

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS
Sitting/Acting as the
Board of Commissioners of the Housing Authority of the County of Clackamas

Study Session Worksheet

Presentation Date: July 10, 2012 **Approx Start Time:** 10:30am **Approx Length:** 1 Hour

Presentation Title: Easton Ridge Refinance & Renovation – moving from predevelopment to financial closing and construction

Department: Housing Authority (HACC)

Presenters: Cindy Becker, H3S; Trell Anderson, HACC; Karen Stegemiller, Carleton Hart Architecture; Bob Powers, Sound Community Ventures; Brian Sweeney and Robin Boyce, Housing Development Center.

Other Invitees: Andrea Sanchez, HACC; Mary Bradshaw, HACC; Daniel Williams, PNC Bank; Ron Lehr, Wedbush; Dan Snow and Bhavna Kumar, Walsh Construction.

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

The purpose of this Study Session is to:

1. Update the HACC Board on the progress to date of the refinance and renovation of Easton Ridge Apartments; and
2. Seek approval to move from the predevelopment phase to financial closing and construction.

Topic areas for the Study Session are:

- Renovation Scope of Work
- Project Financing
- Low Income Housing Tax Credit Overview & Ownership Structure

EXECUTIVE SUMMARY:

Background

On September 20, 2011, in Executive and Study Session, staff presented to the HACC Commissioners a briefing on the physical conditions at Easton Ridge Apartments and potential financing strategies. Subsequently, on October 20, 2011, HACC Commissioners approved Resolution No. 1886 authorizing the Housing Authority to proceed with due diligence, engaging architect and construction management/ general contractor to more fully develop a Capital Improvement Plan.

The recommended financing strategy, as discussed in Executive Session on September 20, 2011, combines the issuance of tax-exempt bonds with County backing in the form of a Contingent Loan Agreement and Federal Low Income Housing Tax Credits. Resolution No. 1886 (approved on October 20, 2011) also authorized the Housing Authority to make applications for private-activity bond cap allocation and low income housing tax credits.

Last updated: January 2012

Property Description

Easton Ridge is located at SE 90th Avenue and SE Causey Avenue approximately one-quarter mile north of Clackamas Town Center. The property is within a short walk of the region's transportation system including the Clackamas Town Center Max Station. The close proximity to the Town Center area also provides ready access for residents to a wide range of goods and services, as well as education and employment opportunities.

Easton Ridge was constructed in 1989 by Bowen Hunt Development, and purchased by the Housing Authority of Clackamas County in 1996. The property is sited on 8.8 acres and consists of 264 units in 11 three-story buildings and a single-story community building with an on-site property management office. The buildings are wood-frame construction with wood lap siding built on concrete slab foundation.

Unit Types	No.	Unit Size
1 BD/1 BA	159	717
2 BD/2 BA	48	1,010
2 BD/1 BA	57	1,010
Unit Total/Average	264	834

Proposed Renovations

The building siding has begun to show visible signs of envelope failure due to poor site drainage and moisture penetration at the exterior envelope. Initial due diligence determined a project scope of work which includes:

- (1) replacing and upgrading the residential building envelope,
- (2) improving interior ventilation, and
- (3) addressing poor site drainage.

Scope of Work

- The building envelope will be replaced completely, with new hardi-board siding, new windows and exterior doors.
- Rain screen venting will be installed behind the siding to improve ventilation.
- Any water damaged stairwell or deck areas will be repaired or replaced.
- Interior ventilation will be upgraded by replacing bath fans with continuous-running fans, replacing recirculating range hoods with exterior-vented fans, and installing venting in the laundry areas to prevent moisture buildup.
- The scope will include excavation of areas where dirt had previously been pushed against the buildings, regrading of parts of the site to improve drainage and repair of any damage or clogged storm drains.
- The scope of work will include making the property ADA compliant, with six newly designated units receiving upgrades as well as accessible routes at site amenities.

- Other exterior work includes landscaping and courtyard improvements, new site lighting, demolition of existing garages and carports, and resurfacing the parking lot areas.

The project operates at full capacity and renovations will be undertaken with tenants in place. The only relocation anticipated is to vacate the six ADA units that require more extensive interior work.

Additionally, Walsh Construction Company as the General Contractor is committed to ensure maximum participation of Target Business firms: Minority/Women/Emerging Small Businesses, local Clackams-based companies, and hiring a minimum of 10 low income individuals and/or residents of Housing Authority properties. With years of experience, Walsh will facilitate a competitive bid process for sub work that emphasises these desired outcomes.

Future Capital Improvements

The priority for the Easton Ridge renovation effort is the exterior improvements. The interior finishes are original but in good condition. Carpets, other flooring, and appliances are replaced as needed at turnover. The property continues to enjoy high occupancy and HACC proposes to undertake a major upgrade of the interiors (replacing kitchen and bathroom cabinets and fixtures) over a 12 year period following the initial rehabilitation. Sufficient funds will be available from capitalized reserves and annual deposits to the replacement reserve. The project budget includes an initial deposit of \$500,000 to the Replacement Reserve, followed by annual deposits of \$450 per unit per year. During the first 10 years, a supplemental deposit of \$50,000 annually will also be made to the replacement reserve. Interior upgrades will also be prioritized for inclusion in the scope of work if there is unused construction contingency.

Low Income Housing Tax Credits

The financing plan involves using tax-exempt bonds and Low Income Housing Tax Credits (LIHTC) to generate sufficient funds for renovations. The property is currently income-restricted to households earning 80% area median income (AMI) and below. Use of LIHTC will further restrict 80% (211) of the units to households earning 60% of area median income (\$43,200 a year for a family of four) or below. The balance of the units, 20%, would remain restricted to households earning 80% of area median income (\$57,600 a year for a family of four) or below. It is anticipated that this can be accomplished without permanently relocating any current residents.

With the introduction of Low Income Housing Tax Credits, the ownership structure will change. HACC will sell the tax credits to raise equity capital for the project. The credit purchaser must be part of the property ownership entity; which will be accomplished by creating a limited liability company (LLC)(in which the credit purchaser has a 99%+ ownership interest). HACC will serve as the managing member and be responsible for managing the project and the partnership, while the non-managing member(s) will be limited to a passive investment role.

Through a competitive process, PNC Bank was selected as the non-managing member investor, and will provide \$7.1 million in equity in exchange for the tax credits. As part

of the financing structure, PNC will also purchase short-term tax-exempt bonds in an amount of \$4,750,000. These bonds will not require coverage of the County's Contingent Loan Agreement and will be repaid from an equity installment at project stabilization following construction.

Tax-Exempt Bond Financing

HACC, as a public housing authority, is authorized to issue tax-exempt bonds. On June 21, 2012 the HACC Board approved Resolution No. 1889 authorizing HACC's intent to issue bonds. HACC submitted its application on June 28, 2012 for bond authority from the State of Oregon to issue private activity bonds in the amount of approximately \$24,000,000 in short and long-term bonds. The private activity bonds qualify the project for low-income housing tax credits.

Bond Type	Amount
Long-Term Bonds	\$16,210,000
<u>Short-Term Bonds</u>	<u>\$4,750,000</u>
Total Bonds	\$20,960,000

HACC anticipates a public sale of the long-term bonds to yield the best interest rate pricing. The proposed financing assumes that Clackamas County will provide a Contingent Loan Agreement for the Housing Authority as part of the issuance. While not a direct guarantee by the County, it provides a strong credit enhancement in the bond market. The project underwriting will provide a minimum debt coverage ratio of 1.20, a debt service reserve equal to 12 months of debt service (\$892,000), and a project operating reserve of \$445,000. Currently, we estimate a long-term bond in the amount \$16,210,000 with an interest rate of 4.25%. The loan will be amortized over 35 years.

FINANCIAL IMPLICATIONS (current year and ongoing):

To date, HACC has used Local Project Reserves to pay for predevelopment expenses. It is expected that predevelopment expenses will be reimbursed through the project's sources of funds.

In order to refinance the property, HACC is utilizing two primary sources of funding:

1. HACC, as a public housing authority, is authorized to issue tax-exempt bonds. HACC is applying for bond authority from the State of Oregon to issue private activity bonds (not to exceed \$24,000,000).
2. HACC is applying for (non-competitive) 4% Low Income Housing Tax Credits which will generate an estimated \$7 million in proceeds.

The project underwriting will provide a minimum debt coverage ratio of 1.20, a debt service reserve equal to 12 months of debt service (\$892,000), and a project operating reserve of \$445,000.

The project is not expected to have an impact on HACC's operating budget and/or the County's budget. The project's operating budget anticipates generating sufficient income from rent collections to cover property operating expenses and make the required debt service payments.

LEGAL/POLICY REQUIREMENTS:

The financing structure requires:

1. Clackamas County to provide a Contingent Loan Agreement (CLA) for the Housing Authority as part of the bond issuance. This enhancement will enable HACC to expand the rehabilitation scope of work.
2. HACC to be in compliance with provisions of the Internal Revenue Code and Treasury Regulations applicable to tax-exempt bonds, and provisions of the Housing Authorities Law applicable to the issuance of Bonds and the making of loans.
3. A new ownership structure, due to the Low Income Housing Tax Credits, in the form of a Limited Liability Corporation (LLC) whereby HACC will serve as the sole managing member.
4. HACC, as the managing member of the LLC, to be in compliance with Section 42 of the IRS Code for the Compliance Period (15 Years).

PUBLIC/GOVERNMENTAL PARTICIPATION:

Tax Exempt Bonds

HACC submitted an application to the State of Oregon's Private Activity Bond Committee (PABC) on June 28, 2012 to issue \$24,000,000 in private activity bonds (not to exceed amount). HACC will present the Easton Ridge project to the PABC on July 17, 2012. The allocation of private activity bonds will qualify the project for low-income housing tax credits.

For purposes of Treasury Regulations, on June 21, 2012 the HACC Board approved Resolution No. 1889 to constitute a "declaration of official intent" to reimburse expenditures for the Easton Ridge Apartments renovations relating to tax-exempt bonds. In accordance with requirements of Section 147(f) of the IRS Code, from the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), HACC held the required public hearing about the intent to issue bonds on July 2, 2012.

The financing structure assumes that Clackamas County will provide a Contingent Loan Agreement (CLA) for the Housing Authority as part of the bond issuance. The CLA provides a strong credit enhancement in the bond market, but it is not a direct guarantee.

Low Income Housing Tax Credits

HACC will submit an application to the State's Office of Housing and Community Services in July for an allocation of non-competitive 4% Low Income Housing Tax Credits. HACC expects to receive a commitment of tax credits in August 2012.

OPTIONS:

1. Do not approve moving forward with the proposed refinance and rehabilitation plan for Easton Ridge Apartments.
2. Approve the proposed refinance and rehabilitation plan with amendments.
3. Approve the proposed refinance and rehabilitation plan for Easton Ridge Apartments with no amendments.

RECOMMENDATION:

Based on the predevelopment work completed to date, HACC staff maintains the recommendation of Option 3 (above) as presented at the September 20, 2012 Study Session. This recommendation was subsequently authorized by the HACC Board in Resolution No. 1886 on October 20, 2011. HACC staff recommends:

1. The rehabilitation of Easton Ridge Apartments according to the proposed scope of work and financing plan.
2. To move from Predevelopment to the Financial Closing and Construction phases for Easton Ridge Apartments through the approval of an Authorizing Resolution delegating authority to the HACC Executive Director, to act on behalf of HACC in its capacity as managing member of the LLC, to authorize, assign and sign in a timely manner all relevant agreements and documents, to make timely monthly construction draw advances to the contractor, and to approve change orders within the resources of the approved final budget. We anticipate this Authorizing Resolution to go before the HACC Board on September 6, 2012.

As next steps, the Board of County Commissioners (not the Housing Authority Board) will be asked to approve two items at a regular business meeting in July:

- the Contingent Loan Agreement, and
- a resolution acknowledging that HACC held the required TEFRA hearing.

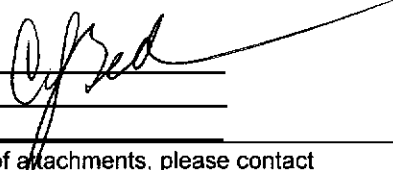
The anticipated result of the above recommendation is the successful refinance and rehabilitation of the Easton Ridge Apartments resulting in the preservation of 264 units affordable to lower income households. Moreover, it will ensure that HACC is providing healthy, safe and secure housing that is located close to transit, jobs and other amenities.

ATTACHMENTS:

- A. Sources and Uses
- B. Project Timeline
- C. Draft – Contingent Loan Agreement
- D. Draft – Resolution regarding TEFRA hearing

SUBMITTED BY:

Division Director/Head Approval _____
Department Director/Head Approval _____
County Administrator Approval _____



For information on this issue or copies of attachments, please contact _____ @ 503-_____

Fiscal Impact Form

RESOURCES:

Is this item in your current work plan and budget?

- YES
- NO

START-UP EXPENSES AND STAFFING (if applicable):

N/A

ONGOING OPERATING EXPENSES/SAVINGS AND STAFFING (if applicable):

N/A

ANTICIPATED RESULTS:

N/A

COSTS & BENEFITS:

N/A

Costs:							
Item	Hours	Start-up Capital	Other Start-up	Annual Operations	Annual Capital	TOTAL	
Total Start-up Costs							
Ongoing Annual Costs							
Benefits/Savings:							
Item	Hours	Start-up Capital	Other Start-up	Annual Operations	Annual Capital	TOTAL	
Total Start-up Benefit/Savings							
Ongoing Annual Benefit/Savings							

Attachment A
Sources and Uses Budget
Refinance and Renovation of Easton Ridge Apartments
Study Session – Housing Authority Board of Commissioners
July 10, 2012

Development Budget	Amount
Uses of Funds	
Acquisition - Payoff of Existing Bond Debt	\$6,977,000
Acquisition – HACC Equity	\$8,913,000
Construction -Hard Costs & Contingency	\$10,122,992
Construction Related Costs (A&E, Permits, Surveys)	\$910,333
Closing Costs (Financing Fees & Construction Interest)	\$1,610,165
Soft Costs (Application Fees, Tax Credit Reservation Fee, Relocation)	\$415,935
Replacement Reserves (Initial Payment toward 10 Year Capital Replacement Plan)	\$500,000
Debt Service & Operating Reserves	\$1,372,075
Development Fees (Consultant Fees, Owner Rep Fee, HACC)	<u>\$4,470,000</u>
Total	\$35,291,500
Sources of Funds	
Tax Exempt Bonds – Long-term debt	\$16,210,000
PNC Equity (LIHTC)	\$7,165,000
HACC Seller Loan	\$8,913,000
HOME Loan	\$0
Rental Income During Construction	\$1,094,500
Deferred Development Fees	<u>\$1,909,000</u>
Total	\$35,291,500
PROJECT GAP	\$0

**Attachment B
Project Timeline – Major Project Milestones
Refinance and Renovation of Easton Ridge Apartments
Study Session - HACC Board of Commissioners
July 10, 2012**

Items in *italics* ending with ** indicate HACC Board of Commissioners approval required.
Items in *italics* ending with ++ indicate Clackamas County Board of Commissioners approval required.

September 2011

- September 20 – Board Executive Study Session

October 2011

- October 3 - Publish Draft Findings of Fact and Open Public Comment Period for HACC's Request for an Exemption and Authorization to Use the Request for Proposals Method to Obtain Construction Management/General Contractor Services
- *October 20 Authorizing Resolution Approval***
- *October 27 (Special Board Meeting) Public Hearing and Adoption of Draft Findings of Fact***
- October 31 – Issue Request for Proposals for Construction Management / General Contractor Services
- Initiate work with legal team to create LIHTC ownership structure.

November 2011

- *November 17 Architecture & Engineering Contract Approval***

December 2011

- December 1 – CM/GC Proposals Due to HACC
- December 22 - Announce CM/GC Award

January 2012

- Project team (Architecture & Engineering team, General Contractor, HACC) commences work

February 2012

- Schematic Design Set Issued

April 2012

- Sound Community Ventures, Inc. issues RFP for Tax Credit Investor

May 2012

- Design Development Set Issued
- May 31 Project Update with HACC Commissioners (2:2:1s)

June 2012

- June 19 Project Update with HACC Commissioners (2:2:1s)
- Design Development Cost Estimate / Approve Scope of Work for Construction Documents
- *June 21 Approval of Inducement Resolution for Tax Exempt Bonds in accordance with the Tax Equity and & Fiscal Responsibility Act of 1982 (TEFRA)***
- June 28 Submit Application to Office of the State Treasurer for Bond Volume Cap

July 2012

- July 2 TEFRA Public Hearing at HACC Office (Public Notice)
- July 10 HACC Board of Commissioners Study Session
- July 17 Presentation to Office of State Treasurer for Bond Volume Cap
- *July 24 Approval by the Board of Clackamas County Board of Commissioners of the Contingent Loan Agreement to "back" tax-exempt bonds++*
- *July 24 Approval of Tax Equity & Fiscal Responsibility Act (TEFRA) Public Hearing Resolution++*
- Construction Document Phase
- Submit Application to the State for 4% LIHTC allocation

August 2012

- Submit for Building Permits (Clackamas County)
- Bidding for Construction Sub-Contractors- Walsh Construction Co.
- Study Session with HACC Board of Commissioners – Final Project Update

September 2012

- *September 6 Final Authorizing Resolution of Project (Authorizing HACC to enter into all agreements and move to financial closing)***
- Execute Construction Contract between Walsh Construction Co. & Easton Ridge, LLC
- September 20 – Estimated Date of Financial Closing

October 2012

- **Start Construction**

CONTINGENT LOAN AGREEMENT

This CONTINGENT LOAN AGREEMENT (this “Agreement”) is entered into by and between CLACKAMAS COUNTY, OREGON, a body politic and corporate of the State of Oregon (the “County”), and THE HOUSING AUTHORITY OF CLACKAMAS COUNTY, OREGON, a public body corporate and politic of the State of Oregon (the “Authority”).

WHEREAS, the Authority, by its Resolution No. [_____] adopted on [_____] 2012 (the “Resolution”), authorized the issuance of the Authority’s Multifamily Housing Revenue Bonds, Series 2012[A/B] (Easton Ridge Apartments Project) (the “Bonds”), in an amount not to exceed \$[_____] for the purpose of providing the funds with which to finance the rehabilitation of a 264-unit multifamily housing complex located in Clackamas County, Oregon, known as the Easton Ridge Apartments (the “Project”) to provide a housing project of the Authority; and

WHEREAS, the County desires to support and assist in preserving affordable housing units within the County and by Ordinance No. [_____] passed on [_____, 2012], approved the form and execution of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties hereto covenant and agree as follows:

ARTICLE I

Related Documents; Definitions

Section 1.01 Related Documents. The Authority has entered or will enter into the Indenture, the Trust Deed, the Loan Agreement and the Regulatory Agreement (each as defined below) relating to the Bonds. The Authority shall not amend the Indenture, the Trust Deed, the Loan Agreement or the Regulatory Agreement without the prior written consent of the County so long as this Agreement is in effect.

Section 1.02 Definitions. Unless the context clearly requires otherwise, the following terms shall have the respective meanings set forth below for purposes of this Agreement.

Additional Bonds means obligations issued pursuant to Section [_____] of the Indenture.

Amounts Available for Contingent Loan Repayment means Net Project Revenues received from the Company under the Loan Agreement, less amounts needed to fund or replenish the Bond Fund and Debt Service Reserve Fund, plus Excess Revenues.

Bond Fund means the fund created by the Trustee pursuant to [Section 3.3] of the Indenture.

Bonds mean the Multifamily Housing Revenue Bonds, Series 2012[A/B] (Easton Ridge Apartments Project), issued by the Authority in an original aggregate principal amount not to exceed \$[] for the purpose of rehabilitating the Project.

Company means [], an Oregon limited liability company of which the Authority is the sole managing member, formed to own and operate the Project.

Contingent Loan Amounts means the funds advanced to the Authority under this Agreement and the interest thereon.

Debt Coverage Ratio means the ratio of Net Project Revenues to Required Debt Service.

Debt Service Reserve Fund means the Fund created by the Trustee pursuant to [Section 3.4] of the Indenture.

Excess Revenues means all revenues of the Authority from any source (other than Project Revenues), but only to the extent that those revenues are available to pay debt service on the Bonds [and/or Contingent Loan Amounts, as applicable,] and are not otherwise obligated by law, regulation, contract, covenant, trust deed or otherwise (including restrictions relating to funds made available to the Authority under the U.S. Housing Act of 1937), to another particular purpose.

Fiscal Year means the fiscal year of the Company, initially the 12-month period ending on December 31 of each year.

Indenture means the Trust Indenture relating to the Bonds dated [], 2012], between the Authority and the Trustee, as it may be amended or supplemented from time to time in accordance with its terms and the terms of this Agreement.

Loan Agreement means the Loan Agreement relating to the Bonds dated [], 2012], between the Authority and the Company.

Management Plan means the Company's plan for stabilizing the Project, including an operating budget. The operating budget may include the managing member's necessary overhead costs and any other information the County may reasonably require.

MSRB means the Municipal Securities Rulemaking Board.

Investment Earnings means all earnings derived from the investment of money held in any of the Funds held by the Trustee under the Indenture.

Net Project Revenues means Project Revenues less Project Operation and Maintenance Costs.

Operating Agreement means the agreement between the Authority as managing member and the investor member(s) that establishes the rights and obligations of the members of the Company with respect to the Project.

Project Operation and Maintenance Costs means all necessary costs for operating and maintaining the Project, including but not limited to administrative and general expenses, costs of insurance (including reasonable contributions for self-insurance reserves, if any), consulting, technical services and repairs and replacements (to the extent not properly classifiable as capital costs) and reasonable replacement reserves therefor, but excluding depreciation (or reserves therefor), Company management fees to the members of the Company (except to the extent authorized in the Management Plan), amortization of intangibles or other bookkeeping entries of a similar nature, debt service on the Bonds or any other obligations of the Authority relating to the Project, and operating reserve contributions.

Project Revenues means all amounts due to or received by the Company or by the Trustee for the account of the Company pursuant or with respect to the Project, including without limitation all lease payments, and all Investment Earnings, but excluding Insurance Proceeds, Condemnation Awards, nonrefundable security deposits and proceeds resulting from the foreclosure of the Trust Deed.

Refunding Bonds means any bonds issued to refund all or a portion of the Bonds.

Regulatory Agreement means the Regulatory Agreement (Easton Ridge Apartments Project) between the Authority and the Company dated [_____, 2012].

Required Debt Service means the amount required to pay all scheduled payments of principal of (including mandatory redemption payment with respect to any Bonds that are term bonds) and interest on the Bonds.

Reserve Requirement means \$[_____].

Trust Deed means the Trust Deed (Including Fixture Filing and Assignment of Rents) (Easton Ridge Apartments Project) under which the [Company] is grantor and the County and the Trustee are beneficiaries, securing, among other things, repayment of any loans made by the County under this Agreement.

Trustee means [_____], or its successor, as trustee under the Indenture.

All other capitalized terms used but not defined in this Agreement shall have the meanings assigned to them in the Indenture.

ARTICLE II

Loans to the Authority

Repayment Terms: Interest Rate: Limitation of Liability

Section 2.01 Loans to the Authority. The County agrees to lend to the Authority the amounts specified in this Agreement on the dates provided in this Agreement.

The total amount of funds to be lent by the County pursuant to this Agreement shall not exceed the principal amount of the Bonds plus interest due and unpaid by the Authority. All funds lent to the Authority pursuant to this Agreement shall be delivered to the Trustee and used to pay debt service on the Bonds or replenish the Debt Service Reserve Fund. No loan funds shall be requested hereunder after the Bonds have been retired or redeemed.

All such loans will be secured by the Trust Deed, as set forth therein, and shall be evidenced by a promissory note from the Authority.

Section 2.02 Notice to County Regarding Project Status.

(1) The Authority shall provide to the County copies of all annual audited financial statements of the Project within 10 days of receipt thereof by the Authority. Such statements shall be prepared at least annually.

(2) If any such annual audited financial statement reveals that the Debt Coverage Ratio for the Project for the Fiscal Year for which such annual financial statements are presented was less than 1.10 to 1, the Authority shall so notify the County.

(3) If any annual audited financial statement reveals that the Debt Coverage Ratio for the Project for the Fiscal Year for which such annual financial statements are presented was less than 1.00 to 1, the Authority shall so notify the County and shall require the Company to submit to the County within 30 days, for its approval, a Management Plan designed to increase the Debt Coverage Ratio to at least 1.10 to 1 within the next [12] months.

(4) If there is a draw on the Debt Service Reserve Fund, the Authority shall so notify the County and shall require the Company to submit to the County, within 30 days, for its approval a Management Plan designed to replenish the Debt Service Reserve Fund to the Reserve Requirement and to provide a Debt Coverage Ratio of 1.10 to 1 within the next [24] months.

(5) Any Management Plan submitted pursuant to Section 2.02 (3) or (4) shall be subject to the following provisions:

(a) At the time the Management Plan is submitted, the Authority shall also notify the County of the amounts, if any, that it projects it will request to borrow under this Agreement in the next year, based on information provided by the Company. If the Authority projects that it will request a loan under this Agreement, the Management Plan shall also include a repayment schedule for Contingent Loan Amounts.

(b) The County may require the Company to raise Project rents to levels necessary to replenish the Debt Service Reserve Fund to the Reserve Requirement and/or to provide a minimum Debt Coverage Ratio of 1.10 to 1, so long as those rent levels do not exceed the levels permitted in Section 42 of the Internal Revenue Code (1986), as amended, or any restrictive covenants by which the Project is bound.

(c) The County may, but is not required to, appoint a Project manager (which may be the County) as part of the Management Plan.

Section 2.03 Timing and Procedures for Loan Requests.

(1) Under the Indenture, the Trustee is required, within two Business Days of any withdrawals from the Debt Service Reserve Fund, to give written notice to the Authority and the County of such withdrawal, which notice shall state the amount of such withdrawal.

(2) Under the Indenture, on or before [_____] of each year in which a withdrawal from the Debt Service Reserve Fund has been made, the Trustee is required to give written notice to the County and the Authority of the amount, if any, required to restore the Debt Service Reserve Fund to the Reserve Requirement or, if larger, the amount, together with other funds held by the Trustee under the Indenture for that purpose, required to pay principal of and interest on the Bonds on the following [_____]. The Authority shall at that time make a request for a loan in a form substantially similar to the attached Attachment A, using information provided by the Company where applicable.

(3) All loans hereunder shall be evidenced by a promissory note given by the Authority to the County at the time the first loan is made.

(4) If the County receives notice from the Trustee pursuant to Section 2.03(2), the County Treasurer shall present to the Board of Commissioners of the County, a request to appropriate funds to make a loan to the Authority in the amount specified by the Trustee in such notice.

(5) If the County staff and the Company have agreed upon a form of Management Plan and loan repayment plan, such Management Plan and loan repayment plan shall be presented to the Board of Commissioners of the County along with the County Treasurer's request for appropriation. If the County staff and the Company are unable to reach agreement on a Management Plan and a loan repayment plan, County staff will present a proposed plan to Board of Commissioners of the County along with the County Treasurer's request for appropriation, and the Company may also present a proposed plan to the Board of Commissioners of the County at that time. If it appropriates funds pursuant to the request, the Board of Commissioners of the County shall also approve a Management Plan and loan repayment plan.

(6) The Board of Commissioners of the County shall have no legal obligation to appropriate funds as requested hereunder; however, once funds have been appropriated, the County shall be obligated to transfer that amount to the Trustee to replenish the Debt Service Reserve Fund if requested as provided in subsection (8) below.

(7) If the Board of Commissioners of the County does not appropriate or otherwise make funds available to make a loan as requested by the Authority, the obligation of the County to make the loan shall terminate for that fiscal period, and such termination shall not constitute an event of default hereunder. The County shall give to the Authority and the Trustee written notice of such nonavailability of funds as soon as reasonably practicable, but in no event more than 15 days after the Board of Commissioners of the County fails to appropriate the funds.

(8) If funds have been appropriated by the Board of Commissioners of the County, as provided in Section 2.03(4)-(5), the County shall deliver to the Trustee the amount requested on or before the Business Day coincident with or immediately following such [____], and shall deliver to the Trustee, no later than the last Business Day of the following [____], the balance of the amount specified in the notice from the Trustee given pursuant to Section 2.03(2) (to the extent not previously replenished by the Authority or the Company from the sources identified in the Indenture). Pursuant to the Indenture, the Trustee shall notify the County in writing of the amount, if any, required to be delivered to the Trustee by the County on the last Business Day of each [____] and [____]. It is understood that the County may make funds available to the Authority as payment is required under the Indenture as described herein.

Section 2.04 Repayment Terms.

(1) The Authority shall repay the principal of any loan made by the County pursuant to this Agreement, and interest thereon, quarterly, on the first Business Day of each [January, April, July and October], from all Amounts Available for Contingent Loan Repayment unless otherwise provided in the approved Management Plan and loan repayment plan. If no Amounts Available for Contingent Loan Repayment are available to make any quarterly payment, the Authority shall so certify to the County. The Authority shall require in the Operating Agreement and/or Loan Agreement that Project Revenues shall be disbursed in the following order:

- (a) to pay Project Operation and Maintenance Costs;
- (b) to make deposits to the Bond Fund as required by the Indenture and Loan Agreement;
- (c) to make deposits to the Debt Service Reserve Fund sufficient to maintain the Reserve Requirement;
- (d) to repay any loans under this Contingent Loan Agreement;
- [(e) QUERY – Other loans to be repaid?;]
- (f) to pay management fees of the Authority (including unpaid fees);

(g) to fund or replenish any other reserves called for in the Operating Agreement;

(h) to make distributions to the members pursuant to the Operating Agreement.

(2) If, after the Bonds are no longer outstanding, there are outstanding loan amounts owing from the Authority to the County, the County may foreclose the Trust Deed by the most expeditious method chosen by the County, after giving the Authority and the Company 90 days' notice, unless the Company is complying with an approved Management Plan and loan repayment plan.

Section 2.05 Interest Rate. The rate of interest borne by each advance hereunder shall be the rate being earned from time to time on the County's investment pool as determined and certified by the County Treasurer. The County shall give notice to the Authority and the Company of the applicable interest rate 15 days before each quarterly payment is due.

Section 2.06 Obligations to Make Loans Not a Debt of the County. The obligation of the County to make a loan to the Authority under Section 2.01 hereof is subject to appropriation of funds by the County for the fiscal period in which payments are requested pursuant hereto and shall not in any way be construed to be a debt of the County in contravention of any applicable charter, constitutional or statutory limitation or requirements concerning the creating of indebtedness by the County.

ARTICLE III

Authority Covenants and Agreements

Section 3.01 Payments to the County. The Authority shall cause the Company to reimburse the County for all out-of-pocket costs, including attorneys' fees, incurred by the County in negotiating and entering into this Agreement. Although the County would ordinarily charge a credit enhancement fee for the use of its credit, it is waiving that credit enhancement fee for the Project.

Section 3.02 Insurance and Loss.

(1) Before the County makes any loan under this Agreement and until all Contingent Loan Amounts have been repaid, the Authority shall require that the Company add the County as an additional insured to all policies of insurance against loss and/or damage to the Project. The Authority shall cause the Company to provide copies of such policies to the County.

(2) Pursuant to the Indenture, if, after the disposition of any Condemnation Awards or Insurance Proceeds, the Bonds have been redeemed and there are funds remaining in any of the accounts held by the Trustee or by the Company for the Project, those funds shall be applied first to repayment of any outstanding Contingent Loan Amounts.

Section 3.03 Other Covenants.

(1) The Authority will comply with all regulatory, partnership, operating and other agreements relating to the Project or the Bonds. It will refrain from any action that will result in rendering the Bonds taxable.

(2) The Project will not be sold or transferred during the term of the Agreement, except with the written consent of the County and an opinion of bond counsel that such transfer would not, in and of itself, cause interest on the Bonds to be included in gross income of the owner thereof for federal income tax purposes. The County's consent will not be unreasonably withheld. The County hereby consents to transfer or sale of the Project to the Authority.

(3) The Authority will notify the County of any proposed changes to the Operating Agreement. The Authority shall not make any changes to the Operating Agreement that would affect this Agreement without the approval of the County. Such approval shall not be unreasonably withheld.

ARTICLE IV

County Covenants

Section 4.01 The County covenants that it will take no action that will affect the tax-exempt status of the Bonds or, except as expressly provided herein, limit the Authority's ability to carry out its obligations to the Company under the Operating Agreement.

Section 4.02 Compliance with Continuing Disclosure Requirements. To meet the conditions of paragraph (d)(2) of United States Securities and Exchange Commission Rule 15c2-12 (the "Rule"), as applicable to a participating underwriter for the Bonds, the County shall undertake for the benefit of holders of the Bonds to provide, or cause to be provided, to the MSRB, Annual Reports and notices of County Listed Events, as described below:

(1) Annual Reports. Each Annual Report shall contain annual financial statements for the County, which statements:

(a) Shall be prepared in accordance with applicable generally accepted accounting principles promulgated by the Government Accounting Standards Board ("GASB"), as such principles may be changed from time to time by GASB or its successor;

(b) Need not be audited, except, however, that if and when audited financial statements are otherwise prepared and available to the County they will be provided;

(c) Shall be provided to the Trustee, not later than the last day of the ninth month after the end of each fiscal year of the County (currently, a fiscal year ending June 30), as such fiscal year may be changed as required or permitted by Oregon law;

(d) May be provided in a single or multiple documents, and may be incorporated by reference to other documents that have been filed with each NRMSIR and the SID, or, if the document incorporated by reference is a "final official statement" with respect to other obligations of the County, that has been filed with the MSRB; and

(e) Shall be presented in an electronic format as prescribed by the MSRB and accompanied by identifying information as prescribed by the MSRB.

(2) Reporting of Listed Events. The County shall give, or cause to be given, notice of the occurrence of any of the following events (each, a "County Listed Event") with respect to the Bonds to the MSRB in an electronic format as prescribed by the MSRB, in a timely manner but not in excess of 10 Business Days after the occurrence of the Listed Event, with a copy to the Authority and the Company:

1. Modifications to rights of holders, if material;
2. Rating changes;
3. Bankruptcy, insolvency, receivership, or similar event of the County; and
4. Consummation of a merger, consolidation, or acquisition involving the County or the sale of all or substantially all of the assets of the County (other than in the ordinary course of business), the entry into a definitive agreement to undertake such action or the termination of a definitive agreement relating to any such actions, other than pursuant to the terms of such agreement, if material.

(3) Termination of County's Continuing Disclosure Obligations. The County's obligations under this undertaking shall terminate upon the payment or legal defeasance of all of the Bonds. In addition, the County's obligations under this undertaking shall terminate if those provisions of the Rule which require the County to comply with this undertaking become legally inapplicable in respect of the Bonds for any reason, as confirmed by an opinion of nationally recognized bond counsel or other counsel familiar with federal securities laws delivered to the County and the Authority, and the Authority provides timely notice of such termination to the MSRB.

ARTICLE V

Rights and Remedies

Section 5.01 Events of Default. The Authority shall be in default under this Agreement if (1) it fails to make when due any payment on outstanding loan amounts when Amounts Available for Contingent Loan Repayments are available to make such payment, or (2) it is in default on any regulatory, partnership, operating or other agreement related to the Bonds,

including the Indenture, and such default has been declared pursuant to the terms of such instrument.

However, if by reason of acts of God, strikes, lockouts, acts of public enemies, insurrections, riots, epidemics, civil disturbances, or any other similar cause or event not reasonably within the control of the Authority, the Authority is unable in whole or in part to make any such payment on outstanding loan amounts or is in default of any regulatory, partnership, operating, or other agreement related to the Bonds, including the Indenture, the Authority shall not be deemed in default during the continuance of such inability.

Section 5.02 Rights of County Upon Making Loans. If the County has made any loans to the Authority hereunder and such loans and interest thereon have not been repaid in full, the County may take any one or more of the following steps:

(1) If the Authority owes the County more than \$[] under this Agreement, and whether or not the Authority is in default, the County may, but is not required to, direct the Trustee to accelerate the maturity of the Bonds in accordance with [Article VI] of the Indenture, but only if the Board of Commissioners of the County has appropriated the amounts necessary to pay all principal and interest due upon that acceleration. In addition, the County shall consult with the Authority before directing such acceleration and shall work with the Authority to reach a mutually agreeable repayment schedule; and

(2) If the Authority is in default in its repayment obligations with respect to any loans made to the Authority by the County hereunder (an "Authority Default") and if, and only if, the Bonds are no longer outstanding the County may (a) declare the entire principal balance of the loan (if not then due and payable) to be due and payable immediately, together with all interest accrued thereon to the date of such acceleration, and (b) foreclose its lien on the Project, anything in this Agreement to the contrary notwithstanding. The County may waive such Authority Default and may rescind and annul such declaration and its consequences; but no such waiver, rescission or annulment shall extend to or affect any subsequent Authority Default or impair any right incident thereto.

Section 5.03 Right to Enforce Agreement. Either party may proceed to protect and enforce its rights in equity or at law for mandamus or for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, as it may deem most effectual to protect and enforce any of its rights or interests hereunder.

Section 5.04 No Remedy Exclusive. No remedy conferred upon or reserved to the County by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or thereafter existing at law or in equity or by statute, and either party hereto shall be free to pursue, at the same time, each and every remedy, at law or in equity, which it may have under this Agreement, or otherwise.

Section 5.05 No Implied Waiver. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. For the exercise of any remedy, it shall not be necessary to give any notice, other than such notice as may be expressly required herein.

Section 5.06 Agreement to Pay Attorney's Fees and Expenses. If a default arises under any provision of this Agreement and either party hereto should employ attorneys or incur other expenses for the collection of amounts due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the other party contained in this Agreement, on demand therefor the non-prevailing party shall pay or reimburse the prevailing party for the reasonable fees of such attorneys and such other expenses so incurred.

ARTICLE VI

Miscellaneous

Section 6.01 Governing Law: Venue. This Agreement is governed by and shall be construed in accordance with the substantive laws of the State of Oregon and shall be liberally construed so as to carry out the purposes hereof. Except as otherwise required by applicable law, any action under this Agreement shall be brought in the Circuit Court in and for Clackamas County and/or in the United States District Court of Oregon.

Section 6.02 Notice. All notices or other communications required hereunder shall be in writing and shall be sufficiently given if addressed and mailed by first-class, certified or registered mail, postage prepaid and return receipt requested, as follows:

To the County: Clackamas County

To the Authority: Housing Authority of Clackamas County

The County or the Authority may, by notice given hereunder, designate any further or different address to which subsequent notices, certificates, requests or other communications shall be sent. Notices shall be deemed served upon deposit of such notices in the United States mail in the manner provided above.

Section 6.03 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the County and the Authority and their successors. This Agreement may not be assigned, except that the Authority shall have the right to assign to the Trustee its right to obtain funds, if available, from the County hereunder for the benefit of the owners of the Bonds.

Section 6.04 Severability. In the event any provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 6.05 Amendments; Additional Bonds; Refunding Bonds. This Agreement may not be effectively changed, modified or altered, except by an instrument in writing duly executed by the County and the Authority (or their successors in title). If the Bonds are rated by a rating agency, then no such amendment will be permitted unless the Company and the Trustee have received written confirmation from the rating agency that such amendment will not result in a reduction or withdrawal of the rating on the Bonds. If the Bonds are not rated by a rating agency, then no such amendment will be permitted unless the parties make a determination, after reasonable investigation, that such amendment will neither (i) adversely affect the County's obligation to make loans pursuant to this Agreement; nor (ii) increase the possibility of the Authority requesting funding by the County pursuant to this Agreement.

The Authority shall not issue any Additional Bonds related to the Project without the County's consent.

If the Authority issues Refunding Bonds at any time, all references in this Agreement to "Bonds" shall be deemed to be references to "Refunding Bonds" for all purposes, without further action by the parties hereto, but only if the average and maximum annual debt service on the Refunding Bonds does not exceed the average and maximum annual debt service on the Bonds and if the final maturity of the Refunding Bonds does not extend beyond the final maturity of the Bonds.

Section 6.06 Waiver of Breach. No waiver of any breach of any covenant or agreement contained herein shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant, agreement, or undertaking, the nondefaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults that were in existence at the time such payment or payments or performance were accepted by it.

Section 6.07 No Rights Created in Third Parties. The terms of this Agreement are not intended to establish nor to create any rights in any persons or entities other than the County, the Authority and the respective successors and assigns of each.

Section 6.08 Time of Essence. Time and all terms and conditions shall be of the essence of this Agreement.

Section 6.09 Termination of Agreement. This Agreement shall terminate upon payment in full of all principal of and interest on the Bonds (or defeasance thereof pursuant to Article [IX] of the Indenture), and the repayment in full of all Contingent Loan Amounts.

Section 6.10 Execution in Counterparts. This document may be executed in counterparts.

IN WITNESS WHEREOF, the County and Authority have caused this Agreement to be executed in their respective names by their duly authorized officers, and have caused this Agreement to be dated as of [_____, 2012].

CLACKAMAS COUNTY, OREGON

By _____
[NAME]
[Title]

[NAME]
[Title]

Approved as to Form.

[NAME]
[Title]

HOUSING AUTHORITY OF CLACKAMAS COUNTY, OREGON

By _____
[NAME]
[Title]

Attachment A
Contingent Loan Agreement

REQUEST FOR APPROPRIATION

Date _____

Appropriation Request Number _____

DEBT SERVICE FUND STATUS

(1) Calculation of Net Minimum Balance

- (a) Bond Debt Service required for the subsequent fiscal year of County _____
(b) Plus Reserve Requirement (one year's debt service)
(c) Less Projected Net Operating Income for the subsequent Fiscal Year (from Project Operations section below) (_____)

Net Minimum Balance _____

(2) Current Bond Debt Service Reserve Fund Balance _____

(3) Net Minimum Balance Less Debt Service Reserve Fund Balance ((1)-(2)) _____

(4) Less Anticipated Authority Excess Revenues Available for Debt Service (_____)

(5) Current Maximum Request Under Contingent Loan Agreement (Reserve Requirement - (2)) _____

(6) Current Anticipated Request Under Contingent Loan Agreement _____

(7) Balance Outstanding Under Agreement as of today _____

PROJECT OPERATIONS

(Note: Please attach Project Operation Statement and Project Calculations)

Prior Year Operations

Project Revenues _____
Less Operation and Maintenance Cost (_____)
Net Operation Income _____

Projected Subsequent Year Operations

Project Revenues _____
Less Operation and Maintenance Costs (_____)
Projected Net Operating Income _____

This request for appropriation is subject to all terms and conditions of the Contingent Loan Agreement for the Easton Ridge Project, dated _____, _____. In accordance with the Agreement, we hereby request development of a mutually agreeable Project Management and Loan Repayment Plan.

Date: _____

By: _____
Housing Authority of Portland

Attachment D:

Draft -- Resolution Acknowledging TEFRA Hearing to be approved at a later date

CLACKAMAS COUNTY, OREGON

RESOLUTION NO. _____

A RESOLUTION of the Board of County Commissioners of Clackamas County, Oregon, approving the issuance of revenue bonds by the Housing Authority of Clackamas County, in the principal amount of not to exceed \$24,000,000, to provide funds to finance low-income housing in Clackamas County.

*Prepared by
Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, Washington 98101
(206) 447-4400*

CLACKAMAS COUNTY, OREGON

RESOLUTION NO. _____

A RESOLUTION of the Board of County Commissioners of Clackamas County, Oregon, approving the issuance of revenue bonds by the Housing Authority of Clackamas County, in the principal amount of not to exceed \$24,000,000, to provide funds to finance low-income housing in Clackamas County.

WHEREAS, ORS 456.120(18) provides that a housing authority may, among other things and if certain conditions are met, “loan money to ... an individual, partnership, corporation or other association to finance, plan, undertake, construct, acquire, manage or operate a housing project”; and

WHEREAS, ORS 456.055 and 456.175 provide that a housing authority may issue bonds, notes, interim certificates, debentures or other obligations for any of its corporate purposes; and

WHEREAS, the Housing Authority of Clackamas County (the “Authority”) has advised the Board of County Commissioners of Clackamas County, Oregon (the “County”), that the Authority intends to issue certain bonds, notes or other obligations (the “Obligations”) in the maximum aggregate principal amount of not to exceed \$24,000,000, pursuant to ORS 456.005 to 456.235 and a plan of financing (the “Plan of Financing”) with respect to the rehabilitation of an existing facility known as the Easton Ridge Apartments Project located at 9009 SE Causey Avenue, Happy Valley, Oregon, to provide housing for low-income persons (the “Project”); and

WHEREAS, the Authority has advised the County that, following timely notice thereof being published in a newspaper of general circulation throughout Clackamas County, Oregon, a public hearing was held on July 2, 2012, in accordance with the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”), on the proposed issuance of the Obligations pursuant to a Plan of Financing for the Project; and

WHEREAS, the Authority has provided the County with a written summary of the public testimony and any written comments received at such public hearing; and

WHEREAS, the Code requires that the issuance of the Obligations be approved by the County; NOW, THEREFORE,

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF CLACKAMAS COUNTY, OREGON, that the County approves the Plan of Financing for the Project, and each issue of Obligations that is timely issued by the Authority for the Project in accordance with the Plan of Financing, the proceeds of which Obligations will be used to make a loan to an Oregon limited liability company of which the Authority will be the sole managing member. This approval is intended to comply with the requirements of Section 147(f) of the Code in order to permit the issuance of Obligations. This approval, however, is not intended to imply that the Obligations are issued on behalf of the County or that the County is under any obligation to repay the Obligations.

[Remainder of Page Left Blank Intentionally]

ADOPTED by the Board of County Commissioners of Clackamas County, Oregon, at an open public meeting thereof, this ____ day of _____, 2012.

BOARD OF COUNTY COMMISSIONERS
CLACKAMAS COUNTY, OREGON

Chair

Commissioner

Commissioner

Commissioner

Commissioner

ATTEST:

Clerk of the Board

CERTIFICATION

I, the undersigned, the duly chosen, qualified and acting Clerk of the Board of County Commissioners of Clackamas County, Oregon (the "County") and keeper of the records of the Authority, CERTIFY:

1. That the attached Resolution No. ____ (the "Resolution") is a true and correct copy of the resolution of the Board of County Commissioners (the "Board") of the County, as finally adopted at a meeting of the Board held on _____, 2012, and duly recorded in the minute books of the County.

2. That such meeting was duly convened and held in all respects in accordance with law, and, to the extent required by law, due and proper notice of such meeting was given; that a quorum was present throughout the meeting and a majority of the members of the Board of County Commissioners of the County present at the meeting voted in the proper manner for the adoption of the Resolution; that all other requirements and proceedings incident to the proper adoption of the Resolution have been duly fulfilled, carried out and otherwise observed, and that I am authorized to execute this Certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 2012.

Clerk of the Board of County Commissioners