

After Recording Return to:
Oregon Department of Human Services
Attn: Housing Program

Salem, OR 97301-1266

SPACE ABOVE FOR RECORDER'S USE

**STATE OF OREGON
DEPARTMENT of HUMAN SERVICES**

**ADULT FOSTER HOME/CHILD FOSTER HOME/24-HOUR RESIDENTIAL AGENCY
PROVIDER
GRANT AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS**

This Community Integration Program Grant Agreement and Declaration of Restrictive Covenants (this “**Agreement**”) is made and entered into this ___ day of ___ 2023. the “**Effective Date**”) by and between the _____ (“**Grantee**”) and the State of Oregon, acting by and through its Department of Human Services (“**ODHS**”).

RECITALS

- A.** In response to the announcement of grant awards, “**Announcement**”, Grantee has completed and submitted to ODHS an application (the “**Application**”) for a reservation of Adult Foster Home (“**AFH**”) funds to be used to finance the housing restricted for individuals with Intellectual and Developmental Disabilities (I/DD) as further described below (the “**Qualified Units**”) (collectively, and including related common areas and other improvements, the “**Improvements**”). The Improvements are situated on certain real property owned by Grantee and located in _____ (the “**City**”), _____ County (the “**County**”), Oregon and further described in Exhibit A, attached hereto (the “**Property**”). The Announcement, accepted Application, Property and the Improvements are collectively referred to herein as the “**Project**” and known as “_____.”
- B.** In response to the Application and subject to the terms and conditions hereof, ODHS has approved a conditional grant of AFH funds for the Project in an amount not to exceed _____ **DOLLARS** (\$____,00.00) (the “**Grant**”)
- C.** The parties desire that this Agreement be recorded in the County records at Grantee’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 exhibit(s) are incorporated into this Agreement 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 Agreement.

2. GRANT.

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

2.2. Limitations. Nothing in this Agreement may be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of ODHS.

2.3. Grant Disbursement. ODHS may disburse ___ percent of the Grant amount to Grantee upon execution and recording of this Agreement. The remainder of the total Grant amount will be disbursed to Grantee after completion of the Project, as verified by an inspection performed by ODHS.

2.4. Appropriateness of Charges. Grant funds may only be used for reimbursement of eligible costs for the Project. ODHS may review all receipts and other evidence, as well as require and obtain such other information as it determines appropriate, concerning the eligibility, appropriateness, and amount of activities and Project costs prior to and after disbursing Grant funds to Grantee under this Agreement. ODHS' determination as to the eligibility, appropriateness and amount of such rehabilitation OR construction activities and related costs will be at ODHS' sole discretion.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS OF GRANTEE.

Grantee represents, warrants and covenants that:

3.1. Validity. Grantee is a nonprofit corporation, duly organized, validly 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 Agreement.

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

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

3.4. Single-Asset, Fee-Simple Ownership. Grantee has a fee interest in the Property. Obligations of Grantee hereunder will be construed, jointly and severally, as obligations of any assignee owner and rights and remedies of ODHS with respect to Grantee hereunder will be construed as rights and remedies of ODHS not just with respect to Grantee, but also with respect to any such assignee owner

3.5. Program Requirements. Grantee shall timely satisfy all requirements of this Agreement, including all applicable ODHS administrative rules, all applicable ODHS handbooks and manuals, all related ODHS directives and other orders (including, but not limited to corrective action notices), 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 ODHS.

3.6. Completion Date. Grantee will complete the Project no later than **February 28, 2025** in accordance with the Program Requirements, including but not limited to the plans and specifications for the Project approved by ODHS or modifications to those plans and specifications, which modifications must be approved by ODHS, and in accordance with the terms and conditions of this Agreement.

3.7. Responsibility. Grantee assumes full responsibility for timely and appropriate completion of the Project, for ownership of the Project, for its operation in accordance with the Program Requirements, and acknowledges that ODHS has no direct or contractual responsibility for the Project, for ownership of the Project, or for its operation.

4. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF GRANTEE.

Grantee also represents, warrants, and covenants that:

4.1. Appropriate Costs. Grantee shall use the Grant funds only for reimbursement of its actual and appropriate costs of eligible costs related to the Project with respect to the Qualified Units in the Project and such eligible common areas and other aspects of the Project, consistent with the Program Requirements.

4.2. Fair Housing and Other Civil Rights Compliance. Grantee shall:

- (a) comply with all applicable state and federal nondiscrimination laws;
- (b) act affirmatively (including the use of appropriate outreach) to ensure those who may be, or are at risk of being, underserved with ODHS resources are provided appropriate accessibility;
- (c) comply with Equal Opportunity Employment standards in hiring and retaining personnel; and
- (d) satisfy any targeted population or services standards in the Program Requirements.

4.3. M/W/ESB Utilization. Grantee shall use best efforts to comply with established Oregon Housing and Community Services Department (OH&CS) policies regarding utilization of M/W/ESB firms. OH&CS' policies regarding M/W/ESB inclusion can be located on OH&CS' website. ODHS, at its discretion, and in a format it may see fit or is agreed upon, will require Grantee to report on its utilization of M/W/ESB firms during rehabilitation and lease up of the Project.

4.4. Habitability; Other Compliance. For a period of ___ years from ___, (the “**Habitability Period**”), Grantee will continuously rent or hold vacant for rent the following Qualified Units to households who meet the requirements of a Dwelling Unit and this section 4.4. Throughout the Habitability Period, Grantee will maintain the Project in a safe, sanitary, and habitable condition satisfactory to ODHS and in accordance with the Program Requirements, including applicable zoning and code requirements. To that end, Grantee hereby represents, covenants, warrants, and agrees as follows:

(a) **Dwelling Unit Characteristics.** Each unit in the Project must contain complete and separate facilities for living, sleeping, eating, cooking, and sanitation for a single person or a family (each, for purposes of this Section, a “**Dwelling Unit**”);

(b) **Project Characteristics.** Grantee must have a provider that is licensed or certified by ODDS and individuals with Intellectual and Developmental Disabilities must reside in the Dwelling Unit.

4.5. Records; Certifications; Monitoring; Corrective Action.

(a) **Financial and Performance Reports.** Grantee will maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Grantee will maintain records satisfactory to ODHS documenting compliance with Program Requirements. Grantee will retain and keep accessible all such records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years, or such longer period thereafter, as may be required by ODHS.

(b) **Annual Certification; Additional Information.** Grantee will provide an annual certification, in a format and on a schedule approved by ODHS in its sole discretion, that Grantee is fulfilling its obligations under this Agreement. ODHS may, from time to time, require additional information or reporting from Grantee.

(c) **Monitoring.** Grantee acknowledges and agrees that ODHS, the Oregon Secretary of State's Office, and the federal government, and their duly authorized representatives will have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of Grantee that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits, and make excerpts and transcripts, and take copies. Furthermore,

Grantee acknowledges and agrees that ODHS may inspect the Project, and any part thereof, upon reasonable notice to Grantee and tenants. Grantee, its agents, employees, and subcontractors will cooperate fully with ODHS in any requested inspection of the Project, its records, or other compliance monitoring.

(d) Reserved.

(e) Corrective Action. As a consequence of its monitoring or otherwise, ODHS may identify deficiencies in Grantee's compliance with the Program Requirements. ODHS may require action by Grantee (satisfactory to ODHS) to correct such deficiencies. Grantee must correct such deficiencies within thirty (30) days of notice by ODHS of such deficiencies unless earlier correction is required by ODHS to address material health or safety needs of Project tenants. The reasonableness of such corrective actions is subject to ODHS in its sole discretion.

5. INSURANCE.

Grantee also represents, warrants, and covenants that:

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

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

5.3. Casualty/Loss Restoration. After the occurrence of any casualty to the Property or Improvements, Grantee will give prompt written notice of the casualty to ODHS, specifically describing the nature and cause of such casualty and the extent of the damage or destruction to the Property. In the event of any casualty to any Improvement, Grantee will immediately take such action as is necessary to make the site safe and legal, including, if necessary, demolition of the improvement, removal of debris, and/or grading the site. Grantee, subject to the rights of an approved senior mortgage lender, if any, assigns to ODHS all insurance proceeds that Grantee may be entitled to receive with respect to any casualty. In the event that Grantee desires to rebuild or restore the Property, insurance proceeds will be placed in escrow, with escrow instructions to release funds for invoices related to such reconstruction. ODHS will have the right to review and approve of reconstruction plans, and may require the conditional release of

liens as condition of escrow payments. No proceeds will be released if Grantee is in default under this Agreement or under the obligations secured by this Agreement. If Grantee (i) does not elect to restore the property, or (ii) is in default under this Agreement or the obligations secured by this Agreement, ODHS may apply the insurance proceeds to satisfy the obligations, subject to the rights of an approved senior mortgage lender, if any.

6. FURTHER ASSURANCES.

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

6.2. Reliance. ODHS may rely upon statements, certificates, and other records of Grantee and its agents and assigns, as well as of occupants of Qualified Units, including as to accuracy, genuine nature, and proper execution of such statements, certificates, and other records.

6.3. Consultation with Counsel. ODHS 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 ODHS in good faith and in conformity with the opinion of such counsel with respect to this Agreement or the Project.

6.4. Agent Compliance. Grantee will comply, and will cause its agents, employees, contractors, subgrantees and assigns, if any, to comply with the terms and conditions of this Agreement, including the Program Requirements, and for any contractors to be registered with the Construction Contractors Board, licensed, bonded and insured, as applicable.

6.5. Prevailing Wage Compliance. Grantee will comply with all applicable requirements arising under any state or federal prevailing wage law with respect to the Project.

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

7.1. Sale, Transfer, or Other Disposition of an Interest in the Grant, Grantee, or Project.

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

(i) reasonable evidence satisfactory to ODHS that Grantee is not then in default hereunder beyond any applicable grace period or cure period;

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

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

(iv) any other conditions that may be imposed by ODHS, in its complete discretion, to assure, among other things, compliance with federal or state law or the Program Requirements, and also including but not limited to the Grantee providing ODHS with current financial information with respect to the Transferee and a full management agent packet for any existing or proposed management agent (“**Management Agent**”).

(b) Transfer of Any Interest in Grantee. If Grantee Transfers or otherwise disposes of any interest in Grantee without obtaining the prior written consent of ODHS, ODHS may declare an Event of Default (as defined below) and exercise the remedies provided for in this Agreement or otherwise available at law.

7.2. Unapproved Transfers Are Void. Any Transfer of the Project, Grantee in violation of this Agreement will be ineffective to relieve Grantee or the Project of any continuing obligations under this Agreement. ODHS’ consent hereunder will not be deemed continuing and the Grantee and each transferee will continue to be bound by this Agreement unless ODHS has consented in writing to the transfer of the Project or Grantee.

8. FORECLOSURE.

Except with respect to government lenders, in the event the primary construction or primary permanent lender, its successors or assigns, lawfully acquire title to the Project through foreclosure or deed in lieu of foreclosure, neither the lender nor any subsequent purchaser of the Project following such a foreclosure or deed in lieu of foreclosure will be deemed a “successor or assign” of Grantee, and neither the lender nor such subsequent purchaser will have any obligation to repay the Grant to ODHS and all conditions and restrictions contained herein will terminate on the date, if any, that the Project is so acquired by foreclosure or deed in lieu of foreclosure provided, however, that (1) the preceding provisions of this sentence will cease to apply and the restrictive covenants and equitable servitudes contained in this Agreement will be reinstated if, at any time during the Habitability Period subsequent to the early termination of this Agreement as the result of an event under this section, any person or entity that was an obligor under this Agreement prior to such early termination event, including Grantee, or any related person (within the meaning of IRC Section 42) obtains an ownership interest in the Project, and (2) for three (3) years after the acquisition of title to the Project by the construction or permanent lender any Qualified Tenants in the Project may not be evicted except for cause and rents charged to such Qualified Tenants may not exceed the rent limits established in this Agreement.

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

9.1. Inducement. Grantee represents, covenants and warrants that the issuance to it of the Grant described herein by ODHS is an inducement to Grantee to complete the Project and to operate the Project in accordance with this Agreement. In consideration of the issuance of the Grant, Grantee has entered into this Agreement and has agreed to restrict the operation of and uses to which the Project can be put on the terms and conditions set forth herein. Therefore, Grantee covenants, agrees and acknowledges that ODHS has relied on this Agreement in determining to issue the Grant.

9.2. Covenants; Equitable Servitudes.

(a) ODHS and Grantee hereby declare their express intent that throughout the Habitability Period the covenants, restrictions, charges and easements set forth herein 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 ODHS' and Grantee's successors in title including any purchaser, grantee or lessee of any portion of the Project and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee or lessee of any portion of the Project and any other person or entity having any right, title or interest therein.

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

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

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

9.3. Burden and Benefit.

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

(b) Grantee 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 tenants, intended beneficiaries (in addition to ODHS) of such covenants, reservations and restrictions, and by furthering the public purposes for which the Grant was issued.

9.4. Right of Modification. ODHS 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 Grantee or subsequent Project owners, as it so determines to be to the benefit of ODHS, the Project, the Program Requirements, or ODHS 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 ODHS representative.

9.5. No Third-Party Right of Action. Tenants and other third-party beneficiaries under this Agreement (including incorporated documents), if any, have no right of action to enforce the restrictive

covenants or equitable servitudes created hereunder. ODHS retains the exclusive right to enforce such covenants and servitudes. Tenants and other third-party beneficiaries under this Agreement (including incorporated documents), if any, have no claim, cause of action or other right of recourse against ODHS with respect to any action or lack of action taken by ODHS 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.

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

10. GENERAL PROVISIONS.

10.1. Compliance with Applicable Laws and Requirements.

(a) Compliance. Grantee shall comply, and shall ensure that the Project complies, with the Program Requirements, including but not limited to all federal, state and local laws, regulations, codes, ordinances, and orders applicable to the Project. Grant funds may only be used for the purposes allowed in the American Rescue Plan Act of 2021 (ARPA) (Pub. L. 117-2), Section 9817.

(b) Contracts; Subcontracts. Grantee shall 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. Grantee will remain fully obligated under the provisions of the Agreement notwithstanding its designation of any third-party or parties for the undertaking of all or any part of the Project with respect to which Grant funding is being provided by ODHS or Plan compliance is being required by ODHS.

(d) Reserved.

(e) Inspections. Grantee will permit ODHS to inspect housing units and common areas within the Project assisted by funding under this Agreement, including all Qualified Units, at reasonable times and under reasonable conditions, and in conformance with the Program Requirements.

10.2. Indemnity. Grantee assumes sole liability for breach of the conditions of the Grant or the Program Requirements (including all terms and conditions of this Agreement) by Grantee or any of its officers, agents, employees, and assigns. Grantee will save, hold harmless, indemnify and (subject to ORS chapter 180) defend the State of Oregon, ODHS and their officers, agents, employees, members and assigns, from all suits, actions, claims, losses or damages of whatsoever nature, kind or description related to the Grant, the Project, this Agreement or the Program Requirements, or resulting from or arising out of the acts, omissions, neglect or misconduct of Grantee or its subcontractors, agents, or employees under this Agreement or related to the Grant, Project, or the Program Requirements, to the extent permitted by law.

10.3. Time of the Essence. Time is of the essence in the performance by Grantee of the terms of this

Agreement.

10.4. No Discrimination; Marketing. Except as permitted by law, Grantee will not inappropriately discriminate in the provision of housing on the basis of race, creed, color, sex, national origin, religion, marital status, sexual orientation, family status, age, disability or the receipt of public assistance. Grantee will use its reasonable efforts to advertise and market the Project dwelling units, particularly the Qualified Units, within the County and, if applicable, City in which the Project is located.

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

ODHS: Oregon Department of Human Services
Attn: _____

Salem, Oregon 97301

Grantee:

_____, OR _____
Attention: _____
Telephone: _____
E-mail: _____

With a copy to:

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.

10.6. No Third-Party Beneficiaries. Unless and only to the degree expressly provided otherwise in this Agreement, ODHS and Grantee 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.

10.7. Grantee Status.

(a) Independent Contractor. Grantee shall perform all obligations under this Agreement and will timely satisfy the Program Requirements as an independent contractor. Grantee 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) Grantee Responsible for Insurance Coverage. Grantee agrees that insurance coverage, whether purchased or by self-insurance, for Grantee's agents, employees, officers and/or subcontractors is the sole responsibility of Grantee.

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

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

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

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

(iii) Is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in subsection (d)(ii) of this Section;

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

(v) Is included on the list titled "**Specially Designated Nationals and Blocked Persons**" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at:

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

10.8. Termination. ODHS 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 Grantee, under any of the following conditions:

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

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

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

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

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

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

(g) If Grantee (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.

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

10.9. Remedies.

(a) Repayment. If this Agreement or any part hereof, terminates prior to the term of the Habitability Period, Grantee will, within thirty (30) days of written demand for repayment, repay to ODHS all Grant funds disbursed to it under this Agreement, together with any earnings on such funds, minus the amount each month the home is used for individuals with I/DD using the entire funded amount divided by 120 months. For example: $\$150,000/120=\$1,250/\text{month}$, and if the home is used for only 5 years, then, the Grantee owes ODHS at least \$75,000.

(b) Deficiencies. ODHS may, from time to time, identify and direct Grantee to correct deficiencies in its compliance with this Agreement (including the Program Requirements), which it shall correct as so directed.

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

(d) Extension of Habitability Period. ODHS may by written notice extend the Habitability Period described in this Agreement for periods of time matching corresponding periods of time during which

ODHS determines the Grantee to be in material noncompliance with any of the terms of this Agreement (including the Program Requirements).

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

- i.** By mandamus or other suit, action or proceeding at law or in equity, require Grantee 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 ODHS under this Agreement;
- ii.** Obtain the appointment of a receiver to operate the Project in compliance with this Agreement;
- iii.** Require a change in the general partner or managing member of the Grantee to its satisfaction (and, for the duration, respectively, of Investor’s involvement in the Grantee or the senior mortgage lender’s loan, reasonably satisfactory to Investor and senior mortgage lender);
- iv.** Require termination of the Management Agent and its replacement to ODHS’ satisfaction;
- v.** Require the Grantee to cease management of the Project and to engage a Management Agent acceptable to ODHS;
- vi.** Withhold from Grantee, 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 ODHS to Grantee with respect to the Project;
- vii.** Declare Grantee, its owners, principals, employees, and agents ineligible to receive further Program funds or other ODHS financial assistance, including with respect to other projects or requests for same, for such period as ODHS determines in its sole discretion;

viii. Offset amounts due from repayment of the Grant against other funding awarded or to be awarded to Grantee;

ix. Have access to, and inspect, examine and make copies of, all of the books and records of Grantee pertaining to the Project and to inspect the Project itself;

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

xi. Take such other action under this Agreement, at law, in equity, or otherwise as may be available to ODHS.

(f) Survival of Remedies; Remedies Not Exclusive; Non-Waiver. The rights and remedies of ODHS provided for in this Agreement, which by their nature are intended to survive termination of this Agreement, will survive the termination of the Habitability Period and of this Agreement. Furthermore, such remedies will not be exclusive and are in addition to any other rights and remedies available at law, in equity or otherwise. No failure of or delay by ODHS to enforce any provision of this Agreement will constitute a waiver by ODHS 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.

10.10. 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.

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

10.12. Attorney Fees. Subject to Article XI, Section 7, of the Oregon Constitution, in the event a lawsuit or other proceeding is instituted regarding this Agreement, the prevailing party in any dispute arising under this Agreement will, to the extent permitted by law, be entitled to recover from the other(s) its reasonable attorney fees and all costs and disbursements incurred at trial, in mediation, and on appeal. Reasonable attorney fees will not exceed the rate charged to ODHS 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.

10.13. 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.

10.14. 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.

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

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

10.17. Merger Clause. This Agreement 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.

10.18. No Limitations on Actions of ODHS 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 ODHS in the exercise of its governmental powers. It is the express intention of the parties hereto that ODHS will retain the full right and ability to exercise its governmental powers with respect to Grantee, the Project, this Agreement, and the transactions contemplated by this Agreement and the 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 ODHS have any liability in contract arising under this Agreement, the Application, the Program Requirements, or otherwise by virtue of any exercise of its governmental powers.

(Signature Pages Follow)

IN WITNESS WHEREOF, ODHS and Grantee have caused this Agreement to be signed by their duly authorized officers on the Effective Date.

ODHS: **STATE OF OREGON, acting by and through its DEPARTMENT of HUMAN SERVICES**

By: _____

STATE OF OREGON)
 : ss
COUNTY OF MARION)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023 by _____, who is the _____ for the _____ Division, for and on behalf of ODHS.

Notary Public for the State of Oregon
My Commission Expires: _____

GRANTEE:

_____,
an Oregon nonprofit corporation,
Tax ID: [INSERT]

By: _____
, Executive Director

STATE OF _____)
: ss
County of _____)

The foregoing instrument was acknowledged before me this __ day of _____, 2023 by _____, _____, an Oregon nonprofit corporation, who executed the foregoing instrument for and on behalf of Grantee.

NOTARY PUBLIC FOR _____
My Commission Expires: _____

EXHIBIT A
Legal Description

[insert legal description]