Act”). Declarant shall comply with PWR, and specifically:

- (i) Determine when PWR or Davis-Bacon Act apply.
- (ii) Require its contractors and subcontractors to pay the applicable PWR or Davis-Bacon Act rates.
- (iii) Comply with all other Oregon Bureau of Labor and Industries (“BOLI”) requirements, including on all contracts and subcontracts and in filing separate public works bonds with the Construction Contractors Board.
- (iv) Pay to BOLI, within the required timeframe and in the appropriate amount, the project fee required by OAR 839-025-0200 to 839-025-0230, including any additional fee that may be owed upon completion of the Project.
- (v) Unless exempt under Section 17(2) of Oregon Laws 2021, chapter 678, if Declarant is a “public body” and the Project is a “qualified project,” as those terms are defined in Section 17(3) of Oregon Laws 2021, chapter 678, Declarant shall require each contractor in a contract with an estimated cost of \$200,000 or greater to:
 - (a) Enter into a project labor agreement that, at a minimum, provides for payment of wages at or above the prevailing rate of wage.
 - (b) Employ apprentices to perform 15 percent of the work hours that workers in apprenticeable occupations performed under the contract, in a manner consistent with the apprentices’ respective apprenticeship training programs.
 - (c) Establish and execute a plan for outreach, recruitment and retention of women, minority individuals and veterans to perform work under the contract, with the aspirational target of having at least 15 percent of total work hours performed by individuals in one or more of those groups.
 - (d) Require any subcontractor with a subcontract that has an estimated cost of \$200,000 or greater to perform the requirements set forth in subparagraphs a, b, and c above.
- (vi) Declarant represents and warrants that it is not on the BOLI current List of Contractors Ineligible to Receive Public Works Contracts and that it will not contract with any contractor on this list.

3.5. Financial Records. Declarant shall keep accurate books and records regarding use of the Grant and maintain them according to generally accepted accounting principles applicable to Declarant in effect at the time.

3.6. Inspections; Information. Declarant shall permit OHA and any party designated by OHA: (i) to inspect the Project and (ii) to inspect and make copies of any accounts, books and records, including, without limitation, Declarant’s records regarding receipts, disbursements, contracts, investments and any other related matters.

3.7. Reports.

3.7.1. Declarant shall prepare and electronically submit written quarterly reports that satisfy

OHA requirements of the continued use of the Project for the agreed purpose as defined in this Declaration.

3.7.2. The quarterly reports are due to OHA no later than April 30 (January 1-March 31), July 30 (April 1- June 30), October 30 (July 1- September 30), and January 30 (October 1-December 31) each year.

3.7.3. The quarterly reports must provide data as OHA requests, including but not limited to bed/unit/client capacity with their utilization rates and data on clients served by the property/facility. OHA will provide the reporting form and instructions for completion and submission of this quarterly compliance report. Declarant may be required to provide capacity and utilization rates every 60 days or more frequently as requested by OHA.

3.7.4. Declarant shall supply any other reports and information related to the Project as OHA may reasonably require.

3.8. Records Maintenance. Declarant shall retain and keep accessible all books, documents, papers, and records that are directly related to this Declaration, the Project, or the Grant throughout the Use Restriction Period and for a minimum of six (6) years, or such longer period thereafter, as may be required by OHA.

3.9. Corrective Action. As a consequence of its monitoring, review of quarterly reports or otherwise, OHA may identify deficiencies in Declarant's compliance with this Declaration. OHA may require action by Declarant (satisfactory to OHA) to correct such deficiencies. Declarant must correct such deficiencies within thirty (30) calendar days of notice by OHA of such deficiencies unless earlier correction is required by OHA to address material health or safety needs of Project users. The reasonableness of such corrective actions is subject to OHA in its sole discretion. Nothing herein is intended or may be construed to impose any duty on OHA to identify deficiencies in Declarant's compliance with this Declaration or to require any action by Declarant to correct such deficiencies, and Declarant remains solely responsible for compliance with this Declaration.

4. FURTHER ASSURANCES.

4.1. Further Acts. Declarant, at any time upon request of OHA, will do, make, execute and deliver all such additional and further acts, instruments or papers as OHA may require in its sole discretion to protect OHA's rights under this Declaration.

4.2. Reliance. OHA may rely upon statements, certificates, and other records of Declarant and its agents and assigns, including as to accuracy, genuine nature, and proper execution of such statements, certificates, and other records.

5. COVENANTS AND EQUITABLE SERVITUDES TO RUN WITH THE LAND.

5.1. Inducement. Declarant represents, covenants and warrants that the issuance to it of the Grant described herein by OHA is an inducement to Declarant to complete the Project and to operate the Project in accordance with the Grant Agreement and this Declaration. In consideration of the issuance of

the Grant, Declarant has entered into this Declaration 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, Declarant covenants, agrees and acknowledges that OHA has relied on this Declaration in determining to issue the Grant.

5.2. Covenants; Equitable Servitudes.

5.2.1. OHA and Declarant hereby declare their express intent that throughout the Use Restriction Period the covenants, restrictions, charges and easements set forth herein, including the Use Restrictions, 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 OHA's and Declarant'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.

5.2.2. 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 residential rental agreement or residential lease) 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.

5.2.3. Any and all legal requirements for the provisions of this Declaration 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 OHA, are deemed satisfied in full.

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

5.3. Burden and Benefit.

5.3.1. Declarant hereby declares its understanding and intent that the burdens of the covenants and equitable servitudes, including the Use Restrictions, set forth herein touch and concern the Property, and the Project as a whole, in that Declarant's legal interest in the Project is rendered less valuable thereby.

5.3.2. Declarant hereby further declares 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 residents, intended beneficiaries (in addition to OHA) of such covenants, reservations and restrictions, and by furthering the public purposes for which the Grant was issued.

5.4 Right of Modification.

OHA may compromise, waive, amend or modify the terms of this Declaration including, but not limited to the restrictive covenants and equitable servitudes created hereby, as it so determines in OHA's sole discretion to be to the benefit of OHA, the Project, or OHA efforts to provide or maintain safe and sanitary conditions of the Project. To be effective, any compromise, waiver, amendment or modification of this Declaration must be in writing, signed by an authorized OHA representative.

6. DECLARANT STATUS.

6.1. Independent Contractor. Declarant shall perform all obligations under this Declaration and will timely satisfy its obligations hereunder as an independent contractor. Declarant 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 Declaration.

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

6.3. Non-Federal Employment Certification. Declarant certifies that it is not employed by or contracting with the federal government for performance covered by this Declaration.

6.4. Good Standing Certification. Declarant certifies to the best of its knowledge and belief that neither Declarant nor any of its principals, officers, directors or employees providing services under this Declaration:

- (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 Declaration 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) of this Section;
- (iv) Has within a three (3) year period preceding this Declaration 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>

7. TERMINATION.

7.1. OHA may terminate this Declaration in whole or in part, without further liability and without impairment of its remedies, effective upon delivery of written notice to Declarant, under any of the following conditions, including as contemplated by the Grant Agreement:

- (i) If 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;
- (ii) 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 Declaration from the planned funding source(s) or if OHA is determined by its legal counsel or otherwise to lack or to have lost the authority to administer the Program;
- (iii) If any authority required by law or regulation to be held by Declarant to complete the Project ends for any reason;
- (iv) If Declarant is unable or fails to commence the Project within six (6) months from the date of this Declaration, or such longer period as OHA may agree to in writing;
- (v) Declarant fails to perform any obligation required under this Declaration and that failure continues for a period of thirty (30) calendar days after written notice specifying such failure is given to Declarant by OHA, or such longer period as OHA may agree to in writing, if OHA determines in its sole discretion that Declarant has instituted and is diligently pursuing corrective action.
- (vi) If OHA determines that any representation, warranty or covenant of Declarant, whether in whole or in part, is false, invalid, or in default; or
- (vii) If Declarant: (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 as 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.

(viii) A proceeding or case is commenced, without the application or consent of Declarant, in any court of competent jurisdiction, seeking: (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Declarant, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Declarant or of all or any substantial part of its assets, or (iii) similar relief in respect to Declarant under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Declarant is entered in an involuntary case under the Federal Bankruptcy Code.

7.2. Termination of this Declaration does not terminate or otherwise impair or invalidate any remedy available to OHA or to Declarant hereunder, at law, or otherwise.

8. REMEDIES.

8.1. **Repayment.** If this Declaration or any part hereof, terminates prior to the term of the Use Restriction Period, Declarant will, within thirty (30) calendar days of written demand for repayment, repay the Grant multiplied by a fraction, the numerator of which is 20 minus the number of full years that the Project has been in compliance with this Declaration, including the Use Restrictions and a denominator of 20.

8.2. **Deficiencies.** OHA may, from time to time, identify and direct Declarant to correct deficiencies in its compliance with this Declaration, which it shall correct as so directed.

8.3. **Extension of Use Restriction Period.** OHA may by written notice extend the Use Restriction Period described in this Declaration for periods of time matching corresponding periods of time during which OHA determines Declarant to be in material noncompliance with any of the terms of this Declaration. Such extensions may be recorded in the County's property records.

8.4. **Additional Remedies.** If Declarant defaults in the performance or observance of any covenant, agreement or obligation set forth in this Declaration (including correction of deficiencies), and if such default remains uncured by Declarant for a period of fourteen (14) calendar days or less (depending upon the requirements of the notice, lesser notice periods being reserved for matters that OHA determines in its sole discretion relate to material health or safety needs of Project occupants) after notice thereof shall have been given by OHA, or if such default runs for a period of fourteen (14) calendar days from the date Declarant should, with due diligence, have discovered such default, then OHA may declare an "**Event of Default**" to have occurred hereunder provided, however, if an Event of Default is not reasonably capable of being cured within fourteen (14) calendar days or any lesser notice period provided by OHA, OHA may, in its sole discretion, extend the correction period for up to six (6) months, but only if OHA determines in its sole discretion there is good cause for granting the extension. To the extent that an Event of Default is not corrected within the above-described period including extensions, if any, granted by OHA, an Event of Default will be deemed to occur and OHA may

exercise its rights and remedies under this Section. Following the occurrence of an Event of Default hereunder OHA may, at its option, take any one or more of the following steps in addition to all other remedies provided in this Declaration, by law, or in equity:

- (i) By mandamus or other suit, action or proceeding at law or in equity, require Declarant specifically to perform its obligations under this Declaration or enjoin any acts or things that may be unlawful or in violation of the rights of OHA under this Declaration;
- (ii) Obtain the appointment of a receiver to operate the Project in compliance with this Declaration;
- (iii) Withhold from Declarant, suspend or terminate or, upon thirty (30) days written demand, require the repayment of all or part of any disbursed Grant funds or other funding assistance provided by OHA to Declarant with respect to the Project;
- (iv) Declare Declarant, its owners, principals, employees, and agents ineligible to receive further OHA funds or other OHA financial assistance, including with respect to other projects or requests for same, for such period as OHA determines in its sole discretion;
- (v) Offset amounts due from repayment of the Grant against other funding awarded or to be awarded to Declarant;
- (vi) Have access to, and inspect, examine and make copies of, all of the books and records of Declarant pertaining to the Project and to inspect the Project itself;
- (vii) Enter onto the Property and correct Events of Default with respect to the Project at Declarant's expense, which expense Declarant will repay to OHA within ten (10) days of any presentment of charges for same; and
- (viii) Take such other action under this Declaration, at law, in equity, or otherwise as may be available to OHA.

9. GENERAL PROVISIONS.

9.1. Compliance with Applicable Laws and Requirements.

9.1.1. Compliance. Declarant shall comply with and shall ensure that the Project complies with all federal, state and local laws, rules regulations, codes, ordinances, and orders applicable to the Project.

9.1.2. Contracts; Subcontracts. Declarant shall ensure that all contracts and subcontracts related to the Project or this Declaration comply with the terms and conditions hereof, including containing a provision to that effect therein.

9.1.3. Endurance of Obligations. Declarant will remain fully obligated under the provisions of this Declaration 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.

9.2. Indemnity. Declarant assumes sole liability for breach of the conditions of the Grant Agreement (including all terms and conditions of this Declaration) by Declarant or any of its officers, agents, employees, and assigns. Declarant will save, hold harmless, indemnify and defend the State of Oregon, OHA and their officers, agents, employees, members and assigns, from all suits, actions, claims, losses or damages, liabilities, costs and expenses of whatsoever nature, kind or description, including attorney fees (collectively, “**Claims**”) related to the Grant, the Project, this Declaration or resulting from or arising out of the acts, omissions, neglect or misconduct of Declarant or its subcontractors, agents, or employees under this Declaration or related to the Grant, Project, to the extent permitted by law. Neither Declarant nor any attorney engaged by Declarant may defend any Claim in the name of the State of Oregon (including any agency of the State of Oregon), nor purport to act as legal representative for the State of Oregon, without first receiving from the Oregon Attorney General, in a form and manner determined appropriate by the Oregon Attorney General, authority to act as legal counsel for the State of Oregon, nor may Declarant settle any Claim on behalf of the State of Oregon without the approval of the Oregon Attorney General. If the State of Oregon assumes its own defense, Declarant will be liable for the attorney fees of the State of Oregon, including but not limited to any fees charged by the Oregon Department of Justice. This Section will survive any expiration or termination of this Declaration.

9.3. Time of the Essence. Time is of the essence in the performance by Declarant of the terms of this Declaration.

9.4. Notice. Except as otherwise expressly provided in this Declaration, any notices required or permitted to be given under this Declaration will be given in writing, by personal delivery, or mailing the same, postage prepaid, to OHA or Declarant at the following addresses:

If to OHA: Oregon Health Authority
 Health Systems Division
 500 NE Summer Street – E-86
 Salem, OR 97301

If to Declarant: Klamath Child and Family Treatment Center, Inc.
 2210 N Eldorado Avenue
 Klamath Falls, OR 97601
 Attention: Kendall Alexander, CEO

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.

9.5. No Third-Party Beneficiaries. Unless and only to the degree expressly provided otherwise in this Declaration, OHA and Declarant are the only Parties to this Declaration and are the only Parties entitled to rely on and enforce the terms of this Declaration. Nothing in this Declaration 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 Declaration and only to the degree they are expressly described as intended beneficiaries of particular terms of this Declaration and only with such remedies as expressly given herein with respect to such interests.

9.6. Survival of Remedies; Remedies Not Exclusive; Non-Waiver. The rights and remedies of OHA provided for in this Declaration, which by their nature are intended to survive termination of this Declaration, will survive the termination of the Use Restriction Period and of this Declaration. 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 OHA to enforce any provision of this Declaration will constitute a waiver by OHA of that or any other provision, nor will any single or partial exercise of any right, power or privilege under this Declaration preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

9.7. Assignment; Successors and Assigns. Except as expressly permitted herein, Grantee shall not assign or otherwise transfer any interest in this Agreement or in Project (other than leases for the residential units in the Project) without the prior written consent of OHA. The provisions of this Agreement are binding upon and will run to the benefit of the Parties to this Agreement and their respective successors and permitted assigns.

9.8. Modification; Prior Loan Agreements; Waiver; This Agreement constitutes the entire agreement between the Parties on the subject matter hereof, and supersedes all prior agreements and understandings relating to such subject matter. No modification or amendment of this Agreement will bind the Parties unless in writing and signed by both Parties, 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.

9.9. 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.

9.10. Attorney Fees. Subject to Article XI, Section 7, of the Oregon Constitution, in the event a lawsuit or other proceeding is instituted regarding this Declaration, the prevailing party in any dispute arising under this Declaration 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 OHA 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.

9.11. Construction. The Parties to this Declaration acknowledge that each Party and its counsel have participated in the drafting and revision of this Declaration. 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 Declaration or any amendment, modification, supplementation or restatement of the foregoing or of any exhibit to this Declaration.

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

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

9.14. Governing Law; Venue: Consent to Jurisdiction. This Declaration 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 Declaration 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 OHA 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. OHA and the State of Oregon expressly reserve all sovereignty rights. DECLARANT, BY EXECUTION OF THIS DECLARATION, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

9.15. Merger Clause. This Declaration, along with the Grant Agreement constitutes the entire agreement between the Parties on the subject matter hereof. No modification or amendment of this Declaration will bind either Party unless in writing and signed by the 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 Declaration.

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

(Signature Pages Follow)

IN WITNESS WHEREOF, OHA and Declarant have caused this Declaration to be signed by their duly authorized officers on the Effective Date.

OHA:

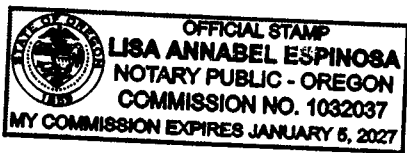
STATE OF OREGON, acting by and through its
OREGON HEALTH AUTHORITY (OHA)
Health Systems Division


By:


Michael Kincaid
Director of Business Operations

STATE OF OREGON)
 : ss
County of Marion)

This instrument was acknowledged before me this 6 ^{Sept. 24} day of ~~May~~ 2024, by Michael Kincaid, for and on behalf of the State of Oregon, acting by and through its Oregon Health Authority.




NOTARY PUBLIC FOR OREGON
My Commission Expires: January 5, 2027

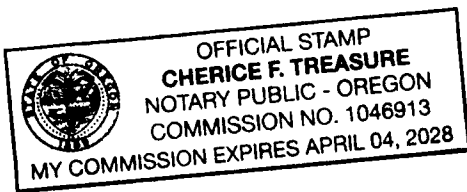
DECLARANT:

Klamath Child and Family Treatment Center, Inc

By: 
Kendall Alexander
Chief Executive Officer

STATE OF OREGON)
 : ss
County of Klamath)

This instrument was acknowledged before me this 4th day of October 2024,
by Kendall Alexander, for and on behalf of Klamath Child and Family Treatment Center, Inc. ~~acting by and through its~~



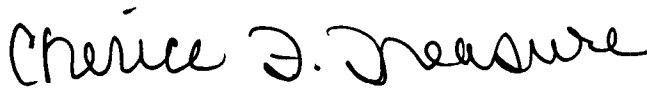

NOTARY PUBLIC FOR OREGON
My Commission Expires: 4-4-2028

EXHIBIT A
Legal Description

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

Parcel 1, 2 and 3 of Land Partition 69-07 being a re-plat of Tract 40C of ENTERPRISE TRACTS situated in the NW 1/4 of Section 34, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon

Situs Address: 705 Washburn Way, Klamath Falls, OR 97603