

**After Recording Return to:**

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

SPACE ABOVE FOR RECORDER'S USE

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

**LAND ACQUISITION PROGRAM  
REGULATORY AGREEMENT AND DECLARATION OF LAND-USE RESTRICTIVE  
COVENANTS**

This Land Acquisition Program Regulatory Agreement and Declaration of Land-Use Restrictive Covenants (this “**Regulatory Agreement**” or “**Agreement**”) is made and entered into this day \_\_\_ of November, 2023 by and between Housing Authority of Lincoln County, a public body corporate and politic of the State of Oregon (“**Borrower**”), and the State of Oregon, acting by and through its Housing and Community Services Department, together with its successors and assigns (“**OHCS**”).

**RECITALS**

- A.** Borrower has completed and submitted to OHCS an application (the “**Application**”) for a reservation of Land Acquisition Program (“**LAP**”) funds to be used for the Project (as hereinafter defined) in compliance with the Loan Documents (as hereinafter defined).
- B.** In response to the Application by Borrower, OHCS has issued a reservation letter dated May 4, 2023 (the “**Reservation**”) approving a conditional loan of LAP funds to Borrower in an amount not to exceed **EIGHT HUNDRED THOUSAND NINE HUNDRED DOLLARS (\$800,900.00)** (the “**Loan**”) to acquire certain real property located in Lincoln City, Lincoln County, Oregon as more particularly described in Exhibit A attached hereto (the “**Property**”) for the purpose of Borrower constructing a low-income multifamily rental housing development with one or more units located on the Property (the Property and the improvements thereon are collectively referred to herein as the “**Project**”), known or to be known as **Lincoln County Mental Health Housing aka Lighthouse Village**.
- C.** OHCS is willing to make the Loan conditioned upon Borrower’s agreement to operate the Project as a low-income multifamily housing development in compliance with the terms and conditions of this Agreement, the Loan Documents, and the Program Requirements.

## AGREEMENT

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

### **SECTION 1. INCORPORATION; DEFINITIONS.**

1. **Incorporation.** The foregoing Recitals and the Exhibits are hereby incorporated by reference to the same extent and with the same force and effect as if fully set forth herein, provided, however, that the Recitals and the Exhibits may not be deemed to modify the express provisions of this Agreement.
  
2. **Definitions.** Capitalized terms used herein without definition or not otherwise defined below, have the meaning ascribed to such term in the Loan Documents and the Program Requirements unless the context clearly requires otherwise.
  - a. “Act” means ORS 456.502, and the Housing Finance Act, ORS Chapter 456.515 to 725, as each may be amended from time to time.
  
  - b. “Affordability Period” means the aggregate of: (A) December 31 of the year that is **thirty (30) years** beginning from the date that any building in the Project is first placed in service; and (B) the time period beginning with the date of this Agreement and expiring not sooner than **December 31, 2063**, provided that Borrower is in continuous compliance with the terms of this Agreement during such time period. Notwithstanding the foregoing, OHCS may, at its sole discretion, extend this Affordability Period for periods of time matching corresponding periods of time during the aforementioned Affordability Period for which OHCS determines the Borrower to be in material noncompliance with any of the terms of this Agreement.
  
  - c. “Corrective Notice” means any directive from OHCS to correct a deficiency in the operation or management of the Project, or other noncompliance with the Program Requirements, as determined by OHCS.
  
  - d. “Dwelling Units” or “Units” mean the units of multifamily residential rental housing comprising the Project that are available for occupancy. For the purposes of this definition, no manager unit so designed herein will be treated as a rental Unit during the time of such occupation unless expressly so stated herein. All manager units will be construed as Units for the computation of any applicable administration and monitoring fees or charges.
  
  - e. “GAAP” means generally accepted accounting principles consistently applied.
  
  - f. “Housing Act” means the United States Housing Act of 1937, as amended.
  
  - g. “HUD” means the U.S. Department of Housing and Urban Development.
  
  - h. “IFRS” means the International Financial Reporting Standards consistently applied.

- i. "LAP" or "LAP Program" means the Land Acquisition Program.
- j. "Lease" means the form(s) of OHCS-approved agreement between the Borrower and a Resident under the terms of which said Resident is entitled to enjoy possession of a Unit in the Project.
- k. "Loan Documents" means the documents executed by Borrower with or in favor of OHCS in connection with the Loan and with the ownership and operation of the Project, including but not limited to documents referred to herein as the Note, the Loan Agreement, the Trust Deed, this Regulatory Agreement, as well as related documents (including, but not limited to exhibits, incorporations, ancillary documents, and documents effecting amendments to any of the foregoing).
- l. "Program Requirements" means collectively, all of the following, including as may be amended from time to time, all performance requirements, restrictive covenants, warranties, liabilities, operational standards, and other obligations of the Borrower arising under the terms and conditions of the LAP Program, the Act, this Agreement, the Loan Documents, OHCS' administrative rules, applicable OHCS manuals, applicable OHCS orders and directives, and other applicable federal, state, and local laws, ordinances, codes, rules, and regulations.
- m. "Qualified Resident" or "Qualified Tenant" mean a person satisfying applicable income limits under this Agreement and validly occupying a Qualified Unit in the Project pursuant to a Lease.
- n. "Qualified Unit" means a Dwelling Unit, the respective Residents of which have an income at or below 80% area median income, adjusted by family size, as determined by OHCS based upon information from the U.S. Department of Housing and Urban Development ("HUD") at the time of initial occupancy. All the Dwelling Units in the Project will be Qualified Units except the manager's unit.
- o. "Rent" means that monthly amount that a Resident is obligated to pay the Borrower pursuant to the terms of a Lease.
- p. "Resident" or "Residential Tenant" means a person or household occupying a Dwelling Unit in the Project pursuant to a Lease.
- q. "Transferee" means the person to whom the Borrower sells, transfers to or disposes of the Project, the Borrower itself or any portion of or interest in either (other than by leasing or renting for individual tenant use as contemplated by this Regulatory Agreement).

**SECTION 2. RESERVED.**

**SECTION 3. MODIFICATION OF COVENANTS.**

Borrower and OHCS hereby agree as follows:

**1. More Restrictive Covenants.** To the extent any amendments to the Act, related statutes, administrative rules, orders, rulings, or other law will, in the written opinion of counsel for OHCS, impose requirements upon the ownership or operation of the Project more restrictive than those imposed by this Regulatory Agreement that must be complied with in order to comport with the Act, related statutes, administrative rules, orders, rulings, or other law, this Regulatory Agreement will be deemed to be automatically amended to impose such additional or more restrictive requirements.

**2. Changes.** OHCS and Borrower may, in a writing signed by authorized representatives of same, amend, modify, waive, release or forebear (collectively, “**Change**”) the compliance and enforcement of other covenants under this Agreement (including incorporated documents) at the sole discretion of OHCS, as it determines to be appropriate under applicable law and to further the purposes of OHCS, including in promoting safe, sanitary and affordable housing for low- and lower-income residents of the State of Oregon.

**3. Execution.** Borrower and OHCS will execute, deliver and, if applicable, file of record any and all documents and instruments, necessary to effectuate the intent of this Section.

#### **SECTION 4. REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER.**

Borrower represents, warrants, and covenants that:

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

**2. Authority; No Impairment.** The making and performance of this Agreement by Borrower has been duly authorized by all necessary action of Borrower; does 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 Borrower’s organizing documents or authorizing statutes; and does 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 Borrower is a party or by which Borrower or any of its properties is bound or affected and does not and will not result in the creation or imposition of any prohibited encumbrance of any nature.

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

**4. Program Requirements.** Borrower shall timely satisfy all requirements of this Agreement, including the Program Requirements, to the satisfaction of OHCS.

**5. Completion Date.** Borrower shall complete the Project no later than December 31, 2031 in accordance with this Agreement, the Loan Agreement, and the Program Requirements.

**6. Responsibility.** Borrower assumes full responsibility for timely and appropriate completion of Project, for ownership of the Project, for the operation of the Project in accordance with this Agreement and the Program Requirements, for full and timely satisfaction of the Program Requirements, and acknowledges that OHCS has no direct or contractual responsibility to Borrower for the Project, for

ownership of the Project, or for its operation.

**7. No Conflicting Agreements.** Borrower has not executed, and will not execute, any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event the requirements of this Regulatory Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith except as may be expressly required by the Code or applicable Treasury Regulations.

**SECTION 5. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER.**

The Borrower also represents, warrants, and covenants that:

**1. LAP Program Compliance Generally.**

**(a) Appropriate Costs.** Borrower shall use the Loan only for the financing of the acquisition of the Project land, consistent with the Program Requirements.

**(b) Overall Compliance.** Borrower shall comply, and will cause its agents, employees, contractors, subgrantees and assigns, if any, to comply with the terms and conditions of this Agreement and the other Loan Documents, including the Program Requirements. Accordingly, Borrower shall include in any contracts with subcontractors that performance under any such contract is subject to the Program Requirements, including record retention by the subcontract and review rights by OHCS and others of such records consistent with monitoring of Borrower records hereunder, with OHCS as a third-party beneficiary.

**2. Affordability.**

**(a) Income Limitations.** Throughout the Affordability Period, Borrower will continuously rent or hold vacant for rent the Dwelling Units to Qualified Residents, in accordance with the terms of this Agreement and the Program Requirements.

**(b) Rent Restrictions.** Throughout the Affordability Period, Borrower shall restrict Rents with respect to the Qualified Units in compliance with the Program Requirements and to ensure that the Rent for each Qualified Unit does not exceed what is considered affordable to those with 80% median family income as published by HUD on an annual basis.

**3. Habitability; Other Compliance.** Throughout the Affordability Period, Borrower shall maintain the Project in a safe, sanitary, and habitable condition satisfactory to OHCS and in accordance with the Program Requirements and any applicable zoning and code requirements.

**4. Reserved.**

**5. Income Verification and Compliance Monitoring.**

**(a) Verification of Resident Income.** Borrower shall make a good faith effort to verify that the income provided by a Resident applicant is accurate by taking such action as may be required by OHCS, including at least one of the following steps as a part of the verification process (collectively, the “**Verification Process**”): (i) obtain a pay stub for the most recent pay period; (ii) obtain an income tax return for the most recent tax year; (iii) obtain a credit report or conduct a similar records search; (iv) obtain an income verification form from the applicant’s current employer; (v) obtain an income verification form from the Social Security Administration if the applicant receives assistance from such agency; (vi) if the prospective Resident maintains bank accounts, a copy of the most recent bank statements for such accounts; and (vii) if the applicant is (A) unemployed and has no such tax return or (B) has no Social Security Administration verification form, obtain another form of independent verification or an executed written declaration of the prospective Resident.

**(b) Income Certification.** Borrower shall (i) obtain, complete, and maintain on file, until **six (6) years** after the end of the Affordability Period, income certifications from each Qualified Resident dated immediately prior to the initial occupancy of such Qualified Resident and no less frequently than annually thereafter using the Verification Process; and (ii) provide such additional information as may be required from time to time by OHCS.

**(c) Certificate of Continuing Compliance.** Borrower shall prepare and submit to OHCS within thirty (30) days after the end of each year during the Affordability Period or as otherwise determined by OHCS, a Certificate of Continuing Program Compliance executed by Borrower stating (i) the percentage of the dwelling units of the Project that were Qualified Units occupied by Qualified Residents during such period, and (ii) that either (A) no uncured default has occurred under this Agreement or (B) that a default has occurred, in which event the certificate will describe the nature of the default and set forth the measures being taken by the Borrower to remedy such default.

## **6. Records; Monitoring.**

**(a) Financial and Performance Records.** Borrower will maintain all financial records relating to this Agreement in accordance with GAAP or, with OHCS approval, IFRS, and in a manner satisfactory to OHCS. In addition, Borrower will maintain all records relating to the Project or compliance with this Agreement. Borrower will retain and keep accessible all such records of whatever source or type (including, but not limited to written or electronic documents, papers, plans, writings, communications, orders, charges, shipments, and other records) throughout the Affordability Period and for a minimum of **six (6) years**, or such longer period thereafter as may be required by OHCS - which expressly includes any period (including beyond the foregoing times) during which an audit, claim, or litigation with respect to the Project or this Agreement remains outstanding, plus **two (2) years** thereafter.

**(b) Provision of Records.** Borrower shall provide to or make available for copying by OHCS, at Borrower’s expense, such records as OHCS may require, including but not limited to, the following:

**(i) Tax Returns.** From time to time upon OHCS's request, but not less than annually, provide to OHCS the latest tax returns complete with all schedules, including applicable K-1 statements and financial statements prepared in accordance with GAAP or IFRS and certified by the Borrower to be true and correct in all respects.

**(ii) Written Notice.** Give OHCS written notice within ten (10) days after the Borrower first receives notice of:

**(A)** Any litigation or claims of any kind which might subject Borrower to any liability that might adversely impact its financing position or ability to own or operate the Project, whether covered by insurance or not; and

**(B)** All complaints and charges filed by any Governmental Authority or any other person affecting the Project, Borrower, or Borrower's business that may impair the operation of the Project or compliance with the Program Requirements.

**(iii) Breach or Event of Default.** Promptly notify OHCS of any condition or event that constitutes a breach, default, or Event of Default under this Regulatory Agreement (including incorporated documents).

**(iv) Other Information.** Promptly furnish to OHCS such data and information, financial or otherwise, concerning Borrower, as from time to time may be requested by OHCS.

**(c) Monitoring.** Borrower acknowledges and agrees that OHCS, the Oregon Secretary of State's Office, the Oregon Department of Revenue, the U.S. Department of the Treasury, and their respective duly-authorized representatives will have access to all records of Borrower that are pertinent to this Agreement to perform examinations, audits, or other action, and to make excerpts and transcripts of such records, and take copies of such records. Furthermore, Borrower acknowledges and agrees that OHCS, the Oregon Secretary of State's Office, the Oregon Department of Revenue, the U.S. Department of the Treasury, HUD, and their respective duly-authorized representatives may inspect the Project, and any part thereof, upon reasonable notice to Borrower and, as applicable, to the Residents. Borrower, its agents, employees, and subcontractors will cooperate fully with OHCS and the others in any requested inspection of the Project, its records, or other compliance monitoring.

**8. Charges.** Borrower shall timely pay fees or charges from time to time as described herein or under the Program Requirements.

**9. Corrective Action.** As a consequence of its monitoring or otherwise, OHCS may identify deficiencies in Borrower's compliance with the Program Requirements. OHCS may require action by Borrower (satisfactory to OHCS) to correct such deficiencies. Borrower shall correct such deficiencies as directed by OHCS. The reasonableness of such corrective actions is subject to OHCS in its sole discretion.

**10. Limitation on Debt.** Borrower will have no other debt that does, or may result in, a lien against the Project without prior written consent from OHCS.

## **SECTION 6. FURTHER ASSURANCES.**

**1. Further Acts.** Borrower, at any time upon request of OHCS, will do, make, execute and deliver all such additional and further acts, instruments or papers as OHCS may require in its sole discretion to protect OHCS' rights or accomplish its purposes under this Agreement.

**2. Reliance.** OHCS may rely upon statements, certificates, and other records of Borrower and its agents and assigns, as well as of Residents of Qualified Units, including as to accuracy, genuine nature, and proper execution of such statements, certificates, and other records.

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

**4. Unapproved Transfers Are Void.** Any transfer of the Loan, the Project, or Borrower, in violation of this Agreement will be ineffective to relieve Borrower, any Transferee, or the Project of any continuing obligations under this Agreement. OHCS' consent hereunder will not be deemed continuing and Borrower and each permitted Transferee will continue to be bound by this Agreement unless OHCS has consented in writing to the transfer.

## **SECTION 8. COVENANTS AND EQUITABLE SERVITUDES TO RUN WITH THE LAND.**

**1. Inducement.** Borrower represents, covenants, and warrants that the issuance to it of the Loan is an inducement to Borrower to have the Project done timely and appropriately, and to have the Project operated in accordance with this Agreement. In consideration of the issuance of the Loan, Borrower has entered into this Agreement and has agreed to restrict the operation of and uses to which the Project can be put on the terms and conditions set forth herein.

### **2. Covenants; Equitable Servitudes.**

**(a) Declaration of Land-Use Restrictive Covenants.** OHCS and Borrower hereby declare their express intent that, throughout the Affordability Period, the covenants, restrictions, charges and easements set forth herein will be deemed covenants running with the land of the Project and will create equitable servitudes running with the land of the Project, and will pass to and be binding upon OHCS' and Borrower's successors in title including any purchaser, transferee, 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, transferee or lessee of any portion of the Project and any other person or entity having any right, title or interest therein. 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.

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



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

### **3. Burden and Benefit.**

(a) **Covenant Burdens.** Borrower 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 Borrower's legal interest in the Project is rendered less valuable thereby.

(b) **Covenant Benefits.** Borrower 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 the Residents, intended beneficiaries (in addition to OHCS) of such covenants, reservations and restrictions, and by furthering the public purposes for which the Loan was issued.

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

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

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

### **SECTION 9. RESERVED.**

### **SECTION 10. RECORDING AND FILING.**

Borrower shall cause this Regulatory Agreement and all amendments and supplements hereto to be recorded and filed in the real property records of the Oregon county or counties in which the Property is situated and in such other places as OHCS may reasonably request together with all other documents so

required by OHCS to be filed by Borrower. Borrower will pay all fees and charges incurred in connection with any such recording.

## **SECTION 11. GENERAL PROVISIONS.**

### **1. Compliance with Applicable Laws and Requirements.**

- (a) Compliance.** Borrower will comply, and will ensure that the Project complies, with the Program Requirements.
- (b) Contracts; Subcontracts.** Borrower will ensure that all contracts and subcontracts related to the Project or this Agreement comply with the Program Requirements, including containing a provision to that effect therein.
- (c) Endurance of Obligations.** Borrower will remain fully obligated under the provisions of this Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the Project with respect to which the Loan is being provided by OHCS or compliance is being required by OHCS.
- (d) Inspections.** Borrower will permit OHCS to inspect all Units and common areas within the Project, including all Qualified Units, at reasonable times and under reasonable conditions.

**2. Indemnity.** Borrower assumes sole liability for breach of the conditions of the Loan, other Project funding (if any), or the Program Requirements (including all terms and conditions of this Agreement) by Borrower or any of its officers, agents, employees, and assigns. Subject to any limitations in the Oregon Constitution, Borrower shall 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 Loan, other Project funding (if any), the Project, this Agreement, or the Program Requirements, or resulting from or arising out of the acts, omissions, neglect or misconduct of Borrower or its subcontractors, agents, or employees under this Agreement or related to the Loan, other Project funding (if any), the Project, or the Program Requirements.

**3. Time of the Essence.** Time is of the essence in the performance by Borrower of the terms of this Agreement.

**4. No Discrimination; Marketing.** Except as permitted by law, Borrower shall not 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. Borrower will use its reasonable efforts to advertise and market the Dwelling Units, particularly the Qualified Units, within the county and, if applicable, the city in which the Project is located.

### **5. Notice.**

- (a)** Except as otherwise expressly provided in this Agreement, any notices required or permitted to be given under this Agreement will be given in writing, by personal delivery, or mailing the same,

postage prepaid, to OHCS or Borrower at the following addresses:

OHCS: Oregon Housing and Community Services Department  
Attn: Multifamily Housing Finance Section Manager  
725 Summer Street N.E., Suite B  
Salem, Oregon 97301-1266  
Facsimile: 503-986-0996

Borrower: Housing Authority of Lincoln County  
Attn: Karen Rockwell  
1039 NW Nye Street  
Newport, Oregon 97365

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

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

## **7. Borrower Status.**

- (a) Independent Contractor.** Borrower shall perform all obligations under this Agreement and will timely satisfy the Program Requirements as an independent contractor. Borrower is not an officer, employee or agent of the State, as those terms are used in ORS 30.265 or otherwise, with respect to performance under this Agreement.
- (b) Borrower Responsible for Insurance Coverage.** Borrower agrees that insurance coverage, whether purchased or by self-insurance, for Borrower's agents, employees, officers and/or subcontractors is the sole responsibility of Borrower.
- (c) Non-federal Employment Certification.** Borrower certifies that it is not employed by or contracting with the federal government for performance covered by this Agreement.
- (d) Good Standing Certification.** Borrower certifies to the best of its knowledge and belief that neither Borrower nor any of its principals, officers, directors or employees:
  - (1)** Is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any state or federal department or agency;

- (2) Has within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract related to a public transaction; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
- (3) 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);
- (4) Has within a three-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default; and
- (5) 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:

<http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>

**8. Termination.** OHCS may terminate this Agreement in whole or in part, without further liability and without impairment of its remedies, effective upon delivery of written notice to Borrower, 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 Loan 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 Loan funding for the Project is no longer allowable or appropriate or the Project is no longer eligible for the Loan funding identified in this Agreement from the planned funding source(s) or if OHCS is determined by its legal counsel or otherwise to lack or to have lost the authority to administer the LAP Program; or
- (c) If any authority required by law or regulation to be held by Borrower to complete the Project ends for any reason; or
- (d) If Borrower breaches or fails to timely perform any of its obligations under this Agreement, or any other applicable Loan document and such breach is not cured within the grace period, if any, provided for cure in the applicable document; or
- (e) If OHCS determines that any representation, warranty or covenant of Borrower, whether in whole or in part, is false, invalid, or in default; or
- (f) If Borrower (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 Agreement for the benefit of its creditors, (iv) commences a voluntary case under

the federal Bankruptcy Code (as now or hereafter in effect), (v) is adjudicated a bankrupt or insolvent, (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the federal Bankruptcy Code (as now or hereafter in effect), or (viii) takes any action for the purpose of effecting any of the foregoing.

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

## 9. Remedies.

- (a) **Repayment Upon Termination.** If this Agreement or any part hereof, terminates prior to the term of the Affordability Period, Borrower shall, within thirty (30) days of written demand for repayment, repay the Loan to OHCS, together with applicable interest, fees, and other charges.
- (b) **Extension of Affordability Period.** OHCS may by written notice extend the Affordability Period described in this Agreement for periods of time matching corresponding periods of time during which OHCS determines the Borrower to be in material noncompliance with any of the terms of this Agreement (including applicable Program Requirements).
- (c) **Deficiencies.** OHCS may, from time to time, identify and direct Borrower to correct deficiencies (including deficiencies by Borrower) in its compliance with this Agreement which it will correct as so directed.
- (d) **Additional Remedies.** If Borrower defaults in the performance or observance of any covenant, agreement or obligation set forth in this Agreement, and if such default remains uncured by Borrower 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 Borrower 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 within any lesser notice period provided by OHCS, OHCS may, in its sole discretion, extend the correction period for up to six (6) months, but only if OHCS determines there is good cause for granting the extension; and provided further, however, in the event of a foreclosure, deed in lieu of foreclosure, or similar event with respect to the Project or the Property, the correction period for the successor for an existing default 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 Borrower

specifically to perform its obligations under this Agreement or enjoin any acts or things that may be unlawful or in violation of the rights of OHCS under this Agreement;

- (2) Obtain the appointment of a receiver to operate the Project in compliance with this Agreement;
  - (3) Require a change in the general partner or managing member of Borrower to OHCS' satisfaction;
  - (4) Require Borrower to cease management of the Project and to engage a management agent acceptable to OHCS;
  - (5) Withhold from Borrower, suspend or terminate, all or part of any undisbursed Loan funding described under this Agreement;
  - (6) Demand repayment of the Loan (together with applicable interest and charges), and such amounts will be immediately due and payable to OHCS following thirty (30) days from such written demand;
  - (7) Declare Borrower, its owners, principals, officers, employees, and agents ineligible to receive further OHCS financial assistance for such period as OHCS determines in its sole discretion;
  - (8) Offset amounts due from repayment of the Loan against other funding awarded or to be awarded to Borrower by OHCS;
  - (9) Have access to, and inspect, examine and make copies of, all of the books and records of Borrower or its agents pertaining to the Project, to inspect the Project at any time, and to inspect the Project upon reasonable notice;
  - (10) Enter onto the Property and correct Events of Default with respect to the Project at Borrower's expense, which expense Borrower will repay to OHCS within ten (10) days of any presentment of charges for same;
  - (11) Require Borrower, its owners, principals, officers, employees, and agents to undertake training, at Borrower's expense, as directed by OHCS; and
  - (12) Take such other action under this Agreement, at law, in equity, or otherwise as may be available to OHCS.
- (e) **Survival of Remedies; Remedies Nonexclusive; Non-Waiver.** The rights and remedies of OHCS provided for in this Agreement will survive the termination of the Affordability Period and of this Agreement. The rights and remedies of OHCS provided for in this Agreement will not be exclusive and are in addition to any other rights and remedies available at law, in equity or otherwise. Inclusion of a remedy as being available upon an Event of Default does not preclude its exercise otherwise, if so permitted under this Agreement without notice of an Event of Default. No failure of or delay by OHCS to enforce any provision of this Agreement will constitute a waiver by OHCS of that or any other provision, nor will any single or partial exercise of any right, power

or privilege under this Agreement preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

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

**11. Survival of Obligations.** Provisions of this Agreement which by their nature are intended to survive termination of this Agreement (including, but not limited to remedies and record-keeping) will survive.

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

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

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

**15. Gender; Number.** Unless the context clearly requires otherwise, as used in this Regulatory Agreement, words of any gender will be construed to include each other gender when appropriate and words of the singular number will be construed to include the plural number, and vice versa, when appropriate.

**16. Effectuation of Purpose.** This Regulatory Agreement and all the terms and provisions hereof will be construed to effectuate the purposes set forth herein and to sustain the validity hereof

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

**18. Governing Law; Venue: Consent to Jurisdiction.** This Agreement will be governed by the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") related to this Agreement will be conducted exclusively within the Circuit Court of Marion County, Oregon (unless Oregon law requires that it be brought and conducted where the real property is located) or, if necessary, the United States District Court for the District of Oregon. In no event will this provision be construed as a waiver by OHCS or the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh

Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. OHCS and the State of Oregon expressly reserve all sovereignty rights. BORROWER, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

**19. Merger Clause.** This Agreement, including the Application, Reservation, and any exhibits, schedules, appendices and attachments hereto (which are by this reference incorporated herein), constitutes the entire agreement between the parties on the subject matter hereof. No modification or amendment of this Agreement will bind either party unless in writing and signed by both parties (and the necessary approvals obtained), and no waiver or consent will be effective unless signed by the party against whom such waiver or consent is asserted. Such waiver or consent, if given, will be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement.

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

**21. Cross Default.** OHCS may treat an Event of Default hereunder as an Event of Default under the Loan Documents. OHCS may treat an Event of Default under any other of the Loan Documents as an Event of Default hereunder.

*[Signature Pages Follow]*



IN WITNESS WHEREOF, OHCS and Borrower have caused this Agreement to be signed by their duly authorized officers as of the first day written above.

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

By: \_\_\_\_\_  
Roberto Franco, Assistant Director  
Affordable Rental Housing Division

STATE OF OREGON            )  
  : ss  
County of Marion            )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of November, 2023 by Roberto Franco, who is the Assistant Director of the Affordable Rental Housing Division, for and on behalf of OHCS.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

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

**BORROWER:**

**Housing Authority of Lincoln County,**  
a public body corporate and politic of the State of Oregon  
Tax ID: 93-6001546

By: \_\_\_\_\_  
Karen Rockwell,  
Chief Executive Officer

STATE OF OREGON            )  
  : ss  
County of                    )

I certify that I know or have satisfactory evidence that Karen Rockwell is the person who appeared before me and acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Chief Executive Officer of **Housing Authority of Lincoln County**, a public body corporate and politic of the State of Oregon, to be the free and voluntary act of such nonprofit public benefit corporation for the uses and purposes mentioned in the instrument.

DATED this \_\_\_\_\_ day of November, 2023.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

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

**EXHIBIT A**  
***[Legal Description]***

Beginning at the Northeast corner of Government Lot 11, in Section 2, Township 7 South, Range 11 West, Willamette Meridian, Lincoln County, Oregon; thence South along the East line of said Lot 11, a distance of 230 feet, more or less, to the Northerly right of way line of U.S. Highway 101; thence Westerly along said right of way line of distance of 550 feet; thence North and parallel to the East line of said Lot 11 a distance of 100 feet; thence at right angles, East a distance of 90 feet; thence North parallel to the East line of said Lot 11, a distance of 160 feet to the North line of said Lot 11; thence East along the North line of said Lot 11, a distance of 460 feet, more or less, to the point of beginning, all being situated in the County of Lincoln, State of Oregon.

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