

# AGENDA

## **Wednesday November 22, 2017 - 10:00 AM** **BOARD OF COUNTY COMMISSIONERS**

Beginning Board Order No. 2017-123

### **CALL TO ORDER**

- Roll Call
- Pledge of Allegiance

### **I. HOUSING AUTHORITY CONSENT AGENDA**

1. Resolution 1922: Approval to Submit a Section 18 Disposition Application for the Sale of Oregon City View Manor
2. Approval of Resolution 1923 Authorizing the Issuance of Up To \$32,000,000 of Revenue Bonds for the Rosewood Terrace Apartments Project
3. Approval of Resolution 1924 Authorizing the Execution, Acknowledgement and Delivery of Transaction Documents for the Rosewood Terrace Apartments Project

### **II. PRESENTATION** *(Following are items of interest to the citizens of the County)*

1. Video Presentation of Clackamas Community College Helps Veterans with Small Businesses (Dylan Blaylock, Public & Government Affairs)

**III. CITIZEN COMMUNICATION** *(The Chair of the Board will call for statements from citizens regarding issues relating to County government. It is the intention that this portion of the agenda shall be limited to items of County business which are properly the object of Board consideration and may not be of a personal nature. Persons wishing to speak shall be allowed to do so after registering on the blue card provided on the table outside of the hearing room prior to the beginning of the meeting. Testimony is limited to three (3) minutes. Comments shall be respectful and courteous to all.)*

**IV. PUBLIC HEARINGS** *(The following items will be individually presented by County staff or other appropriate individuals. Persons appearing shall clearly identify themselves and the department or organization they represent. In addition, a synopsis of each item, together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*

1. Board Order No. \_\_\_\_\_ for Boundary Change Proposal No. CL 17-016 Annexation to Clackamas County Service District No. 1 (Chris Storey, County Counsel, Ken Martin, Boundary Change Consultant)
2. Board Order No. \_\_\_\_\_ for Boundary Change Proposal No. CL 17-017 Proposed Withdrawal From Clackamas County Service District No. 1 (Chris Storey, County Counsel, Ken Martin, Boundary Change Consultant)

**SERVICE DISTRICT NO. 5 (Street Lighting)**

Wendi Coryell, DTD, will present the 9 Assessment Areas

3. Board Order No. \_\_\_\_\_ Forming a One Lot Assessment Area within Clackamas County Service District No. 5, Assessment Area 03-16, 10-Unit Apartment Building
4. Board Order No. \_\_\_\_\_ Forming a 5-Lot Assessment Area within Clackamas County Service District No. 5, Assessment Area 33-17, Retail Bank Building and Two Tenant Spaces
5. Board Order No. \_\_\_\_\_ Forming a One Lot Assessment Area within Clackamas County Service District No. 5, Assessment Area 41-17, Congregate Housing
6. Board Order No. \_\_\_\_\_ Forming a Three Lot Assessment Area within Clackamas County Service District No. 5, Assessment Area 39-16, Three Lot Partition
7. Board Order No. \_\_\_\_\_ Forming a 102-Lot Assessment Area within Clackamas County Service District No. 5, Assessment Area 27-16, Hidden Falls III 102-Lot Subdivision
8. Board Order No. \_\_\_\_\_ Forming a 21-Lot Assessment Area within Clackamas County Service District No. 5, Assessment Area 05-17, Kings Landing 21-Lot Subdivision
9. Board Order No. \_\_\_\_\_ Forming a Two Lot Assessment Area within Clackamas County Service District No. 5, Assessment Area 14-17, Two Lot Partition
10. Board Order No. \_\_\_\_\_ Forming a 9-Lot Assessment Area within Clackamas County Service District No. 5, Assessment Area 42-17, Deer Ridge Estates 9-Lot Subdivision
11. Board Order No. \_\_\_\_\_ Forming a Three Lot Assessment Area within Clackamas County Service District No. 5, Assessment Area 39-17, Three Lot Partition

**V. CONSENT AGENDA** *(The following items are considered to be routine, and therefore will not be allotted individual discussion time on the agenda. Many of these items have been discussed by the Board in Work Sessions. The items on the Consent Agenda will be approved in one motion unless a Board member requests, before the vote on the motion, to have an item considered at its regular place on the agenda.)*

**A. Health, Housing & Human Services**

1. Approval of an Agency Service Contract with Lifeworks NW for Supported Employment Services for Uninsured and Indigent Clackamas County Residents – *Behavioral Health*
2. Approval of Construction Contract Change Order No. 2 with Jim Smith Excavating for the Addie Street Improvements project in Gladstone – *Housing & Community Development*
3. Approval of an Amendment to an Intergovernmental Agreement with the State of Oregon, Department of Consumer and Business Services, Senior Health Insurance Benefits Assistance (SHIBA) – *Social Services*

**B. Department of Transportation & Development**

1. Board Order No. \_\_\_\_\_ Adopting Local Delivery Only on Morgan Road (44011)

**C. Finance Department**

1. Resolution No. \_\_\_\_\_ Authorizing Refunding of the County's Full Faith and Credit Obligations, Series 2007 and Series 2009

**D. Elected Officials**

1. Approval of Previous Business Meeting Minutes – *BCC*

**E. Juvenile Department**

1. Approval of an Intergovernmental Agreement with the State of Oregon Acting by and through its Oregon Department of Education, Youth Development Division for Juvenile Crime Prevention Funding

**F. Community Corrections**

1. Approval of an Intergovernmental Agreement between Clackamas County Community Corrections and Tri-County Metropolitan Transportation for the Bus Pass Program
2. Approval of an Intergovernmental Agreement between Clackamas County Community Corrections and Clackamas Community College to Provide GED Instructional Services
3. Approval of the Justice Reinvestment Grant Agreement, JR-17-003 with the State of Oregon, Criminal Justice Commission for Clackamas County Community Corrections Programs

**G. County Counsel**

1. Approval of an Intergovernmental Agreement with Clackamas River Water Related to Deferral of System Development Charges for 115<sup>th</sup> Street Property
3. Declaring a Local State of Emergency and Declaring Emergency Measures to Address Landslide Issues on Dickey Prairie Road

**VI. DEVELOPMENT AGENCY**

1. Approval of a Disposition Agreement with Oregon Beverage Recycling Cooperative

**VII. WATER ENVIRONMENT SERVICES**

*(Service District No. 1)*

1. Approval of an Intergovernmental Agreement between Water Environment Services and Clean Water Services for Liquid Biosolids Management
2. Approval of the Goods and Services Contract between Clackamas County Service District No. 1 and Valley Landfills, Inc. dba Republic Services for Biosolids and Grit Disposal - *Procurement*
4. Approval of the Goods and Services Contract between Water Environment Services and Valley Landfills, Inc. dba Republic Services for Biosolids and Grit Disposal – *Procurement*
5. Approval of the Goods and Services Contract between Polydyne, Inc. and Water Environment Services for Thickening and Dewatering Polymer - *Procurement*
6. Approval of the Goods and Services Contract between Polydyne, Inc. and Clackamas County Service District No. 1 for Thickening and Dewatering Polymer - *Procurement*

**VIII. COUNTY ADMINISTRATOR UPDATE**

**IX. COMMISSIONERS COMMUNICATION**

November 22, 2017

Housing Authority Board of Commissioners  
Clackamas County

Members of the Board:

Resolution 1922: Approval to Submit a Section 18 Disposition Application for the  
Sale of Oregon City View Manor

<b>Purpose/Outcomes</b>	Approval to submit a Section 18 Disposition application to HUD for the sale of Oregon City View Manor, a 100 unit Public Housing community in Oregon City
<b>Dollar Amount and Fiscal Impact</b>	No immediate Fiscal Impact
<b>Funding Source(s)</b>	N/A
<b>Duration</b>	If application is approved, HACC will begin tenant relocation in the summer of 2018.
<b>Previous Board Action</b>	At a Study session on October 3 <sup>rd</sup> , 2017 the Board requested HACC complete the application for approval at a later business meeting.
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. Sustainable and affordable housing</li> <li>2. Ensure safe, healthy and secure communities</li> </ol>
<b>Contact Person</b>	Chuck Robbins, HACC Executive Director (503) 650-5666
<b>Contract Number</b>	N/A

**BACKGROUND:**

The Housing Authority of Clackamas County (HACC), a Division of the Health, Housing and Human Services Department, requests approval to submit a Section 18 Disposition application to the U.S. Department of Housing and Urban Development (HUD) for the sale of Oregon City View Manor (OCVM).

The plan for OCVM is to sell 17-19 acres at market rate. The remaining 3-5 acres would be sold for the construction of 30-45 housing units affordable to families at or below 60% of the Area Median Income. Any family relocated from OCVM would be given first opportunity to move back to the new units.

The sale of Oregon City View Manor will generate funds to leverage the construction of around 400 new affordable housing units scattered throughout the county. Ultimately all of the 545 Public Housing units will be evaluated for sale, redevelopment or modernization. Over the next 10 years, HACC will be guided by the following development objectives to achieve portfolio-wide revitalization:

1. Ensure a replacement unit for every Public Housing unit sold or demolished that will serve households earning 30% or less of area median Income (AMI).
2. Build 1,000 new, high quality affordable housing units (serving residents earning 60% or less of AMI) dispersed throughout the County.
3. Provide supportive services to help residents reach their full potential.

4. Commit to transparent and consistent communication with current Public Housing residents as we plan these new communities.
5. Strive to place new housing within desirable neighborhoods near parks, green space and natural beauty.
6. Commit to creating mixed income communities close to natural resources, public transportation, good schools, jobs and opportunities for the residents.
7. Provide relocation assistance for any household required to move due to a rehabilitation or sale of a public housing community.

The sites for construction of new units will include Clackamas Heights property in Oregon City, Hillside Park property in Milwaukie, and new sites to be acquired by the Housing Authority as funding is available. Construction of replacement units will begin as early as 2019.

In addition to units that will be constructed new, the Housing Authority has access to affordable housing resources through the following properties:

- Easton Ridge: 264 Units of affordable housing in Happy Valley owned by the Housing Authority. The Housing Authority will establish a priority on the property's waiting list for any resident displaced from Oregon City View Manor.
- Pedcor/Rosewood Terrace: 212 units of affordable housing to be constructed in Happy Valley. The Housing Authority is co-owner of this development and will work to establish a preference for any resident displaced from Oregon City View Manor.

If the application is approved, HACC and its Relocation Contractor will begin relocating residents of Oregon City View Manor in the summer of 2018 by utilizing 100 new Section 8 Vouchers. The Section 8 vouchers will not impact the Housing Authority's current waiting list as they will be issued directly from HUD for the residents at Oregon City View Manor.

Residents relocated from the property will receive the following assistance:

- a) A Relocation Consultant who will provide:
  - i. Individual interviews and a relocation plan developed for each household matching the needs and preferences of residents.
  - ii. Identification of at least three replacement homes for each displaced household, to be rented with the assistance of a Section 8 voucher.
  - iii. Assistance to complete all applications, screening documents, and other move-in requirements for the replacement home.
  - iv. Coordination of professional packing, moving and transportation services.
- b) HACC will provide the following services in addition to the Relocation Consultant:
  - i. Coordination and issuance of a permanent Section 8 voucher for the replacement home.
  - ii. Payment of all deposits and fees required for move in to the replacement home.
  - iii. Payment of all movers, packers, and other assistance required for physically moving residents into their replacement home.
  - iv. 42 months of rental difference payment if there is a difference between current Public Housing rent and their new rent under the Section 8 voucher for the replacement home.

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No County General Funds are involved.

**RECOMMENDATION:**

Staff recommends the Board approve Resolution 1922, authorizing submission of the Section 18 Disposition application for Oregon City View Manor.

Staff also recommends the Board authorize Chuck Robbins, HACCC Executive Director, to sign Approval Forms for the Section 18 Disposition application, on behalf of the Housing Authority of Clackamas County.

Respectfully submitted,

Richard Swift, Director  
Health, Housing and Human Services

Resolution Authorizing the Housing Authority's Submittal of a Section 18 Disposition Application for the Sale of Oregon City View Manor.

RESOLUTION NO. 1922

WHEREAS, the Housing Authority of Clackamas County Board of Commissioners has approved HACC's Development Objectives to replace all Public Housing units at a minimum of one-for-one ratio within new projects in order to Redevelop and Reposition HACC's Housing Portfolio, and

WHEREAS, the Housing Authority of Clackamas County needs to submit a Section 18 Disposition application to the U.S. Department of Housing and Urban Development (HUD) for approval to initiate the sale of the Public Housing Property, and

WHEREAS, the Housing Authority staff has consulted with the leaders of the jurisdiction where the property is located and obtained written support for the sale, and

WHEREAS, the Resident Advisory Board has been notified of the planned sale and has made no comments, and

WHEREAS, the Housing Authority understands it must obtain a price that will cover replacement housing or fair market value, whichever is higher, and

WHEREAS, the Housing Authority will use the net sale proceeds to develop facilities that benefit low-income households, and

WHEREAS, the Housing Authority will provide relocation services funded with the gross proceeds from the sale of the properties, to move households displaced by the sale, to comparable housing,

NOW THEREFORE BE IT RESOLVED that the Board approves the Housing Authority's submittal of a Section 18 Disposition application to HUD for Oregon City View Manor, containing 100 (one hundred) Public Housing units; and

BE IT FURTHER RESOLVED, that HACC's Executive Director is authorized to execute documents and provide certifications as required for the submittal and approval of this action.

Resolution Authorizing the Housing  
Authority's Submittal of a Section 18  
Disposition Application for the Sale of Oregon  
City View Manor.

RESOLUTION NO. 1922  
(Cont'd)

DATED this 22<sup>nd</sup> day of November, 2017

BOARD OF COMMISSIONERS OF THE HOUSING  
AUTHORITY OF CLACKAMAS COUNTY, OREGON

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Chair

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Recording Secretary



November 22, 2017

Board of County Commissioners sitting as the  
Housing Authority of Clackamas County Board

Members of the Board:

Approval of Resolution #1923 Authorizing the Issuance of Up To \$32,000,000 of  
Revenue Bonds for the Rosewood Terrace Apartments Project

<b>Purpose/Outcomes</b>	Approve Resolution No. 1923 Authorizing execution of the Principle Bond Documents for the Rosewood Terrace project.
<b>Dollar Amount and Fiscal Impact</b>	\$32,000,000
<b>Funding Source(s)</b>	State of Oregon Multifamily Housing Revenue Bonds
<b>Duration</b>	32 Years
<b>Previous Board Action</b>	The Board was provided a draft of the Bond Documents and the financing plan was discussed at a planning session on October 31, 2017
<b>Strategic Plan Alignment</b>	Ensure safe, healthy and secure communities Sustainable and Affordable Housing
<b>Contact Person</b>	Chuck Robbins, HACC Executive Director (503) 650-5666
<b>Contract Number</b>	N/A

**BACKGROUND:**

The Housing Authority of Clackamas County (HACC) a Division of the Health, Housing & Human Services Department requests the approval of the Principle Bond Documents for the Rosewood Terrace Affordable Housing project.

These documents authorize HACC to sell and issue its Multifamily Housing Revenue Bonds (Rosewood Terrace Apartments Project), Series 2017 and Multifamily Housing Subordinate Revenue Bonds (Rosewood Terrace Apartments Project), Series 2017B in an aggregate principal amount of not more than \$32,000,000. The proceeds will be used to construct a multifamily affordable housing complex at 8810 & 8850 Otty Road in Happy Valley. The project will consist of (6) 4-story, wood framed structures with an elevator servicing each building. It is centrally located with easy access to services and within short walking distance of the MAX Green Line as well as several TriMet bus stops.

This project is being developed by Pedcor Inc. and will consist of 212 units of affordable rental housing located at 8810 & 8850 Otty Road in Happy Valley. The development includes (112) 1 Bedroom/1 Bath units, (92) 2 Bedroom/2 Bath units, and (8) 3 Bedroom/2 Bath Units. With 2 BR/2 Bath units renting for over \$1,330/month in the metro area, this project would hold rents to \$761/Mo for 1BR/ Bath, \$909/Mo for 2BR/2Bath, and \$1,044/Mo for 3 BR/2 Bath making it affordable to households making less than 60% of the Area Median Income.

These units are required to remain affordable for a period of 60 years. All of the following documents have been prepared and reviewed by outside legal counsel. HACC has retained

Hawkins, Delafield & Wood LLP to act as Bond Counsel, with Harvey Rogers preparing the Bond Documents for this project. The documents have also been reviewed by David Rosen and Associates, HACC's financial consultant, Rob Sullivan, P.C., HACC Tax Credit Counsel, and County Counsel for compliance with the Memo of Understanding (MOU) and Term Sheet for the Rosewood Terrace project

**Principle Bond Documents:** These documents describe the terms of a bond purchase agreement and include sale conditions, sale price, bond interest rate, bond maturity, bond redemption provisions, sinking fund provisions and conditions under which the agreement may be canceled. The bond documents for this project were prepared by Ice Miller LLP for Pedcor Investments and Hawkins, Delafield & Wood LLP for the Housing Authority of Clackamas County. The documents include:

1. Subordinate Bond Financing Agreement - short term construction bridge loan
2. Subordinate Bond
3. Financing Agreement – Intermediate to Long Term primary development loan
4. Bond
5. Bond Purchase Agreements - document between a bond issuer (HACC) and the underwriter establishing the terms of a bond sale
6. Regulatory Agreement - Land use restriction agreement ensuring multi-family housing revenue bond issues are used for the construction of affordable housing

Approval to execute these documents constitutes an agreement to proceed with the financing and construction of the Rosewood Terrace Apartment project. 24

The financial impacts (current year and ongoing) to HACC include:

Subordinate Bridge Loan	\$2,400,000
Primary Bond Loan	<u>\$29,600,000</u>
TOTAL	<u>\$32,000,000</u>

All documents have been reviewed and approved by Clackamas County Counsel.

**RECOMMENDATION:**

Staff recommends the Board approve Resolution 1923 authorizing the financing and construction of Rosewood Terrace. Additionally, staff recommends the Board authorizes the Board Chair to sign these documents once they have been finalized and closing is near at hand.

Respectfully submitted,

Richard Swift, Director  
Health, Housing and Human Services

**ATTACHMENTS:**

- a. Housing Authority Resolution # 1923
- b. Bond Documents

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In the Matter of Authorizing the Issuance of  
Up To \$32,000,000 of Revenue Bonds for the  
Rosewood Terrace Apartments Project and  
providing for related matters

RESOLUTION NO. 1923

WHEREAS, the Housing Authority of Clackamas County (“Authority”) is authorized to issue bonds to finance multifamily housing for persons and families of lower income pursuant to Oregon Revised Statutes (“ORS”) 456.005 through 456.235 and ORS Chapter 288A; and,

WHEREAS, in 2016 the Authority approved a non-binding Memorandum of Understanding with Pedcor Investments (the “Developer”) relating to the revenue bond financing of the Rosewood Terrace Apartments project (the “Project”); and,

WHEREAS, the Project will consist of approximately 212-units of rental housing and related facilities that will be owned by Pedcor Investments – 2017-LCV, Limited Partnership, an Oregon limited partnership (“Pedcor”); and,

WHEREAS, the Developer has agreed to rent all tenant units at the Project except staff units to persons or families with incomes of 60% of area median or less, and to operate the Project as a “housing project” as defined in ORS 456.065; and,

WHEREAS, on January 19, 2017, after publication of notice and a public hearing, the Board of County Commissioners of Clackamas County approved the issuance of up to \$32,000,000 of tax-exempt private activity revenue bonds for the Project under Section 147(f) of the Internal Revenue Code of 1986, as amended; and,

WHEREAS, on January 25, 2017, the State of Oregon Private Activity Bond Committee made a \$32,000,000 carry-forward allocation of private activity bond volume cap to the Authority for the Project; and,

WHEREAS, current drafts of the following documents (the “Principal Documents”) were filed with the Authority by the Developer and have been available for review since November 13, 2017: the Financing Agreement, the Bond, the Bond Purchase Agreements, the Subordinate Bond Financing Agreement and the included subordinate bond, and the Regulatory Agreement; and,

WHEREAS, the Principal Documents contain the most significant rights and obligations of the Authority in connection with the Bonds, and will be reviewed for the Authority prior to execution by Authority staff, by County Counsel and by the Authority’s bond counsel; and,

WHEREAS, the Developer has requested that the Authority approve the issuance and sale of up to \$32,000,000 of revenue bonds in one or more series to finance the Project, which

In the Matter of Authorizing the Issuance of  
Up To \$32,000,000 of Revenue Bonds for the  
Rosewood Terrace Apartments Project and  
providing for related matters

RESOLUTION NO. 1923  
(Cont'd)

are expected to be sold through a negotiated sale, current anticipated to be purchased by United Fidelity Bank, fsb, International City Bank, N.A. and Huntington National Bank, and in any case are not expected to be reoffered to the public; and,

WHEREAS, changes to the United States Internal Revenue Code of 1986, as amended, (the "Code") are being considered by the United States Congress which, if enacted, would prohibit the issuance of the Bonds as tax-exempt obligations after December 31, 2017;

NOW, THEREFORE, BE IT RESOLVED BY THE AUTHORITY

Section 1. Authorization to Sell and Issue Bonds. The Authority is hereby authorized to sell and issue its Multifamily Housing Revenue Bonds (Rosewood Terrace Apartments Project), Series 2017 and Multifamily Housing Subordinate Revenue Bonds (Rosewood Terrace Apartments Project), Series 2017B (collectively, the "Bonds") in an aggregate principal amount of not more than \$32,000,000, and to apply the proceeds of the Bonds to finance the Project and pay costs related to the Project and the Bonds as contemplated by the Principal Documents.

Section 2. Security. The Bonds shall be special obligations of the Authority that are payable solely from revenues of the Project and related amounts, including amounts payable under certificates issued by the Government National Mortgage Association and funding commitments from private parties, as provided in the Principal Documents. As provided in ORS 456.180: neither the commissioners of the Authority, an employee or agent thereof, nor any person executing the Bonds shall be liable personally on the Bonds by reason of the issuance thereof; and the Bonds and the other obligations of the Authority under the Principal Documents shall not be a debt of any city, of Clackamas County, of the State of Oregon or of any other political subdivision of the State of Oregon, even if such debt may be shown in the consolidated financial annual reports of Clackamas County.

Section 3. Delegation. The Chair of the Board of County Commissioners or, if the Chair is not available, the Director of Health Housing and Human Services or the Deputy Director (each of whom is referred to in this resolution as a "Director") may, on behalf of the Authority and without further action by the Board:

- A. Establish the final, aggregate principal amount of each series of the Bonds (which shall not exceed \$32,000,000), and the method of determining interest rates, maturities, and other terms of each series of the Bonds.
- B. Finalize the terms of, and execute and deliver the Principal Documents. Before executing and delivering the Principal Documents the Director may, after consulting with bond counsel and County Counsel, make changes to those documents that are desirable to: (i) allow the Bonds to be issued in 2017, before contemplated changes

In the Matter of Approving the Housing Authority's Intent to Issue Not to Exceed \$32,000,000 of Revenue Bonds for the Rosewood Terrace Apartments

RESOLUTION NO. 1923  
(Cont'd)

to the Code take effect, such as changes that allow all the Bond proceeds to be drawn down when the Bonds are issued, and changes that allow Bond proceeds to be held in escrow until the HUD closing; or (ii) allow other changes that facilitate closing of the Bonds. However, the changes described in the preceding sentence shall not change the security for the Bonds as described in Section 2 of this Resolution and Order.

- C. Execute and deliver any other documents and take any actions that are necessary or desirable to allow the issuance of the Bonds to finance the Project, as contemplated by the Principal Documents and this Resolution and Order.

DATED THIS 22<sup>nd</sup> DAY OF NOVEMBER, 2017.

BOARD OF COMMISSIONERS FOR THE HOUSING  
AUTHORITY OF CLACKAMAS COUNTY

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

APPROVED AS TO FORM

\_\_\_\_\_  
COUNTY COUNSEL  
FOR CLACKAMAS COUNTY, OREGON.

**EXHIBIT B**  
**FORM OF BONDS**

**THIS BOND MAY BE SOLD OR TRANSFERRED ONLY TO AN APPROVED  
INVESTOR UPON DELIVERY OF AN INVESTOR LETTER  
AND SUBJECT TO OTHER CONDITIONS PROVIDED IN THE  
FINANCING AGREEMENT**

No. BR-1      \$ \_\_\_\_\_

HOUSING AUTHORITY OF CLACKAMAS COUNTY, OREGON  
MULTIFAMILY HOUSING SUBORDINATE REVENUE BONDS  
(ROSEWOOD TERRACE APARTMENTS PROJECT),  
SERIES 2017B

DATED DATE: \_\_\_\_\_, 2017

MATURITY DATE: \_\_\_\_\_

REGISTERED OWNER:    The Huntington National Bank

PRINCIPAL AMOUNT:    Two Million Four Hundred Thousand and no/100s Dollars

INTEREST PAYMENT DATE:    The 15<sup>th</sup> day of each month commencing  
\_\_\_\_\_

HOUSING AUTHORITY OF CLACKAMAS COUNTY (the "Issuer"), a housing authority of the State of Oregon (the "State"), for value received, promises to pay to the Registered Owner specified above or registered assigns, but solely from the sources and in the manner referred to herein, the Principal Amount specified above on the aforesaid Maturity Date or on such earlier date as provided herein, and interest on the Principal Amount remaining unpaid from the later of the date hereof or the most recent Interest Payment Date to which interest has been paid at the Interest Rate and subject to the provisions specified below, payable on each Interest Payment Date. Principal of and interest on this Bond are payable at the principal office of the Registered Owner, or at such other place and in such other manner as may be elected by the Registered Owner hereof in accordance with the Financing Agreement (as defined below). Upon payment in full of the principal of this Bond, whether at maturity or prior redemption, the Registered Owner shall forthwith deliver this Bond to the Escrow Agent for cancellation.

Defined Terms. In addition to terms defined elsewhere herein, the following terms, as used herein, shall have the respective meanings set forth below:

"Borrower" shall mean Pedcor Investments-2016-CLV, an Oregon limited partnership.

"Interest Rate" shall mean \_\_\_\_% per annum..

In addition to interest at the Interest Rate, upon a Determination of Taxability (as defined in the Agreement) or other event described in Section 8.16(b) of the Financing Agreement,

additional amounts shall be payable to the Registered Owner of this Bond in accordance with such Section 8.16(b).

This Bond may be redeemed in whole or in part upon thirty (30) days prior written notice to the Registered Owners, at any time and at such redemption prices as shall be in accordance with the prepayment provisions of the Financing Agreement.

This Bond is one of a duly authorized issue of the Issuer's Multifamily Housing Subordinate Revenue Bonds (Rosewood Terrace Apartments Project), Series 2017B (the "Bonds"), issuable under the Subordinate Bond Financing Agreement dated as of December 1, 2017 (the "Financing Agreement") by and among the Issuer, the Borrower, The Huntington National Bank (the "Purchaser"). The Bonds are issued pursuant to Chapter 456 of Oregon Revised Statutes, as amended (the "Act"), and a resolution duly adopted by the Issuer.

This Bond is secured by (i) the proceeds held in the Subordinate Construction Fund, and (ii) the payments made and collateral security provided by the Borrower under the Equity Bridge Loan Agreement (the "Bridge Loan Agreement"), dated December \_\_, 2017, between Borrower and the Purchaser.

THIS BOND IS A SPECIAL, LIMITED OBLIGATION OF THE ISSUER PAYABLE, AS TO PRINCIPAL AND INTEREST SOLELY FROM THE ASSETS PLEDGED THERETO UNDER THE FINANCING AGREEMENT AND THE BRIDGE LOAN AGREEMENT. THIS BOND SHALL NOT BE A DEBT OR INDEBTEDNESS OF THE STATE OF OREGON, CLACKAMAS COUNTY OR ANY OTHER POLITICAL SUBDIVISION THEREOF (INCLUDING THE ISSUER), AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION OF THE STATE OF OREGON SHALL BE LIABLE HEREON, NOR IN ANY EVENT SHALL THIS BOND BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN THOSE OF THE ISSUER PLEDGED UNDER THE FINANCING AGREEMENT. THIS BOND SHALL NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE ISSUER FROM THE SOURCES IDENTIFIED IN THE FINANCING AGREEMENT) SHALL BE LIABLE FOR PAYMENT OF THIS BOND NOR IN ANY EVENT SHALL PRINCIPAL OF AND INTEREST ON THIS BOND BE PAYABLE OUT OF ANY FUNDS OR ASSETS OTHER THAN THOSE PLEDGED TO THAT PURPOSE BY THE ISSUER IN THE FINANCING AGREEMENT. THE ISSUER HAS NO TAXING POWER.

NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THIS BOND AGAINST ANY PAST, PRESENT OR FUTURE MEMBER OF THE ISSUER'S GOVERNING BODY, OR THE OFFICERS, COUNSEL, FINANCIAL ADVISORS OR AGENTS OF THE ISSUER, OR OF ANY SUCCESSOR THERETO, UNDER ANY RULE OF LAW OR EQUITY, STATUTE OR CONSTITUTION, AND ALL SUCH LIABILITY IS HEREBY EXPRESSLY WAIVED AND RELEASED AS A CONDITION OF, AND CONSIDERATION FOR, THE EXECUTION AND ISSUANCE OF THIS BOND.

All payments hereunder shall be payable in lawful money of the United States of America representing legal tender in payment of all debts and dues, public and private, at the time of payment.

This Bond shall be construed according to the laws of the State of Oregon.

This Bond may be transferred only in accordance with the provisions of the Financing Agreement.

Any capitalized terms appearing herein which are not otherwise defined shall have the meaning ascribed to them in the Financing Agreement.

This Bond will not be entitled to any security or benefit under the Financing Agreement, or be valid or become obligatory for any purpose, until the Certificate of Authentication hereon shall have been manually signed by the Registrar.



IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name by the manual or facsimile signature of the Executive Director of the Issuer, and its corporate seal to be hereunto affixed.

HOUSING AUTHORITY OF CLACKAMAS COUNTY,  
OREGON

By: \_\_\_\_

\_\_\_\_\_, Executive Director

(SEAL)

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the Financing Agreement referred to herein.

Date of Authentication: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_, Authorized Officer

11/13/17

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SUBORDINATE BOND FINANCING AGREEMENT

Dated as of December 1, 2017  
by and among

PEDCOR INVESTMENTS-2016-CLV, LIMITED PARTNERSHIP,

HOUSING AUTHORITY OF CLACKAMAS COUNTY

and

THE HUNTINGTON NATIONAL BANK

relating to

HOUSING AUTHORITY OF CLACKAMAS COUNTY  
MULTIFAMILY HOUSING SUBORDINATE REVENUE BONDS  
(ROSEWOOD TERRACE APARTMENTS PROJECT),  
SERIES 2017B

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The amounts payable to Housing Authority of Clackamas County (the "**Issuer**") and other rights of the Issuer (except for Reserved Rights, as defined herein) under this Financing Agreement have been pledged (pursuant to ORS 287A.310) and assigned to the Purchaser to secure payment of the Bonds.

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## SUBORDINATE BOND FINANCING AGREEMENT

**THIS SUBORDINATE BOND FINANCING AGREEMENT** (the "**Agreement**" or this "Financing Agreement") is made as of December 1, 2017, by and among **PEDCOR INVESTMENTS-2016-CLV, LIMITED PARTNERSHIP**, an Oregon limited partnership (together with its successors and assigns, the "**Borrower**"), **HOUSING AUTHORITY OF CLACKAMAS COUNTY**, a housing authority of the State of Oregon (together with its successors and assigns, the "**Issuer**") and **THE HUNTINGTON NATIONAL BANK**, a national banking association (together with its successors and assigns, the "**Purchaser**").

### RECITALS

A. The Issuer is authorized under the applicable provisions of Chapters 456 and 287A of the Oregon Revised Statutes, as amended (the "**Act**") to issue revenue bonds for the purpose of providing multifamily residential housing that substantially benefits persons of low income.

B. The Borrower desires to acquire and construct multifamily apartment housing facilities consisting of a total of 212 units, located in the City of Happy Valley, Oregon (the "**Project Facilities**" or the "**Project**"), the acquisition, construction and equipping of which are being financed by the proceeds of the Bonds (hereinafter defined).

C. The Issuer has determined that the public purposes set forth in the Act will be furthered by the issuance, sale and delivery of the Issuer's Multifamily Housing Subordinate Revenue Bonds (Rosewood Terrace Apartments Project), Series 2017B (the "**Bonds**") in the maximum principal amount of \$2,400,000, to provide funds to finance the costs of the acquisition, construction and equipping of the Project Facilities, by loaning the proceeds of the Bonds to the Borrower in the manner herein described.

D. To secure the Bonds, to provide for conditions on the disbursement of the proceeds of the Bonds and to commit the Borrower to the agreements, covenants and representations required by the Purchaser as a condition to executing this Agreement, the Borrower has executed and delivered to the Purchaser the Equity Bridge Loan Agreement (the "**Bridge Loan Agreement**"), dated as of December \_\_\_, 2017.

E. To reimburse the Borrower for the costs of the acquisition, construction and equipping of the Project Facilities, upon the satisfaction of the conditions set forth herein and in the Bridge Loan Agreement, the Purchaser will deposit the proceeds of the Bonds into the Subordinate Construction Fund and disburse such proceeds from time to time to the Borrower subject to the terms and conditions of the Bridge Loan Agreement.

F. To secure the Bonds, the Issuer shall assign and pledge to the Purchaser the Issuer's right, title and interest in this Financing Agreement (except the Reserved Rights defined herein) and the Bond Note defined herein.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE UNDERTAKINGS HEREIN SET FORTH AND INTENDING TO BE LEGALLY BOUND, THE BORROWER, THE ISSUER AND THE PURCHASER HEREBY AGREE AS FOLLOWS:

## ARTICLE I DEFINITIONS

Section 1.1. Definitions. In addition to terms defined elsewhere in this Agreement, the following words and terms as used in this Agreement and the preambles hereto shall have the following meanings unless the context or use clearly indicates another or different meaning or intent.

"**Act**" means the applicable provisions of Chapters 456 and 287A of the Oregon Revised Statutes, as now in effect and as it may from time to time hereafter be amended and supplemented.

"**Act of Bankruptcy**" means the actual notice received by the Purchaser that the Borrower has become insolvent or has failed to pay its debts generally as such debts become due or has admitted in writing its inability to pay any of its indebtedness or has consented to or has petitioned or applied to any court or other legal authority for the appointment of a receiver, liquidator, trustee or similar official for itself or for all or any substantial part of its properties or assets or that any such trustee, receiver, liquidator or similar official has been appointed or that insolvency, reorganization or liquidation proceedings (or similar proceedings) have been instituted by or against the Borrower.

"**Affiliate**" means, with respect to any designated Person, each Person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another designated Person, pursuant to the organizational document(s) of an entity or by other express, written agreement.

"**Agreement**" means this Subordinate Bond Financing Agreement, dated as of December 1, 2017, by and among the Issuer, the Borrower and the Purchaser and any modifications, amendments and supplements thereto permitted hereunder.

"**Approved Investor**" means any investor that is (i) a "qualified institutional buyer" as defined in Rule 144A promulgated by the Securities Exchange Commission under the Securities Act of 1933, as amended, (ii) an "accredited investor" as defined in Rule 501(a)(1), (2), (3), (4), (7) or (8) of Regulation D promulgated by the Securities Exchange Commission under the Securities Act of 1933, as amended, (iii) a custodial trust the sole beneficial owners of which are entities described in clauses (i) and (ii), or (iv) any other investor approved by the Issuer.

"**Authorized Representative**" means one or more individuals duly authorized to bind the Borrower in connection with the administration of the Project Facilities. The initial Authorized Representatives of the Borrower are Phillip J. Stoffregen and Bruce A. Cordingley.

"**Bond Counsel**" means an attorney, or firm of attorneys, nationally recognized and experienced in legal work relating to the financing of facilities through the issuance of tax-exempt bonds, selected by the Issuer and reasonably acceptable to the Purchaser.

"**Bond Documents**" means, collectively, the Bonds, this Agreement, the Bridge Loan Agreement, the Bond Note, the Regulatory Agreement, the Tax Certificate and Agreements, and



other agreements or instruments relating to, or executed in connection with the issuance and delivery of, the Bonds, including all modifications, amendments or supplements thereto.

**"Bond Loan"** means the loan of the proceeds of the Bonds by the Issuer to the Borrower by the deposit of proceeds of the Bonds by the Purchaser into the Subordinate Construction Fund as further described herein.

**"Bond Note"** means the note delivered by the Borrower to the Issuer and endorsed to the Purchaser in the form attached hereto as Exhibit B, and subject to the provisions set forth in the Bridge Loan Agreement.

**"Bonds"** means the Bonds authorized under this Agreement.

**"Borrower"** means Pedcor Investments-2016-CLV, Limited Partnership, an Oregon limited partnership, and its successors and assigns.

**"Bridge Loan Agreement"** means the Equity Bridge Loan Agreement between the Borrower, Pedcor Investments, A Limited Liability Company, a Wyoming limited liability company, and Purchaser dated as of December \_\_, 2017.

**"Business Day"** means any day on which the offices of the Purchasers are open for business and on which The New York Stock Exchange is not closed.

**"Code"** means the Internal Revenue Code of 1986, as amended to the Issue Date, and all applicable regulations (whether proposed, temporary or final) under the Code and the statutory predecessor of the Code, and any official rulings and judicial determinations under the foregoing applicable to the Bonds.

**"Control"** (including, with the correlative meanings, the terms "controlling", "controlled by" and "under common control with") means, as used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such other Person, or of the Person, whether through contract, stock ownership, partnership interests, membership, voting rights, governing boards, committees, divisions or other bodies with one or more common members, directors, trustees or other managers, or otherwise.

**"Counsel"** means an attorney, or firm of attorneys, admitted to practice law before the highest court of any state in the United States of America or the District of Columbia, including any Bond Counsel.

**"Default"** means an event or condition which is, or which after giving notice or lapse of time or both would be, an Event of Default.

"Default Rate" shall mean the Interest Rate on the Bonds then in effect plus [four percent (4.0%)].

**"Determination of Taxability"** means a determination that the interest accrued or paid on the Bonds is included in gross income of the Purchaser for federal income tax purposes,

which determination shall be deemed to have been made upon the occurrence of the first to occur of the following:

(i) the day on which the Borrower is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that the interest on the Bonds is included in the gross income of the Purchaser for federal income tax purposes;

(ii) the day on which the Borrower receives notice from the Purchaser in writing that the Purchaser has received (1) a notice in writing that the Internal Revenue Service has issued a statutory notice of deficiency or similar notice to the Purchaser that asserts in effect that the interest on the Bonds received by the Purchaser is included in the gross income of the Purchaser for federal income tax purposes, or (2) an Opinion of Bond Counsel that concludes in effect that the interest on the Bonds is included in the gross income of the Purchaser for federal income tax purposes;

(iii) the day on which there has been issued a public or private ruling of the Internal Revenue Service or a technical advice memorandum issued by the national office of the Internal Revenue Service that the interest on the Bonds is included in the gross income of the Purchaser for federal income tax purposes; or

(iv) the day on which the Borrower is advised in writing by Counsel that a final determination, from which no further right of appeal exists, has been made by a court of competent jurisdiction in the United States of America in a proceeding with respect to which the Borrower has been given written notice and an opportunity to participate and defend that the interest on the Bonds is included in the gross income of the Purchaser for federal income tax purposes;

*provided, however*, no Determination of Taxability shall occur if the interest on the Bonds or any portion thereof is included in the gross income of the Purchaser for federal income tax purposes solely because the Bonds or any portion thereof were held by a Person who is a Substantial User or a Related Person (unless as a result of an action not permitted by Section 8.10 hereof) or as a result of a change in existing law or regulations.

**"Event of Default"** means any of the events specified in Section 9.1 hereof.

**"Fiscal Year"** means the annual accounting year of the Borrower, which currently begins on January 1 in each calendar year for the Borrower.

**"GAAP"** means generally accepted accounting principles in effect in the United States from time to time, consistently applied.

**"General Partner"** means Rosewood Terrace Housing Company, LLC an Oregon limited liability company, authorized to conduct its business in the State, the general partner of the Borrower, together with its successors and assigns.

**"Governmental Action"** means all permits, authorizations, registrations, consents, certifications, approvals, waivers, exceptions, variances, claims, orders, judgments and decrees, licenses, exemptions, publications, filings, notices to and declarations of or with any

Governmental Authority and shall include all permits and licenses required to use, operate and maintain any of the Project Facilities.

**"Governmental Authority"** means any federal, state, or local governmental or quasi-governmental subdivision, authority, or other instrumentality thereof and any entity asserting or exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

**"Improvements"** means all buildings and other improvements included in the Project Facilities.

**"Indemnified Parties"** shall have the meaning given to such term in Section 8.19 of this Agreement.

**"Interest Rate"** means \_\_\_\_\_% for the Bonds.

**"Investor Letter"** means a letter substantially in the form set forth in Exhibit C hereto, which form may be modified upon the Issuer's approval of an Approved Investor pursuant to clause (iv) of the definition of Approved Investor.

**"Investor Member"** means U.S. Bancorp Community Development Corporation, a Minnesota corporation or its permitted successors or assigns in such person's capacity as investor limited partner of Borrower , and its permitted successors and assigns.

**"Issue Date"** means December\_\_\_\_, 2017, the date on which the Bonds are delivered to the Purchaser.

**"Issuer"** means Housing Authority of Clackamas County, a housing authority existing under the laws of the State of Oregon, including the Act, or any successor to its rights and obligations under this Agreement.

**"Legal Requirements"** means all statutes, codes, laws, ordinances, regulations, rules, policies, or other federal, state, local and municipal requirements of any Governmental Authority whether now or hereafter enacted or adopted, and all judgments, decrees, injunctions, writs, orders or like action of an arbitrator or a court or other Governmental Authority of competent jurisdiction (including those pertaining to the health, safety or the environment).

**"Lien"** means any lien, mortgage, security interest, tax lien, pledge, encumbrance, conditional sale or title retention arrangement, or any other interest in property designed to secure the repayment of indebtedness, whether arising by agreement or under any statute or law, or otherwise.

**"Maturity Date"** means [36 months from closing date].

**"Opinion of Bond Counsel"** means any opinion of Bond Counsel delivered pursuant to this Agreement with respect to the excludability of interest on the Bonds from gross income of the Purchasers for federal income tax purposes. Each such opinion shall be addressed to the Issuer and the Purchaser. No such opinion delivered pursuant hereto shall be deemed

unsatisfactory when required as a condition to any provision hereunder because such opinion states that interest on the Bonds is an item of tax preference, is included in determining alternative minimum taxable income under the Code or is taxable when the Bonds are held by a Substantial User or Related Person.

**"Outstanding"** means the drawn but unpaid principal portion of the Bonds at any date the principal amount of the Bonds is to be determined.

**"Permitted Encumbrances"** means only:

(i) the HUD Regulatory Agreement, the Regulatory Agreement, the Senior Mortgage, and the Subordinate Mortgage, each as defined in the Primary Financing Agreement;

(ii) impositions not yet due and payable or being contested in good faith and by appropriate proceedings promptly initiated and diligently conducted if such proceedings do not in the opinion of the Purchaser and HUD involve the risk of the sale, forfeiture or loss of the property subject to such lien or interfere with the operation of the Project Facilities, and provided that the Borrower shall have established a reserve or made other appropriate provision, if any, as shall be required by the Purchaser, and any foreclosure, distraint, sale or other similar proceedings shall have been effectively stayed; and

(iii) liens of carriers, warehouseman, mechanics and materialmen incurred in the ordinary course of business for sums not yet due or being contested by appropriate proceedings promptly initiated and diligently conducted if such proceedings do not in the opinion of the Purchaser and HUD involve the risk of the sale, forfeiture or loss of the property subject to such lien or interfere with the operation of the Project Facilities, and provided that such liens have been bonded or the Borrower shall have established a reserve or made other appropriate provision, if any, as shall be required by the Purchaser.

**"Permitted Investments"** means any investment, if and to the extent the same is then a legal investment under the applicable laws of the State, and approved by the Purchaser.

**"Person"** means any individual, for-profit or not-for-profit corporation, partnership, joint venture, association, limited liability company, limited liability partnership, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

**"Primary Financing Agreement"** means the Financing Agreement, dated as of December 1, 2017, among the Issuer, the Borrower, P/R Mortgage & Investment Corp., BOKF, NA, as Subordinate Construction Fund Agent, International City Bank, N.A., and United Fidelity Bank, fsb.

**"Project"** or **"Project Facilities"** means the multifamily apartment housing facilities consisting of a total of 212 units, to be located in the City of Happy Valley, Oregon, the acquisition, construction and equipping of which are being financed by the proceeds of the Bonds.

**"Project Costs"** means the costs, fees, and expenses associated with the acquisition, construction and equipping of the Project Facilities for use as affordable rental housing including

but not limited to the cost of materials, appliances, equipment, and other items of tangible personal property, the fees and expenses of architects, contractors, engineers, attorneys, accountants, developers, surveyors, and the payment of certain costs and expenses incidental to the issuance of the Bonds.

**"Project Site"** means the land described in *Exhibit F* on which the Project will be developed, \_\_\_\_\_ Street, Happy Valley, Oregon \_\_\_\_\_.

**"Purchaser"** means The Huntington National Bank, a national banking association, as the initial purchaser of the Bonds, and any successors or assigns thereof.

**"Qualified Project Costs"** means the actual costs incurred to acquire, construct, furnish and equip the Project Facilities which (i) except for preliminary expenditures incurred prior to the commencement of acquisition, construction, furnishing and equipping of the Project Facilities that do not exceed 20% of the aggregate issue price of the Bonds that will finance Project Costs and other amounts that do not exceed the lesser of \$100,000 or 5% of the proceeds of the Bonds, are or were incurred after October 20, 2016, (ii) are (A) chargeable to the Project Facilities' capital account or would be so chargeable either with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs, within the meaning of Treasury Regulation Section 1.103-8(a)(1), and if charged or chargeable to the Project Facilities' capital account are or would have been deducted only through an allowance for depreciation or (B) made for the acquisition of land, to the extent allowed in Section 147(c) of the Code and (iii) are made exclusively with respect to a "qualified residential rental project" within the meaning of Section 142(d) of the Code.

**"Rebate Amount"** shall have the meaning given to such term in Section 8.10 of this Agreement.

**"Rebate Report"** shall have the meaning given to such term in Section 8.10 of this Agreement.

**"Regulatory Agreement"** means the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of December 1, 2017, between the Issuer, the Borrower and United Fidelity Bank, fsb, as Administrative Agent, as such agreement may be amended, modified or supplemented from time to time.

**"Related Person"** with reference to any Substantial User, means a "related person" within the meaning of Section 147(a)(2) of the Code.

**"Reserved Rights"** means the rights of the Issuer pursuant to Sections 2.6, 3.1(b)(2), 3.1(c), 4.2, 8.7, 8.9, 8.19, 9.7, 10.5 and 10.13 of this Agreement and the rights of the Issuer pursuant to other sections of this Agreement providing that notices, reports and other statements be given to the Issuer and that specified consents be obtained from the Issuer.

**"Special Member"** means the Housing Authority of Clackamas County or any successor to its rights and obligations under this Agreement.

**"State"** means the State of Oregon.

**"Subordinate Construction Fund"** means the account of that name created pursuant to Section 2.7 of this Agreement and held under the Bridge Loan Agreement.

**"Substantial User"** means, with respect to any "facilities" (as the term "facilities" is used in Section 144(a) of the Code), a "substantial user" of such "facilities" within the meaning of Section 147(a) of the Code.

**"Tax Certificate and Agreement"** means the certificates, including all exhibits and attachments thereto, of the Issuer and the Borrower, dated the Issue Date, concerning certain federal tax matters furnished in connection with the initial issuance and delivery of the Bonds.

Section 1.2. Rules of Construction; Time of Day. In this Agreement, unless otherwise indicated, (i) defined terms may be used in the singular or the plural and the use of any gender includes all genders, (ii) the words "hereof", "herein", "hereto", "hereby" and "hereunder" refer to this entire Agreement, and (iii) all references to particular Articles or Sections are references to the Articles or Sections of this Agreement, (iv) the terms "agree" and "agreements" contained herein are intended to include and mean "covenant" and "covenants", (v) the term "including" shall mean "including, but not limited to," and (vi) the terms "best knowledge" or "knowledge" shall mean the actual knowledge (and shall not include constructive knowledge) of the manager of the General Partner of the Borrower. References to any time of the day in this Agreement shall refer to Eastern Standard Time or Eastern daylight saving time on such day.

## **ARTICLE II PLAN OF FINANCING**

Section 2.1. Issuance of Bonds; Loan of Bond Proceeds. In order to provide funds for payment of costs related to financing the Project Facilities:

(a) The Issuer shall simultaneously with the execution and delivery hereof proceed with the issuance of the Bonds and the making of the Bond Loan to the Borrower. The Bonds are issued in the principal amount of \$2,400,000 and shall be issued as fully registered bonds. The proceeds of the Bonds shall be deposited to the Subordinate Construction Fund. The Bonds will be secured as provided in the Bridge Loan Agreement, including funds held in the Subordinate Construction Fund, and payments received on the Bond Note. Payment of principal and interest on the Bonds shall be made to the Purchaser or assigns, as the registered owner of the Bonds.

The Purchaser shall be responsible for managing the disbursements from the Subordinate Construction Fund as requested by the Borrower in a manner provided herein and in the Bridge Loan Agreement.

(b) The Bonds shall bear interest payable monthly on the 5<sup>th</sup> day of each calendar month commencing [January 5, 2018], at the Interest Rate. . The Bonds shall mature and all principal and unpaid interest shall be due on the Maturity Date.

(c) Subject to the satisfaction of all of the terms and conditions set forth in this Agreement and the Bridge Loan Agreement, the Purchaser agrees to make disbursements from

the Subordinate Construction Fund authorized by a payment request form submitted by the Borrower in the form set forth in **Exhibit A** and as required in the Bridge Loan Agreement.

(d) The Borrower and its General Partner agree to take or cause to be taken all actions necessary to cause the Investor Member to make all equity deposits contemplated by the Borrower's limited partnership agreement and the documents related thereto and to administer those existing deposits as provided in the Bridge Loan Agreement.

(e) The Borrower agrees to take all actions required in order that all funds disbursed from the Subordinate Construction Fund shall be applied to pay, or to reimburse the payment of, costs as described in the certificates of the Borrower in substantially the form of **Exhibit A** attached hereto.

Section 2.2. Reserved.

Section 2.3. Sufficiency of Funds. The Purchaser shall not have any obligation to disburse funds that exceed the amount in the Subordinate Construction Fund. The Borrower agrees that if the Borrower should pay any costs relating to the acquisition, construction, furnishing or equipping of the Project Facilities other than from the proceeds of the Bonds, the Borrower shall not be entitled to any reimbursement therefor from the Issuer or the Purchaser, and shall not be entitled to any reduction of amounts due under this Agreement. The Issuer and the Purchaser make no warranty, either express or implied, that the moneys to be deposited in the Subordinate Construction Fund and available for payment will be sufficient to pay all the Project Costs.

Section 2.4. Reserved.

Section 2.5. Investment of Moneys. Any moneys held as part of the Subordinate Construction Fund shall be invested or reinvested, from time to time, by the Purchaser in Permitted Investments. The Borrower has reviewed the provisions hereof, including without limitation those provisions relating to investment of funds held hereunder and the use of such investment earnings, and has reviewed the proposed initial investment of funds held under this Agreement and hereby approves and directs the same.

Section 2.6. Limitation of Issuer's Liability. THE BONDS SHALL BE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER PAYABLE, AS TO PRINCIPAL AND INTEREST SOLELY FROM THE ASSETS PLEDGED HEREUNDER. THE BONDS SHALL NOT BE A DEBT OR INDEBTEDNESS OF THE STATE OF OREGON, CLACKAMAS COUNTY OR ANY POLITICAL SUBDIVISION OF THE STATE OF OREGON (INCLUDING THE ISSUER), AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON, NOR IN ANY EVENT SHALL THE BONDS BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN THOSE OF THE ISSUER PLEDGED UNDER THIS AGREEMENT OR THE BRIDGE LOAN AGREEMENT. THE BONDS SHALL NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE ISSUER FROM THE SOURCES IDENTIFIED HEREIN) SHALL BE LIABLE

FOR PAYMENT OF THE BONDS NOR IN ANY EVENT SHALL PRINCIPAL OF AND INTEREST ON THE BONDS BE PAYABLE OUT OF ANY FUNDS OR ASSETS OTHER THAN THOSE PLEDGED TO THAT PURPOSE BY THE ISSUER HEREIN OR IN THE BRIDGE LOAN AGREEMENT. THE ISSUER HAS NO TAXING POWER.

NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE BONDS AGAINST ANY PAST, PRESENT OR FUTURE MEMBER OF THE ISSUER'S GOVERNING BODY, OR THE OFFICERS, COUNSEL, FINANCIAL ADVISORS OR AGENTS OF THE ISSUER, OR OF ANY SUCCESSOR THERETO, UNDER ANY RULE OF LAW OR EQUITY, STATUTE OR CONSTITUTION, AND ALL SUCH LIABILITY IS HEREBY EXPRESSLY WAIVED AND RELEASED AS A CONDITION OF, AND CONSIDERATION FOR, THE EXECUTION AND ISSUANCE OF THE BONDS.

Section 2.7. Subordinate Construction Fund.

(a) The Purchaser shall establish and maintain a special account designated as the "Rosewood Terrace Apartments Subordinate Bond Fund" and shall keep such account segregated from all other funds held by the Borrower or the Purchaser and administer such fund in accordance with this Agreement and the Bridge Loan Agreement.

(b) The Purchaser shall deposit the proceeds of the Bonds into the Subordinate Construction Fund, and shall disburse such funds to pay or reimburse the Borrower for the costs of the acquisition, construction and equipping of the Project Facilities in the manner provided in the Bridge Loan Agreement.

**ARTICLE III  
PAYMENT OF LOAN**

Section 3.1. Amounts Payable.

(a) The Borrower covenants to make payments required by the Bond Note, as and when the same become due. The Borrower covenants that, for so long as the Bonds are Outstanding and except as otherwise contemplated hereby, it will not execute any amendment to the Bond Note that results in a decrease in the amount payable thereunder without the consent of the Purchaser.

(b) To the extent not paid pursuant to the Bond Note, the Borrower also shall pay, or cause to be paid, as and when the same become due: (1) to the Purchaser the expenses reasonably incurred by it as Purchaser hereunder, including without limitation the reasonable fees and expenses of its counsel and the amount, if any, required to pay the principal of and interest on the Bonds when due; (2) to the Issuer or to any payee designated by the Issuer, all expenses of the Issuer, and its respective agents reasonably incurred at any time related to the Bonds or the Project Facilities or the financing thereof, including, without limitation, legal and advisory fees and expenses incurred in connection with the interpretation, performance, enforcement or amendment of any documents relating to the Project Facilities or the Bonds or in connection with questions or other matters arising under such documents, which amounts described in this clause (2) shall be paid upon demand and in any event no later than thirty (30) days after receipt of request for payment thereof; (3) to Bond Counsel, the reasonable fees and expenses of Bond



Counsel incurred after the Issue Date in connection with the Bonds or any Bond Documents at the request of the Issuer or the Purchaser; (4) to the rebate analyst any reasonable expenses of calculating the Rebate Amount; and (5) to the respective payee, any other expenses payable in accordance with this Agreement.

(c) In addition to the foregoing, the Borrower shall pay to the Issuer on the Issue Date, an issuance fee equal to one and one-half percent (1.5%) of the maximum principal amount of the Bonds.

Section 3.2. Prepayment of Loan; Redemption of Bonds. The Issuer and the Purchaser acknowledge that, subject to the terms of the Bridge Loan Agreement, the Borrower shall have the option to prepay the Bond Loan in full or in part at any time upon thirty (30) days advance written notice to the Purchaser.

Section 3.3. Absolute Obligations of Borrower. The obligation of the Borrower to make payments on the Bond Note, to make all other payments provided for herein and to perform and observe the other agreements and covenants on its part herein contained shall be absolute and unconditional, irrespective of any defense or any rights of setoff, recoupment or counterclaim it might otherwise have against the Issuer, the Purchaser or any other person. Subject to prepayment of the Bond Note in full and termination as provided herein, the Borrower shall not suspend or discontinue any such payment hereunder or on the Bond Note (any re-amortization of the payments on the Bond Note in accordance with this Agreement and the Bridge Loan Agreement) or fail to perform and observe any of its other agreements and covenants contained herein or terminate this Agreement for any cause, including, without limiting the generality of the foregoing, any acts or circumstances that may deprive the Borrower of the use and enjoyment of the Project Facilities, failure of consideration or commercial frustration of purpose, any damage to or destruction of the Project Facilities or any part thereof, the taking by eminent domain of title to or the right to temporary use of all or any part of the Project Facilities, any change in the tax or other laws of the United States of America, the State or any political or taxing subdivision of either thereof, or any failure by the Issuer to perform and observe any agreement or covenant, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement.

Section 3.4. Rights Assigned. The Issuer hereby pledges and assigns to the Purchaser all the Issuer's rights under this Agreement (except its Reserved Rights), the Bond Note and the Bridge Loan Agreement to secure payment of the Bonds. This pledge is made pursuant to ORS 287A.310. The Borrower hereby consents to such pledge and assignment.

#### **ARTICLE IV REPRESENTATIONS OF ISSUER**

Section 4.1. Representations by the Issuer. The Issuer represents and warrants as follows:

- (a) The Issuer is a housing authority of the State of Oregon.
- (b) The Issuer has all requisite power, authority and legal right to execute and deliver the Bond Documents to which it is a party and all other instruments and documents to be

executed and delivered by the Issuer pursuant thereto, to perform and observe the provisions thereof and to carry out the transactions contemplated by the Bond Documents. All corporate action on the part of the Issuer which is required for the execution, delivery, performance and observance by the Issuer of the Bond Documents has been duly authorized and effectively taken, and such execution, delivery, performance and observation by the Issuer do not contravene applicable law or any contractual restriction binding on or affecting the Issuer.

(c) The Issuer has duly approved the issuance of the Bonds and the loan of the proceeds of the Bonds to the Borrower for the acquisition and construction of the Project Facilities; no other authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required as a condition precedent to the execution of this Agreement or the delivery of the Bonds that are to be delivered on the date of this Agreement.

(d) This Agreement is, and each other Bond Document to which the Issuer is a party when delivered will be, a valid and binding special obligation of the Issuer enforceable against the Issuer in accordance with its terms except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other laws affecting creditors' rights generally; (ii) the application of equitable principles and the exercise of judicial discretion in appropriate cases; (iii) common law and statutes affecting the enforceability of contractual obligations generally; and (iv) principles of public policy concerning, affecting or limiting the enforcement of rights or remedies against governmental entities such as the Issuer.

(e) There is no action, suit, proceeding, inquiry, or investigation at law or in equity or before or by any court, public board or body pending, or, to the best knowledge of the Issuer, threatened against or affecting the Issuer wherein an unfavorable decision, ruling or finding would adversely affect (i) the transactions contemplated by, or the validity or enforceability of, the Bonds or this Agreement or (ii) the tax-exempt status of interest on the Bonds.

(f) In connection with the authorization, issuance and sale of the Bonds, the Issuer has complied in all material respects with all provisions of the laws of the State, including the Act.

(g) The Issuer has not assigned or pledged and will not assign or pledge its interest in this Agreement for any purpose other than to secure the Bonds under this Financing Agreement. The Bonds constitute the only obligations of the Issuer in any manner payable from the revenues to be derived from this Agreement, and except for the Bonds, no obligations have been or will be issued on the basis of this Agreement.

(h) The Issuer is not in default under any of the provisions of the laws of the State, which default would affect the issuance, validity or enforceability of the Bonds or the transactions contemplated by this Agreement.

(i) THE ISSUER AND THE PURCHASER MAKE NO REPRESENTATION OR WARRANTY THAT THE PROJECT FACILITIES WILL BE ADEQUATE OR SUFFICIENT FOR THE PURPOSES OF THE BORROWER. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS REQUIRING THE ISSUER OR THE PURCHASER TO PROVIDE

ANY FINANCING FOR THE PROJECT FACILITIES OTHER THAN THE PROCEEDS OF THE BOND LOAN OR TO PROVIDE SUFFICIENT MONEYS FOR ALL OF THE COSTS OF THE PROJECT.

Section 4.2. The Issuer will not take or omit to take any action, which action or omission will adversely affect the exclusion of gross income for federal income tax purposes of the interest of the Bonds under the Code. Role of the Issuer. The Issuer shall not be required to take any action not expressly provided for herein. In addition, the Issuer shall have no obligation to review, control or oversee the activities of the Purchaser or any other person in connection with this Agreement or the Bonds. Furthermore, the Issuer shall not be obligated to take any action that might in its reasonable judgment involve it in any expense or liability unless it shall have been furnished with assurance of payment or reimbursement for any expense and with reasonable indemnity for liability of the Issuer, its officers, members, officials, agents and employees.

The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Agreement and the Bonds executed and delivered hereunder; provided, however, that the liability of the Issuer under any such covenant, condition or agreement for any breach or default by the Issuer thereof or thereunder shall be limited solely to the revenues and receipts held hereunder or derived from the Bridge Loan Agreement.

The Issuer acknowledges and agrees that all representations, warranties and covenants contained in this Agreement are for the benefit of the Purchaser and relied upon by Purchaser and shall survive the delivery of the Bonds.

Section 4.3. Further Assurances. The Issuer shall, upon request and subject to its right to reimbursement and indemnity in Section 8.19 hereof, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such agreements supplemental hereto and such further acts, instruments and transfers as the Purchaser may reasonably require for the better assuring, transferring, conveying, pledging and assigning to the Purchaser of all the rights assigned hereby and the revenues and receipts pledged hereby to the payment of the principal of and interest on the Bonds. The Issuer shall, upon request and subject to its right to reimbursement and indemnity in Section 8.19 hereof, cooperate reasonably with the Borrower and the Purchaser in protecting the rights and security of the Purchaser.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES OF THE BORROWER**

The Borrower represents and warrants to and for the benefit of the Issuer and the Purchaser as follows:

Section 5.1. Existence. The Borrower is a limited partnership, duly organized, validly existing and in good standing under the Legal Requirements of the State of Oregon and is duly qualified to do business in the State. The Borrower has furnished true and complete copies of its partnership agreement and certificate of limited partnership. The Borrower owns no assets other than the Project Facilities. The Borrower has been, is and will be engaged solely in the

business of financing, owning, managing and operating the Project Facilities and activities incident thereto. The General Partner of the Borrower is Rosewood Terrace Housing Company, LLC, a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Oregon and is duly qualified to do business in the State. The General Partner has furnished to the Purchaser true and complete copies of its Articles of Organization and Certificates of Existence. The Borrower represents that the ownership of interests in the Borrower, as follows, are correct as of the Issue Date: (a) the General Partner – .005%; (b) Investor Member – 99.99%; and (c) the Special Member – .005%.

Section 5.2. Power, Authorization and No Conflicts. The Borrower has all requisite power and authority and the legal right to own and operate its properties and to conduct its business and operations as they are currently being conducted and as proposed to be conducted by it. The execution, delivery and performance by the Borrower of this Agreement and the other Bond Documents to which the Borrower is a party (i) are within the Borrower's powers, (ii) have been duly authorized by all necessary company and legal action, and (iii) do not contravene the partnership agreement, operating agreement, articles of organization, or certificate of limited partnership of the Borrower or the General Partner, as applicable, or any Legal Requirement applicable to the Borrower or the General Partner or any material contract or restriction binding on or affecting the Borrower, the General Partner or any of their respective assets, or result in the creation of any mortgage, pledge, lien or encumbrance upon any of their assets other than as provided by the terms thereof.

Section 5.3. Governmental Authorizations and other Approvals. The Borrower and the General Partner have all necessary Governmental Actions and qualifications, and have complied in all material respects with all applicable Legal Requirements necessary to conduct their business as it is presently conducted and to own and operate the Project Facilities in accordance with the provisions of the Bond Documents. No authorization, approval or other action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery and performance by the Borrower of this Agreement, or the other Bond Documents, except such as have been obtained or are not issuable on or before the date of execution and delivery of this Agreement.

Section 5.4. Validity and Binding Effect. This Agreement and the other Bond Documents to which the Borrower is a party are the legal, valid and binding obligations of the Borrower, enforceable against it in accordance with their terms, subject to the application by a court of general principles of equity and to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar Legal Requirement affecting creditors' rights generally.

Section 5.5. No Litigation. There is no pending action or proceeding before any Governmental Authority or arbitrator against or involving the Borrower, the General Partner or to the Borrower's knowledge after due inquiry, the Project Facilities and, to the best knowledge of the Borrower and the General Partner, there is no threatened action or proceeding affecting the Borrower or the General Partner before any Governmental Authority or arbitrator which, in any case, might materially and adversely affect the business, operations, assets, condition (financial or otherwise) or prospects of the Borrower or the General Partner, or the validity or enforceability of this Agreement, the Bonds or the other Bond Documents or the operation or ownership of the Project Facilities.

Section 5.6. Compliance. The Borrower shall, through the term of this Agreement and at no expense to the Issuer, promptly comply or cause compliance with all laws, ordinances, orders, rules, regulations and requirements of duly constituted public authorities which may be applicable to the Project Facilities or to the repair and alteration thereof, or to the use or manner of use of the Project Facilities.

## **ARTICLE VI [RESERVED]**

## **ARTICLE VII ACQUISITION OF BONDS; REGISTRATION AND TRANSFER**

Section 7.1. Acquisition of Bonds for Account of the Purchaser; Registration and Transfer. The Issuer shall maintain the registration records containing the names and addresses of the registered owner or owners of the Bonds and shall register the Bonds. The Purchaser represents and warrants that it will acquire the Bonds for its own account and that it has no present intention of making any distribution or disposition of the Bonds. The Person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal of and interest on such Bond shall be made only to or upon the order of the registered owner thereof, or its legal representative.

The Purchaser may only sell a Bond or any participations, receipts evidencing ownership or other participatory interests in the Bonds upon delivery of an Investor Letter from an Approved Investor. The Issuer agrees to execute, acknowledge and deliver, at the Purchaser's expense, such further instruments as the Purchaser may reasonably request to effectuate any transaction establishing such sale, participations, receipts evidencing ownership or other participatory interests by the Purchaser.

## **ARTICLE VIII GENERAL COVENANTS**

So long as any amount is due and owing hereunder, the Borrower covenants and agrees that, except to the extent the Purchaser and the Issuer shall otherwise consent in writing, each of the following covenants shall be performed and complied with:

Section 8.1. Conduct of Business; Maintenance of Existence; Mergers. The Borrower will (i) engage solely in the business of financing, owning and operating the Project Facilities, and activities incident thereto, (ii) preserve and maintain in full force and effect its existence as a limited partnership under the Legal Requirements of the state of its organization, and its rights and privileges and its qualification to do business in the State, (iii) not dissolve or otherwise dispose of all or substantially all of its assets and (iv) not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it.

Section 8.2. Compliance with Legal Requirements. The Borrower will comply with all Legal Requirements applicable to the Borrower or the Project Facilities and will construct and operate the Project Facilities as a "housing project" as defined in ORS 456.065(2)(a).

Section 8.3. Maintenance of Governmental Authorizations. The Borrower will maintain in full force and effect all of its Governmental Actions and qualifications necessary for the conduct of its business as it is presently being conducted and the ownership and operation of its facilities as they are presently being operated.

Section 8.4. Reserved.

Section 8.5. Compliance with Other Contracts and Bond Documents. The Borrower will comply with all of its covenants and agreements under the Bond Documents, as the same may hereafter be amended or supplemented from time to time, and each of such covenants is incorporated herein by reference as if fully set forth herein. The Borrower shall comply in all material respects with, or cause to be complied with, all requirements and conditions of all material contracts or restrictions binding on, relating to or affecting the Borrower, the General Partner or any of their respective assets, or relating to the Project Facilities. The Borrower shall not take any action which would adversely affect the exclusion from gross income of interest on the Bonds, nor shall the Borrower omit or fail to take any action required to maintain the exclusion from gross income of interest on the Bonds.

Section 8.6. Maintenance of Properties. The Borrower will, at its sole expense, maintain and preserve, or cause to be maintained and preserved, the Project Facilities in good working order and repair, fit for the purposes for which the Project Facilities were originally erected; not permit, commit or suffer any waste of any of its properties; not use (and use reasonable efforts to not permit tenants to use) any of the Project Facilities for any unlawful purpose and use reasonable efforts to not permit any nuisance to exist thereon; promptly make such repairs or replacements (structural or nonstructural, foreseen or unforeseen) as are required for the proper operation, repair and maintenance of the Project Facilities in an economical and efficient manner and consistent with customary and prudent practices, standards and procedures applicable to properties of like size and type; perform all repairs or replacements in a good and workmanlike manner, and in compliance with all applicable Legal Requirements; keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas which may be owned by the Borrower in good and neat order and repair; not take (or fail to take) any action, which if taken (or not so taken) would increase in any way the risk of fire or other hazard occurring to or affecting any of the Project Facilities; and not sell, lease (other than pursuant to residential Leases), cause a sale of or otherwise dispose of any part of its properties, except as otherwise permitted hereunder and under the other Bond Documents.

Section 8.7. Inspection Rights. The Borrower will, at any reasonable time and from time to time, permit the Purchaser, the Issuer and the agents or representatives of the Purchaser and the Issuer, to examine and copy and make abstracts from the records and books of account of, and visit the properties of, the Borrower, and to discuss the affairs, finances and accounts of the Borrower with the General Partner and its accountant. Upon reasonable prior notice, and subject to the rights of tenants, the Borrower will permit the Issuer or the Purchaser to inspect, or cause to be inspected, the Project Facilities at any reasonable time or times as the Purchaser or the Issuer may direct. The Borrower shall pay or reimburse the Purchaser on demand for reasonable and necessary advances and expenses incurred in connection with such inspections.

Section 8.8. Reserved.

Section 8.9. Reserved.

Section 8.10. Tax-Exempt Status. The Borrower covenants, represents and agrees to comply with the provisions of the Tax Certificate and Agreement and that it will not take or omit to take or permit any action that would adversely affect the exclusion of interest on the Bonds from the gross income of the recipients thereof for federal income tax purposes and, if it should take or permit any such action, the Borrower will take all lawful actions that it can take to rescind such action promptly upon having knowledge thereof and that the Borrower will take such action or actions, including amendment of this Agreement and the Regulatory Agreement, as may be necessary, in the Opinion of Bond Counsel, to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service applicable to the Bonds or affecting the Project Facilities. Further, the Borrower shall not permit the ownership in the Borrower, the General Partner or any Affiliate thereof to be modified without the prior written consent of the Purchaser and the Issuer. Further, except with the prior written approval of the Purchaser, the Borrower agrees to operate, construct and develop the Project in such a manner as to assure that no entity other than the Borrower is or will be a Substantial User or Related Person to a Substantial User and, if it should take or permit any such action, the Borrower will take all lawful actions that it can take to rescind such action promptly upon having knowledge thereof.

The Borrower will not make or permit any use, and will not direct the Purchaser to make any investment or use of the proceeds of the Bonds, which would cause the Bonds to be an "arbitrage bond" within the meaning of Section 148 of the Code and the Regulations thereunder as the same may be applicable to the Bonds at the time of such action, investment or use and agrees to take and cause the Issuer and the Purchaser to take all actions required to comply with the provisions of Section 148 of the Code.

The Borrower further covenants and agrees that it will comply with and will take all action reasonably required to comply with all applicable requirements of Section 148 and the rules and regulations of the United States Treasury Department thereunder relating to the Bonds and the interest thereon, including the employment of a rebate analyst for the calculation of any rebatable amount (the "**Rebate Amount**") to the United States Treasury Department. The Borrower agrees that it will cause the rebate analyst to calculate the Rebate Amount not later than forty-five (45) days after the fifth anniversary of the Issue Date and each five (5) years thereafter and agrees that the Borrower will pay all costs associated therewith. Within fifteen (15) days of the date of each such calculation, the Borrower shall promptly deliver a report or letter from the rebate analyst setting forth the Rebate Amount, if any, then due and the methods used to calculate such amount (each a "**Rebate Report**") to the Issuer and the Purchaser. In addition, the Borrower shall prepare, or cause the rebate analyst to prepare, and file any forms required by the Internal Revenue Service to be submitted with the Rebate Amount, if any.

Neither the Borrower, any Substantial User, nor any Related Person shall, pursuant to any arrangement, formal or informal, purchase or acquire the Bonds, unless the Borrower or such Substantial User or Related Person delivers a favorable Opinion of Bond Counsel with a reliance letter addressed to the Purchaser.

No changes will be made to the Project Facilities, no actions will be taken by the Borrower and the Borrower will not omit to take any actions, which will in any way adversely affect the tax-exempt status of the Bonds.

The Borrower will not make any changes in the Project Facilities that would, at the time made, cause the average reasonably expected economic life of the Project Facilities, determined pursuant to Section 147(b) of the Code, to be less than the average reasonably expected economic life of the Project set forth in such certificates or letters of representation of the Borrower, unless the Borrower files with the Issuer and the Purchaser a favorable Opinion of Bond Counsel that such changes to the Project Facilities will not result in loss of the exclusion of interest on the Bonds from gross income for federal income tax purposes.

No portion of the proceeds of the Bonds will be used to acquire existing property or any interest therein unless such acquisition meets the rehabilitation requirements of Section 147(d) of the Code.

The Issuer covenants and agrees that it will, solely at the written request of the Borrower and at the expense of the Borrower, take or cause to be taken all required actions reasonably within its control, to preserve the exclusion from gross income for federal income tax purposes of interest on the Bonds.

Section 8.11. Reserved.

Section 8.12. Reserved.

Section 8.13. Reserved.

Section 8.14. Reserved.

Section 8.15. Reserved.

Section 8.16. Determination of Taxability; Increased Costs.

(a) Neither the Borrower nor the General Partner shall admit in writing to the Issuer or the Purchaser that interest on the Bonds has become includable in gross income for purposes of federal income taxation of a Purchaser without first providing reasonable advance notice to the Purchaser and permitting the Purchaser, at its sole discretion and expense, to contest such conclusion. Promptly after the Borrower first becomes aware of any Determination of Taxability or an event that could trigger a Determination of Taxability, the Borrower shall give written notice thereof to the Issuer and the Purchaser.

(b) If either of the following shall occur:

(i) A Determination of Taxability, or

(ii) other than due to matters constituting a Determination of Taxability, in the event that the Purchaser shall reasonably determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that any law,



treaty or governmental rule, regulation or order, or any change therein or in the interpretation, administration or application thereof (including the introduction of any new law, treaty or governmental rule, regulation or order), or any determination of a court or governmental authority, in each case that becomes effective after the date hereof, or compliance by the Purchaser with any guideline, request or directive issued or made after the date hereof by any central bank or other governmental or quasi-governmental authority (whether or not having the force of law):

(a) subjects the Purchaser to any additional tax (other than any tax on the overall net income of the Purchaser) with respect to the Bonds, the transactions contemplated by the Bonds and this Financing Agreement, any of the Purchaser's obligations hereunder or any payments to the Purchaser of principal, interest, penalties, fees or any other amount payable hereunder or under the Bonds;

(b) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, compulsory loan, FDIC insurance or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of the Purchaser; or

(c) imposes any other condition on or affecting the Purchaser (or its applicable lending office) or its obligations under the Financing Agreement;

and the result of any of the foregoing events described in (i) or (ii) above is:

(x) to increase the cost to the Purchaser of purchasing or owning the Bonds, or

(y) to reduce the amount of interest, or any amount received or receivable by a Purchaser (or its applicable lending office) with respect to the Bonds, or

(z) to require a Purchaser to make any payment or to forego any interest or other sum payable under the Bonds, the amount of which payment or foregone interest or other sum is calculated by reference to the gross amount of any sum receivable or deemed received by the Purchaser from the Issuer under the Bonds, including any federal income taxes due on the interest on the Bonds;

then, in any such case, the Borrower shall pay or caused to be paid to the Purchaser, upon receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of a fee representing the increased rate, or a different method of calculating, interest or otherwise as the Purchaser in its sole discretion shall determine) as may be necessary to compensate the Purchaser for any such increased cost or reduction in amounts received or receivable hereunder. The Purchaser shall deliver to the Issuer and the Borrower a written statement setting forth in reasonable detail the basis for calculating the additional amounts owed to the Purchaser under

this Section 8.16(b), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

Section 8.17. Reserved.

Section 8.18. Borrower's Approval of Assignment of Security Interest. The Borrower understands that pursuant to the provisions of Section 10.17 hereof, the Issuer, as security for the payment of the principal of and the interest on the Bonds, has assigned and pledged to the Purchaser, certain of the Issuer's rights, title and interest in and to this Agreement (including all payments hereunder and under the Bridge Loan Agreement) reserving, however, the Reserved Rights; and the Borrower hereby agrees and consents to such assignment and pledge. By its execution of this Agreement, the Borrower acknowledges that it has approved, has agreed to and is bound by such assignment and pledge. The Borrower agrees that the Purchaser shall be entitled to enforce and to benefit from the terms and conditions of this Agreement that relate to it.

Section 8.19. Indemnification. Each of the Borrower and Pedcor Investments, A Limited Liability Company separately indemnifies and holds harmless the Issuer and each of its Affiliates (and each of the Issuer's and its Affiliates' respective directors, officers, employees, representatives and agents), and the Purchaser and each of its Affiliates (and each of the Purchaser's and its Affiliates' respective directors, officers, employees, representatives and agents) (collectively, the "**Indemnified Parties**") except as limited below, from and against any and all claims, damages, losses, liabilities, costs or expenses (including attorneys' fees for counsel of each of the Indemnified Parties' choice) whatsoever which the Indemnified Parties may incur (or which may be claimed against any of the Indemnified Parties by any person or entity whatsoever) by reason of or in connection with:

(a) any breach by the Borrower of any representation, warranty, covenant, term or condition in, or the occurrence of any default or Event of Default under, this Agreement or the other Bond Documents, including all reasonable fees or expenses resulting from the settlement or defense of any claims or liabilities arising as a result of any such breach or default or any Determination of Taxability;

(b) the involvement of any of the Indemnified Parties in any legal suit, investigation, proceeding, inquiry or action as a consequence, direct or indirect, of the Purchaser's actions taken pursuant to this Agreement or any other event or transaction contemplated by any of the foregoing;

(c) any untrue statement or alleged untrue statement contained or incorporated by reference in any offering or reoffering materials prepared in respect of the Bonds, or any supplement or amendment thereof, or the omission or alleged omission to state therein a material fact necessary to make such statements in light of the circumstances under which they are or were made not misleading;

(d) the acceptance or administration of the Bond Documents or the trusts thereunder or the performance of duties under the Bond Documents or any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining

to the Project Facilities or the use thereof, including without limitation any lease thereof or assignment of its interest in this Agreement;

(e) any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Project Facilities, the operation of the Project Facilities, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation or construction of, the Project Facilities or any part thereof;

(f) any Lien (other than a **Permitted Encumbrance**) or charge upon payments by the Borrower to the Issuer and the Purchaser hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Issuer or the Purchaser in respect of any portion of the Project Facilities;

(g) the enforcement of, or any action taken by the Issuer or the Purchaser, related to remedies under, this Agreement and the other Bond Documents;

(h) any action, suit, claim, proceeding, audit, inquiry, examination, or investigation of a judicial, legislative, administrative or regulatory nature concerning or related to interest payable on the Bonds not being exempt from federal or state income taxation;

(i) any action, suit, claim or demand contesting or affecting the title of the Project Facilities; and

(j) the investigation of, preparation for or defense of any litigation, proceeding or investigation in connection with the Project Facilities or the transactions to be consummated in connection therewith of any nature whatsoever, commenced or threatened against the Borrower, the Project Facilities or any Indemnified Party.

The indemnification shall include the reasonable costs and expenses of defending itself or investigating any claim of liability and other reasonable expenses and attorneys' fees incurred by the Issuer or the Purchaser. The obligations of the Borrower and Pedcor Investments, A Limited Liability Company under this Section shall survive the termination of this Agreement. Notwithstanding any other provision of this Agreement or the Bond Documents to the contrary, each of the Borrower and Pedcor Investments, A Limited Liability Company separately agrees (i) not to assert any claim or institute any action or suit against the Purchaser or its employees arising from or in connection with any investment of funds made by the Purchaser in good faith as directed by the Borrower or the Purchaser, and (ii) to indemnify and hold the Purchaser and its employees harmless against any liability, losses, damages, costs, expenses, causes of action, suits, claims, demands and judgments of any nature arising from or in connection with any such investment. Nothing in this Section is intended to limit the Borrower's reimbursement obligations contained in Section 3.1 and 3.3 hereof. Amounts payable to the Issuer or the Purchaser hereunder shall be due and payable five (5) days after demand and will accrue interest at the Default Rate, commencing with the expiration of the five (5) day period. When the Issuer or the Purchaser incurs expenses or renders service in connection with any bankruptcy or insolvency proceeding, such expenses (including the fees and expenses of its counsel) and the

compensation for such services are intended to constitute expenses of administration under any bankruptcy law or law relating to creditors rights generally.

## **ARTICLE IX DEFAULTS AND REMEDIES**

Section 9.1. Defaults. Each of the following shall constitute an event of default hereunder ("**Event of Default**"), in each event following notice to the Borrower by the Purchaser and the continuation of such Event of Default for a thirty (30) day period:

(a) Failure by the Borrower to pay any amount required to be paid by the Borrower under this Agreement or any of the other Bond Documents when the same shall become due and payable after the expiration of any notice or cure period;

(b) Failure by the Borrower to perform or comply with any terms or conditions contained in this Agreement and any of the other Bond Documents to which the Borrower is a party and continuation of such failure for thirty (30) days after written notice from the Purchaser to the Borrower, or such longer period to which the Purchaser may agree in the case of a default not curable by the exercise of due diligence within such thirty (30) day period, provided that the Borrower or the General Partner shall have commenced, or the Investor Member or the Special Member has caused to be commenced, a cure of such default within such thirty (30) day period and shall complete, or cause to be completed, such cure as quickly as reasonably possible with the exercise of due diligence;

(c) Any of the representations or warranties of the Borrower set forth in this Agreement, any of the other Bond Documents or any other document furnished to the Purchaser pursuant to the terms hereof proves to have been false or misleading in any material respect when made;

(d) Any material provision of this Agreement or any of the other Bond Documents to which the Borrower is a party for any reason ceases to be valid and binding on the Borrower, or is declared to be null and void, or is violative of any applicable Legal Requirement relating to a maximum amount of interest permitted to be contracted for, charged or received, or the validity or enforceability thereof is contested by the Borrower or any Governmental Authority, or the Borrower denies that it has any or further liability or obligation under this Agreement or any of the Bond Documents to which the Borrower is a party;

(e) The occurrence of an Event of Default as defined in the other Bond Documents or an act or event (or failure to act or non-occurrence of an act) which, with the passage of time, the giving of notice or both, would constitute an Event of Default under the Bond Documents;

(f) An Act of Bankruptcy of the Borrower; or

(g) An Event of Default under the Bridge Loan Agreement.

Section 9.2. Remedies. If an Event of Default has occurred and is continuing uncured, the Purchaser, acting in its sole discretion, may:

(a) Declare the principal amount of the Bonds then Outstanding and the interest accrued thereon to be due and payable; and

(b) Enter upon the Project Facilities and take possession thereof, together with the Improvements in the course of construction or completed and all of the Borrower's materials, supplies, tools, equipment and construction facilities and appliances located thereon, and proceed either in the name of the Purchasers or in the name of the Borrower (and the Borrower hereby appoints the Purchaser as the attorney-in-fact of the Borrower, which authority is coupled with an interest and is irrevocable by the Borrower for such purposes) as the Purchaser shall elect, to complete the construction of the Improvements at the cost and expense of the Borrower. If the Purchaser elects to complete or cause the construction of the Improvements to be so completed, it may do so according to the terms of the plans and specifications or as the Purchaser shall deem expedient or necessary, and the Purchaser may enforce or cancel all contracts entered into as aforesaid or make other contracts which in the Purchaser's reasonable opinion may seem advisable, and the Borrower shall be liable, under this Agreement or any note given by it pursuant to the provisions hereof, to pay the Purchaser upon demand any amount or amounts expended by the Purchaser or its representatives for such performance, together with any costs, charges or expenses incident thereto or otherwise incurred or expended by the Purchaser or its representatives on behalf of the Borrower in connection with the Improvements, and the amounts so expended shall bear interest at the Default Rate specified in this Agreement, and shall be considered part of the indebtedness evidenced by this Agreement and secured by the Bond Note.

(c) Exercise, or cause to be exercised, any and all such remedies as it may have under this Agreement, the Bridge Loan Agreement or any of the other Bond Documents by a suit in equity or action at law, including for the right to disburse and control the use of the Subordinate Construction Fund, specific performance of the Bond Note, and any covenant or agreement contained in this Agreement, the Bridge Loan Agreement or the other Bond Documents, or by mandamus or other appropriate proceeding for the enforcement of any other legal or equitable remedy as the Purchaser determines.

The Purchaser shall apply all proceeds derived from the exercise of such remedies, plus any moneys held in the Subordinate Construction Fund, to pay the principal of and interest on the Bonds. In the event the proceeds derived from such sale, plus any moneys held in the Subordinate Construction Fund, are at least sufficient to pay the Bonds in full, the Borrower shall be entitled to any excess proceeds.

Section 9.3. No Waivers; Consents. No waiver of, or consent with respect to, any provision of this Agreement shall in any event be effective unless the same shall be in writing and signed by the Issuer at the direction of the Purchaser, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

Section 9.4. No Waiver; Remedies Cumulative. No failure on the part of the Issuer or the Purchaser to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; and no single or partial exercise of any right hereunder shall preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies available under any other document or at law or in equity.

Section 9.5. Issuer and Borrower to Give Notice of Default. The Issuer and the Borrower severally covenant that they will, at the expense of the Borrower, promptly give to the Purchaser, the Investor Member and the Special Member and to each other written notice of any Event of Default under this Agreement, and any act, event or circumstance which, with the passage of time, or notice, or both, would constitute such an Event of Default of which they shall have actual knowledge or written notice, but the Issuer shall not be liable for failing to give such notice.

Section 9.6. Cure by Investor Member or Special Member. Notwithstanding anything to the contrary contained herein, the Issuer and the Purchaser hereby agree that any cure of any default made or tendered by the Investor Member or the Special Member shall be deemed to be a cure by the Borrower, and shall be accepted or rejected on the same basis as if made or tendered by the Borrower; provided, however, that neither the Investor Member nor the Special Member shall have any obligation or duty to take any action to cure any default or to cause any default to be cured.

Section 9.7. Attorney Fees. Upon the occurrence of an Event of Default under this Agreement, if the Issuer or the Purchaser employs attorneys or incurs other expenses for the collection of amounts payable hereunder or for the enforcement of the performance or observance of any covenants or agreements on the part of the Borrower herein contained, whether or not suit is commenced, the Borrower agrees that it will on demand therefor pay to the Issuer or the Purchaser, as applicable, the reasonable fees of such attorneys to the extent actually incurred and such other reasonable expenses so incurred by the Issuer or the Purchaser.

## **ARTICLE X MISCELLANEOUS**

Section 10.1. Notices. All notices and other communications provided for hereunder shall be in writing and sent by facsimile and by reputable overnight mail service or private delivery service addressed as follows:

To the Issuer:           Housing Authority of Clackamas County  
                                  13900 South Gain Street  
                                  P.O. Box 1510  
                                  Oregon City, OR 97045  
                                  Attention: Executive Director

To the Borrower:       Pedcor Investments-2016-CLV, Limited Partnership  
                                  c/o Pedcor Investments  
                                  One Pedcor Square  
                                  770 3rd Avenue, S.W.  
                                  Carmel, IN 46032  
                                  Attention: Phillip J. Stoffregen

with a copy to: Pedcor Investments  
One Pedcor Square  
770 3rd Avenue, S.W.  
Carmel, IN 46032  
Attention: Jeremy Buchanan, Legal Counsel

To the Investor Member: [Insert USB CDC Info] \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_  
Attention: \_\_\_\_\_

with a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_  
Attention: \_\_\_\_\_

To the Special Member: Housing Authority of Clackamas County  
13900 South Gain Street  
P.O. Box 1510  
Oregon City, OR 97045  
Attention: Executive Director

with a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Purchaser: The Huntington National Bank  
  
45 North Pennsylvania Street, Suite 300  
Indianapolis, Indiana 46204  
Attn: Collin Mueller, Vice President  
E-mail: [collin.mueller@huntington.com](mailto:collin.mueller@huntington.com)

With copy to: Frost Brown Todd LLC  
201 North Illinois Street, Suite 1900  
P.O. Box 44961  
Indianapolis, Indiana 46244-0961  
Attn: Michael D. Moriarty, Esq.  
E-mail: [mmoriarty@fbtlaw.com](mailto:mmoriarty@fbtlaw.com)

The parties listed above may change the address to which notices to it are to be sent by written notice given to the other persons listed in this Section. All notices shall, when sent as aforesaid, be effective when received.

Section 10.2. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. The Borrower may not assign its rights under this Agreement without the prior written consent of the Purchaser. The Borrower and the Issuer intend that no person other than the parties hereto, and their successors and assigns as permitted hereunder, shall have any claim or interest under this Agreement or right of action hereon or hereunder.

Section 10.3. Survival of Covenants. All covenants made by the Borrower herein and in any document delivered pursuant hereto shall survive the delivery of this Agreement and the payment of any amounts under the Bond Documents.

Section 10.4. Counterparts. The execution hereof by each party hereto shall constitute a contract between them for the uses and purposes herein set forth, and this Agreement may be executed in any number of counterparts, with each executed counterpart constituting an original and all counterparts together constituting one agreement.

Section 10.5. Costs, Expenses and Taxes. The Borrower agrees to pay at closing and thereafter within 30 days after demand, all reasonable costs and expenses of the Issuer and the Purchaser in connection with the preparation, execution, delivery and administration of this Agreement, the other Bond Documents and any other documents that may be delivered in connection with this Agreement or the Bond Documents or any amendments or supplements thereto, including, without limitation, the reasonable fees and expenses of Bond Counsel, Issuer counsel or counsel for the Purchaser with respect thereto and with respect to advising the Purchaser as to its rights and responsibilities under this Agreement, the other Bond Documents and such other documents, and all costs and expenses, if any, (including, without limitation, reasonable counsel fees and expenses of the Purchaser) in connection with the enforcement of this Agreement, the other Bond Documents and such other documents.

Section 10.6. Severability; Interest Limitation. If any provision hereof is found by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction, it shall be ineffective as to such jurisdiction only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision as to such jurisdiction to the extent it is not prohibited or unenforceable, nor invalidate such provision in any other jurisdiction, nor invalidate the other provisions hereof, all of which shall be liberally construed in favor of the Issuer in order to effect the provisions of this Agreement. Notwithstanding anything to the contrary herein contained, the total liability of the Borrower for payment of interest pursuant hereto shall not exceed the maximum amount, if any, of such interest permitted by applicable Legal Requirements to be contracted for, charged or received, and if any payments by the Borrower to the Purchaser include interest in excess of such a maximum amount, the Purchasers shall apply such excess to the reduction of the unpaid principal amount due pursuant hereto, or if none is due, such excess shall be refunded to the Borrower; provided that, to the extent permitted by applicable Legal Requirements, in the event the interest is not collected, is applied to principal or is refunded pursuant to this sentence and



interest thereafter payable pursuant hereto shall be less than such maximum amount, then such interest thereafter so payable shall be increased up to such maximum amount to the extent necessary to recover the amount of interest, if any, theretofore uncollected, applied to principal or refunded pursuant to this sentence. Any such application or refund shall not cure or waive any Event of Default. In determining whether or not any interest payable under this Agreement exceeds the highest rate permitted by applicable Legal Requirements, any non-principal payment (except payments specifically stated in this Agreement to be "interest") shall be deemed, to the extent permitted by applicable Legal Requirements, to be an expense, fee, premium or penalty rather than interest.

Section 10.7. Conflicts. Insofar as possible the provisions of this Agreement shall be deemed complementary to the terms of the other Bond Documents, but in the event of conflict the terms hereof shall control to the extent such are enforceable under applicable Legal Requirements.

Section 10.8. Complete Agreement. Taken together with the other Bond Documents and the other instruments and documents delivered in compliance herewith, this Agreement is a complete memorandum of the agreement of the Borrower, the General Partner, the Purchaser and the Issuer.

Section 10.9. Consent to Jurisdiction; Venue; Waiver of Jury Trial. The parties hereby irrevocably (i) agree that any suit, action or other legal proceeding to which the Issuer is a party arising out of or relating to this Agreement or the other Bond Documents shall be brought solely in a federal court located in the State or in a State court located in Clackamas County, Oregon and consent to the jurisdiction of such court in any such suit, action or proceeding, (ii) agree that any suit, action or other legal proceeding to which the Issuer is not a party arising out of or relating to this Agreement or the other Bond Documents shall be brought solely in a federal or state court located in the State of Oregon in Clackamas County and consent to the jurisdiction of such court in any such suit, action or proceeding, and (iii) waive any objection which it may have to the laying of venue of any such suit, action or proceeding in any such court and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. The parties hereby irrevocably consent to the service of any and all process in any such suit, action or proceeding by mailing of copies of such process to such party at its address provided under or pursuant to Section 10.1 hereof. The parties agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Legal Requirements. All mailings under this Section shall be by certified or registered mail, return receipt requested. Nothing in this Section shall affect the right of the Purchaser to serve legal process in any other manner permitted by applicable Legal Requirements. **TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HERETO HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING HEREUNDER OR UNDER THIS AGREEMENT, ANY OF THE OTHER BOND DOCUMENTS OR OTHERWISE IN CONNECTION HEREWITH.**

Section 10.10. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State without reference to its principles of conflicts of law; provided that the duties and obligations of the Purchaser under this Agreement shall be governed

by and construed in accordance with the internal laws of the State of Indiana without giving effect to conflict of law principles.

Section 10.11. Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 10.12. Determinations. Subject to specific provisions in this Agreement to the contrary, in any instance under this Agreement where the consent or approval of the Purchaser may be given or is required, or where any determination, judgment or decision is to be rendered by the Purchaser under this Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by the Purchaser (or its designated representative) at their discretion.

Section 10.13. Issuer, Members, Directors Attorneys, Officers, Employees and Agents of Issuer Not Liable. To the extent permitted by law, no recourse shall be had for the enforcement of any obligation, promise or agreement of the Issuer contained herein or in the other Bond Documents to which the Issuer is a party or for any claim based hereon or thereon or otherwise in respect hereof or thereof against any director, officer, agent, attorney or employee, as such, in his individual capacity, past, present or future, of the Issuer or of any successor entity, either directly or through the Issuer or any successor entity whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise. No personal liability whatsoever shall attach to, or be incurred by, any director, officer, agent, attorney or employee as such, past, present or future, of the Issuer or any successor entity, either directly or through the Issuer or any successor entity, under or by reason of any of the obligations, promises or agreements entered into between the Issuer and the Borrower, whether herein contained or to be implied here from as being supplemental hereto; and all personal liability of that character against every such director, officer, agent attorney and employee is, by the execution of this Agreement and as a condition of, and as part of the consideration for, the execution of this Agreement, expressly waived and released.

Section 10.14. Reserved.

Section 10.15. Reserved.

Section 10.16. Modification, Amendment, Waiver, Etc. No modification, amendment or waiver of any provision of this Agreement shall be effective unless the same shall be in writing and signed by all of the parties hereto and an Opinion of Bond Counsel is delivered.

Section 10.17. Assignment of Issuer's Interests. For so long as the Bonds are Outstanding, the interests of the Issuer in this Agreement (except its Reserved Rights) will be, and hereby are, assigned to the Purchaser, and its respective successors, under this Financing Agreement, and during such period this Agreement shall be enforceable by the Purchaser in accordance with its terms.

Section 10.18. Guaranty of Certain Reserved Rights Payments. Pedcor Investments, A Limited Liability Company hereby guarantees the prompt payment when due of (i) any obligations of the Borrower to the Purchaser pursuant to this Agreement and any other Bond

Document and (ii) any pecuniary obligations of the Borrower to the Issuer pursuant to Sections 2.1(e), 2.6, 3.1(b)(2), 3.1(c), 8.19, 9.7 or 10.5 of this Agreement. Pedcor Investments, A Limited Liability Company hereby acknowledges to the Issuer and Purchaser that it understands the Issuer would not make the Bond Loan to the Borrower without the guarantees provided by this Section 10.18 and Section 8.19 hereof. The Issuer and/or the Purchaser, each in its sole discretion, may proceed to exercise any right or remedy which it may have under this Section 10.18 or Section 8.19 hereof without pursuing or exhausting any right or remedy which it may have against the Borrower.

Section 10.19. Non-Recourse. Except as provided in Section 10.18 hereof, the obligations of the Borrower under this Agreement, including specifically the Bond Note, are non-recourse to the Borrower and any of its partners and are payable exclusively from the sources identified and as provided in the Bridge Loan Agreement.

\* \* \* \* \*

IN WITNESS WHEREOF, the Issuer, the Borrower and the Purchaser have caused this Agreement to be duly executed and delivered on the day and year first above written.

**HOUSING AUTHORITY OF CLACKAMAS  
COUNTY, OREGON**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Executive Director

**PEDCOR INVESTMENTS-2016-CLV,  
LIMITED PARTNERSHIP**

By: Rosewood Terrace Housing Company, LLC,  
its General Partner

By: Pedcor Investments, A Limited Liability  
Company, its Managing Member

By: \_\_\_\_\_  
Name: Thomas G. Crowe  
Title: Executive Vice President, Development &  
Finance

**THE HUNTINGTON NATIONAL BANK,  
a national banking association**

By: \_\_\_\_\_  
Name: Nanette Hammond  
Title: Authorized Signer

Sections 8.19 and 10.18 of this Financing Agreement acknowledged and agreed to by **PEDCOR INVESTMENTS, A LIMITED LIABILITY COMPANY**

By: \_\_\_\_\_  
Name: Thomas G. Crowe  
Title: Executive Vice President, Development &  
Finance

**EXHIBIT A**  
CERTIFICATE CONCERNING ALLOCATION OF PROJECT COSTS

Requisition No. \_\_\_\_\_

Date: \_\_\_\_\_

The Huntington National Bank  
\_\_\_\_\_, Street  
\_\_\_\_\_, \_\_\_\_\_

RE: \$ \_\_\_\_\_ Housing Authority of Clackamas County, Oregon Multifamily Housing Subordinate Revenue Bonds (Rosewood Terrace Apartments Project), Series 2017B (the "Bonds") issued pursuant to the Financing Agreement, dated as of December 1, 2017 (the "Agreement") among Housing Authority of Clackamas County, Oregon (the "Issuer"), Pedcor Investments-2016-CLV, Limited Partnership (the "Borrower"), and The Huntington National Bank (the "Purchaser")

Ladies and Gentlemen:

The undersigned, on behalf of Pedcor Investments-2016-CLV, Limited Partnership (the "Borrower"), hereby certifies that he/she is a duly appointed Authorized Representative of the Borrower. The undersigned further certifies on behalf of the Borrower that disbursement of the funds requested will not cause or result in the violation, or be in violation, of any covenant contained in the Agreement, the Bridge Loan Agreement, the Regulatory Agreement or in the Tax Certificate and Agreement relating to the Bonds, including without limitation, the covenants that (i) at least 95% of the Net Bond Proceeds of the Bonds (as defined in such Tax Certificate and Agreement) will be allocated to pay costs chargeable to the capital account of the Project Facilities or would be so chargeable either with a proper election or but for a proper election to deduct such amounts and (ii) the issuance costs of the Bonds financed with proceeds of the Bonds will not exceed 2% of the proceeds of the Bonds. Capitalized terms used herein, but not defined herein, shall have the respective meanings ascribed thereto in the Agreement.

The payments to be made have not been the basis for a prior request for disbursement.

All of the Borrower's representations, covenants and warranties contained in the Financing Agreement, the Bridge Loan Agreement and the Tax Certificate and Agreement were true and accurate in all material respects as of the date made, and remain true and accurate in all material respects as of the date of this Certificate except as disclosed to the Purchaser, and the Borrower has fully and satisfactorily performed all of its covenants and obligations to date required under the Financing Agreement and the Tax Certificate and Agreement except as disclosed to the Purchaser. No Default or Event of Default has occurred and is continuing under the Financing Agreement or under the Bond Note except for Defaults or Events of Default that have been disclosed to Purchaser.

The Borrower understands that the Purchaser is relying on the certifications herein with regard to and in connection with approving the disbursement requested hereby.

Please indicate if this Certificate relates to the final disbursement from the Subordinate Construction Fund: \_\_\_\_ Yes \_\_\_ No.

If this Certificate requests such a reimbursement from the Bonds for expenditures made prior to the issuance of the Bonds, the payment or payments for any obligations originally paid by the Borrower, for federal income tax purposes, was after October 20, 2016.

The Borrower attaches hereto the invoices and/or bills of sale relating to the Project Facilities and, if such invoices have been paid by Issuer or Borrower, evidence of payment thereof.

**[Execution on Following Page]**

IN WITNESS WHEREOF, the undersigned Authorized Representative has executed this Certificate to be effective as of the date first set forth hereinabove.

PEDCOR INVESTMENTS-2016-CLV, LIMITED  
PARTNERSHIP

By: Rosewood Terrace Housing Company, LLC,  
its General Partner

By: Pedcor Investments, A Limited Liability  
Company, its Managing Member

By: \_\_\_\_\_  
Name: Thomas G. Crowe  
Title: Executive Vice President, Development &  
Finance

**EXHIBIT B**  
**FORM OF BONDS**

**THIS BOND MAY BE SOLD OR TRANSFERRED ONLY TO AN APPROVED  
INVESTOR UPON DELIVERY OF AN INVESTOR LETTER  
AND SUBJECT TO OTHER CONDITIONS PROVIDED IN THE  
FINANCING AGREEMENT**

No. R-1 \$ \_\_\_\_\_

HOUSING AUTHORITY OF CLACKAMAS COUNTY, OREGON  
MULTIFAMILY HOUSING SUBORDINATE REVENUE BONDS  
(ROSEWOOD TERRACE APARTMENTS PROJECT),  
SERIES 2017B

DATED DATE: \_\_\_\_\_, 2017

MATURITY DATE: \_\_\_\_\_

REGISTERED OWNER: THE HUNTINGTON NATIONAL BANK

PRINCIPAL AMOUNT: \_\_\_\_\_ Dollars

INTEREST PAYMENT DATE: The 15<sup>th</sup> day of each month commencing  
\_\_\_\_\_

HOUSING AUTHORITY OF CLACKAMAS COUNTY (the "Issuer"), a housing authority of the State of Oregon (the "State"), for value received, promises to pay to the Registered Owner specified above or registered assigns, but solely from the sources and in the manner referred to herein, the Principal Amount specified above on the aforesaid Maturity Date or on such earlier date as provided herein, and interest on such Principal Amount from the later of the date hereof or the most recent Interest Payment Date to which interest has been paid at the Interest Rate and subject to the provisions specified below, payable on each Interest Payment Date. Principal of and interest on this Bond are payable at the principal office of the Registered Owner, or at such other place and in such other manner as may be elected by the Registered Owner hereof in accordance with the Financing Agreement (as defined below). Upon payment in full of the principal of this Bond, whether at maturity or prior redemption, the Registered Owner shall forthwith deliver this Bond to the Authority for cancellation.

Defined Terms. In addition to terms defined elsewhere herein, the following terms, as used herein, shall have the respective meanings set forth below:

"Borrower" shall mean Pedcor Investments-2016-CLV, Limited Partnership, an Oregon limited partnership.

"Interest Rate" shall mean \_\_\_\_\_.



In addition to interest at the Interest Rate, upon a Determination of Taxability (as defined in the Agreement) or other event described in Section 8.16(b) of the Financing Agreement, additional amounts shall be payable to the Registered Owner of this Bond in accordance with such Section 8.16(b).

This Bond may be redeemed in whole or in part upon thirty (30) days prior written notice to the Registered Owners, at any time and at such redemption prices as shall be in accordance with the prepayment provisions of the respective Bond Note, the Bridge Loan Agreement and the Financing Agreement.

This Bond is one of a duly authorized issue of the Issuer's Multifamily Housing Subordinate Revenue Bonds (Rosewood Terrace Apartments Project), Series 2017B (the "Bonds"), issuable under the Financing Agreement dated as of December 1, 2017 (the "Financing Agreement") by and among the Issuer, the Borrower, and The Huntington National Bank. The Bonds are issued pursuant to Chapter 456 of Oregon Revised Statutes, as amended (the "Act"), and a resolution duly adopted by the Issuer.

THIS BOND IS A SPECIAL, LIMITED OBLIGATION OF THE ISSUER PAYABLE, AS TO PRINCIPAL AND INTEREST SOLELY FROM THE ASSETS PLEDGED THERETO UNDER THE FINANCING AGREEMENT AND THE BRIDGE LOAN AGREEMENT. THIS BOND SHALL NOT BE A DEBT OR INDEBTEDNESS OF THE STATE OF OREGON, CLACKAMAS COUNTY OR ANY OTHER POLITICAL SUBDIVISION THEREOF (INCLUDING THE ISSUER), AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION OF THE STATE OF OREGON SHALL BE LIABLE HEREON, NOR IN ANY EVENT SHALL THIS BOND BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN THOSE OF THE ISSUER PLEDGED UNDER THE FINANCING AGREEMENT AND THE BRIDGE LOAN AGREEMENT. THIS BOND SHALL NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE ISSUER FROM THE SOURCES IDENTIFIED IN THE FINANCING AGREEMENT) SHALL BE LIABLE FOR PAYMENT OF THIS BOND NOR IN ANY EVENT SHALL PRINCIPAL OF AND INTEREST ON THIS BOND BE PAYABLE OUT OF ANY FUNDS OR ASSETS OTHER THAN THOSE PLEDGED TO THAT PURPOSE BY THE ISSUER IN THE FINANCING AGREEMENT AND THE BRIDGE LOAN AGREEMENT. THE ISSUER HAS NO TAXING POWER.

No recourse under or upon any obligation, covenant or agreement contained in this Bond, or under any judgment obtained against the Issuer, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, under or independent of this Bond, shall be had against any incorporator, member, director or officer, as such, past, present or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the holder of this Bond or otherwise, of any sum that may be due and unpaid by the Issuer upon this Bond. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director or officer, as such, to respond by reason of any act or omission on his part or otherwise,

for the payment for or to the Issuer or any receiver thereof, or for or to the holder of this Bond or otherwise, of any sum that may remain due and unpaid upon this Bond, is hereby expressly waived and released as a condition of and consideration for the issue of this Bond.

All payments hereunder shall be payable in lawful money of the United States of America representing legal tender in payment of all debts and dues, public and private, at the time of payment.

This Bond shall be construed according to the laws of the State of Oregon.

This Bond may be transferred only in accordance with the provisions of the Financing Agreement.

Any capitalized terms appearing herein which are not otherwise defined shall have the meaning ascribed to them in the Financing Agreement.

This Bond will not be entitled to any security or benefit under the Financing Agreement, or be valid or become obligatory for any purpose, until the Certificate of Authentication hereon shall have been manually signed by the Registrar.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name by the manual or facsimile signature of the Executive Director of the Issuer, and its corporate seal to be hereunto affixed.

HOUSING AUTHORITY OF CLACKAMAS  
COUNTY, OREGON

By: \_\_\_\_\_  
\_\_\_\_\_, Executive Director

(SEAL)

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the Financing Agreement referred to herein.

Date of Authentication: \_\_\_\_\_

HOUSING AUTHORITY OF CLACKAMAS  
COUNTY, OREGON, as Registrar

By: \_\_\_\_\_  
\_\_\_\_\_, Authorized Officer

**EXHIBIT C**  
**FORM OF INVESTOR LETTER**

Housing Authority of Clackamas County  
13900 South Gain Street  
Oregon City, OR 97045  
Attention: Executive Director

Pedcor Investments-2016-CLV, Limited Partnership  
One Pedcor Square  
770 3rd Avenue, S.W.  
Carmel, Indiana 46032

Re: Housing Authority of Clackamas County, Oregon, Multifamily Housing Subordinate Revenue Bonds (Rosewood Terrace Apartments Project), Series 2017B

Ladies and Gentlemen:

The undersigned authorized signatory for \_\_\_\_\_ (the "Purchaser"), the Purchaser of \$ \_\_\_\_\_, aggregate principal amount of Multifamily Housing Subordinate Revenue Bonds (Rosewood Terrace Apartments Project), Series 2017B (the "Purchaser Bonds"), does hereby certify, represent and warrant for the benefit of the Housing Authority of Clackamas County, Oregon (the "Issuer") and Pedcor Investments-2016-CLV, Limited Partnership (the "Borrower"), that the Purchaser is either a "qualified institutional buyer" as defined in Rule 144A under the Securities Act of 1933, as amended (a "QIB"), or an "accredited investor" (as defined in Rule 501(a)(1), (2), (3), (4), (7) or (8) of Regulation D promulgated under the Securities Act of 1933) (an "Accredited Investor").

The Purchaser hereby acknowledges, represents, and warrants to, and agrees with, the Issuer and the Borrower, as follows:

(1) The Purchaser is purchasing the Purchaser Bonds with its own funds (or with funds from accounts over which it has sole investment authority) and not the funds of any other person, and for its own account (or for accounts over which it has sole investment authority) and not as nominee or agent for the account of any other person and not with a view to any distribution thereof, other than the deposit or sale of the Purchaser Bonds in or to a custodial or trust arrangement each of the beneficial owners of which shall be required to be a QIB or an Accredited Investor.

(2) The Purchaser has such knowledge and experience in business and financial matters, including (i) the evaluation of residential real estate developments such as the Project Facilities, (ii) the evaluation of the capabilities of persons such as Pedcor Investments-2016-CLV, Limited Partnership (the "Borrower"), and the manager of the Project Facilities to operate and maintain the Project Facilities, and (iii) the analysis, purchase and ownership of multifamily housing revenue bonds, tax-exempt securities and other investment vehicles similar in character to the Bonds, so as to enable it to understand and evaluate the risks of such investments and form an investment decision with respect thereto, the Purchaser has no need for liquidity in such

investment and the Purchaser is (or any account for which it is purchasing is) able to bear the risk of such investment for an indefinite period and to afford a complete loss thereof.

(3) The Purchaser acknowledges that it has been provided with, and has had the opportunity to review, the Subordinate Bond Financing Agreement dated as of December 1, 2017 (the "Financing Agreement"), among the Issuer, the Borrower and The Huntington National Bank, and all other documents relating to the issuance of the Purchaser Bonds. The Purchaser has conducted its own investigation of the Project Facilities, the Borrower, the manager of the Project Facilities, the Purchaser Bonds, the Financing Agreement and related documents and the transactions relating thereto, to the extent it deemed necessary. The Purchaser has been offered an opportunity to have made available to it any and all such information it might request from the Issuer, the Borrower and the manager of the Project Facilities. On this basis, it is agreed by the Purchaser that the Purchaser is not relying on the Issuer or any other party or person to undertake the furnishing or verification of information related to the referenced transaction.

(4) In connection with the purchase of the Purchaser Bonds, the Purchaser has been advised that (i) the Issuer has not undertaken steps to ascertain the accuracy, completeness or truth of any statements made or omitted to be made to the undersigned concerning any of the facts relating to the business, operations, financial condition, or future prospects of the Borrower or the manager of the Project Facilities, and (ii) the Issuer has not made any representations concerning the accuracy or completeness of any information supplied to the undersigned by the Borrower or the manager of the Project Facilities.

(5) THE PURCHASER UNDERSTANDS THAT:

(i) THE PURCHASER BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY OUT OF THE REVENUES, RECEIPTS AND OTHER MONEYS PLEDGED THEREFOR UNDER THE FINANCING AGREEMENT AND THE BRIDGE LOAN AGREEMENT. THE PURCHASER BONDS SHALL NOT BE A DEBT OR INDEBTEDNESS OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF (INCLUDING THE ISSUER), AND NEITHER THE STATE OF OREGON ("STATE") NOR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON, NOR IN ANY EVENT SHALL THE PURCHASER BONDS BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN THOSE OF THE ISSUER PLEDGED UNDER THE FINANCING AGREEMENT AND THE BRIDGE LOAN AGREEMENT. THE PURCHASER BONDS SHALL NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION.

(ii) THE ISSUER HAS NO TAXING POWER AND PRINCIPAL AND INTEREST ON THE PURCHASER BONDS ARE PAYABLE SOLELY OUT OF THE MONEYS TO BE RECEIVED BY THE ISSUER UNDER THE FINANCING AGREEMENT AND AMOUNTS ON DEPOSIT IN THE FUNDS AND ACCOUNTS ESTABLISHED AND PLEDGED UNDER THE FINANCING AGREEMENT. NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE ISSUER FROM THE SOURCES IDENTIFIED ABOVE) SHALL BE LIABLE FOR PAYMENT OF THE PURCHASER BONDS NOR IN ANY EVENT SHALL PRINCIPAL OF AND INTEREST ON THE PURCHASER BONDS BE PAYABLE OUT OF ANY FUNDS OR ASSETS OTHER THAN THOSE PLEDGED TO

THAT PURPOSE BY THE ISSUER UNDER THE FINANCING AGREEMENT AND THE BRIDGE LOAN AGREEMENT.

(6) The Purchaser understands that in connection with any proposed transfer or exchange of Purchaser Bonds, there must be delivered to the Issuer a letter of the transferee to substantially the same effect as this letter or otherwise as permitted under the Financing Agreement.

(7) The Purchaser understands that, in connection with any proposed transfer of the Purchaser Bonds, such transfer must be limited to an Approved Investor (as defined in the Financing Agreement) that makes representations with respect to itself to substantially the same effect as the representations set forth herein.

(8) The Purchaser (or in the case of any transferee, such transferee) also understands that it shall indemnify the Issuer as set forth in the Financing Agreement: "THE PURCHASER AND ANY TRANSFEREE SHALL AGREE TO INDEMNIFY THE ISSUER FROM AND AGAINST ANY AND ALL LIABILITY, COST OR EXPENSE (INCLUDING ATTORNEYS' FEES AND EXPENSES) THAT MAY RESULT IF THE REPRESENTATIONS OF SUCH PURCHASER OR ANY SUCH TRANSFEREE, RESPECTIVELY, CONTAINED IN ITS INVESTOR LETTER ARE FALSE IN ANY MATERIAL RESPECT."

This letter and the representations and agreements contained herein are made for your benefit.

IN WITNESS WHEREOF, I have hereunto set my hand the \_\_\_\_ day of \_\_\_\_\_.

[PURCHASER]

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

MUST BE SIGNED BY ACTUAL  
PARTICIPANT. MAY NOT BE SIGNED  
BY NOMINEE OR AGENT.

**EXHIBIT D**  
**FORM OF BOND NOTE<sup>1</sup>**

**MULTIFAMILY PROMISSORY NOTE**

AFTER THE ENDORSEMENT AS HEREON PROVIDED AND PLEDGE OF THIS NOTE, THIS NOTE MAY NOT BE ASSIGNED, PLEDGED, ENDORSED OR OTHERWISE TRANSFERRED EXCEPT TO AN ASSIGNEE OR SUCCESSOR OF THE PURCHASER IN ACCORDANCE WITH THE FINANCING AGREEMENT, BOTH REFERRED TO HEREIN.

\$ \_\_\_\_\_

FOR VALUE RECEIVED, Pedcor Investments-2016-CLV, Limited Partnership, a limited partnership, duly formed and existing under the laws of the State of Oregon (the "Borrower"), by this promissory note hereby promises to pay to the order of the Housing Authority of Clackamas County, Oregon (the "Issuer") the principal sum of \_\_\_\_\_ Hundred Dollars (\$ \_\_\_\_\_), together with interest on the unpaid principal amount hereof, from the Issue Date (as defined in the Financing Agreement referenced below) until paid in full, at a rate per annum equal to the rate of interest borne by the Bonds (as hereinafter defined) and premium, if any, on the Bonds. All such payments of principal, interest and premium shall be made in funds which shall be immediately available on the due date of such payments and in lawful money of the United States of America at the principal office of the Purchaser (as defined in the Financing Agreement).

The principal amount, interest and premium, if any, on this Note shall be payable on the dates and in the amount, that principal of, interest and premium, if any, on the Bonds are payable, subject to prepayment as hereinafter provided.

This promissory note is the "Bond Note" referred to in the Subordinate Bond Financing Agreement, dated as of December 1, 2017 (the "Financing Agreement") among the Issuer, the Borrower, and The Huntington National Bank (the "Purchaser"), the terms, conditions and provisions of which are hereby incorporated by reference.

This Note and the payments required to be made hereunder are irrevocably assigned, without recourse, representation or warranty, and pledged for payment of the Bonds to the Purchaser under the Financing Agreement, and such payments will be made directly to the Purchaser for the account of the Issuer pursuant to such assignment. Such assignment is made as security for the payment of \$ \_\_\_\_\_ aggregate principal amount of Housing Authority of Clackamas County Multifamily Housing Subordinate Revenue Bonds (Rosewood Terrace Apartments Project), Series 2017B (the "Bonds"). All the terms, conditions and provisions of the Financing Agreement and the Bonds are hereby incorporated as a part of this Note.

Notwithstanding any provision of this Note to the contrary, the Borrower's obligations hereunder are non-recourse to the Borrower and its partners and are payable solely from the sources pledged in the Bridge Loan Agreement.

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<sup>1</sup> Alternatively, use Notes prepared by Bank Counsel.



The Borrower may at its option, and may under certain circumstances be required to, prepay together with accrued interest, all or any part of the amount due on this Note, as provided in the Financing Agreement.

Presentation, demand, protest and notice of dishonor are hereby expressly waived by the Borrower.

The Borrower hereby promises to pay reasonable costs of collection and reasonable attorneys' fees in case of default on this Note.

\* \* \* \* \*

This Note shall be governed by, and construed in accordance with, the laws of the State of Oregon.

PEDCOR INVESTMENTS-2016-CLV, LIMITED  
PARTNERSHIP

By: Rosewood Terrace Housing Company, LLC,  
its General Partner

By: Pedcor Investments, A Limited Liability  
Company, its Managing Member

By: \_\_\_\_\_  
Name: Thomas G. Crowe  
Title: Executive Vice President, Development &  
Finance

**ENDORSEMENT**

Pay to the order of The Huntington National Bank, without recourse, the Purchaser named in the Financing Agreement referred to in the within mentioned Note, as security for the Bonds issued under such Financing Agreement. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Note.

HOUSING AUTHORITY OF CLACKAMAS  
COUNTY

By:

\_\_\_\_\_  
\_\_\_\_\_, President

Dated: \_\_\_\_\_, 2017

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## MULTIFAMILY PROMISSORY NOTE

AFTER THE ENDORSEMENT AS HEREON PROVIDED AND PLEDGE OF THIS NOTE, THIS NOTE MAY NOT BE ASSIGNED, PLEDGED, ENDORSED OR OTHERWISE TRANSFERRED EXCEPT TO AN ASSIGNEE OR SUCCESSOR OF THE PURCHASER IN ACCORDANCE WITH THE FINANCING AGREEMENT, BOTH REFERRED TO HEREIN.

\$ \_\_\_\_\_, 201\_

FOR VALUE RECEIVED, Pedcor Investments-2016-CLV, L.P., a limited partnership, duly formed and existing under the laws of the State of Oregon (the "Company"), by this promissory note hereby promises to pay to the order of the Housing Authority of Clackamas County, Oregon (the "Issuer") the principal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), together with interest on the unpaid principal amount hereof, from the Issue Date (as defined in the Financing Agreement referenced below) until paid in full, at a rate per annum equal to the rate of interest borne by the Bonds (as hereinafter defined) and premium, if any, on the Bonds. All such payments of principal, interest and premium shall be made in funds which shall be immediately available on the due date of such payments and in lawful money of the United States of America at the principal office of the Purchaser (as defined in the Financing Agreement).

The principal amount, interest and premium, if any, on this Note shall be payable on the dates and in the amount, that principal of, interest and premium, if any, on the Bonds are payable, subject to prepayment as hereinafter provided.

This promissory note is the "Bond Note" referred to in the Financing Agreement, dated as of \_\_\_\_\_ 1, 2018 (the "Financing Agreement") among the Issuer, the Company, P/R Mortgage & Investment Corp., United Fidelity Bank, fsb ("United") and International City Bank, N.A. ("International" and with United the "Purchasers"), the terms, conditions and provisions of which are hereby incorporated by reference.

This Note and the payments required to be made hereunder are irrevocably assigned, without recourse, representation or warranty, and pledged for payment of the Bonds to the Purchasers under the Financing Agreement, and such payments will be made directly to the Purchasers for the account of the Issuer pursuant to such assignment. Such assignment is made as security for the payment of \$ \_\_\_\_\_ aggregate principal amount of Housing Authority of Clackamas County Multifamily Housing Revenue Bonds (Rosewood Terrace Apartments Project), Series 2018 (the "Bonds"). All the terms, conditions and provisions of the Financing Agreement and the Bonds are hereby incorporated as a part of this Note.

Notwithstanding any provision of this Note to the contrary, the Borrower's obligations hereunder are non-recourse to the Borrower and its partners and are: (1) payable solely from Surplus Cash (as defined and as provided in the Financing Agreement); (2) except for that portion of interest constituting Additional Interest, discharged and satisfied to the extent that the principal of and interest on the Bonds is paid from the Ginnie Mae Certificates (as defined in the Financing Agreement) and (3) with respect to that portion constituting Additional Interest,

discharged and satisfied to the extent that Additional Interest on the Bonds is paid from the Subordinate Note of the Company (as defined in the Financing Agreement); however, to the extent that Additional Interest is payable from Surplus Cash, such payments shall be payable from up to 75% of such available Surplus Cash.

The Company may at its option, and may under certain circumstances be required to, prepay together with accrued interest, all or any part of the amount due on this Note, as provided in the Financing Agreement.

Presentation, demand, protest and notice of dishonor are hereby expressly waived by the Company.

The Company hereby promises to pay reasonable costs of collection and reasonable attorneys' fees in case of default on this Note.

\* \* \* \* \*

This Note shall be governed by, and construed in accordance with, the laws of the State of Oregon.

**PEDCOR INVESTMENTS-2016-CLV,  
LIMITED PARTNERSHIP**

By: Rosewood Terrace Housing Company, LLC,  
its General Partner

By: Pedcor Investments, A Limited Liability  
Company, its Managing Member

By: \_\_\_\_\_  
Name: Thomas G. Crowe  
Title: Executive Vice President, Development &  
Finance

**ENDORSEMENT**

Pay to the order of United Fidelity Bank, fsb, and International City Bank, N.A., the Purchasers named in the Financing Agreement referred to in the within mentioned Note, in accordance with the Financing Agreement, without recourse, as security for the Bonds issued under such Financing Agreement. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Note.

**HOUSING AUTHORITY OF CLACKAMAS  
COUNTY, OREGON**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Executive Director

Dated: \_\_\_\_\_, 201\_\_



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FINANCING AGREEMENT

Dated as of \_\_\_\_\_ 1, 2018  
by and among

PEDCOR INVESTMENTS-2016-CLV, LIMITED PARTNERSHIP,

HOUSING AUTHORITY OF CLACKAMAS COUNTY

P/R MORTGAGE & INVESTMENT CORP.,

INTERNATIONAL CITY BANK, N.A.,  
in its capacity as a Purchaser of certain Bonds

and

UNITED FIDELITY BANK, fsb  
in its capacity as a Purchaser of certain Bonds and  
as Administrative Agent

relating to

HOUSING AUTHORITY OF CLACKAMAS COUNTY  
MULTIFAMILY HOUSING REVENUE BONDS  
(ROSEWOOD TERRACE APARTMENTS PROJECT),  
SERIES 2018

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The amounts payable to Housing Authority of Clackamas County (the "**Issuer**") and other rights of the Issuer (except for Reserved Rights, as defined herein) under this Financing Agreement have been pledged (pursuant to ORS 287A.310) and assigned to secure payment of the Bonds.

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## FINANCING AGREEMENT

**THIS FINANCING AGREEMENT** (the "**Agreement**") is made as of \_\_\_\_\_ 1, 2018, by and among **PEDCOR INVESTMENTS-2016-CLV, LIMITED PARTNERSHIP**, an Oregon limited partnership (together with its successors and assigns, the "**Borrower**"), **HOUSING AUTHORITY OF CLACKAMAS COUNTY**, a housing authority of the State of Oregon (together with its successors and assigns, the "**Issuer**"), **P/R MORTGAGE & INVESTMENT CORP.** (together with its successors and assigns, the "**Lender**"), **INTERNATIONAL CITY BANK, N.A. ("International")** in its capacity as a purchaser of certain Bonds and **UNITED FIDELITY BANK, fsb ("UFB")** in its capacity as a purchaser of certain Bonds (together with their successors and assigns, the "**Purchasers**") and as **Administrative Agent**.

### RECITALS

A. The Issuer is authorized under the applicable provisions of Chapters 456 and 287A of the Oregon Revised Statutes, as amended (the "**Act**") to issue revenue bonds for the purpose of providing multifamily residential housing that substantially benefits persons of low income.

B. The Borrower desires to acquire and construct multifamily apartment housing facilities consisting of a total of 212 units, located in the City of Happy Valley, Oregon (the "**Project Facilities**" or the "**Project**"), the acquisition, construction and equipping of which are being financed by the proceeds of the Bonds (hereinafter defined).

C. The Issuer has determined that the public purposes set forth in the Act will be furthered by the issuance, sale and delivery of the Issuer's Multifamily Housing Revenue Bonds (Rosewood Terrace Apartments Project), Series 2017 (the "**Bonds**") in the maximum principal amount of \$ \_\_\_\_\_, to provide funds to finance the costs of the acquisition, construction and equipping of the Project Facilities, by loaning the proceeds of the Bonds to the Borrower in the manner herein described, as effected by the purchase of the Ginnie Mae Certificates as described below.

D. In connection with such financing of the Project Facilities, the Lender will originate a mortgage loan to the Borrower (the "**Senior Mortgage Loan**"); the Senior Mortgage Loan will be insured by the Federal Housing Administration ("**FHA**") of the United States Department of Housing and Urban Development ("**HUD**") pursuant to Section 221(d)(4) of the National Housing Act of 1934, as amended (the "**National Housing Act**"); the Senior Mortgage Loan will be evidenced by the Borrower's promissory note in the original principal amount of \$ \_\_\_\_\_ (the "**Senior Mortgage Note**") in favor of the Lender; the Senior Mortgage Note will be executed by the Borrower.

E. The Senior Mortgage Loan will be secured by a first lien deed of trust (the "**Senior Mortgage**") on the Project Facilities.

F. To reimburse the Lender for advances of the costs of the acquisition, construction and equipping of the Project Facilities and to provide security for the Bonds (other than any Additional Interest, as defined herein), upon the satisfaction of the conditions set forth herein, the Administrative Agent, on behalf of the Purchasers, will deliver proceeds of the Bonds deposited into the Construction Fund to the Lender in exchange for Ginnie Mae Certificates in respective

principal amounts equal to the related Advances (as defined herein) of the Senior Mortgage Loan to the Borrower from the Lender, each of which Ginnie Mae Certificates will be guaranteed as to the timely payment of principal and interest by the Government National Mortgage Association ("**Ginnie Mae**") pursuant to the National Housing Act and the regulations promulgated thereunder.

G. The Purchasers will each purchase an equal principal amount of Bonds and fund identical amounts for drawing upon the principal amount of the Bonds for deposit to the Construction Fund, so that the Administrative Agent (as defined herein) will be in the position to fund the purchase of the Ginnie Mae Certificates in the manner provided herein.

H. The Purchasers have authorized the Administrative Agent to perform those tasks and duties set forth herein for the Administrative Agent in the Administrative Agency Agreement (as defined herein).

I. The Administrative Agent and the Lender shall provide for the delivery of the Ginnie Mae Certificates in such manner as shall assure that the two Purchasers each are registered as owning their respective interests in the Ginnie Mae Certificates.

J. The Administrative Agent shall distribute to each Purchaser its pro rata share of all payments received on the Ginnie Mae Certificates and the Bonds.

K. In order to induce the Purchasers to purchase the Bonds, the Borrower has executed and delivered to the Issuer the Subordinate Mortgage Notes and Subordinate Mortgages pursuant to which the Borrower agrees to pay to the Issuer for the account of the Purchasers the amount of Additional Interest due on the Bonds.

L. The Borrower will execute and deliver to the Issuer the Bond Note, the Subordinate Mortgage Notes and the Subordinate Mortgage.

M. To secure the Bonds, the Issuer shall assign and pledge to the Purchasers the Issuer's right, title and interest in the Financing Agreement, except the Reserved Rights defined herein, the Bond Note, the Subordinate Mortgage Notes and the Subordinate Mortgage and directs that the GNMA Certificates shall be delivered directly to the Purchasers, all as security for the Bonds.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE UNDERTAKINGS HEREIN SET FORTH AND INTENDING TO BE LEGALLY BOUND, THE BORROWER, THE ISSUER, THE LENDER, THE ADMINISTRATIVE AGENT AND THE PURCHASERS HEREBY AGREE AS FOLLOWS:

## **ARTICLE I DEFINITIONS**

Section 1.1. Definitions. In addition to terms defined elsewhere in this Agreement, the following words and terms as used in this Agreement and the preambles hereto shall have the following meanings unless the context or use clearly indicates another or different meaning or intent.

"Act" means the applicable provisions of Chapters 456 and 287A of the Oregon Revised Statutes, as now in effect and as it may from time to time hereafter be amended and supplemented.

"Act of Bankruptcy" means the actual notice received by the Administrative Agent or the Purchasers that the Borrower has become insolvent or has failed to pay its debts generally as such debts become due or has admitted in writing its inability to pay any of its indebtedness or has consented to or has petitioned or applied to any court or other legal authority for the appointment of a receiver, liquidator, trustee or similar official for itself or for all or any substantial part of its properties or assets or that any such trustee, receiver, liquidator or similar official has been appointed or that insolvency, reorganization or liquidation proceedings (or similar proceedings) have been instituted by or against the Borrower.

"Additional Interest" means the interest due on the Bonds in excess of the Pass-Through Rate per annum up to a maximum amount equal to \$\_\_\_\_\_ minus the outstanding principal balance on the Ginnie Mae Certificates (the "Maximum Amount"). Payment of Additional Interest shall be subject to and payable solely from: (i) advances received by the Borrower subject to that certain Tri-Party Agreement, dated as of \_\_\_\_\_, \_\_\_\_\_, by and among, the Borrower, the Issuer and Pedcor Development Associates, LLC (the "Tri-Party Agreement"); and (ii) available Surplus Cash (as defined in the HUD Regulatory Agreement and Sale Proceeds); however, to the extent that Additional interest is payable from Surplus Cash such payments shall be payable only from up to 75% of such available Surplus Cash.

"Administrative Agency Agreement" means the Administrative Agency Agreement dated as of the date hereof, between International and UFB.

"Administrative Agent" means UFB, acting under the authority granted under the Administrative Agency Agreement, or any successor thereto.

"Advance" means any advance of the Senior Mortgage Loan to the Borrower by the Lender.

"Affiliate" means, with respect to any designated Person, each Person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another designated Person, pursuant to the organizational document(s) of an entity or by other express, written agreement.

"Agreement" means this Financing Agreement, dated as of \_\_\_\_\_ 1, 2018, by and among the Issuer, Borrower, Lender, the Administrative Agent and Purchasers and any modifications, amendments and supplements thereto permitted hereunder.

"Approved Investor" means any investor that is (i) a "qualified institutional buyer" as defined in Rule 144A promulgated by the Securities Exchange Commission under the Securities Act of 1933, as amended, (ii) an "accredited investor" as defined in Rule 501(a)(1), (2), (3), (4), (7) or (8) of Regulation D promulgated by the Securities Exchange Commission under the Securities Act of 1933, as amended, (iii) a custodial trust the sole beneficial owners of which are entities described in clauses (i) and (ii), or (iv) any other investor approved by the Issuer.

**"Authorized Representative"** means one or more individuals duly authorized to bind the Borrower in connection with the administration of the Project Facilities. The initial Authorized Representatives of the Borrower are Phillip J. Stoffregen and Bruce A. Cordingley.

**"Bond Counsel"** means an attorney, or firm of attorneys, nationally recognized and experienced in legal work relating to the financing of facilities through the issuance of tax-exempt bonds, selected by the Issuer and reasonably acceptable to the Administrative Agent.

**"Bond Documents"** means, collectively, the Bonds, the Bond Note, this Agreement, the Bond Purchase Agreements, the Subordinate Mortgage Notes, the Administrative Agency Agreement, the Subordinate Mortgages, the Ginnie Mae Certificates, the Regulatory Agreement, the Tax Certificate and Agreements, and other agreements or instruments relating to, or executed in connection with the issuance and delivery of, the Bonds, including all modifications, amendments or supplements thereto.

**"Bond Loan"** means the loan of the proceeds of the Bonds by the Issuer to the Borrower by the deposit of proceeds of the Bonds from time to time by the Purchasers into the Construction Fund as further described herein.

**"Bond Note"** means the promissory note from the Borrower payable to the order of the Issuer and endorsed to the Purchasers in the form attached hereto as Exhibit B.

**"Bonds"** means the draw-down Bonds authorized under this Agreement.

**"Borrower"** means Pedcor Investments-2016-CLV, an Oregon limited partnership, and its successors and assigns.

**"Business Day"** means any day on which the offices of the Purchasers are open for business and on which The New York Stock Exchange is not closed.

**"Code"** means the Internal Revenue Code of 1986, as amended, and all applicable regulations (whether proposed, temporary or final) under the Code and the statutory predecessor of the Code, and any official rulings and judicial determinations under the foregoing applicable to the Bonds.

**"Construction Funds"** means the account of that name created pursuant to Section 2.7 of this Agreement.

**"Construction Loan Certificate"** means any Ginnie Mae Certificate, other than the Project Loan Certificate, which represents an Advance of the Senior Mortgage Loan advanced by the Lender to the Borrower, an allocable portion of which will be purchased by the Administrative Agent or its nominee on behalf of each Purchaser.

**"Construction Loan Certificate Maturity Date"** means

\_\_\_\_\_.

**"Control"** (including, with the correlative meanings, the terms "controlling", "controlled by" and "under common control with") means, as used with respect to any Person, the



possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such other Person, or of the Person, whether through contract, stock ownership, partnership interests, membership, voting rights, governing boards, committees, divisions or other bodies with one or more common members, directors, trustees or other managers, or otherwise.

**"Counsel"** means an attorney, or firm of attorneys, admitted to practice law before the highest court of any state in the United States of America or the District of Columbia, including any Bond Counsel.

**"Default"** means an event or condition which is, or which after giving notice or lapse of time or both would be, an Event of Default.

**"Delivery Date"** means \_\_\_\_\_, as such date may be extended in accordance with Section 2.8(e) hereof, being the latest date for delivery of the Project Loan Certificate to the Administrative Agent or its nominee.

**"Determination of Taxability"** means a determination that the interest accrued or paid on the Bonds is includable in gross income of a Purchaser for federal income tax purposes, which determination shall be deemed to have been made upon the occurrence of the first to occur of the following:

(i) the day on which the Borrower is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that the interest on the Bonds is includable in the gross income of a Purchaser for federal income tax purposes;

(ii) the day on which the Borrower receives notice from the Administrative Agent in writing that a Purchaser has received (1) a notice in writing that the Internal Revenue Service has issued a statutory notice of deficiency or similar notice to a Purchaser that asserts in effect that the interest on the Bonds received by a Purchaser is includable in the gross income of a Purchaser for federal income tax purposes, or (2) an Opinion of Bond Counsel that concludes in effect that the interest on the Bonds is includable in the gross income of a Purchaser for federal income tax purposes;

(iii) the day on which there has been issued a public or private ruling of the Internal Revenue Service or a technical advice memorandum issued by the national office of the Internal Revenue Service that the interest on the Bonds is includable in the gross income of a Purchaser for federal income tax purposes; or

(iv) the day on which the Borrower is advised in writing by Counsel that a final determination, from which no further right of appeal exists, has been made by a court of competent jurisdiction in the United States of America in a proceeding with respect to which the Borrower has been given written notice and an opportunity to participate and defend that the interest on the Bonds is includable in the gross income of a Purchaser for federal income tax purposes;

provided, however, no Determination of Taxability shall occur if the interest on the Bonds or any portion thereof is includable in the gross income of a Purchaser for federal income tax purposes

solely because the Bonds or any portion thereof were held by a Person who is a Substantial User or a Related Person (unless as a result of an action not permitted by Section 8.10 hereof) or as a result of a change in existing law or regulations.

**"Environmental Laws"** means all Legal Requirements governing or relating to the protection of the environment, natural resources or human health concerning (i) activities at any of the Project Facilities, (ii) repairs or construction of any improvements at any of the Project Facilities, (iii) handling of any materials at any of the Project Facilities, (iv) releases into or upon the air, soil, surface water or ground water from any of the Project Facilities, and (v) storage, distribution, use, treatment, transport or disposal of any waste at or connected with any activity at any of the Project Facilities, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 42 U.S.C. §§ 9601 et seq., as amended from time to time; the Hazardous Materials Transportation Act 49 U.S.C. §§ 5101 et seq., as amended from time to time; the Resource Conservation and Recovery Act 42 U.S.C. §§ 6901 et seq., as amended from time to time; the Federal Water Pollution Control Act 33 U.S.C. §§ 1251 et seq., as amended from time to time; and comparable State laws, statutes and regulations.

**"Event of Default"** means any of the events specified in Section 9.1 hereof.

**"FHA"** means the Federal Housing Administration of HUD or any successor entity and any authorized representatives or agents thereof, including the Secretary of HUD, the Federal Housing Commissioner and their representatives or agents.

**"FHA Firm Commitment"** means the Commitment for Insurance of Advances, to be issued by FHA pursuant to Section 221(d)(4) of the National Housing Act for a mortgage loan on the Project Facilities.

**"FHA Insurance"** means the insurance of the Senior Mortgage Note by FHA pursuant to Section 221(d)(4) of the National Housing Act.

**"Final Endorsement"** means the final endorsement of the Senior Mortgage Note by FHA for FHA Insurance.

**"Fiscal Year"** means the annual accounting year of the Borrower, which currently begins on January 1 in each calendar year for the Borrower.

**"GAAP"** means generally accepted accounting principles in effect in the United States from time to time, consistently applied.

**"General Partner"** means Rosewood Terrace Housing Company, LLC, an Oregon limited liability company, authorized to conduct its business in the State, the general partner of the Borrower, together with its successors and assigns.

**"Ginnie Mae"** means the Government National Mortgage Association, an organizational unit within HUD, or any successor entity and any authorized representatives or agents thereof, including the Secretary of HUD and his representatives or agents.

**"Ginnie Mae Certificate"** means a Construction Loan Certificate or the Project Loan Certificate, as the case may be, each being a mortgage-backed security issued by the Lender and guaranteed as to timely payment of interest, in the case of a Construction Loan Certificate, or of principal and interest, in the case of the Project Loan Certificate, by Ginnie Mae pursuant to the National Housing Act, as amended, and the regulations promulgated thereunder and backed by the Senior Mortgage Loan, which shall be purchased by the Administrative Agent or its nominee on behalf of the Purchasers with the proceeds of the Bonds deposited into the Construction Fund by the Purchasers. The Ginnie Mae Certificates shall be delivered by the Lender in such form that each Purchaser is recognized as owning its respective share of each Ginnie Mae Certificate. Any reference to a Purchaser owning a Ginnie Mae Certificate shall be deemed to mean the Purchaser's ownership interest in the Ginnie Mae Certificate held by the Administrative Agent or its nominee on behalf of such Purchaser.

**"Ginnie Mae Depository"** means any securities depository for recording in book entry form ownership interests in Ginnie Mae Certificates, initially the Federal Reserve Bank of New York.

**"Ginnie Mae Documents"** means the commitments issued by Ginnie Mae to the Lender to guarantee the Ginnie Mae Certificates and all other documents, certifications and assurances executed and delivered by the Lender, Ginnie Mae or the Borrower in connection with the Ginnie Mae Certificates.

**"Ginnie Mae Requirements"** means all applicable published regulations and requirements of general application of Ginnie Mae.

**"Governmental Action"** means all permits, authorizations, registrations, consents, certifications, approvals, waivers, exceptions, variances, claims, orders, judgments and decrees, licenses, exemptions, publications, filings, notices to and declarations of or with any Governmental Authority and shall include all permits and licenses required to use, operate and maintain any of the Project Facilities.

**"Governmental Authority"** means any federal, state, or local governmental or quasi-governmental subdivision, authority, or other instrumentality thereof and any entity asserting or exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

**"Hazardous Substances"** means any petroleum or petroleum products and their by-products, flammable explosives, radioactive materials, toxic chemicals and substances, radon, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and polychlorinated biphenyls (PCB), asbestos-containing materials (ACMs), lead-containing or lead-based paint (LBP), radon, medical waste and other bio-hazardous materials and any chemicals, pollutants, materials or substances defined as or included in the definition of "hazardous substances" as defined pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, "regulated substances" within the meaning of subtitle I of the federal Resource Conservation and Recovery Act and words of similar import under applicable Environmental Laws.

"**HUD**" means the United States Department of Housing and Urban Development.

"**HUD Regulatory Agreement**" means the Regulatory Agreement between the Borrower and HUD with respect to the Project, as the same may be amended or modified from time to time in accordance with its terms.

"**HUD Requirements**" means, collectively, all applicable provisions and current requirements set forth in (a) the National Housing Act, (b) the United States Housing Act of 1937, as amended, and/or (c) HUD regulations and HUD rules, handbooks, guides, notices and other similar administrative requirements with respect to HUD mortgage insurance (and Section 8 of the United States Housing Act of 1937, as amended, if applicable) and/or (d) all mortgage letters that apply to the Project, applicable statutes and any regulations issued by the Secretary of HUD that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in this Agreement rather than add or delete provisions from such document. Handbooks, guides, notices and mortgage letters are available on HUD's official website: <http://www.hud.gov/hudportal/HUD?src=resources> or a successor location to that site.

"**Improvements**" means all buildings and other improvements included in the Project Facilities.

"**Indemnified Parties**" shall have the meaning given to such term in Section 8.19 of this Agreement.

"**Initial Advance**" means the first Advance made by the Lender.

"**Initial Endorsement**" means the initial endorsement of the Senior Mortgage Note by FHA for FHA Insurance.

"**International**" means International City Bank, N.A., a California banking corporation, with offices in Long Beach, California, as the initial registered owner of a portion of the Bonds, together with its successors and assigns.

"**International Bonds**" means those Bonds purchased by International.

"**International Construction Fund**" means the account of that name created pursuant to Section 2.7 of this Agreement.

"**Interest Rate**" shall mean (i) from the Issue Date through and including the February 15<sup>th</sup> or August 15<sup>th</sup> next succeeding the date of Final Endorsement, the Pass-Through Rate, and (ii) commencing on the next succeeding Interest Payment Date thereafter, the LIBOR Based Rate; provided however, that the "Interest Rate" on the Bonds shall be the Pass-Through Rate during any period during which the principal owed on the Bonds, plus Additional Interest, exceeds the Maximum Amount.

**"Investor Letter"** means a letter substantially in the form set forth in Exhibit C hereto, which form may be modified upon the Issuer's approval of an Approved Investor pursuant to clause (iv) of the definition of Approved Investor.

**"Investor Member"** means Pedcor Investments, a Limited Liability Company, and its permitted successors and assigns.

**"Issue Date"** means \_\_\_\_\_, 2018, the date on which the Bonds are delivered to the Purchasers.

**"Issuer"** means Housing Authority of Clackamas County, a housing authority existing under the laws of the State of Oregon, including the Act, or any successor to its rights and obligations under this Agreement.

**"Legal Requirements"** means all statutes, codes, laws, ordinances, regulations, rules, policies, or other federal, state, local and municipal requirements of any Governmental Authority whether now or hereafter enacted or adopted, and all judgments, decrees, injunctions, writs, orders or like action of an arbitrator or a court or other Governmental Authority of competent jurisdiction (including those pertaining to the health, safety or the environment).

**"Lender"** means P/R Mortgage & Investment Corp., or its successors and assigns or, if P/R Mortgage & Investment Corp. loses its status as an FHA approved mortgagee, any other mortgagee approved by FHA and the Issuer, and their respective successors or assigns.

**"LIBOR Based Rate"** means for any day, a rate of interest per annum equal to the LIBOR Rate plus 0.75%; provided, that the LIBOR Based Rate shall never be less than 3.00% per annum nor more than 8.00% per annum.

**"LIBOR Rate"** means for each calendar month, the one-month LIBOR Rate quoted by the Administrative Agent from Reuters Screen LIBOR01 Page or any successor thereto designated by the Administrative Agent, which shall be that one-month LIBOR Rate in effect two (2) New York Banking Days prior to the tenth day of each calendar month adjusted for any reserve requirement and any subsequent costs arising from a change in government regulations, such rate rounded up to the nearest one-sixteenth percent and such rate to be reset monthly on the tenth day of each calendar month. The Administrative Agent must provide written notice of the LIBOR Rate prior to the date on which interest is payable on the Bonds based upon the LIBOR Based Rate. The Administrative Agent's internal records of applicable interest rates shall be determinative in the absence of manifest error.

**"Lien"** means any lien, mortgage, security interest, tax lien, pledge, encumbrance, conditional sale or title retention arrangement, or any other interest in property designed to secure the repayment of indebtedness, whether arising by agreement or under any statute or law, or otherwise.

**"Lost Ginnie Mae Certificates"** means Ginnie Mae Certificates that are no longer owned by a Purchaser as a result of the sale thereof or the foreclosure of any pledge thereof as contemplated in Section 2.8(d)(2) hereof or otherwise.

**"Maturity Date"** means \_\_\_\_\_.

**"Maximum Amount"** " means an amount equal to \$ \_\_\_\_\_ minus the outstanding principal balance on the Ginnie Mae Certificates.

**"Mortgage Notes"** means, together, the Senior Mortgage Note and the Subordinate Mortgage Notes.

**"National Housing Act"** means the National Housing Act, as amended, and the applicable regulations thereunder.

**"Opinion of Bond Counsel"** means any opinion of Bond Counsel delivered pursuant to this Agreement with respect to the excludability of interest on the Bonds from gross income of the Purchasers for federal income tax purposes. Each such opinion shall be addressed to the Borrower, the Issuer and the Purchaser. No such opinion delivered pursuant hereto shall be deemed unsatisfactory when required as a condition to any provision hereunder because such opinion states that interest on the Bonds is an item of tax preference, is included in determining alternative minimum taxable income under the Code or is taxable when the Bonds are held by a Substantial User or Related Person.

**"Outstanding"** means the drawn but unpaid principal portion of the Bonds at any date the principal amount of the Bonds is to be determined.

**"Pass-Through Rate"** means 2.25% per annum, the rate of interest on the Ginnie Mae Certificates.

**"Permitted Encumbrances"** means only:

- (i) the HUD Regulatory Agreement, the Regulatory Agreement, the Senior Mortgage, and the Subordinate Mortgages;
- (ii) impositions not yet due and payable or being contested in good faith and by appropriate proceedings promptly initiated and diligently conducted if such proceedings do not in the opinion of the Lender and HUD involve the risk of the sale, forfeiture or loss of the property subject to such lien or interfere with the operation of the Project Facilities, and provided that the Borrower shall have established a reserve or made other appropriate provision, if any, as shall be required by the Administrative Agent, and any foreclosure, distraint, sale or other similar proceedings shall have been effectively stayed;
- (iii) liens of carriers, warehouseman, mechanics and materialmen incurred in the ordinary course of business for sums not yet due or being contested by appropriate proceedings promptly initiated and diligently conducted if such proceedings do not in the opinion of the Lender and HUD involve the risk of the sale, forfeiture or loss of the property subject to such lien or interfere with the operation of the Project Facilities, and provided that such liens have been bonded or the Borrower shall have established a reserve or made other appropriate provision, if any, as shall be required by the Administrative Agent; and

(iv) other matters of title approved in writing by the Lender and HUD, including the exceptions listed in the pro forma mortgagee's title insurance policy issued on the Issue Date.

**"Permitted Investments"** means any investment, if and to the extent the same is then a legal investment under the applicable laws of the State, and approved by the Administrative Agent.

**"Person"** means any individual, for-profit or not-for-profit corporation, partnership, joint venture, association, limited liability company, limited liability partnership, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

**"Project"** or **"Project Facilities"** means the multifamily apartment housing facilities consisting of a total of 212 units, to be located in the City of Happy Valley, Oregon, the acquisition, construction and equipping of which are being financed by the proceeds of the Bonds.

**"Project Costs"** means the costs, fees, and expenses associated with the acquisition, construction and equipping of the Project Facilities for use as affordable rental housing including but not limited to the cost of materials, appliances, equipment, and other items of tangible personal property, the fees and expenses of architects, contractors, engineers, attorneys, accountants, developers, surveyors, and the payment of certain costs and expenses incidental to the issuance of the Bonds.

**"Project Loan Certificate"** means the Ginnie Mae Certificate issued after the Senior Mortgage Loan is finally endorsed for FHA Insurance.

**"Project Site"** means the land described in *Exhibit F* on which the Project will be developed, \_\_\_\_\_ Street, Happy Valley, Oregon \_\_\_\_\_.

**"Purchasers"** means both UFB and International, as the initial purchasers of the Bonds, and any successors or assigns thereof and "Purchaser" means either UFB or International and any successor or assign.

**"Qualified Project Costs"** means the actual costs incurred to acquire, construct, furnish and equip the Project Facilities which (i) except for preliminary expenditures incurred prior to the commencement of acquisition, construction, furnishing and equipping of the Project Facilities that do not exceed 20% of the aggregate issue price of the Bonds that will finance Project Costs and other amounts that do not exceed the lesser of \$100,000 or 5% of the proceeds of the Bonds, are or were incurred after October 19, 2016, (ii) are (A) chargeable to the Project Facilities' capital account or would be so chargeable either with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs, within the meaning of Treasury Regulation Section 1.103-8(a)(1), and if charged or chargeable to the Project Facilities' capital account are or would have been deducted only through an allowance for depreciation or (B) made for the acquisition of land, to the extent allowed in Section 147(c) of the Code and (iii) are made exclusively with respect to a "qualified residential rental project" within the meaning of Section 142(d) of the Code.

"**Rebate Amount**" shall have the meaning given to such term in Section 8.10 of this Agreement.

"**Rebate Report**" shall have the meaning given to such term in Section 8.10 of this Agreement.

"**Receiving Participant**" shall have the meaning given to such term in Section 2.7(c) of this Agreement.

"**Regulatory Agreement**" means the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of \_\_\_\_\_ 1, 2018, between the Issuer, the Borrower and the Administrative Agent, as such agreement may be amended, modified or supplemented from time to time.

"**Related Person**" with reference to any Substantial User, means a "related person" within the meaning of Section 147(a)(2) of the Code.

"**Reserved Rights**" means the rights of the Issuer pursuant to Sections 2.6, 3.1(b)(3), 3.1(c), 4.2, 8.7, 8.9, 8.19, 9.7, 10.5 and 10.13 of this Agreement and the rights of the Issuer pursuant to other sections of this Agreement providing that notices, reports and other statements be given to the Issuer and that specified consents be obtained from the Issuer.

"**Sale Proceeds**" means any proceeds derived from the sale or refinancing of the Project Facilities after repayment of the Senior Mortgage Note and any other prior obligations owed by the Borrower prior to the payment on the Bonds.

"**Senior Mortgage**" means the Multifamily Deed of Trust, Assignment of Leases and Rents and Security Agreement from the Borrower in favor of a trustee for the benefit of the Lender, as the same may be amended or modified from time to time.

"**Senior Mortgage Loan**" means the loan from the Lender to the Borrower to be evidenced by the Senior Mortgage Note and secured by the Senior Mortgage.

"**Senior Mortgage Loan Documents**" means the Senior Mortgage, the Senior Mortgage Note, the HUD Regulatory Agreement and all other documents required by the Lender and/or HUD in connection with the Senior Mortgage Loan.

"**Senior Mortgage Note**" means the Note (Multistate) of the Borrower, to be payable to the order of the Lender, including any riders thereto, as the same may be amended or modified from time to time.

"**Special Member**" means the Housing Authority of Clackamas County or any successor to its rights and obligations under this Agreement.

"**State**" means the State of Oregon.

"**Subordinate Mortgages**" means the Second Position Deed of Trust from the Borrower for the benefit of the Issuer, which will be assigned by the Issuer to the Administrative Agent, as



the same may be amended or modified from time to time, and the Third Position Deed of Trust from the Borrower for the benefit of the Issuer, which will be assigned by the Issuer to Pedcor Development Associates, L.L.C., as the same may be amended or modified from time to time.

**"Subordinate Mortgage Notes"** means the Surplus Cash Note of the Borrower, to be payable to the order of the Issuer, which will be endorsed by the Issuer to the Administrative Agent, including any riders thereto, as the same may be amended or modified from time to time and the Promissory Note (Authority to Developer) and the Promissory Note (Partnership to Authority) as the same may be amended or modified from time to time.

**"Substantial User"** means, with respect to any "facilities" (as the term "facilities" is used in Section 144(a) of the Code), a "substantial user" of such "facilities" within the meaning of Section 147(a) of the Code.

**"Surplus Cash"** has the meaning assigned to such term in the HUD Regulatory Agreement

**"Tax Certificate and Agreement"** means the certificates, including all exhibits and attachments thereto, of the Issuer and the Borrower, dated the Issue Date, concerning certain federal tax matters furnished in connection with the initial issuance and delivery of the Bonds.

**"UFB"** means United Fidelity Bank, fsb, with offices in Evansville, Indiana, as an initial registered owner of the Bonds, together with its successors and assigns and as Administrative Agent.

**"UFB Construction Fund"** means the account of that name created pursuant to Section 2.7 of this Agreement.

Section 1.2. Rules of Construction; Time of Day. In this Agreement, unless otherwise indicated, (i) defined terms may be used in the singular or the plural and the use of any gender includes all genders, (ii) the words "hereof", "herein", "hereto", "hereby" and "hereunder" refer to this entire Agreement, and (iii) all references to particular Articles or Sections are references to the Articles or Sections of this Agreement, (iv) the terms "agree" and "agreements" contained herein are intended to include and mean "covenant" and "covenants", (v) the term "including" shall mean "including, but not limited to," and (vi) the terms "best knowledge" or "knowledge" shall mean the actual knowledge (and shall not include constructive knowledge) of the Manager of the General Partner of the Borrower. References to any time of the day in this Agreement shall refer to Eastern Standard Time or Eastern daylight saving time on such day.

## ARTICLE II PLAN OF FINANCING

Section 2.1. Issuance of Bonds; Loan of Bond Proceeds. In order to provide funds for payment of costs related to financing the Project Facilities:

(a) The Issuer shall simultaneously with the execution and delivery hereof proceed with the issuance of the Bonds and the making of the Bond Loan to the Borrower. The Bonds are issued as draw-down bonds, and shall be issued as fully registered bonds in substantially the

form set forth hereto as Exhibit B, in the maximum aggregate principal amount of \$\_\_\_\_\_. The proceeds of the Bonds shall be deposited to the UFB Construction Fund or the International Construction Fund as applicable according to the applicable Purchaser's funding, from time to time as provided herein. In accordance with Section 2.8(b) hereof, the Lender shall deliver to the Administrative Agent or its nominee a Construction Loan Certificate in a principal amount equal to an Advance of the Senior Mortgage Loan registered through the Administrative Agent's nominee in the name of each Purchaser for its respective principal amount, and each such deposit of proceeds of the Bonds into the applicable Construction Fund shall be used to reimburse the Lender for such Advance to the Borrower. The Bonds (other than any Additional Interest) will be secured solely by such Construction Loan Certificates and, after the Senior Mortgage Loan is finally endorsed for FHA Insurance, by the Project Loan Certificates. Any Additional Interest on the Bonds will be further secured by the applicable Subordinate Mortgages. Payment of principal and interest on the Bonds shall be made to the Purchasers or assigns, as the registered owner of the Bonds.

Each Purchaser shall be responsible for funding draws on the Bonds to the applicable Construction Fund as requested by the Lender in a pro rata manner based upon their respective principal amount of Bonds held for deposit into the applicable Construction Fund, so that the Administrative Agent is authorized to purchase the Construction Loan Certificates on behalf of both Purchasers. The Administrative Agent and the Lender shall be responsible to provide for the delivery of the Construction Loan Certificates to the Administrative Agent's nominee in such manner as evidences the respective ownership thereof by each Purchaser.

Upon receipt of the payment on the Ginnie Mae Certificates or the payment of Additional Interest, the Administrative Agent shall distribute such payments to each Purchaser on a pro rata basis in respect to the principal amount of the Bonds owned by each Purchaser.

(b) The Bonds shall bear interest payable monthly on the 15<sup>th</sup> day of each calendar month commencing \_\_\_\_\_, at the Interest Rate. The Bonds shall be subject to principal amortization in accordance with the principal repayment schedule set forth in Exhibit D hereto, provided, however, if the principal Amortization Schedule for the Senior Mortgage Loan is modified as a result of a reduction to the principal amount of the Senior Mortgage Note pursuant to Section 2.1(g) hereof, the Lender, the Borrower and the Administrative Agent shall agree to modify Exhibit D to conform to the new amortization schedule. The Bonds shall mature on the Maturity Date.

(c) Subject to the satisfaction of all of the terms and conditions set forth in the FHA Firm Commitment, the Senior Mortgage Loan Documents and the HUD Requirements with respect to the Senior Mortgage Loan, and the compliance by the Administrative Agent and the Purchaser with the terms of this Agreement, the Lender agrees to fund Advances under the Senior Mortgage Loan to the Borrower, and promptly deliver a Construction Loan Certificate to the Administrative Agent or its nominee in accordance with Section 2.8(b) hereof in an amount equal to such Advance of the Senior Mortgage Loan registered by the Administrative Agent's nominee in the name of each Purchaser for its respective principal amount upon (1) the Administrative Agent's release of moneys in the Construction Fund to the Lender in an amount equal to the principal amount of such Construction Loan Certificate and (2) the Purchasers' payment (which shall be on a pro rata basis taking into account the principal amount of Bonds

owned by each Purchaser) to the Lender of an amount equal to the accrued and unpaid interest on the Construction Loan Certificate from the Purchasers' own moneys, which amount shall be reimbursed to the Purchasers from the first interest paid thereon. Notwithstanding anything to the contrary contained in this Agreement, (i) the Lender shall have no obligation to make the Senior Mortgage Loan unless and until Initial Endorsement has occurred and all other terms and conditions of the FHA Firm Commitment, HUD Requirements and requirements of applicable FHA loan documents have been satisfied, (ii) the Lender shall have no obligation to make any Advance unless and until HUD has insured such Advance by executing an Application for Insurance of Advance of Mortgage Proceeds for such Advance and any other appropriate documentation, and (iii) the Purchasers shall have no obligation to deposit amounts in the Construction Fund and the Administrative Agent shall have no obligation to release such funds unless HUD has insured an Advance in the amount of such deposit (excluding accrued interest) and amounts in the applicable Construction Fund shall not be advanced to the Lender unless, simultaneously with such advance to the Lender, a Construction Loan Certificate in a principal amount equal to such advance is delivered to the Administrative Agent's nominee for the benefit of the Purchasers.

(d) The Borrower agrees to take all actions required of it to cause the Advances to be insured by HUD and the Ginnie Mae Certificates to be promptly issued and delivered as contemplated by subsection (c) of this Section and Section 2.8 hereof, including the funding of all required escrows and reserves.

(e) The Borrower and its General Partner agree to take or cause to be taken all actions necessary to cause the Investor Member to make all equity deposits contemplated by the Borrower's limited partnership agreement and the documents related thereto.

(f) On or prior to the Delivery Date, the Purchasers agree that the Administrative Agent is authorized to make disbursements from the applicable Construction Fund authorized by a payment request form submitted by the Borrower and reasonably acceptable to the Administrative Agent in connection with Exhibit A contemporaneously with the delivery to the Administrative Agent's nominee for the benefit of the Purchasers of the Construction Loan Certificates from the Lender for the related Advances in accordance with Section 2.7 hereof, at which time the Purchasers will fund accrued interest as required in (c) above.

(g) In the event that the Senior Mortgage Note commences amortization prior to the date that the Project Loan Certificate is issued and held by the Purchasers as collateral for the Bonds, the Lender agrees to retain for its own account all payments on the Senior Mortgage Note that represent principal amortization payments thereof which are received prior to the date of issuance of the Project Loan Certificate, and not to pass through such principal amortization payments to the Purchasers; provided, however, that the retention of such principal amortization payments by the Lender shall result in a reduction in the amount of the Project Loan Certificate when issued equal to any such principal amortization payments, and the Purchasers' obligations to draw from the applicable Construction Fund at the time of issuance of the Project Loan Certificate to reimburse the Lender for an Advance shall be reduced by the amount of such principal amortization payments retained by the Lender, at which time the Bonds will be redeemed in part at the principal amount thereof, so that the outstanding principal amount of the Bonds equals the principal amount of the Project Loan Certificate. The Lender agrees not to

amend the Senior Mortgage Note to accelerate amortization unless (i) required to do so by HUD or (ii) the Administrative Agent has received an Opinion of Bond Counsel that such amendment will not, in and of itself, adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes, and HUD permits such amendment.

(h) The Borrower agrees to take all actions required in order that all funds advanced by the Lender under the Senior Mortgage Loan shall be applied to pay, or to reimburse the payment of, costs as described in the certificates of the Borrower in substantially the form of Exhibit A attached hereto.

(i) The Borrower agrees to take or cause to be taken all actions required in order that (i) the Senior Mortgage Loan is fully advanced and all such Advances are insured by HUD, excepting only amounts that HUD determines are not insurable, (ii) the Lender shall have no obligation to make the final Advance unless and until the Senior Mortgage Note is finally endorsed for insurance by HUD and (iii) the Lender is able to issue the Project Loan Certificate prior to the Delivery Date.

(j) The Borrower and Pedcor Investments, A Limited Liability Company, agree to reimburse the Lender for any interest paid by the Lender on the Construction Loan Certificates that is in excess of the interest paid by the Borrower on the Senior Mortgage Note.

Section 2.2. Senior Mortgage Loan to Borrower. The Lender and the Borrower represent, and the Issuer, the Administrative Agent and the Purchasers acknowledge, that the Senior Mortgage Loan is to be insured by FHA pursuant to and in accordance with the provisions of Section 221(d)(4) of the National Housing Act and applicable regulations thereunder, as evidenced by HUD's endorsement of the Senior Mortgage Note evidencing the Senior Mortgage Loan for FHA Insurance; and that the Senior Mortgage Loan will be in the principal amount, will bear interest at the rates, will have a final maturity, will be payable in equal monthly installments of principal and interest and will be subject to prepayment, all as set forth in the Senior Mortgage Note. The Senior Mortgage Loan will be secured pursuant to the Senior Mortgage Loan Documents.

Section 2.3. Sufficiency of Funds. It is anticipated that each Purchaser will fund 50% of the total amount of Advances and, subject to Section 2.8(f), neither Purchaser shall have any obligation to expend funds to purchase any Ginnie Mae Certificates that exceed \$ \_\_\_\_\_ in aggregate principal amount plus accrued interest as provided in Section 2.1(c) above. The Borrower agrees that if the Borrower should pay any costs relating to the acquisition, construction, furnishing or equipping of the Project Facilities other than from the proceeds of the Bonds and Advances, the Borrower shall not be entitled to any reimbursement therefor from the Lender, the Issuer, the Administrative Agent or the Purchasers, and shall not be entitled to any reduction of amounts due under this Agreement. The Issuer, the Administrative Agent and the Purchasers make no warranty, either express or implied, that the moneys to be deposited in the Construction Fund and available for payment of the costs of acquiring the Ginnie Mae Certificates will be sufficient to pay all the costs thereof.

Section 2.4. Failure to Deliver Ginnie Mae Certificates. Any provisions in any other documents to the contrary notwithstanding, in the event the Ginnie Mae Certificates are not

delivered to the Administrative Agent or its nominee, to be held as collateral for the Bonds on or before the Delivery Date, as provided in this Agreement, the Administrative Agent and the Purchasers shall have no further obligation to purchase the remaining Ginnie Mae Certificates.

Section 2.5. Investment of Moneys. Any moneys held as part of any fund created under this Agreement shall be invested or reinvested, from time to time, by the Administrative Agent in Permitted Investments. The Borrower has reviewed the provisions hereof, including without limitation those provisions relating to investment of funds held hereunder and the use of such investment earnings, and has reviewed the proposed initial investment of funds held under this Agreement and hereby approves and directs the same.

Section 2.6. Limitation of Issuer's Liability. THE BONDS SHALL BE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER PAYABLE, AS TO PRINCIPAL AND INTEREST SOLELY FROM THE ASSETS PLEDGED HEREUNDER. THE BONDS SHALL NOT BE A DEBT OR INDEBTEDNESS OF THE STATE OF OREGON, CLACKAMAS COUNTY OR ANY POLITICAL SUBDIVISION OF THE STATE OF OREGON (INCLUDING THE ISSUER), AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON, NOR IN ANY EVENT SHALL THE BONDS BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN THOSE OF THE ISSUER PLEDGED UNDER THIS AGREEMENT. THE BONDS SHALL NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE ISSUER FROM THE SOURCES IDENTIFIED HEREIN) SHALL BE LIABLE FOR PAYMENT OF THE BONDS NOR IN ANY EVENT SHALL PRINCIPAL OF AND INTEREST ON THE BONDS BE PAYABLE OUT OF ANY FUNDS OR ASSETS OTHER THAN THOSE PLEDGED TO THAT PURPOSE BY THE ISSUER HEREIN. THE ISSUER HAS NO TAXING POWER.

NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE BONDS AGAINST ANY PAST, PRESENT OR FUTURE MEMBER OF THE ISSUER'S GOVERNING BODY, OR THE OFFICERS, COUNSEL, FINANCIAL ADVISORS OR AGENTS OF THE ISSUER, OR OF ANY SUCCESSOR THERETO, UNDER ANY RULE OF LAW OR EQUITY, STATUTE OR CONSTITUTION, AND ALL SUCH LIABILITY IS HEREBY EXPRESSLY WAIVED AND RELEASED AS A CONDITION OF, AND CONSIDERATION FOR, THE EXECUTION AND ISSUANCE OF THE BONDS.

Section 2.7. Construction Fund.

(a) The Administrative Agent shall establish and maintain (i) a special account designated as the "Rosewood Terrace Apartments UFB Construction Fund" shall keep such account segregated and administer such fund in accordance with this Agreement and (ii) a special account designated as the "Rosewood Terrace Apartments International Construction Fund" and shall keep such account segregated and administer such fund in accordance with this Agreement.

(b) The Purchasers shall advance funds under the Bonds for deposit into the applicable Construction Fund from time to time as requested by the Lender or the Administrative Agent, and shall use such funds to reimburse the Lender for Advances of the costs of the acquisition, construction and equipping of the Project Facilities in exchange for Ginnie Mae Certificates as set forth in Section 2.8 hereof. All Ginnie Mae Certificates shall be held by the respective Purchasers in the manner provided herein, subject to the provisions of Section 2.8(d) hereof.

(c) The Purchasers and the Issuer shall treat all principal and interest payments received or in connection with any Ginnie Mae Certificate as payments of principal and interest on the Bonds in repayment of the Bond Loan.

(d) The Lender shall deliver a Ginnie Mae Certificate to the applicable Purchaser or its nominee in an amount equal to each Advance. Each Ginnie Mae Certificate must be registered in the name of each Purchaser or the participant acting on behalf of that Purchaser at the depository for such book-entry designation at the time each Purchaser acquires the Ginnie Mae Certificate as collateral for the Bonds and the following shall apply:

(i) the Purchaser or its nominee (which may be the Administrative Agent) shall be or shall become a participant in the Ginnie Mae Depository or shall have entered into a custody agreement with respect to the Ginnie Mae Certificate with a participant of the Ginnie Mae Depository (in either case, the "**Receiving Participant**");

(ii) the Receiving Participant shall establish a limited purpose account with the Ginnie Mae Depository for this Agreement to be called the "Limited Purpose Account";

(iii) the Receiving Participant shall deliver an irrevocable instruction to the Ginnie Mae Depository to the effect that all fees arising in connection with the Limited Purpose Account are to be charged to another account maintained by the Ginnie Mae Depository for the Receiving Participant;

(iv) the Ginnie Mae Depository shall deliver a certificate to the Receiving Participant acknowledging that the Ginnie Mae Depository will not charge the specified Limited Purpose Account at all times that the instruction in subparagraph (iii) above remains in effect (with exceptions only for mistake or to secure and repay any advance of principal and interest made by the Ginnie Mae Depository);

(v) there must be evidence from the Ginnie Mae Depository or the Receiving Participant that the Ginnie Mae Depository has made an appropriate entry in its records of the transfer of such book-entry security to the Receiving Participant's account; and

(vi) the Ginnie Mae Certificate has been transferred and received into the Limited Purpose Account free of any payment obligation other than the Administrative Agent's or the Purchasers' obligation to pay the Lender for the Ginnie Mae Certificate in accordance with the terms thereof.

The Lender may rely on representations made by the Purchasers and the Administrative Agent regarding compliance with the foregoing requirements. The provisions of paragraphs (iii), (iv), (v), and (vi) shall not apply if the Administrative Agent receives written evidence from the Ginnie Mae Depository and the Receiving Participant that the Ginnie Mae Depository will not offset its fees against the Receiving Participant's custodial account.

Section 2.8. Acquisition of Ginnie Mae Certificates and Funding of Senior Mortgage Loan Draws.

(a) All Ginnie Mae Certificates issued with respect to the Senior Mortgage Loan shall be dated the first day of the month in which such Ginnie Mae Certificates are issued and shall pay interest on the fifteenth (15th) day of each month commencing the fifteenth (15th) day of the month following the month of the date of issue. Each Construction Loan Certificate shall pay interest to and including the earlier of the last day of the calendar month immediately preceding the Construction Loan Certificate Maturity Date or the day immediately preceding the date on which the Project Loan Certificate is dated. Each Construction Loan Certificate shall mature on the Construction Loan Certificate Maturity Date. Each Ginnie Mae Certificate shall bear interest at the Pass-Through Rate.

(b) (i) With respect to any Advance of the Senior Mortgage Loan funded by the Lender, the Lender shall deliver to the applicable Purchaser or its nominee a Construction Loan Certificate in a principal amount equal to such Advance as security for the Bonds as required by this Agreement. The Lender or the Borrower shall notify the Administrative Agent and the applicable Purchaser at least two (2) Business Days prior to the date on which the applicable Purchaser is expected to receive a Construction Loan Certificate. Simultaneously with receipt of each Construction Loan Certificate, the Purchasers shall purchase such Construction Loan Certificate from the Lender at a purchase price equal to 100% of the principal amount thereof plus accrued interest thereon. The maximum principal amount of the Construction Loan Certificates purchased shall not exceed the original stated principal amount of the Senior Mortgage Loan and the maximum principal amount of the Bonds.

(ii) The Lender shall use reasonable efforts to deliver the Project Loan Certificate to the Administrative Agent or the Administrative Agent's nominee in exchange for the cancellation of the Construction Loan Certificates as soon as practicable after Final Endorsement; provided, however, that if the principal amount of the Senior Mortgage Loan at Final Endorsement is less than the principal amount of the outstanding Construction Loan Certificates, Borrower shall provide to Lender the amount of such reduction (less funds collected by Lender pursuant to Section 2.1(f) hereof) and upon payment of such amount by Borrower to Lender, if any, the Construction Loan Certificates shall be prepaid by the Lender without the imposition of a prepayment penalty in the amount of such reduction prior to conversion of the Construction Loan Certificates to the Project Loan Certificate and the Purchasers or the Administrative Agent shall apply such difference to redeem or prepay a portion of the outstanding principal amount of the Bonds at the principal amount thereof, so that the principal amount of the Bonds equals the principal amount of the Project Loan Certificate. Subject to receipt of any amount due under the preceding sentence, the Administrative Agent and the Purchasers shall execute and deliver such documents as may be reasonably requested

in writing by the Lender to effect the cancellation of the Construction Loan Certificates in exchange for the Project Loan Certificate. Payments of principal on the Senior Mortgage Loan which are made on or before the date of the Project Loan Certificate shall be retained by the Lender, and shall not be paid to the Administrative Agent, the Purchasers or their nominees, and the Purchasers' obligations to purchase Construction Loan Certificates or the Project Loan Certificate shall be reduced by the amount of such principal payments retained by the Lender and the Bonds shall be redeemed or prepaid in the amount of such principal retained by the Lender. The maximum principal amount of the Project Loan Certificate purchased by the Purchasers or their nominee shall not exceed the original stated principal amount of the Senior Mortgage Loan and the maximum outstanding principal amount of the Bonds.

(c) After receipt of the Initial Construction Loan Certificate, the Purchasers shall continue to acquire Construction Loan Certificates as provided for herein, provided that the Purchasers have received (1) all the Construction Loan Certificates representing prior Advances (and all payments due thereon) and (2) the Construction Loan Certificate relating to and in the amount of such Advance (subject to a rounding convention of \$1.00).

(d) (i) Notwithstanding anything to the contrary in this Agreement, the Purchasers (including any Successor Purchaser or Lender Purchaser) shall continue to hold the Ginnie Mae Certificates as collateral for the Bonds in accordance with this Agreement; provided, however that, after all of the buildings comprising the Project Facilities are placed in service for federal income tax purposes, each Purchaser may, from time to time, pledge its interest in the Ginnie Mae Certificates or a portion thereof as security for other obligations of that Purchaser, without approval from the Lender, the Issuer or the Borrower, but with written notice to the Lender, the Borrower and the Issuer.

(ii) A Purchaser shall notify the Lender, the Borrower and the Issuer in writing of any Ginnie Mae Certificate becoming a Lost Ginnie Mae Certificate. In the event there are any Lost Ginnie Mae Certificates, the applicable Purchaser agrees that it shall pay, for the benefit of the Borrower and the Issuer, on the dates scheduled for payment as provided for in this Agreement, an amount equal to the principal and interest payable on the Lost Ginnie Mae Certificates, thereby substituting that Purchaser's guaranty of such payment for the payments that would have been made in respect of the Lost Ginnie Mae Certificates. In addition, the payments received on the remaining Ginnie Mae Certificate or the remaining portion of the Ginnie Mae Certificates shall continue to be distributed to the Purchasers in a pro rata portion based upon the principal amount of the Bonds owned by each Purchaser for which there is no related Lost Ginnie Mae Certificate.

(iii) It is the express intention of the parties to this Agreement that (1) in the event there are Lost Ginnie Mae Certificates, the Bonds will remain Outstanding and will not be deemed redeemed or cancelled or otherwise paid as a result thereof, and (2) the principal balance of the Bonds shall always equal the principal balance of the Ginnie Mae Certificates (including the Lost Ginnie Mae Certificates), with reductions of such principal to be made on a dollar for dollar basis in the amounts and on the dates that payments of principal are made on the Ginnie Mae Certificates (including any Lost



Ginnie Mae Certificates by virtue of the payment by that Purchaser of such principal in accordance with Section 2.8(d)(ii) hereof).

(iv) The Purchasers acknowledge that unless there shall be delivered to the Issuer, the Borrower and the Purchasers an Opinion of Bond Counsel to the effect that the change in security provided for in paragraph (ii) of this subsection (d) did not, in and of itself, cause the interest on the Bonds no longer to be excludable from gross income for federal income tax purposes, the portion of the interest on the Bonds attributable to the Lost Ginnie Mae Certificates may no longer represent tax-exempt interest, and the Purchasers expressly agrees that the Opinion of Bond Counsel rendered in connection with the original issuance of the Bonds shall not apply to such interest on the Bonds thereafter.

(e) If the Project Loan Certificate cannot be delivered to the Administrative Agent or its nominee by the Delivery Date, the Delivery Date may be extended as provided in the Trade Agreement dated \_\_\_\_\_, \_\_\_\_ among each Purchaser, the Lender and Pedcor Investments, A Limited Liability Company in the event Final Endorsement has not occurred and all Construction Loan Certificates have not been delivered to the Purchasers or their nominee on or before the Delivery Date. In order to extend the Delivery Date, the Administrative Agent and the Purchasers must receive, on or before the Delivery Date then in effect, a written request from the Borrower (with the written consent of the Lender) or the Lender for such extension accompanied by an Opinion of Bond Counsel to the effect that such extension will not cause interest on the Bonds to become includable in gross income for federal income tax purposes.

(f) In the event that a Purchaser fails to purchase on one or more occasions any portion of a Construction Loan Certificate (a "Non-Performance") as contemplated in Section 2.8(b)(i) hereof (a "Non-Performing Purchaser"), the Lender shall give immediate notice to the Administrative Agent and the Borrower. In the event of a Non-Performance, the Borrower (provided the Borrower is not in default under this Agreement or the Senior Mortgage Loan Documents) or any of the Purchasers shall have the ability, within ten (10) days from the date of such notice (the "Notice Period"), to identify an eligible person under this Agreement (a "Successor Purchaser") to take assignment of the portion of the Bonds not drawn as a result of the Non-Performance (the "Non-Performing Bonds") upon payment of the principal amount and accrued interest upon the related Construction Loan Certificates (the "Non-Performing CLCs") that were to be owned by the Non-Performing Purchaser. The assignment of such Bonds to the Successor Purchaser shall not include any other portion of the Bonds owned by the Non-Performing Purchaser (the "Performing Bonds") or the related Construction Loan Certificates (the "Performing CLCs"). Upon payment for the Non-Performing CLCs, such Successor Purchaser shall thereafter be considered the Purchaser of the Non-Performing Bonds and the Non-Performing CLCs instead of the Non-Performing Purchaser hereunder and under the Administrative Agency Agreement. The Successor Purchaser shall establish any and all accounts necessary for purchase of the Non-Performing CLCs. Notwithstanding any other section of this Agreement, all remedies against a Non-Performing Purchaser for a Non-Performance are contained in this Section 2.8(f).

Following the expiration of the Notice Period, if no Successor Purchaser has been identified, the Lender shall be permitted to proceed in the manner described in subsections (i)

and (ii) below; provided however, that each Successor Purchaser and Lender Purchaser (as defined below) shall continue to hold Ginnie Mae Certificates as collateral for the Bonds held by such Successor Purchaser and/or Lender Purchaser in accordance with this Agreement until such time as all of the buildings comprising the Project Facilities are placed in service for federal income tax purposes:

(i) The Lender may direct a sale of the Non-Performing Bonds (and the Non-Performing CLCs) to the Lender or any affiliate of the Lender (each a "Lender Purchaser" and, in such case, a Successor Purchaser) or any other eligible purchaser under this Agreement which Successor Purchaser shall thereafter be considered the Purchaser of the Non-Performing Bonds (and the Non-Performing CLCs) instead of the Non-Performing Purchaser hereunder and under the Administrative Agency Agreement; and/or

(ii) Upon receipt of an opinion of Bond Counsel that the excludability of interest on the Bonds for federal tax purposes will not be affected, in the event a Lender Purchaser is the Successor Purchaser, the Lender Purchaser may from time to time sell all or any portion of the Non-Performing CLCs at a price in accordance with then current market conditions. In addition, at the election of the Lender Purchaser, the Administrative Agent and the Non-Performing Purchaser shall allow the Lender Purchaser to sell, at a price in accordance with then current market conditions, the Performing CLCs (but only such amount of Performing CLCs which shall make the Lender Purchaser whole as a result of the Non-Performance). Except as provided below, it is the express intention of the parties to this Agreement that in the event of such sale of Performing CLCs and/or Non-Performing CLCs, the Bonds related to such sale of Construction Loan Certificates will remain Outstanding, unless required to be extinguished by law. At the election of the Non-Performing Purchaser, the Lender Purchaser will either (a) apply the sale proceeds to pay for the principal plus interest due on the Non-Performing Bonds (at which time such Non-Performing Bonds shall be extinguished) or (b) retain sale proceeds equal to the principal plus interest due on the Non-Performing Bonds (however, such amount will not be applied as payment on the Non-Performing Bonds and such Non-Performing Bonds will remain outstanding) and, in both instances, shall transfer to the Non-Performing Purchaser (i) the excess proceeds from such sale, if any, and (ii) any Performing and/or Non-Performing Bonds that continue to be held by the Lender Purchaser. In connection with clause (b) above, such Successor Purchaser shall be obligated to make all future principal and interest payments on such transferred Bonds and none of the Borrower, the Issuer nor the Lender shall be obligated to make such principal and interest payments beginning on such date of transfer in accordance with clause (b) above of any transferred Performing and/or Non-Performing Bonds. The Lender Purchasers, Successor Purchasers and Purchasers each acknowledge that unless there shall be delivered to the Issuer, the Borrower and the applicable Purchasers an Opinion of Bond Counsel to the effect that the change in security provided for in this paragraph does not, in and of itself, cause the interest on the Bonds no longer to be excludable from gross income for federal income tax purposes, the Bonds related to the sale of the Construction Loan Certificates may no longer represent tax-exempt interest, and the Lender Purchasers expressly agree that the Opinion of Bond Counsel rendered in connection with the original issuance of the Bonds shall not apply to

such interest on the Bonds related to the sale of the Construction Loan Certificates thereafter.

Upon the purchase of any Bonds by the Successor Purchaser, the Non-Performing Purchaser shall assign and transfer such Bonds and the related Construction Loan Certificates to the Successor Purchaser.

If the Lender Purchaser becomes the Successor Purchaser as described in Section 2.8(f)(i) above and the Lender Purchaser has not agreed to sell the Non-Performing Bonds and/or Non-Performing CLCs to a third party, the Non-Performing Purchaser shall have the right to repurchase the Non-Performing Bonds (and the Performing Bonds, if applicable) at any time after the Non-Performance at a price equal to the principal amount then outstanding, plus any interest accrued thereon. The Non-Performing Purchaser shall thereafter be considered the Purchaser of the Non-Performing Bonds (and the Performing Bonds, if applicable) and the related Non-Performing CLCs (and the Performing CLCs, if applicable) instead of the Successor Purchaser. In addition, the Successor Purchaser, the Non-Performing Purchaser and any other Purchaser may, by providing written notice to the Lender, the Purchasers, the Borrower and the Administrative Agent, elect to make purchases of undelivered Construction Loan Certificates on a pro-rata basis as reasonably determined by such parties. In such event, the Non-Performing Purchaser and the Successor Purchaser shall both be considered Purchasers according to their pro-rata purchasing agreement hereunder and under the Administrative Agency Agreement.

The Purchasers and the Administrative Agent shall take all necessary action so that the Non-Performing Bonds and/or the Performing Bonds shall be assigned and transferred as necessary to reflect the appropriate ownership interests described above.

### **ARTICLE III PAYMENT OF LOAN**

#### Section 3.1. Amounts Payable.

(a) The Borrower covenants to make payments required by the Mortgage Notes, as and when the same become due. The Borrower covenants that, for so long as the Bonds are Outstanding and except as otherwise contemplated hereby, or as may be required by HUD or Ginnie Mae, it will not execute any amendment to the Senior Mortgage Note or the Subordinate Mortgage Notes that results in a decrease in the amount payable thereunder without the consent of the Administrative Agent. The Issuer and the Borrower shall receive credit for any principal and interest payments due to the Purchasers on the Bonds or due to the Issuer on the Bond Loan, respectively, in the amount and to the extent of payments of principal and interest from or in connection with any Ginnie Mae Certificate delivered to the Administrative Agent or its nominee.

(b) To the extent not paid pursuant to the Mortgage Notes, the Borrower also shall pay, or cause to be paid, as and when the same become due: (1) to the Administrative Agent the expenses reasonably incurred by it as Administrative Agent hereunder, including without limitation the reasonable fees and expenses of its counsel; (2) to the Purchasers the expenses reasonably incurred by them as Purchasers hereunder, including without limitation the

reasonable fees and expenses of their counsel and the amount, if any, required to pay the principal of and interest on the Bonds when due; (3) to the Issuer or to any payee designated by the Issuer, all expenses of the Issuer, and its respective agents reasonably incurred at any time related to the Bonds or the Project Facilities or the financing thereof, including, without limitation, legal and advisory fees and expenses incurred in connection with the interpretation, performance, enforcement or amendment of any documents relating to the Project Facilities or the Bonds or in connection with questions or other matters arising under such documents, which amounts described in this clause (3) shall be paid upon demand and in any event no later than thirty (30) days after receipt of request for payment thereof; (4) to Bond Counsel, the reasonable fees and expenses of Bond Counsel incurred after the Issue Date in connection with the Bonds or any Bond Documents at the request of the Issuer, the Administrative Agent, the Purchasers, the Lender or the Borrower; (5) to the rebate analyst any reasonable expenses of calculating the Rebate Amount; (6) to FHA, Ginnie Mae and the Lender all fees and expenses associated with obtaining FHA and Ginnie Mae approvals necessary for the issuance of the FHA Commitment and the Ginnie Mae Certificates; (7) to the Lender, the difference, if any, between the interest due on the Construction Loan Certificate and interest on the Senior Mortgage Note received by the Lender; and (8) to the respective payee, any other expenses payable in accordance with this Agreement. The obligations of the Borrower to pay the amounts due in this subsection (b) shall be payable solely from Surplus Cash.

(c) In addition to the foregoing, the Borrower shall pay to the Issuer on the Issue Date, an issuance fee equal to one and one-half percent (1.5%) of the maximum principal amount of the Bonds.

Without limiting in any way the obligation of the Borrower to pay all expenses described above (including, without limitation, the amount by which any such expenses are reduced as a result of any unscheduled prepayment of the principal amount of the Ginnie Mae Certificates) payable to the Issuer, the Administrative Agent or the Purchasers, in the event any such expenses or any portion thereof is not paid when due, or is not paid in the amount otherwise due, as a result of any restriction or requirement under the Senior Mortgage Loan Documents, any HUD Requirements or any Ginnie Mae Requirements, then such expenses or portion thereof nonetheless shall be payable on behalf of the Borrower thereafter promptly when permitted by the Senior Mortgage Loan Documents, HUD Requirements and Ginnie Mae Requirements, including, without limitation, from Surplus Cash to the extent permitted by HUD and which remains after payment and repayment of amounts, including, but not limited to fees, advances, loans and expenses as specified in the Borrower's limited partnership agreement.

Section 3.2. Prepayment of Loan; Redemption of Bonds. The Issuer and the Purchasers acknowledge that, subject to the terms of the Senior Mortgage Note, (i) the Borrower shall have the option to prepay the Senior Mortgage Loan in full or in part at any time upon thirty (30) days advance written notice to the Administrative Agent, (ii) the Senior Mortgage Note also is subject to mandatory monthly prepayment and extraordinary mandatory prepayment, but only in accordance with the provisions of the Senior Mortgage Note, and (iii) the Bonds are subject to optional redemption upon optional prepayment of the Senior Mortgage Loan, mandatory sinking fund redemption upon the mandatory monthly prepayment of the Senior Mortgage Loan and extraordinary mandatory redemption upon the extraordinary mandatory prepayment of the Senior Mortgage Loan. Any prepayment premium payable by the Borrower

pursuant to the Senior Mortgage Note in connection with any such prepayment shall be paid to the owner or owners of the Ginnie Mae Certificates, and shall constitute a redemption premium on the Bonds to the extent the owner or owners of the Bonds are also the owner or owners of the Ginnie Mae Certificates.

Section 3.3. Absolute Obligations of Borrower.

(a) The obligation of the Borrower to make payments on the Mortgage Notes, to make all other payments provided for herein and to perform and observe the other agreements and covenants on its part herein contained shall be absolute and unconditional, irrespective of any defense or any rights of setoff, recoupment or counterclaim it might otherwise have against the Issuer, the Administrative Agent, the Purchasers, the Lender or any other person. Subject to prepayment of the Mortgage Notes in full and termination as provided herein, the Borrower shall not suspend or discontinue any such payment hereunder or on the Mortgage Notes (any reamortization of the payments on the Senior Mortgage Note in accordance with this Agreement and the Senior Mortgage shall not constitute a suspension or discontinuance of payments on the Senior Mortgage Note) or fail to perform and observe any of its other agreements and covenants contained herein or terminate this Agreement for any cause, including, without limiting the generality of the foregoing, any acts or circumstances that may deprive the Borrower of the use and enjoyment of the Project Facilities, failure of consideration or commercial frustration of purpose, any damage to or destruction of the Project Facilities or any part thereof, the taking by eminent domain of title to or the right to temporary use of all or any part of the Project Facilities, any change in the tax or other laws of the United States of America, the State or any political or taxing subdivision of either thereof, or any failure by the Issuer to perform and observe any agreement or covenant, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement.

(b) Notwithstanding any provisions in this Agreement or any of the other Bond Documents to the contrary, enforcement of the provisions of this Agreement or any of the other Bond Documents shall not result in any claim against Senior Mortgage Loan proceeds, any reserve or deposit required by HUD or the Lender in connection with the Senior Mortgage Loan, or the rents or other income from the Project Facilities (other than available Surplus Cash of the Project Facilities, if any), and the liability of the Borrower, the General Partner and/or Investor Member for any breach or default by or obligation of the Borrower under this Agreement or any of the other Bond Documents shall be limited to the available Surplus Cash of the Project Facilities, if any. By execution hereof, each of the Issuer, the Administrative Agent and the Purchasers affirms that, other than pursuant to the Senior Mortgage and the Subordinate Mortgages, no pledge has been made and that it has no claim, and will not later assert any claim, against the mortgaged property, the Senior Mortgage Loan proceeds, any reserve or deposit made with the Lender or required by HUD in connection with the Senior Mortgage Loan transaction or against the income from the mortgaged property for payment of any obligation contained herein or in any of the other Bond Documents; provided, however, that nothing in this provision or elsewhere in this Agreement or any of the other Bond Documents shall alter, affect or diminish the rights of the Lender under the Senior Mortgage Loan Documents.

Section 3.4. Rights Assigned. The Issuer hereby pledges and assigns all the Issuer's rights under this Agreement (except its Reserved Rights), the Bond Note, the Subordinate

Mortgage Notes and the Subordinate Mortgage and directs that the GNMA Certificates shall be delivered directly to the Purchasers, to secure payment of the Bonds. This pledge is made pursuant to ORS 287A.310. The Borrower and the Lender hereby consent to such pledge and assignment.

#### **ARTICLE IV REPRESENTATIONS OF ISSUER**

Section 4.1. Representations by the Issuer. The Issuer represents and warrants as follows:

- (a) The Issuer is a housing authority of the State of Oregon.
- (b) The Issuer has all requisite power, authority and legal right to execute and deliver the Bond Documents to which it is a party and all other instruments and documents to be executed and delivered by the Issuer pursuant thereto, to perform and observe the provisions thereof and to carry out the transactions contemplated by the Bond Documents. All corporate action on the part of the Issuer which is required for the execution, delivery, performance and observance by the Issuer of the Bond Documents has been duly authorized and effectively taken, and such execution, delivery, performance and observation by the Issuer do not contravene applicable law or any contractual restriction binding on or affecting the Issuer.
- (c) The Issuer has duly approved the issuance of the Bonds and the loan of the proceeds of the Bonds to the Borrower, as effected by the purchase of the Ginnie Mae Certificates as described herein, for the acquisition and construction of the Project Facilities; no other authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required as a condition precedent to the execution of this Agreement or the delivery of the Bonds that are to be delivered on the date of this Agreement.
- (d) This Agreement is, and each other Bond Document to which the Issuer is a party when delivered will be, a valid and binding special obligation of the Issuer enforceable against the Issuer in accordance with its terms except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other laws affecting creditors' rights generally; (ii) the application of equitable principles and the exercise of judicial discretion in appropriate cases; (iii) common law and statutes affecting the enforceability of contractual obligations generally; and (iv) principles of public policy concerning, affecting or limiting the enforcement of rights or remedies against governmental entities such as the Issuer.
- (e) There is no action, suit, proceeding, inquiry, or investigation at law or in equity or before or by any court, public board or body pending, or, to the best knowledge of the Issuer, threatened against or affecting the Issuer wherein an unfavorable decision, ruling or finding would adversely affect (i) the transactions contemplated by, or the validity or enforceability of, the Bonds or this Agreement or (ii) the tax-exempt status of interest on the Bonds.
- (f) In connection with the authorization, issuance and sale of the Bonds, the Issuer has complied in all material respects with all provisions of the laws of the State, including the Act.

(g) The Issuer has not assigned or pledged and will not assign or pledge its interest in this Agreement for any purpose other than to secure the Bonds under this Financing Agreement. The Bonds constitute the only obligations of the Issuer in any manner payable from the revenues to be derived from this Agreement, and except for the Bonds, no obligations have been or will be issued on the basis of this Agreement.

(h) The Issuer is not in default under any of the provisions of the laws of the State, which default would affect the issuance, validity or enforceability of the Bonds or the transactions contemplated by this Agreement.

(i) THE ISSUER, THE ADMINISTRATIVE AGENT AND THE PURCHASERS MAKE NO REPRESENTATION OR WARRANTY THAT THE PROJECT FACILITIES WILL BE ADEQUATE OR SUFFICIENT FOR THE PURPOSES OF THE BORROWER. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS REQUIRING THE ISSUER, THE ADMINISTRATIVE AGENT OR THE PURCHASERS TO PROVIDE ANY FINANCING FOR THE PROJECT FACILITIES OTHER THAN THE PROCEEDS OF THE LOAN OR TO PROVIDE SUFFICIENT MONEYS FOR ALL OF THE COSTS OF THE PROJECT.

Section 4.2. Role of the Issuer. The Issuer shall not be required to take any action not expressly provided for herein. In addition, the Issuer shall have no obligation to review, control or oversee the activities of the Administrative Agent or the Purchasers or any other person in connection with this Agreement or the Bonds. Furthermore, the Issuer shall not be obligated to take any action that might in its reasonable judgment involve it in any expense or liability unless it shall have been furnished with assurance of payment or reimbursement for any expense satisfactory to the Issuer, and with reasonable indemnity for liability of the Issuer, its officers, members, officials, agents and employees.

The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Agreement and the Bonds executed and delivered hereunder; provided, however, that the liability of the Issuer under any such covenant, condition or agreement for any breach or default by the Issuer thereof or thereunder shall be limited solely to the revenues and receipts held hereunder or derived from the Ginnie Mae Certificates and, with respect to any Additional Interest on the Bonds, 75% of Surplus Cash, and any amounts due under Section 8.16(b) hereof, any Surplus Cash.

The Issuer acknowledges and agrees that all covenants contained in this Agreement are with and for the benefit of the Administrative Agent and the Purchasers and may be enforced by the Administrative Agent, in its discretion as provided in the Administrative Agency Agreement.

Section 4.3. Further Assurances. The Issuer shall, upon request and subject to its right to reimbursement and indemnity in Section 8.19 hereof, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such agreements supplemental hereto and such further acts, instruments and transfers as the Administrative Agent may reasonably require for the better assuring, transferring, conveying, pledging and assigning to the Administrative Agent and the Purchasers of all the rights assigned hereby and the revenues and receipts pledged hereby to the payment of the principal of and interest on the Bonds. The

Issuer shall, upon request and subject to its right to reimbursement and indemnity in Section 8.19 hereof, cooperate reasonably with the Administrative Agent, the Borrower, and the Lender in protecting the rights and security of the Administrative Agent and the Purchasers.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES OF THE BORROWER**

The Borrower represents and warrants to and for the benefit of the Issuer, the Administrative Agent, the Purchasers, and the Lender as follows:

Section 5.1. Existence. The Borrower is a limited partnership, duly organized, validly existing and in good standing under the Legal Requirements of the State of Oregon and is duly qualified to do business in the State. The Borrower has furnished true and complete copies of its partnership agreement and certificate of limited partnership. The Borrower owns no assets other than the Project Facilities. The Borrower has been, is and will be engaged solely in the business of financing, owning, managing and operating the Project Facilities and activities incident thereto. The General Partner of the Borrower is Rosewood Terrace Housing Company, LLC, a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Oregon and is duly qualified to do business in the State. The General Partner has furnished to the Purchasers true and complete copies of its Articles of Organization and Certificates of Existence. The Borrower represents that the ownership of interests in the Borrower, as follows, are correct as of the Issue Date: (a) the General Partner – .005%; (b) Investor Member – 99.99%; and (c) the Special Member – .005%.

Section 5.2. Power, Authorization and No Conflicts. The Borrower has all requisite power and authority and the legal right to own and operate its properties and to conduct its business and operations as they are currently being conducted and as proposed to be conducted by it. The execution, delivery and performance by the Borrower of this Agreement and the other Bond Documents to which the Borrower is a party (i) are within the Borrower's powers, (ii) have been duly authorized by all necessary company and legal action, and (iii) do not contravene the partnership agreement, operating agreement, articles of organization, or certificate of limited partnership of the Borrower or the General Partner, as applicable, or any Legal Requirement applicable to the Borrower or the General Partner or any material contract or restriction binding on or affecting the Borrower, the General Partner or any of their respective assets, or result in the creation of any mortgage, pledge, lien or encumbrance upon any of their assets other than as provided by the terms thereof.

Section 5.3. Governmental Authorizations and other Approvals. The Borrower and the General Partner have all necessary Governmental Actions and qualifications, and have complied in all material respects with all applicable Legal Requirements necessary to conduct their business as it is presently conducted and to own and operate the Project Facilities in accordance with the provisions of the Bond Documents. No authorization, approval or other action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery and performance by the Borrower of this Agreement, or the other Bond Documents, except such as have been obtained or are not issuable on or before the date of execution and delivery of this Agreement.



Section 5.4. Validity and Binding Effect. This Agreement and the other Bond Documents to which the Borrower is a party are the legal, valid and binding obligations of the Borrower, enforceable against it in accordance with their terms, subject to the application by a court of general principles of equity and to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar Legal Requirement affecting creditors' rights generally.

Section 5.5. No Litigation. There is no pending action or proceeding before any Governmental Authority or arbitrator against or involving the Borrower, the General Partner or to the Borrower's knowledge after due inquiry, the Project Facilities and, to the best knowledge of the Borrower and the General Partner, there is no threatened action or proceeding affecting the Borrower or the General Partner before any Governmental Authority or arbitrator which, in any case, might materially and adversely affect the business, operations, assets, condition (financial or otherwise) or prospects of the Borrower or the General Partner, or the validity or enforceability of this Agreement, the Bonds or the other Bond Documents or the operation or ownership of the Project Facilities.

Section 5.6. Compliance. The Borrower shall, through the term of this Agreement and at no expense to the Issuer, promptly comply or cause compliance with all laws, ordinances, orders, rules, regulations and requirements of duly constituted public authorities which may be applicable to the Project Facilities or to the repair and alteration thereof, or to the use or manner of use of the Project Facilities.

Section 5.7. Title to Properties; Liens and Encumbrances. The Borrower has, as of the Issue Date, good and indefeasible title in fee simple to the Project Facilities, free and clear of all liens or encumbrances except for the Permitted Encumbrances. To the best of the Borrower's knowledge, all such real property, fixtures and equipment necessary to the conduct of the business of the Borrower and the operation of the Project Facilities are in reasonable working order and are suitable for the purposes for which they are presently being used. There exist no liens, encumbrances or other charges against any Project Facilities (including without limitation statutory and other liens of mechanics, workers, contractors, subcontractors, suppliers, taxing authorities and others), except Permitted Encumbrances and those for which the Borrower has secured affirmative title insurance coverage.

Section 5.8. Utilities and Access. All utility services necessary for the operation of the Project Facilities, including water supply, storm and sanitary sewer facilities, electricity and telephone facilities are available within the boundaries of the Project Facilities; and all roads necessary for the full utilization of the Project Facilities for their intended purposes either have been completed or rights-of-way therefor have been acquired by the appropriate governmental authority or others or have been dedicated to public use and accepted by such Governmental Authority.

Section 5.9. Financial Information.

(a) All of the financial information furnished to the Purchasers with respect to the Borrower and the General Partner in connection with this Agreement (i) is complete and correct in all material respects as of the date hereof; and (ii) accurately presents the financial condition

of such party as of the date hereof. Neither the Borrower nor the General Partner has any material liability or contingent liability not disclosed to the Purchasers in writing; and

(b) Since its formation, each of the Borrower and the General Partner has conducted its operations in the ordinary course, and no material adverse change has occurred in the business, operations, assets or financial condition of the Borrower or the General Partner.

Section 5.10. Environmental Representations. Neither the Borrower nor the General Partner has released into or upon the air, soil, surface water or groundwater of the Project Facilities any Hazardous Substances, other than in accordance with Environmental Laws, it has no knowledge of any environmental contaminants or Hazardous Substances present now or in the past at the Project Facilities, it has obtained and maintains all required permits or approvals from any Governmental Authority, and it is in full compliance with all applicable Environmental Laws and regulations.

Section 5.11. Full Disclosure. This Agreement, the exhibits hereto and the other documents, certificates, opinions, schedules and statements furnished to the Administrative Agent or the Purchasers by or on behalf of the Borrower or the General Partner in connection with the transactions contemplated hereby or by the Bond Documents, do not contain any untrue statement of a material fact with respect to the Borrower or the General Partner or the Project Facilities and do not omit to state a material fact with respect to the Borrower or the General Partner or the Project Facilities necessary in order to make the statements contained therein not misleading in light of the circumstances under which they were made. There is no fact known to the Borrower or the General Partner which materially adversely affects or in the future may adversely affect the business, operations, properties, assets or financial condition of the Borrower or the General Partner which has not been set forth in this Agreement or in the other documents, certificates, opinions, schedules and statements furnished to the Administrative Agent or the Purchasers and on behalf of any such party before the date of execution and delivery of this Agreement in connection with the transactions contemplated hereby.

Section 5.12. Bond Documents. Each of the Borrower and the General Partner has provided the Purchasers with true, correct and complete copies of: (i) all documents executed by the Borrower or the General Partner in connection with the Bonds; including all amendments thereto and compliance reports filed thereunder; (ii) all management and service contracts entered into by the Borrower in connection with the Project Facilities, including all amendments thereto; (iii) all material correspondence, if any, relating to the Bonds from the Administrative Agent or the Purchasers, the Issuer, the Securities and Exchange Commission, the Internal Revenue Service or any state or local securities regulatory body or taxing authority or any securities rating agency; and (iv) all documentation, if any, relating to governmental grants, subsidies or loans or any other loans, lines of credit or other subordinate financing relating to the Borrower or the Project Facilities, whether or not secured by the Project Facilities. Each of the representations and warranties on the Borrower's part made in the Bond Documents remain true and correct in all material respects and no Default exists under any covenants on the Borrower's part to perform under the Bond Documents.

Section 5.13. Illegal Activity. No portion of any of the Project Facilities has been or will be purchased, improved, fixtured, equipped or furnished with proceeds of any illegal activity conducted by the Borrower.

Section 5.14. Permits and Approvals. All zoning, development and other governmental approvals necessary for the construction of the Project Facilities have been obtained, and all permits necessary for the implementation of the Project Facilities plans and specifications have been obtained or may be obtained as a matter of right. The zoning of the Project Facilities currently permits the use of the Property for a multifamily housing facility. All such approvals obtained by the Borrower have been validly issued and are in full force and effect. No such approvals will terminate, or become void or voidable or terminable, upon any sale, transfer or other disposition of the Project Facilities, including any transfer pursuant to foreclosure sale under the Senior Mortgage.

Section 5.15. Adequacy of Loan. Borrower's sources, taking into account the amount and timing thereof, are sufficient to construct the Project Facilities and otherwise pay all costs of the Project Facilities in accordance with this Agreement and the Project Facilities budget.

Section 5.16. Project Facilities Contracts. Each of the Project Facilities contracts is in full force and effect, represents the entire agreement of the parties thereto with respect to the subject matter thereof, and is free from default by any party thereto that would entitle any other party to enforce remedies for breach thereof. Borrower has delivered a true and complete copy of each Project Facilities contract (including all amendments) to Lender.

Section 5.17. Contiguous Property. Except as reflected in easements currently of record, the Project Facilities do not rely on any contiguous property or other property for access, utilities, services, drainage or other matters.

## **ARTICLE VI REPRESENTATIONS OF THE LENDER**

Section 6.1. Representation by the Lender. The Lender represents and warrants as follows:

(a) The Lender (i) is not prohibited by the laws of the State from making the Senior Mortgage Loan, (ii) is organized and operated for the purposes, among others, of making mortgage loans to provide financing for the acquisition, construction and equipping of multi-family residential rental developments and of issuing mortgage-backed securities guaranteed by Ginnie Mae to obtain funds to make such mortgage loans, (iii) has full lawful power and authority under its organizational documents and applicable laws to execute and deliver this Agreement, and, upon Initial Endorsement of the Senior Mortgage Note by FHA for FHA Insurance, to issue and deliver the Ginnie Mae Certificates and to perform its obligations hereunder and thereunder, and (iv) by proper action has duly authorized the execution and delivery of this Agreement and will take all such actions within its power and control necessary to effect the issuance and delivery of the Ginnie Mae Certificates.

(b) This Agreement constitutes the legal, valid and binding obligation of the Lender enforceable in accordance with its terms, except as limited by bankruptcy, insolvency,

reorganization, moratorium, fraudulent conveyance and other laws affecting creditors' rights and/or equitable principles.

(c) The execution and delivery of this Agreement and each of the Ginnie Mae Documents to which it is a party and the delivery of the Ginnie Mae Certificates, and the consummation of the transactions contemplated hereby and thereby, do not conflict with or constitute a breach of or a default under the Lender's organizational documents or, to its best knowledge after reasonable investigation, under the terms and conditions of any agreement or commitment to which the Lender is a party or by which the Lender is bound.

(d) There is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency, public board or body pending in which the Lender has been served with process or, to the knowledge of the Lender, otherwise pending or threatened against the Lender, which questions or materially and adversely affects the power or authority of the Lender to carry out the transactions contemplated by, or to be performed under, this Agreement, any of the Ginnie Mae Documents to which it is a party or the Ginnie Mae Certificates.

(e) The Lender (i) is an FHA approved mortgagee and, as such, is authorized to originate and service mortgage loans insured by FHA under Section 221(d)(4) of the National Housing Act and (ii) meets all the issuer eligibility requirements (including net worth requirements) of and is approved by Ginnie Mae to issue mortgage-backed securities guaranteed by Ginnie Mae pursuant to Section 306(g) of Title III of the National Housing Act.

(f) This Agreement has been submitted to the Lender for examination, and the Lender acknowledges, by execution of this Agreement, that it has reviewed and understands and approves this Agreement.

(g) The Lender has reserved \$\_\_\_\_\_ of its commitment authority granted by Ginnie Mae to issue mortgage-backed securities for the issuance of the Construction Loan Certificates and the Project Loan Certificate contemplated by this Agreement and such reservation with respect to the Project Loan Certificate shall not terminate, if at all, until a date which is subsequent to the Construction Loan Certificate Maturity Date, as the same may be extended.

(h) The Lender acknowledges, represents and warrants that it has not relied on the Issuer, the Issuer's counsel, the Purchasers, the Borrower, the Administrative Agent, the Purchasers' counsel or Bond Counsel for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by this Agreement, the Regulatory Agreement and the other Bond Documents or otherwise relied on the Issuer or the Issuer's counsel or Bond Counsel in any manner.

## **ARTICLE VII ACQUISITION OF BONDS; REGISTRATION AND TRANSFER**

Section 7.1. Acquisition of Bonds for Account of the Purchasers; Registration and Transfer. Except as provided in the third paragraph of this Section 7.1, the Issuer shall maintain the registration records containing the names and addresses of the registered owner or owners of the Bonds and shall register the Bonds. Each Purchaser represents and warrants that it will

acquire its Bonds for its own account and that it has no present intention of making any distribution or disposition of its Bonds. The Person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal of and interest on such Bond shall be made only to or upon the order of the registered owner thereof, or its legal representative.

Each Purchaser agrees that its Bonds shall not be sold, pledged, disposed of or transferred (collectively, "**Disposed**" or a "**Disposal**" or a "**Disposition**") prior to delivery of the Project Loan Certificate to the Administrative Agent or its nominee on behalf of the Purchasers, other than in whole to a single Approved Investor which, if the Senior Mortgage Loan has not been fully Advanced, has entered into a trade agreement with the Lender to acquire the remaining Construction Loan Certificates. Each Purchaser agrees that its Bonds shall not be Disposed of after delivery of the Project Loan Certificate to the Administrative Agent or its nominee, other than in whole to a single Approved Investor, except as provided in the following paragraph.

After delivery of the Project Loan Certificate to the Administrative Agent, the applicable Bonds may be Disposed of by a Purchaser to Approved Investors in minimum principal amounts of \$1,000,000, upon delivery to the Issuer, the Lender, the Administrative Agent and the Borrower of an Investor Letter from the prospective transferee, but only if prior to any such Disposal, a financial institution, reasonably satisfactory to the Issuer, having trust powers shall have been appointed to act as bond trustee, bond registrar and fiduciary on behalf of the owners of the applicable Bonds. Each such financial institution shall (i) be a bank or trust company in good standing, (ii) have a reported capital and surplus of not less than \$50,000,000, and (iii) be willing, qualified and able to accept such trust upon reasonable or customary terms. The fees of any such financial institution shall be paid by the Borrower.

If the Senior Mortgage Loan has been fully Advanced, prior to any Disposition of the Bonds, an Opinion of Bond Counsel must be received by the Administrative Agent and the Purchasers to effectuate such Disposition.

No transfer of Bonds shall be effective unless and until the applicable Purchaser or the Administrative Agent also transfers to the transferee Ginnie Mae Certificates in a principal amount equal to the principal amount of the Bonds that are being transferred. Notwithstanding the above, in the event that a Purchaser Disposes of its interest in the Ginnie Mae Certificates or a portion thereof as security for other obligations of that Purchaser pursuant to Section 2.8(d) hereof, or after the date there are any Lost Ginnie Mae Certificates, there shall be no sale and transfer of such Bonds in a principal amount in excess of the principal amount of such Bonds secured by the portion, if any, of the Ginnie Mae Certificates that are not so Disposed or the Ginnie Mae Certificates that are not Lost Ginnie Mae Certificates, as the case may be.

EACH PURCHASER AND ANY TRANSFEREE SHALL AGREE TO INDEMNIFY THE ISSUER FROM AND AGAINST ANY AND ALL LIABILITY, COST OR EXPENSE (INCLUDING ATTORNEYS' FEES AND EXPENSES) THAT MAY RESULT IF THE REPRESENTATIONS OF SUCH PURCHASER OR TRANSFEREE, RESPECTIVELY, CONTAINED IN ITS INVESTOR LETTER ARE FALSE IN ANY MATERIAL RESPECT.

Nothing herein shall prohibit a Purchaser from selling on a date at least 30 days after the Issue Date participations, receipts evidencing ownership or other participatory interests in its Bonds without delivery of an Investor Letter, provided that each acquirer of any such participations, receipts evidencing ownership or other participatory interests shall meet the qualifications of an Approved Investor. The Issuer agrees to execute, acknowledge and deliver, at that Purchaser's expense, such further instruments as that Purchaser may reasonably request to effectuate any transaction establishing such participations, receipts evidencing ownership or other participatory interests by that Purchaser.

## **ARTICLE VIII GENERAL COVENANTS**

So long as any amount is due and owing hereunder, the Borrower covenants and agrees that, except to the extent the Administrative Agent, the Lender, and the Issuer shall otherwise consent in writing, each of the following covenants shall be performed and complied with:

Section 8.1. Conduct of Business; Maintenance of Existence; Mergers. The Borrower will (i) engage solely in the business of financing, owning and operating the Project Facilities, and activities incident thereto, (ii) preserve and maintain in full force and effect its existence as a limited partnership under the Legal Requirements of the state of its organization, and its rights and privileges and its qualification to do business in the State, (iii) not dissolve or otherwise dispose of all or substantially all of its assets and (iv) not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it.

Section 8.2. Compliance with Legal Requirements. The Borrower will comply with all Legal Requirements applicable to the Borrower or the Project Facilities and will construct and operate the Project Facilities as a "housing project" as defined in ORS 456.065(2)(a).

Section 8.3. Maintenance of Governmental Authorizations. The Borrower will maintain in full force and effect all of its Governmental Actions and qualifications necessary for the conduct of its business as it is presently being conducted and the ownership and operation of its facilities as they are presently being operated.

Section 8.4. Maintenance of Insurance. At all times throughout the term hereof, the Borrower shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by facilities of like size and type and shall pay, as the same become due and payable, all premiums with respect thereto.

Section 8.5. Compliance with Other Contracts and Bond Documents. The Borrower will comply with all of its covenants and agreements under the Bond Documents, as the same may hereafter be amended or supplemented from time to time, and each of such covenants is incorporated herein by reference as if fully set forth herein. The Borrower shall comply in all material respects with, or cause to be complied with, all requirements and conditions of all material contracts or restrictions binding on, relating to or affecting the Borrower, the General Partner or any of their respective assets, or relating to the Project Facilities. The Borrower shall not take any action which would adversely affect the exclusion from gross income of interest on

the Bonds, nor shall the Borrower omit or fail to take any action required to maintain the exclusion from gross income of interest on the Bonds.

Section 8.6. Maintenance of Properties. The Borrower will, at its sole expense, maintain and preserve, or cause to be maintained and preserved, the Project Facilities in good working order and repair, fit for the purposes for which the Project Facilities were originally erected; not permit, commit or suffer any waste of any of its properties; not use (and use reasonable efforts to not permit tenants to use) any of the Project Facilities for any unlawful purpose and use reasonable efforts to not permit any nuisance to exist thereon; promptly make such repairs or replacements (structural or nonstructural, foreseen or unforeseen) as are required for the proper operation, repair and maintenance of the Project Facilities in an economical and efficient manner and consistent with customary and prudent practices, standards and procedures applicable to properties of like size and type; perform all repairs or replacements in a good and workmanlike manner, and in compliance with all applicable Legal Requirements; keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas which may be owned by the Borrower in good and neat order and repair; not take (or fail to take) any action, which if taken (or not so taken) would increase in any way the risk of fire or other hazard occurring to or affecting any of the Project Facilities; and not sell, lease (other than pursuant to residential Leases), cause a sale of or otherwise dispose of any part of its properties, except as otherwise permitted hereunder and under the other Bond Documents.

Section 8.7. Inspection Rights. The Borrower will, at any reasonable time and from time to time, permit the Administrative Agent, the Issuer, the Lender, and the agents or representatives of the Administrative Agent or the Purchasers, the Issuer, and the Lender, to examine and copy and make abstracts from the records and books of account of, and visit the properties of, the Borrower, and to discuss the affairs, finances and accounts of the Borrower with the General Partner and its accountant. Upon reasonable prior notice, and subject to the rights of tenants, the Borrower will permit the Issuer, the Administrative Agent, or the Lender to inspect, or cause to be inspected, the Project Facilities at any reasonable time or times as the Administrative Agent may direct. The Borrower shall pay or reimburse the Administrative Agent on demand for reasonable and necessary advances and expenses incurred in connection with such inspections.

Section 8.8. Keeping of Books. The Borrower will keep proper books of record and account, in which full and correct entries shall be made of financial transactions and the assets and operations of the Borrower in accordance with GAAP, and have a complete audit of such books of record and account made by its accountant for each Fiscal Year.

Section 8.9. Reporting Requirements.

(a) The Borrower will furnish or cause to be furnished to the Administrative Agent and, if requested, the Issuer the following in form satisfactory to the Administrative Agent and the Issuer and in such number of copies as the Administrative Agent or the Issuer may reasonably require:

(i) As soon as available and in any event within one hundred twenty (120) days after the close of each Fiscal Year of the Borrower audited financial statements for

the Borrower, on a consolidated basis, including a balance sheet and related statements of income and changes in financial position as of the end of such Fiscal Year and for such Fiscal Year, which shall be prepared and reported on without qualification by the accountant in accordance with GAAP, and shall fairly present the financial condition of the Borrower and the Project Facilities as of the end of such Fiscal Year;

(ii) Simultaneously with the delivery of the audited financial statements delivered pursuant to paragraph (a) above, a certificate stating, to the knowledge of the Borrower, that no Determination of Taxability has occurred and that there exists on the date of such certificate no Event of Default or, if any Event of Default or Determination of Taxability then exists, setting forth the details thereof and the action that the Borrower is taking or proposes to take with respect thereto; and

(iii) Such other information respecting the operations and properties, financial or otherwise, of the Borrower as the Administrative Agent or the Lender, may from time to time reasonably request.

(b) The Borrower shall provide to the Issuer within 30 days following each June 30 during which the Bonds are Outstanding, written information as to the aggregate principal amount of Bonds Outstanding at the close of business on the immediately preceding June 30.

Section 8.10. Tax-Exempt Status. The Borrower covenants, represents and agrees to comply with the provisions of the Tax Certificate and Agreement and that it will not take or omit to take or permit any action that would adversely affect the excludability of interest on the Bonds from the gross income of the recipients thereof for federal income tax purposes and, if it should take or permit any such action, the Borrower will take all lawful actions that it can take to rescind such action promptly upon having knowledge thereof and that the Borrower will take such action or actions, including amendment of this Agreement, the Senior Mortgage, the Subordinate Mortgages and the Regulatory Agreement, as may be necessary, in the Opinion of Bond Counsel, to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service applicable to the Bonds or affecting the Project Facilities. Further, the Borrower shall not permit the ownership in the Borrower, the General Partner or any Affiliate thereof to be modified without the prior written consent of the Administrative Agent and the Issuer. Further, except with the prior written approval of the Administrative Agent, the Borrower agrees to operate, construct and develop the Project in such a manner as to assure that no entity other than the Borrower is or will be a Substantial User or Related Person to a Substantial User and, if it should take or permit any such action, the Borrower will take all lawful actions that it can take to rescind such action promptly upon having knowledge thereof. The Borrower shall not amend or modify its management agreement, development services agreement and/or construction contract (as such agreements or contracts are defined in the Borrower's limited partnership agreement) or change the management of the Project without the prior written consent of the Administrative Agent and the Issuer.

The Borrower will not make or permit any use, and will not direct the Administrative Agent or the Lender to make any investment or use of the proceeds of the Bonds, which would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code and the



Regulations thereunder as the same may be applicable to the Bonds at the time of such action, investment or use and agrees to take and cause the Issuer, the Administrative Agent, and the Lender to take all actions required to comply with the provisions of Section 148 of the Code.

The Borrower further covenants and agrees that it will comply with and will take all action reasonably required to comply with all applicable requirements of Section 148 and the rules and regulations of the United States Treasury Department thereunder relating to the Bonds and the interest thereon, including the employment of a rebate analyst for the calculation of any rebatable amount (the "**Rebate Amount**") to the United States Treasury Department. The Borrower agrees that it will cause the rebate analyst to calculate the Rebate Amount not later than forty-five (45) days after the fifth anniversary of the Issue Date and each five (5) years thereafter and agrees that the Borrower will pay all costs associated therewith. Within fifteen (15) days of the date of each such calculation, the Borrower shall promptly deliver a report or letter from the rebate analyst setting forth the Rebate Amount, if any, then due and the methods used to calculate such amount (each a "**Rebate Report**") to the Issuer and the Administrative Agent. In addition, the Borrower shall prepare, or cause the rebate analyst to prepare, and file any forms required by the Internal Revenue Service to be submitted with the Rebate Amount, if any.

Neither the Borrower, any Substantial User, nor any Related Person shall, pursuant to any arrangement, formal or informal, purchase or acquire Bonds or other tax-exempt obligations of the Issuer in an amount related to the Bond Loan, unless the Borrower or such Substantial User or Related Person delivers a favorable Opinion of Bond Counsel with a reliance letter addressed to the Administrative Agent and Purchasers.

No changes will be made to the Project Facilities, no actions will be taken by the Borrower and the Borrower will not omit to take any actions, which will in any way adversely affect the tax-exempt status of the Bonds.

The Borrower will not make any changes in the Project Facilities that would, at the time made, cause the average reasonably expected economic life of the Project Facilities, determined pursuant to Section 147(b) of the Code, to be less than the average reasonably expected economic life of the Project set forth in such certificates or letters of representation of the Borrower, unless the Borrower files with the Administrative Agent, the Issuer, and the Lender a favorable Opinion of Bond Counsel that such changes to the Project Facilities will not result in loss of the excludability of interest on the Bonds from gross income for federal income tax purposes.

No portion of the proceeds of the Bonds will be used to acquire existing property or any interest therein unless such acquisition meets the rehabilitation requirements of Section 147(d) of the Code.

The Issuer covenants and agrees that it will, solely at the written request of the Borrower and at the expense of the Borrower, take or cause to be taken all required actions reasonably within its control, to preserve the excludability from gross income for federal income tax purposes of interest on the Bonds.

Section 8.11. Negative Pledge; No Sale.

(a) The Borrower will not create, incur, assume or permit to exist any mortgage, pledge, security interest, encumbrance or other lien upon the Project Facilities or any property, tangible or intangible, now owned or hereafter acquired (including without limitation property leased to or being acquired by the Borrower under capital leases or installment sale agreements), of the Borrower (the sale with recourse of receivables or any "sale and lease back" of any fixed assets being deemed to be the giving of a lien thereon for money borrowed), other than Permitted Encumbrances;

(b) The Borrower shall not sell, assign, transfer, convey or otherwise dispose of the Project Facilities, or any part thereof, or permit or consent to a sale without in each instance obtaining the express written consent of the Administrative Agent, the Lender and the Issuer, which consent may be withheld or granted (subject to the payment of such fees and the satisfaction of other conditions as set forth in the applicable Senior Mortgage) in the Administrative Agent's, the Lender's or the Issuer's sole and absolute discretion.

Section 8.12. Environmental Covenants. The Borrower will cause all activities at the Project Facilities during the term of this Agreement to be conducted in full compliance with all applicable Environmental Laws. The Borrower shall obtain and maintain all required permits and approvals from any Governmental Authority regarding Environmental Laws and shall comply with the terms of such permits and approvals.

Section 8.13. Tax Returns. The General Partner will timely file all tax returns for itself and for the Borrower, pay or cause to be paid when due all taxes imposed on their operations, assets, income or properties, and, upon request, provide to the Administrative Agent copies of such returns and receipts for payment of such taxes. Nothing contained herein shall limit, restrict or condition Borrower's right to challenge, contest, appeal or dispute any alleged tax liability, deficiency, obligation, penalty or assessment.

Section 8.14. Leases. The Borrower hereby represents that there are no leases or agreements to lease all or any part of the Project Facilities now in effect except for leases to residential tenants in compliance with the Regulatory Agreement, and leases for services associated with residential rental properties (such as laundry and cable leases).

Section 8.15. Further Assurances. The Borrower will promptly and duly execute, acknowledge and deliver from time to time such further instruments and take such further actions as may be reasonably required to carry out the purposes and provisions of this Agreement and the other Bond Documents to confirm the priority and/or perfection of any lien, pledge, assignment or security interest created or intended to be created by this Agreement and to assure the Administrative Agent of the subrogation and security rights in favor of the Administrative Agent contemplated by this Agreement, by the other Bond Documents.

Section 8.16. Determination of Taxability; Increased Costs.

(a) Neither the Borrower nor the General Partner shall admit in writing to the Issuer, the Lender or the Administrative Agent that interest on the Bonds has become includable in gross income for purposes of federal income taxation of a Purchaser without first providing

reasonable advance notice to the Administrative Agent and permitting the Administrative Agent or the Purchaser, at their sole discretion and expense, to contest such conclusion. Promptly after the Borrower first becomes aware of any Determination of Taxability or an event that could trigger a Determination of Taxability, the Borrower shall give written notice thereof to the Issuer, the Lender and the Administrative Agent.

(b) If either of the following shall occur:

(i) A Determination of Taxability, or

(ii) other than due to matters constituting a Determination of Taxability, in the event that the Administrative Agent shall reasonably determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that any law, treaty or governmental rule, regulation or order, or any change therein or in the interpretation, administration or application thereof (including the introduction of any new law, treaty or governmental rule, regulation or order), or any determination of a court or governmental authority, in each case that becomes effective after the date hereof, or compliance by the Purchasers with any guideline, request or directive issued or made after the date hereof by any central bank or other governmental or quasi-governmental authority (whether or not having the force of law):

(a) subjects any Purchaser to any additional tax (other than any tax on the overall net income of the Purchaser) with respect to the Bonds, the transactions contemplated by the Bonds and this Financing Agreement, any of the Purchaser's obligations hereunder or any payments to the Purchaser of principal, interest, penalties, fees or any other amount payable hereunder or under the Bonds;

(b) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, compulsory loan, FDIC insurance or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of any Purchaser; or

(c) imposes any other condition on or affecting a Purchaser (or its applicable lending office) or its obligations under the Financing Agreement;

and the result of any of the foregoing events described in (i) or (ii) above is:

(x) to increase the cost to a Purchaser of purchasing or owning the Bonds, or

(y) to reduce the amount of interest, or any amount received or receivable by a Purchaser (or its applicable lending office) with respect to the Bonds, or

(z) to require a Purchaser to make any payment or to forego any interest or other sum payable under the Bonds, the amount of which payment or foregone interest or other sum is calculated by reference to the gross amount of any sum receivable or deemed received by a Purchaser from the Issuer under the Bonds, including any federal income taxes due on the interest (including Additional Interest) on the Bonds;

then, in any such case, the Borrower shall pay or caused to be paid to the Purchasers, upon receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of a fee (rather than interest payable on the Bonds) representing the increased rate, or a different method of calculating, interest or otherwise as the Purchasers in its sole discretion shall determine) as may be necessary to compensate the Purchasers for any such increased cost or reduction in amounts received or receivable hereunder. The Purchasers shall deliver to the Issuer and the Borrower a written statement setting forth in reasonable detail the basis for calculating the additional amounts owed to the Purchasers under this Section 8.16(b), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

Any amounts due under this Section 8.16(b) shall be payable pursuant to, and subject to, the terms of the Subordinate Mortgage Notes, solely from Surplus Cash as detailed in Article 9 of Borrower's Limited Partnership Agreement.

Section 8.17. Use of Proceeds. The Borrower represents and warrants that the proceeds of the Bonds will be allocated exclusively to pay Qualified Project Costs and that for the greatest possible number of buildings the Bond proceeds will be allocated on a pro rata basis to each building constituting a portion of the Project Facilities and the land on which such building is located, so that each building and the land on which it is located will have been financed 50% or more by the proceeds of the Bonds for the purpose of complying with Section 42(h)(4)(B) of the Code.

Section 8.18. Borrower's Approval of Assignment of Security Interest. The Borrower understands that pursuant to the provisions of Section 10.17 hereof, the Issuer, as security for the payment of the principal of and the interest on the Bonds, has assigned and pledged to the Purchasers, and created a security interest in favor of the Purchasers in certain of the Issuer's rights, title and interest in and to this Agreement (including all payments hereunder and the Ginnie Mae Certificates) reserving, however, the Reserved Rights; and the Borrower hereby agrees and consents to such assignment and pledge. By its execution of this Agreement, the Borrower acknowledges that it has approved, has agreed to and is bound by such assignment and pledge. The Borrower agrees that the Administrative Agent shall be entitled to enforce and to benefit from the terms and conditions of this Agreement that relate to it or the Purchasers for the benefit of and on behalf of the Purchasers.

Section 8.19. Indemnification. Each of the Borrower and Pedcor Investments, A Limited Liability Company separately indemnifies and holds harmless the Issuer and each of its Affiliates (and each of the Issuer's and its Affiliates' respective directors, officers, employees, representatives and agents), the Administrative Agent and its Affiliates (and each of its Affiliates' respective directors, officers, employees, representatives and agents), and each Purchaser and each of its Affiliates (and each of the Purchaser's and its Affiliates' respective

directors, officers, employees, representatives and agents) (collectively, the "**Indemnified Parties**") except as limited below, from and against any and all claims, damages, losses, liabilities, costs or expenses (including attorneys' fees for counsel of each of the Indemnified Parties' choice) whatsoever which the Indemnified Parties may incur (or which may be claimed against any of the Indemnified Parties by any person or entity whatsoever) by reason of or in connection with:

(a) any breach by the Borrower of any representation, warranty, covenant, term or condition in, or the occurrence of any default or Event of Default under, this Agreement or the other Bond Documents, including all reasonable fees or expenses resulting from the settlement or defense of any claims or liabilities arising as a result of any such breach or default or any Determination of Taxability;

(b) the involvement of any of the Indemnified Parties in any legal suit, investigation, proceeding, inquiry or action as a consequence, direct or indirect, of the Purchaser's or the Administrative Agent's actions taken pursuant to this Agreement or any other event or transaction contemplated by any of the foregoing;

(c) any untrue statement or alleged untrue statement contained or incorporated by reference in any offering or reoffering materials prepared in respect of the Bonds, or any supplement or amendment thereof, or the omission or alleged omission to state therein a material fact necessary to make such statements in light of the circumstances under which they are or were made not misleading;

(d) the acceptance or administration of the Bond Documents or the trusts thereunder or the performance of duties under the Bond Documents or any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project Facilities or the use thereof, including without limitation any lease thereof or assignment of its interest in this Agreement;

(e) any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Advances or the Project Facilities, the operation of the Project Facilities, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation or construction of, the Project Facilities or any part thereof;

(f) any Lien (other than a Permitted Encumbrance) or charge upon payments by the Borrower to the Issuer, the Administrative Agent and the Purchasers hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Issuer, the Administrative Agent or the Purchasers in respect of any portion of the Project Facilities;

(g) any violation or alleged violation of any Environmental Law with respect to, or the release of any toxic substance from, the Project Facilities or any part thereof;

(h) the enforcement of, or any action taken by the Issuer, the Administrative Agent or the Purchasers, related to remedies under, this Agreement and the other Bond Documents;

(i) any action, suit, claim, proceeding, audit, inquiry, examination, or investigation of a judicial, legislative, administrative or regulatory nature concerning or related to interest payable on the Bonds not being exempt from federal or state income taxation;

(j) any action, suit, claim or demand contesting or affecting the title of the Project Facilities; and

(k) the investigation of, preparation for or defense of any litigation, proceeding or investigation in connection with the Project Facilities or the transactions to be consummated in connection therewith of any nature whatsoever, commenced or threatened against the Borrower, the Project Facilities or any Indemnified Party.

The indemnification shall include the reasonable costs and expenses of defending itself or investigating any claim of liability and other reasonable expenses and attorneys' fees incurred by the Issuer, the Administrative Agent or the Purchasers. The obligations of the Borrower and Pedcor Investments, A Limited Liability Company under this Section shall survive the termination of this Agreement. Notwithstanding any other provision of this Agreement or the Bond Documents to the contrary, each of the Borrower and Pedcor Investments, A Limited Liability Company separately agrees (i) not to assert any claim or institute any action or suit against the Administrative Agent or the Purchasers or their employees arising from or in connection with any investment of funds made by the Administrative Agent or the Purchasers in good faith as directed by the Borrower, the Administrative Agent or the Purchasers, and (ii) to indemnify and hold the Administrative Agent and the Purchasers and their employees harmless against any liability, losses, damages, costs, expenses, causes of action, suits, claims, demands and judgments of any nature arising from or in connection with any such investment. Nothing in this Section is intended to limit the Borrower's reimbursement obligations contained in Section 3.1 and 3.3 hereof. Amounts payable to the Issuer, the Administrative Agent, the Purchasers, or the Lender hereunder shall be due and payable five (5) days after demand and will accrue interest at the Default Rate, commencing with the expiration of the five (5) day period. When the Issuer, the Administrative Agent, the Purchasers, or the Lender incurs expenses or renders service in connection with any bankruptcy or insolvency proceeding, such expenses (including the fees and expenses of its counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy law or law relating to creditors rights generally.

Any amounts due from the Borrower (but not from Pedcor Investments, A Limited Liability Company) under this Section 8.19 shall be payable pursuant to, and subject to, the terms of the Subordinate Mortgage Notes, solely from Surplus Cash, or from the proceeds of any applicable insurance.

Section 8.20. Additional Documents. In connection with the Senior Mortgage Loan, the Lender and the Borrower shall execute and deliver such documents as may be customarily utilized for insured mortgage loans under the provisions of Section 221(d)(4) of the National Housing Act and applicable regulations thereunder, with such omissions, insertions and variations as may be permitted by such regulations and as may be consistent with the terms and provisions of this Agreement, including Sections 10.14 and 10.15 hereof. In connection with the delivery of the Subordinate Mortgage Notes, the Borrower shall execute such additional

documents reasonably requested by the Administrative Agent or the Purchasers as may be consistent with the terms and provisions of this Agreement.

## **ARTICLE IX DEFAULTS AND REMEDIES**

Section 9.1. Defaults. Each of the following shall constitute an event of default hereunder ("**Event of Default**"), in each event following notice to the Borrower by the Administrative Agent and the continuation of such Event of Default for a thirty (30) day period:

(a) Failure by the Borrower to pay any amount required to be paid by the Borrower under this Agreement or any of the other Bond Documents when the same shall become due and payable after the expiration of any notice or cure period; provided, that failure to pay any Additional Interest due or past due shall not constitute an Event of Default hereunder to the extent that 75% of Surplus Cash is not available or is insufficient to make any such payment in full;

(b) Failure by the Borrower to perform or comply with any terms or conditions contained in this Agreement and any of the other Bond Documents to which the Borrower is a party and continuation of such failure for thirty (30) days after written notice from the Administrative Agent to the Borrower, or such longer period to which the Administrative Agent may agree in the case of a default not curable by the exercise of due diligence within such thirty (30) day period, provided that the Borrower or the General Partner shall have commenced, or the Investor Member or the Special Member has caused to be commenced, a cure of such default within such thirty (30) day period and shall complete, or cause to be completed, such cure as quickly as reasonably possible with the exercise of due diligence;

(c) Any of the representations or warranties of the Borrower set forth in this Agreement, any of the other Bond Documents or any other document furnished to the Administrative Agent or the Purchasers pursuant to the terms hereof proves to have been false or misleading in any material respect when made;

(d) Any material provision of this Agreement or any of the other Bond Documents to which the Borrower is a party for any reason ceases to be valid and binding on the Borrower, or is declared to be null and void, or is violative of any applicable Legal Requirement relating to a maximum amount of interest permitted to be contracted for, charged or received, or the validity or enforceability thereof is contested by the Borrower or any Governmental Authority, or the Borrower denies that it has any or further liability or obligation under this Agreement or any of the Bond Documents to which the Borrower is a party;

(e) The occurrence of an Event of Default as defined in the other Bond Documents or an act or event (or failure to act or non-occurrence of an act) which, with the passage of time, the giving of notice or both, would constitute an Event of Default under the Bond Documents;

(f) An Act of Bankruptcy of the Borrower;

(g) An Event of Default under the Senior Mortgage Loan Documents; or

(h) Failure to deliver the Project Loan Certificate by the Delivery Date.

Section 9.2. Remedies. If an Event of Default has occurred and is continuing uncured, the Administrative Agent, acting in its sole discretion but subject to the Administrative Agency Agreement, may, subject to Sections 10.14 and 10.15 hereof:

(a) Declare the principal amount of the Bonds then Outstanding and the interest accrued thereon to be due and payable; and

(b) Enter upon the Project Facilities and take possession thereof, together with the Improvements in the course of construction or completed and all of the Borrower's materials, supplies, tools, equipment and construction facilities and appliances located thereon, and proceed either in the name of the Purchasers or in the name of the Borrower (and the Borrower hereby appoints the Administrative Agent as the attorney-in-fact of the Borrower, which authority is coupled with an interest and is irrevocable by the Borrower for such purposes) as the Administrative Agent shall elect, to complete the construction of the Improvements at the cost and expense of the Borrower. If the Administrative Agent elects to complete or cause the construction of the Improvements to be so completed, it may do so according to the terms of the plans and specifications or as the Administrative Agent shall deem expedient or necessary, and the Administrative Agent may enforce or cancel all contracts entered into as aforesaid or make other contracts which in the Administrative Agent's reasonable opinion may seem advisable, and the Borrower shall be liable, under this Agreement or any note given by it pursuant to the provisions hereof, to pay the Administrative Agent upon demand any amount or amounts expended by the Administrative Agent or its representatives for such performance, together with any costs, charges or expenses incident thereto or otherwise incurred or expended by the Administrative Agent or its representatives on behalf of the Borrower in connection with the Improvements, and the amounts so expended shall bear interest at the default rate specified in this Agreement, and shall be considered part of the indebtedness evidenced by this Agreement and secured by the Senior Mortgage.

(c) Exercise, or cause to be exercised, any and all such remedies as it may have under this Agreement or any of the other Bond Documents by a suit in equity or action at law, including for the right to disburse and control the use of the Construction Fund, specific performance of any covenant or agreement contained in this Agreement or the other Bond Documents, or by mandamus or other appropriate proceeding for the enforcement of any other legal or equitable remedy as the Administrative Agent determines, or by foreclosing the Subordinate Mortgages.

(d) Sell the Ginnie Mae Certificates; provided that the Lender shall have the right, upon payment of the principal amount on the Ginnie Mae Certificates, plus accrued interest thereon, to purchase the Ginnie Mae Certificates from the Purchasers.

The Administrative Agent shall apply all proceeds derived from the exercise of such remedies, plus any moneys held in the Construction Fund, to pay the principal of and interest on the Bonds. In the event the proceeds derived from such sale, plus any moneys held in the Construction Fund, are at least sufficient to pay the Bonds in full, including Additional Interest, the Borrower shall be entitled to any excess proceeds. Notwithstanding anything contained



herein to the contrary, the occurrence and continuance of an Event of Default shall not relieve the Purchasers or the Administrative Agent of their obligations to purchase Ginnie Mae Certificates in accordance with the terms of this Agreement unless and until (i) Lender or HUD declares a default under the Senior Loan Documents, or (ii) the Delivery Date has passed and has not been extended pursuant to the terms and provisions of this Agreement.

Section 9.3. No Waivers; Consents. No waiver of, or consent with respect to, any provision of this Agreement shall in any event be effective unless the same shall be in writing and signed by the Issuer at the direction of the Administrative Agent, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

Section 9.4. No Waiver; Remedies Cumulative. No failure on the part of the Issuer or the Administrative Agent to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; and no single or partial exercise of any right hereunder shall preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies available under any other document or at law or in equity.

Section 9.5. Issuer and Borrower to Give Notice of Default. The Issuer and the Borrower severally covenant that they will, at the expense of the Borrower, promptly give to the Administrative Agent, the Purchasers, the Investor Member and the Special Member and to each other written notice of any Event of Default under this Agreement, and any act, event or circumstance which, with the passage of time, or notice, or both, would constitute such an Event of Default of which they shall have actual knowledge or written notice, but the Issuer shall not be liable for failing to give such notice.

Section 9.6. Cure by Investor Member or Special Member. Notwithstanding anything to the contrary contained herein, the Issuer and the Administrative Agent hereby agree that any cure of any default made or tendered by the Investor Member or the Special Member shall be deemed to be a cure by the Borrower, and shall be accepted or rejected on the same basis as if made or tendered by the Borrower; provided, however, that neither the Investor Member nor the Special Member shall have any obligation or duty to take any action to cure any default or to cause any default to be cured.

Section 9.7. Attorney Fees. Upon the occurrence of an Event of Default under this Agreement, if the Issuer or the Administrative Agent employs attorneys or incurs other expenses for the collection of amounts payable hereunder or for the enforcement of the performance or observance of any covenants or agreements on the part of the Borrower herein contained, whether or not suit is commenced, the Borrower agrees that it will on demand therefor pay to the Issuer or the Purchasers, as applicable, the reasonable fees of such attorneys to the extent actually incurred and such other reasonable expenses so incurred by the Issuer or the Administrative Agent.

**ARTICLE X  
MISCELLANEOUS**

Section 10.1. Notices. All notices and other communications provided for hereunder shall be in writing and sent by facsimile and by reputable overnight mail service or private delivery service addressed as follows:

To the Issuer:           Housing Authority of Clackamas County  
                                  13900 South Gain Street  
                                  P.O. Box 1510  
                                  Oregon City, OR 97045  
                                  Attention: Executive Director

To the Borrower:       Pedcor Investments-2016-CLV, Limited Partnership  
                                  c/o Pedcor Investments  
                                  One Pedcor Square  
                                  770 3rd Avenue, S.W.  
                                  Carmel, IN 46032  
                                  Attention: Phillip J. Stoffregen

with a copy to:       Pedcor Investments  
                                  One Pedcor Square  
                                  770 3rd Avenue, S.W.  
                                  Carmel, IN 46032  
                                  Attention: Jeremy Buchanan, Legal Counsel

To the Investor Member:   U.S. Bancorp Community Development  
                                  Corporation  
                                  1307 Washington Avenue, Suite 300  
                                  St. Louis, MO 63103  
                                  Attention: Director of LIHTC Asset Management

with a copy to:       Kutak Rock LLP  
                                  1650 Farnam Street  
                                  Omaha, NE 68102-2186  
                                  Attention: Jill H. Goldstein, Esq.

To the Special Member:   Housing Authority of Clackamas County  
                                  13900 South Gain Street  
                                  P.O. Box 1510  
                                  Oregon City, OR 97045  
                                  Attention: Executive Director

with a copy to:       \_\_\_\_\_

                                  \_\_\_\_\_

                                  \_\_\_\_\_

To UFB: United Fidelity Bank, fsb  
18 NW Fourth Street  
Evansville, IN 47708  
Attention: Donald R. Neel, President and CEO

To International: International City Bank, N.A.  
249 E. Ocean Blvd.  
Long Beach, CA 90802  
Attention: President and CEO

To the Lender: P/R Mortgage & Investment Corp.  
11555 N. Meridian Street, Suite 400  
Carmel, IN 46032  
Attention: Michael R. Dury

with a copy to: Wooden & McLaughlin, LLP  
One Indiana Square  
211 N. Pennsylvania, Suite 1800  
Indianapolis, IN 46204  
Attention: John W. Hamilton

The parties listed above may change the address to which notices to it are to be sent by written notice given to the other persons listed in this Section. All notices shall, when sent as aforesaid, be effective when received.

Section 10.2. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, including, without limitation, the Administrative Agent and the Purchasers. The Borrower may not assign its rights under this Agreement without the prior written consent of the Administrative Agent or the Purchasers. The Borrower and the Issuer intend that no person other than the parties hereto, the Administrative Agent or the Purchasers, and their successors and assigns as permitted hereunder, shall have any claim or interest under this Agreement or right of action hereon or hereunder.

Section 10.3. Survival of Covenants. All covenants made by the Borrower herein and in any document delivered pursuant hereto shall survive the delivery of this Agreement and the payment of any amounts under the Bond Documents.

Section 10.4. Counterparts. The execution hereof by each party hereto shall constitute a contract between them for the uses and purposes herein set forth, and this Agreement may be executed in any number of counterparts, with each executed counterpart constituting an original and all counterparts together constituting one agreement.

Section 10.5. Costs, Expenses and Taxes. The Borrower agrees to pay at closing and thereafter within 30 days after demand, all reasonable costs and expenses of the Issuer, the Administrative Agent and the Purchasers in connection with the preparation, execution, delivery and administration of this Agreement, the other Bond Documents and any other documents that

may be delivered in connection with this Agreement or the Bond Documents or any amendments or supplements thereto, including, without limitation, the reasonable fees and expenses of Bond Counsel, Issuer counsel or counsel for the Administrative Agent or the Purchasers with respect thereto and with respect to advising the Administrative Agent or the Purchasers as to their respective rights and responsibilities under this Agreement, the other Bond Documents and such other documents, and all costs and expenses, if any, (including, without limitation, reasonable counsel fees and expenses of the Purchasers and the Administrative Agent) in connection with the enforcement of this Agreement, the other Bond Documents and such other documents.

Section 10.6. Severability; Interest Limitation. If any provision hereof is found by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction, it shall be ineffective as to such jurisdiction only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision as to such jurisdiction to the extent it is not prohibited or unenforceable, nor invalidate such provision in any other jurisdiction, nor invalidate the other provisions hereof, all of which shall be liberally construed in favor of the Issuer in order to effect the provisions of this Agreement. Notwithstanding anything to the contrary herein contained, the total liability of the Borrower for payment of interest pursuant hereto shall not exceed the maximum amount, if any, of such interest permitted by applicable Legal Requirements to be contracted for, charged or received, and if any payments by the Borrower to the Purchasers include interest in excess of such a maximum amount, the Purchasers shall apply such excess to the reduction of the unpaid principal amount due pursuant hereto, or if none is due, such excess shall be refunded to the Borrower; provided that, to the extent permitted by applicable Legal Requirements, in the event the interest is not collected, is applied to principal or is refunded pursuant to this sentence and interest thereafter payable pursuant hereto shall be less than such maximum amount, then such interest thereafter so payable shall be increased up to such maximum amount to the extent necessary to recover the amount of interest, if any, theretofore uncollected, applied to principal or refunded pursuant to this sentence. Any such application or refund shall not cure or waive any Event of Default. In determining whether or not any interest payable under this Agreement exceeds the highest rate permitted by applicable Legal Requirements, any non-principal payment (except payments specifically stated in this Agreement to be "interest") shall be deemed, to the extent permitted by applicable Legal Requirements, to be an expense, fee, premium or penalty rather than interest.

Section 10.7. Conflicts. Insofar as possible the provisions of this Agreement shall be deemed complementary to the terms of the other Bond Documents, but in the event of conflict the terms hereof shall control to the extent such are enforceable under applicable Legal Requirements.

Section 10.8. Complete Agreement. Taken together with the other Bond Documents and the other instruments and documents delivered in compliance herewith, this Agreement is a complete memorandum of the agreement of the Borrower, the General Partner, the Administrative Agent, the Purchasers, the Lender, and the Issuer.

Section 10.9. Consent to Jurisdiction; Venue; Waiver of Jury Trial. The parties hereby irrevocably (i) agree that any suit, action or other legal proceeding to which the Issuer is a party arising out of or relating to this Agreement or the other Bond Documents shall be brought

solely in a federal court located in the State or in a State court located in Clackamas County, Oregon and consent to the jurisdiction of such court in any such suit, action or proceeding, (ii) agree that any suit, action or other legal proceeding to which the Issuer is not a party arising out of or relating to this Agreement or the other Bond Documents shall be brought solely in a federal or state court located in the State of Oregon in Clackamas County and consent to the jurisdiction of such court in any such suit, action or proceeding, and (iii) waive any objection which it may have to the laying of venue of any such suit, action or proceeding in any such court and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. The parties hereby irrevocably consent to the service of any and all process in any such suit, action or proceeding by mailing of copies of such process to such party at its address provided under or pursuant to Section 10.1 hereof. The parties agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Legal Requirements. All mailings under this Section shall be by certified or registered mail, return receipt requested. Nothing in this Section shall affect the right of the Administrative Agent or the Purchasers to serve legal process in any other manner permitted by applicable Legal Requirements. **TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HERETO HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING HEREUNDER OR UNDER THIS AGREEMENT, ANY OF THE OTHER BOND DOCUMENTS OR OTHERWISE IN CONNECTION HEREWITH.**

Section 10.10. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State without reference to its principles of conflicts of law; provided that the duties and obligations of UFB and International under this Agreement shall be governed by and construed in accordance with the internal laws of the State of Indiana without giving effect to conflict of law principles.

Section 10.11. Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 10.12. Determinations. (A) Subject to specific provisions in this Agreement to the contrary, in any instance under this Agreement where the consent or approval of the Purchasers may be given or is required, or where any determination, judgment or decision is to be rendered by the Purchasers under this Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by the Purchasers (or their designated representative) at their discretion.

(B) Subject to specific provisions in this Agreement to the contrary, in any instance under this Agreement where the consent or approval of the Administrative Agent may be given or is required, or where any determination, judgment or decision is to be rendered by the Administrative Agent under this Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by the Administrative Agent (or its designated representative) at its discretion subject to the provisions of the Administrative Agency Agreement.

Section 10.13. Issuer, Members, Directors Attorneys, Officers, Employees and Agents of Issuer Not Liable. To the extent permitted by law, no recourse shall be had for the enforcement of any obligation, promise or agreement of the Issuer contained herein or in the other Bond Documents to which the Issuer is a party or for any claim based hereon or thereon or otherwise in respect hereof or thereof against any director, officer, agent, attorney or employee, as such, in his individual capacity, past, present or future, of the Issuer or of any successor entity, either directly or through the Issuer or any successor entity whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise. No personal liability whatsoever shall attach to, or be incurred by, any director, officer, agent, attorney or employee as such, past, present or future, of the Issuer or any successor entity, either directly or through the Issuer or any successor entity, under or by reason of any of the obligations, promises or agreements entered into between the Issuer and the Borrower, whether herein contained or to be implied here from as being supplemental hereto; and all personal liability of that character against every such director, officer, agent attorney and employee is, by the execution of this Agreement and as a condition of, and as part of the consideration for, the execution of this Agreement, expressly waived and released.

Section 10.14. HUD Requirements. The provisions of this Agreement are subject and subordinate to the National Housing Act, and all other applicable HUD Requirements, the Senior Mortgage Loan Documents, all applicable Ginnie Mae Requirements and the Ginnie Mae Documents; and in the event of any conflict between the provisions of this Agreement and the provisions of the National Housing Act, any HUD Requirements, the Senior Mortgage Loan Documents, any applicable Ginnie Mae Requirements and/or the Ginnie Mae Documents, the HUD Requirements, Senior Mortgage Loan Documents, Ginnie Mae Requirements and Ginnie Mae Documents shall be controlling in all respects.

Section 10.15. Supremacy of Senior Mortgage Loan Documents, HUD Requirements and Ginnie Mae Requirements. This Section 10.15 shall remain effective for so long as the Senior Mortgage Loan, or any other mortgage loan encumbering the Project Facilities that is insured or held by HUD, remains in full force and effect. In the event the terms of this Agreement shall conflict with the Senior Mortgage Loan Documents, applicable HUD Requirements, the Ginnie Mae Documents or applicable Ginnie Mae Requirements, such Senior Mortgage Loan Documents, HUD Requirements, the Ginnie Mae Documents and Ginnie Mae Requirements shall control. Notwithstanding any other provision of this Agreement to the contrary, it is expressly agreed by the Borrower, the Lender, the Purchasers and the Issuer as follows:

(a) in the event of a foreclosure of the Senior Mortgage or a transfer of title by deed-in-lieu of foreclosure to the holder of the Senior Mortgage or to a person other than the Borrower or any Related Person and the retirement of the Bonds within a reasonable time thereafter, this Agreement shall automatically terminate;

(b) any amendment to this Agreement shall be contingent upon the prior written approval of HUD, if required;

(c) any provisions of this Agreement that require the Borrower to take any action necessary to preserve the tax-exemption of the interest on the Bonds or prohibiting the Borrower

from taking any action that might jeopardize the tax-exemption, are qualified to except therefrom actions required or prohibited by FHA pursuant to Section 221(d)(4) of the National Housing Act;

(d) the Borrower and the Issuer agree that this Agreement is subordinate to all applicable provisions of the National Housing Act, the other HUD Requirements, the Senior Mortgage and the other Senior Mortgage Loan Documents;

(e) no failure on the part of the Borrower to comply with the provisions of this Agreement shall serve as a basis for a default on the Senior Mortgage Loan or any of the Senior Mortgage Loan Documents;

(f) enforcement of the provisions of this Agreement shall not result in any claim under the Senior Mortgage Loan, or any claim against the Project, Senior Mortgage Loan proceeds, any reserve or deposit made with the Lender or another person or entity required by HUD or the Lender in connection with the Senior Mortgage Loan transaction or against the rents or other income from the Project (other than available Surplus Cash of the Project Facilities and Sale Proceeds, if any);

(g) the Borrower shall not be deemed to be in violation of this Agreement if it shall take (or refrain from taking) any actions required (or prohibited) by HUD pursuant to the National Housing Act, applicable HUD Requirements, the Senior Mortgage Loan Documents, applicable Ginnie Mae Requirements and the Ginnie Mae Documents; and

(h) in consideration of HUD's agreeing to insure the Senior Mortgage Loan, and in reliance by HUD upon the promises of the Borrower and the Issuer to comply herewith, HUD has reserved the right to require the Issuer to unilaterally (without the consent of the Borrower, the Lender, the Administrative Agent or the Purchasers) remove or void any restrictions in excess of those necessary to ensure tax-exemption for the Bonds and continued eligibility of the federal tax credits relating to the Project upon a written determination by HUD that the excess restriction(s) is (are) threatening the financial viability of the Project (i.e., impairing the Borrower's ability to sustain a level of income sufficient to meet all financial obligations of the Project, including debt service costs, HUD-required escrows, and Project operating expenses); in the absence of the Issuer's compliance with a written request from HUD to take appropriate action to unilaterally remove or void the aforesaid excess restriction(s), HUD shall have the right and authority under this Section 10.15 to unilaterally remove or void such excess restriction(s).

Section 10.16. Modification, Amendment, Waiver, Etc. No modification, amendment or waiver of any provision of this Agreement shall be effective unless the same shall be in writing and signed by all of the parties hereto and an Opinion of Bond Counsel is delivered.

Section 10.17. Assignment of Issuer's Interests. For so long as the Bonds are Outstanding, the interests of the Issuer in this Agreement (except its Reserved Rights) will be, and hereby are, assigned to the Purchasers and the Administrative Agent, and their respective successors, under this Financing Agreement, and during such period this Agreement shall be enforceable by the Purchasers and the Administrative Agent in accordance with its terms.

Section 10.18. Guaranty of Certain Reserved Rights Payments. Pedcor Investments, A Limited Liability Company hereby guarantees the prompt payment when due of any pecuniary obligations of the Borrower to the Issuer, the Administrative Agent and the Purchasers pursuant to Sections 2.1(j), 3.1(b)(3), 3.1(c), 8.19, 9.7 or 10.5 of this Agreement. Pedcor Investments, A Limited Liability Company hereby acknowledges to the Issuer that it understands the Issuer would not make the Bond Loan to the Borrower without the guarantees provided by this Section 10.18 and Section 8.19 hereof. The Issuer, in its sole discretion, may proceed to exercise any right or remedy which it may have under this Section 10.18 or Section 8.19 hereof without pursuing or exhausting any right or remedy which it may have against the Borrower.

Section 10.19. Non-Recourse. Except as provided in Section 10.18 hereof, the obligations of the Borrower under this Agreement, including specifically the Mortgage Notes, are non-recourse to the Borrower and any of its partners and are payable exclusively from the Ginnie Mae Certificates, Surplus Cash and any Sale Proceeds).

\* \* \* \* \*



IN WITNESS WHEREOF, the Issuer, the Borrower, the Administrative Agent, the Purchasers and the Lender have caused this Agreement to be duly executed and delivered on the day and year first above written.

**HOUSING AUTHORITY OF CLACKAMAS  
COUNTY, OREGON**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Executive Director

**PEDCOR INVESTMENTS-2016-CLV,  
LIMITED PARTNERSHIP**

By: Rosewood Terrace Housing Company, LLC,  
its General Partner

By: Pedcor Investments, A Limited Liability  
Company, its Managing Member

By: \_\_\_\_\_  
Name: Thomas G. Crowe  
Title: Executive Vice President, Development &  
Finance

**P/R MORTGAGE & INVESTMENT CORP.**

By: \_\_\_\_\_  
Name: Michael R. Dury  
Title: Assistant Vice President

**UNITED FIDELITY BANK, fsb, in its capacity  
as a Purchaser of certain Bonds and as  
Administrative Agent**

By: \_\_\_\_\_  
Name: Kirby J. Purciful  
Title: Senior Vice President & CFO

**INTERNATIONAL CITY BANK, N.A., in its  
capacity as a Purchaser of certain Bonds**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Sections 8.19 and 10.18 of this Financing  
Agreement acknowledged and agreed to by  
**PEDCOR INVESTMENTS, A LIMITED  
LIABILITY COMPANY**

By: \_\_\_\_\_  
Name: Thomas G. Crowe  
Title: Executive Vice President, Development &  
Finance

**EXHIBIT A**  
CERTIFICATE CONCERNING ALLOCATION OF PROJECT COSTS

Requisition No. \_\_\_\_\_  
United Fidelity Bank, fsb  
NW Fourth Street  
Evansville, Indiana, 46698

Date: \_\_\_\_\_

RE: \$ \_\_\_\_\_ Housing Authority of Clackamas County, Oregon Multifamily Housing Revenue Bonds (Rosewood Terrace Apartments Project), Series 2017 (the "Bonds") issued pursuant to the Financing Agreement, dated as of \_\_\_\_\_ 1, 2018 (the "Agreement") among Housing Authority of Clackamas County, Oregon (the "Issuer"), Pedcor Investments-2016-CLV, Limited Partnership (the "Borrower"), International City Bank, N.A., and United Fidelity Bank, fsb (the "Purchasers"), and P/R Mortgage & Investment Corp. (the "Lender")

Ladies and Gentlemen:

The undersigned, on behalf of Pedcor Investments-2016-CLV, Limited Partnership (the "Borrower"), hereby certifies that he/she is a duly appointed Authorized Representative of the Borrower. The undersigned further certifies on behalf of the Borrower that, in connection with the Borrower's requisition for an Advance of the Senior Mortgage Loan proceeds from the Lender, subject to the provisions of Section 10.14 and 10.15 of the Agreement, such Advance will not cause or result in the violation, or be in violation, of any covenant contained in the Agreement, the Regulatory Agreement or in the Tax Certificate and Agreement relating to the Bonds, including without limitation, the covenants that (i) at least 95% of the Net Bond Proceeds (as defined in such Tax Certificate and Agreement) will be allocated to pay costs chargeable to the capital account of the Project Facilities or would be so chargeable either with a proper election or but for a proper election to deduct such amounts and (ii) the issuance costs of the Bonds financed with proceeds of the Bonds will not exceed 2% of the proceeds of the Bonds. Capitalized terms used herein, but not defined herein, shall have the respective meanings ascribed thereto in the Agreement.

The payments to be made from this Advance have not been the basis for a prior Advance.

All of the Borrower's representations, covenants and warranties contained in the Financing Agreement and the Tax Certificate and Agreement were true and accurate in all material respects as of the date made, and remain true and accurate in all material respects as of the date of this Certificate except as disclosed to the Purchasers or the Administrative Agent, and the Borrower has fully and satisfactorily performed all of its covenants and obligations to date required under the Financing Agreement and the Tax Certificate and Agreement except as disclosed to the Purchasers or the Administrative Agent. No Default or Event of Default has occurred and is continuing under the Financing Agreement or under the Mortgage Notes except for Defaults or Events of Default that have been disclosed to Purchasers or the Administrative Agent and the Lender.

The Borrower understands that the Purchasers or the Administrative Agent and the Lender are relying on the certifications herein with regard to and in connection with approving the disbursement requested hereby.

Please indicate if this Certificate relates to the final disbursement from the Construction Fund: \_\_\_\_ Yes \_\_\_\_ No.

If this Certificate relates to the final disbursement from the Construction Fund, the Borrower, the Lender, the Administrative Agent and the Purchasers hereby agree to redeem the Bonds to the extent necessary as set forth in the Financing Agreement.

If this Certificate requests such a reimbursement for expenditures made prior to the issuance of the Bonds, the payment or payments for any obligations originally paid by the Borrower, for federal income tax purposes, was after October 20, 2016.

The Borrower attaches hereto the invoices and/or bills of sale relating to the Project Facilities and, if such invoices have been paid by Issuer or Borrower, evidence of payment thereof.

**[Execution on Following Page]**

IN WITNESS WHEREOF, the undersigned Authorized Representative has executed this Certificate to be effective as of the date first set forth hereinabove.

PEDCOR INVESTMENTS-2016-CLV, LIMITED  
PARTNERSHIP

By: Rosewood Terrace Housing Company, LLC,  
its General Partner

By: Pedcor Investments, A Limited Liability  
Company, its Managing Member

By: \_\_\_\_\_  
Name: Thomas G. Crowe  
Title: Executive Vice President, Development &  
Finance

**EXHIBIT B**  
**FORM OF BONDS**

**THIS BOND MAY BE SOLD OR TRANSFERRED ONLY TO AN APPROVED  
INVESTOR UPON DELIVERY OF AN INVESTOR LETTER  
AND SUBJECT TO OTHER CONDITIONS PROVIDED IN THE  
FINANCING AGREEMENT**

No. R-1 \$ \_\_\_\_\_

HOUSING AUTHORITY OF CLACKAMAS COUNTY, OREGON  
MULTIFAMILY HOUSING REVENUE BONDS  
(ROSEWOOD TERRACE APARTMENTS PROJECT),  
SERIES 2017

DATED DATE: \_\_\_\_\_, 2017

MATURITY DATE: \_\_\_\_\_

REGISTERED OWNER: [United Fidelity Bank, fsb] [International City Bank, N.A.]

PRINCIPAL AMOUNT: \_\_\_\_\_ Dollars

INTEREST PAYMENT DATE: The 15<sup>th</sup> day of each month commencing  
\_\_\_\_\_

HOUSING AUTHORITY OF CLACKAMAS COUNTY (the "Issuer"), a housing authority of the State of Oregon (the "State"), for value received, promises to pay to the Registered Owner specified above or registered assigns, but solely from the sources and in the manner referred to herein, the Principal Amount specified above or so much thereof as shall have been advanced by the Registered Owner from time to time on the aforesaid Maturity Date or on such earlier date as provided herein, and interest on the balance of such Principal Amount so advanced remaining unpaid from the later of the date hereof or the most recent Interest Payment Date to which interest has been paid at the Interest Rate and subject to the provisions specified below, payable on each Interest Payment Date. Principal of and interest on this Bond are payable at the principal office of the Registered Owner, or at such other place and in such other manner as may be elected by the Registered Owner hereof in accordance with the Financing Agreement (as defined below). Upon payment in full of the principal of this Bond, whether at maturity or prior redemption, the Registered Owner shall forthwith deliver this Bond to the Authority for cancellation.

This is a draw-down Bond. The principal amount of this Bond as of any given date shall be equal to (i) the total amount of principal of this Bond advanced by the Purchaser, less (ii) any repayment of such principal on this Bond received by the Registered Owner of this Bond.

Defined Terms. In addition to terms defined elsewhere herein, the following terms, as used herein, shall have the respective meanings set forth below:

"Additional Interest" means the interest due on the Bonds in excess of the Pass-Through Rate. Payment of Additional Interest shall be subject to and payable solely from: (i) advances received by the Borrower subject to that certain Tri-Party Agreement, dated as of \_\_\_\_\_, \_\_\_\_\_, by and among, the Borrower, the Issuer and Pedcor Development Associates, LLC (the "Tri-Party Agreement"); and (ii) available Surplus Cash (as defined in the HUD Regulatory Agreement) and Sale Proceeds; however, to the extent that Additional interest is payable from Surplus Cash such payments shall be payable only from up to 75% of such available Surplus Cash.

"Borrower" shall mean Pedcor Investments-2016-CLV, an Oregon limited partnership.

"Interest Rate" shall mean (i) from the Issue Date through and including the February 15<sup>th</sup> or August 15<sup>th</sup> next succeeding the date of Final Endorsement, the Pass-Through Rate, and (ii) commencing on the next succeeding Interest Payment Date thereafter, the LIBOR Based Rate; provided however, that the "Interest Rate" on the Bonds shall be the Pass-Through Rate during any period during which the principal owed on the Bonds, plus Additional Interest, exceeds the Maximum Amount.

"Lender" shall mean P/R Mortgage Investments Corp.

All interest due on this Bond at an Interest Rate in excess of \_\_\_\_\_% per annum, up to a maximum amount equal to \$ \_\_\_\_\_ minus the outstanding principal balance on the Ginnie Mae Certificates (the "Maximum Amount") shall constitute "Additional Interest", as defined in the Financing Agreement. At any time amounts due hereunder equal the Maximum Amount, Additional Interest shall not accrue until the balance due hereunder is less than the Maximum Amount at which time Additional Interest shall continue to accrue hereunder.

In addition to interest at the Interest Rate, upon a Determination of Taxability (as defined in the Agreement) or other event described in Section 8.16(b) of the Financing Agreement, additional amounts shall be payable to the Registered Owner of this Bond in accordance with such Section 8.16(b), but only from Surplus Cash, as defined in the Financing Agreement.

This Bond may be redeemed in whole or in part upon thirty (30) days prior written notice to the Registered Owners, at any time and at such redemption prices as shall be in accordance with the prepayment provisions of the Senior Mortgage Note and Financing Agreement.

This Bond is one of a duly authorized issue of the Issuer's Multifamily Housing Revenue Bonds (Rosewood Terrace Apartments Project), Series 2017 (the "Bonds"), issuable under the Financing Agreement dated as of \_\_\_\_\_ 1, 2018 (the "Financing Agreement") by and among the Issuer, the Borrower, International City Bank, N.A., United Fidelity Bank, fsb, as the initial Purchasers of the Bonds, and the Lender. The Bonds are issued pursuant to Chapter 456 of Oregon Revised Statutes, as amended (the "Act"), and a resolution duly adopted by the Issuer.

This Bond is secured (i) by payments made to the Purchaser from fully modified pass-through mortgage backed securities issued by the Lender, which are guaranteed as to timely payment of principal and interest by the Government National Mortgage Association ("Ginnie Mae"), and (ii) with respect to Additional Interest on this bond, advance made pursuant to that certain Tri-Party Agreement (as defined in the Financing Agreement), and available Surplus

Cash and Sale Proceeds (as defined in the Financing Agreement); however, to the extent that Additional interest is payable from Surplus Cash such payments shall be payable only from up to 75% of such available Surplus Cash.

THIS BOND IS A SPECIAL, LIMITED OBLIGATION OF THE ISSUER PAYABLE, AS TO PRINCIPAL AND INTEREST SOLELY FROM THE ASSETS PLEDGED THERETO UNDER THE FINANCING AGREEMENT. THIS BOND SHALL NOT BE A DEBT OR INDEBTEDNESS OF THE STATE OF OREGON, CLACKAMAS COUNTY OR ANY OTHER POLITICAL SUBDIVISION THEREOF (INCLUDING THE ISSUER), AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION OF THE STATE OF OREGON SHALL BE LIABLE HEREON, NOR IN ANY EVENT SHALL THIS BOND BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN THOSE OF THE ISSUER PLEDGED UNDER THE FINANCING AGREEMENT. THIS BOND SHALL NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE ISSUER FROM THE SOURCES IDENTIFIED IN THE FINANCING AGREEMENT) SHALL BE LIABLE FOR PAYMENT OF THIS BOND NOR IN ANY EVENT SHALL PRINCIPAL OF AND INTEREST ON THIS BOND BE PAYABLE OUT OF ANY FUNDS OR ASSETS OTHER THAN THOSE PLEDGED TO THAT PURPOSE BY THE ISSUER IN THE FINANCING AGREEMENT. THE ISSUER HAS NO TAXING POWER.

NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THIS BOND AGAINST ANY PAST, PRESENT OR FUTURE MEMBER OF THE ISSUER'S GOVERNING BODY, OR THE OFFICERS, COUNSEL, FINANCIAL ADVISORS OR AGENTS OF THE ISSUER, OR OF ANY SUCCESSOR THERETO, UNDER ANY RULE OF LAW OR EQUITY, STATUTE OR CONSTITUTION, AND ALL SUCH LIABILITY IS HEREBY EXPRESSLY WAIVED AND RELEASED AS A CONDITION OF, AND CONSIDERATION FOR, THE EXECUTION AND ISSUANCE OF THIS BOND. [conforms to earlier section in document]

All payments hereunder shall be payable in lawful money of the United States of America representing legal tender in payment of all debts and dues, public and private, at the time of payment.

This Bond shall be construed according to the laws of the State of Oregon.

This Bond may be transferred only in accordance with the provisions of the Financing Agreement.

Any capitalized terms appearing herein which are not otherwise defined shall have the meaning ascribed to them in the Financing Agreement.

This Bond will not be entitled to any security or benefit under the Financing Agreement, or be valid or become obligatory for any purpose, until the Certificate of Authentication hereon shall have been manually signed by the Registrar.



IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name by the manual or facsimile signature of the Executive Director of the Issuer, and its corporate seal to be hereunto affixed.

HOUSING AUTHORITY OF CLACKAMAS  
COUNTY, OREGON

By: \_\_\_\_\_  
\_\_\_\_\_, Executive Director

(SEAL)

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the Financing Agreement referred to herein.

Date of Authentication: \_\_\_\_\_

HOUSING AUTHORITY OF CLACKAMAS  
COUNTY, OREGON, as Registrar

By: \_\_\_\_\_  
\_\_\_\_\_, Authorized Officer

**EXHIBIT C**  
**FORM OF INVESTOR LETTER**

Housing Authority of Clackamas County  
13900 South Gain Street  
Oregon City, OR 97045  
Attention: Executive Director

Pedcor Investments-2016-CLV, Limited Partnership  
One Pedcor Square  
770 3rd Avenue, S.W.  
Carmel, Indiana 46032

P/R Mortgage & Investment Corp.  
11555 N. Meridian Street, Suite 400  
Carmel, Indiana 46032

Re: Housing Authority of Clackamas County, Oregon, Multifamily Housing Revenue Bonds  
(Rosewood Terrace Apartments Project), Series 2017

Ladies and Gentlemen:

The undersigned authorized signatory for \_\_\_\_\_ (the "Purchaser"), the Purchaser of \$ \_\_\_\_\_, aggregate principal amount of Multifamily Housing Revenue Bonds (Rosewood Terrace Apartments Project), Series 2017 (the "Purchaser Bonds"), does hereby certify, represent and warrant for the benefit of the Housing Authority of Clackamas County, Oregon (the "Issuer"), Pedcor Investments-2016-CLV, Limited Partnership (the "Borrower") and P/R Mortgage & Investment Corp. (the "Lender"), that the Purchaser is either a "qualified institutional buyer" as defined in Rule 144A under the Securities Act of 1933, as amended (a "QIB"), or an "accredited investor" (as defined in Rule 501(a)(1), (2), (3), (4), (7) or (8) of Regulation D promulgated under the Securities Act of 1933) (an "Accredited Investor").

The Purchaser hereby acknowledges, represents, and warrants to, and agrees with, the Issuer, the Borrower and the Lender, as follows:

- (1) The Purchaser is purchasing the Purchaser Bonds with its own funds (or with funds from accounts over which it has sole investment authority) and not the funds of any other person, and for its own account (or for accounts over which it has sole investment authority) and not as nominee or agent for the account of any other person and not with a view to any distribution thereof, other than the deposit or sale of the Purchaser Bonds in or to a custodial or trust arrangement each of the beneficial owners of which shall be required to be a QIB or an Accredited Investor.
- (2) The Purchaser has such knowledge and experience in business and financial matters, including (i) the evaluation of residential real estate developments such as the Project Facilities, (ii) the evaluation of the capabilities of persons such as Pedcor Investments-2016-CLV, Limited Partnership (the "Borrower"), and the manager of the Project Facilities to operate and maintain the Project Facilities, and (iii) the analysis, purchase and ownership of multifamily housing

revenue bonds, tax-exempt securities and other investment vehicles similar in character to the Bonds, so as to enable it to understand and evaluate the risks of such investments and form an investment decision with respect thereto, the Purchaser has no need for liquidity in such investment and the Purchaser is (or any account for which it is purchasing is) able to bear the risk of such investment for an indefinite period and to afford a complete loss thereof.

(3) The Purchaser acknowledges that it has been provided with, and has had the opportunity to review, the Financing Agreement dated as of \_\_\_\_\_ 1, 2018 (the "Financing Agreement"), among the Issuer, the Borrower, the Lender and International City Bank, N.A. and United Fidelity Bank, fsb, as the original Purchasers of the Bonds, and all other documents relating to the issuance of the Purchaser Bonds. IN PARTICULAR, THE PURCHASER UNDERSTANDS ANY ADDITIONAL INTEREST ON THE PURCHASER BONDS IS PAYABLE ONLY FROM 75% OF SURPLUS CASH AND ALL SALE PROCEEDS, AS DEFINED AND DESCRIBED IN THE FINANCING AGREEMENT. The Purchaser has conducted its own investigation of the Project Facilities, the Borrower, the manager of the Project Facilities, the Purchaser Bonds, the Financing Agreement and related documents and the transactions relating thereto, to the extent it deemed necessary. The Purchaser has been offered an opportunity to have made available to it any and all such information it might request from the Issuer, the Borrower and the manager of the Project Facilities. On this basis, it is agreed by the Purchaser that the Purchaser is not relying on the Issuer or any other party or person to undertake the furnishing or verification of information related to the referenced transaction.

(4) In connection with the purchase of the Purchaser Bonds, the Purchaser has been advised that (i) the Issuer has not undertaken steps to ascertain the accuracy, completeness or truth of any statements made or omitted to be made to the undersigned concerning any of the facts relating to the business, operations, financial condition, or future prospects of the Borrower or the manager of the Project Facilities, and (ii) the Issuer has not made any representations concerning the accuracy or completeness of any information supplied to the undersigned by the Borrower or the manager of the Project Facilities.

(5) THE PURCHASER UNDERSTANDS THAT:

(i) THE PURCHASER BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY OUT OF THE REVENUES, RECEIPTS AND OTHER MONEYS PLEDGED THEREFOR UNDER THE FINANCING AGREEMENT. THE PURCHASER BONDS SHALL NOT BE A DEBT OR INDEBTEDNESS OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF (INCLUDING THE ISSUER), AND NEITHER THE STATE OF OREGON ("STATE") NOR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON, NOR IN ANY EVENT SHALL THE PURCHASER BONDS BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN THOSE OF THE ISSUER PLEDGED UNDER THE FINANCING AGREEMENT. THE PURCHASER BONDS SHALL NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION.

(ii) THE ISSUER HAS NO TAXING POWER AND PRINCIPAL AND INTEREST ON THE PURCHASER BONDS ARE PAYABLE SOLELY OUT OF THE MONEYS TO BE RECEIVED BY THE ISSUER UNDER THE FINANCING AGREEMENT AND AMOUNTS

ON DEPOSIT IN THE FUNDS AND ACCOUNTS ESTABLISHED AND PLEDGED UNDER THE FINANCING AGREEMENT. NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE ISSUER FROM THE SOURCES IDENTIFIED ABOVE) SHALL BE LIABLE FOR PAYMENT OF THE PURCHASER BONDS NOR IN ANY EVENT SHALL PRINCIPAL OF AND INTEREST ON THE PURCHASER BONDS BE PAYABLE OUT OF ANY FUNDS OR ASSETS OTHER THAN THOSE PLEDGED TO THAT PURPOSE BY THE ISSUER UNDER THE FINANCING AGREEMENT.

(6) The Purchaser understands that in connection with any proposed transfer or exchange of Bonds, there must be delivered to the Issuer a letter of the transferee to substantially the same effect as this letter or otherwise as permitted under the Financing Agreement.

(7) The Purchaser understands that, in connection with any proposed transfer of the Bonds, such transfer must be limited to an Approved Investor (as defined in the Financing Agreement) that makes representations with respect to itself to substantially the same effect as the representations set forth herein.

(8) The Purchaser (or in the case of any transferee, such transferee) also understands that it shall indemnify the Issuer as set forth in the Financing Agreement: "THE PURCHASER AND ANY TRANSFEREE SHALL AGREE TO INDEMNIFY THE ISSUER FROM AND AGAINST ANY AND ALL LIABILITY, COST OR EXPENSE (INCLUDING ATTORNEYS' FEES AND EXPENSES) THAT MAY RESULT IF THE REPRESENTATIONS OF SUCH PURCHASER OR ANY SUCH TRANSFEREE, RESPECTIVELY, CONTAINED IN ITS INVESTOR LETTER ARE FALSE IN ANY MATERIAL RESPECT."

This letter and the representations and agreements contained herein are made for your benefit.

IN WITNESS WHEREOF, I have hereunto set my hand the \_\_\_\_ day of \_\_\_\_\_.

[PURCHASER]

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

MUST BE SIGNED BY ACTUAL  
PARTICIPANT. MAY NOT BE SIGNED  
BY NOMINEE OR AGENT.

**EXHIBIT D**  
**FORM OF BOND NOTE**

**MULTIFAMILY PROMISSORY NOTE**

AFTER THE ENDORSEMENT AS HEREON PROVIDED AND PLEDGE OF THIS NOTE, THIS NOTE MAY NOT BE ASSIGNED, PLEDGED, ENDORSED OR OTHERWISE TRANSFERRED EXCEPT TO AN ASSIGNEE OR SUCCESSOR OF THE PURCHASER IN ACCORDANCE WITH THE FINANCING AGREEMENT, BOTH REFERRED TO HEREIN.

\$ \_\_\_\_\_

FOR VALUE RECEIVED, Pedcor Investments-2016-CLV, Limited Partnership, a limited partnership, duly formed and existing under the laws of the State of Oregon (the "Company"), by this promissory note hereby promises to pay to the order of the Housing Authority of Clackamas County, Oregon (the "Issuer") the principal sum of \_\_\_\_\_ Million \_\_\_\_\_ Thousand \_\_\_\_\_ Hundred Dollars (\$ \_\_\_\_\_), together with interest on the unpaid principal amount hereof, from the Issue Date (as defined in the Financing Agreement referenced below) until paid in full, at a rate per annum equal to the rate of interest borne by the Bonds (as hereinafter defined) and premium, if any, on the Bonds. All such payments of principal, interest and premium shall be made in funds which shall be immediately available on the due date of such payments and in lawful money of the United States of America at the principal office of the Purchaser (as defined in the Financing Agreement).

The principal amount, interest and premium, if any, on this Note shall be payable on the dates and in the amount, that principal of, interest and premium, if any, on the Bonds are payable, subject to prepayment as hereinafter provided.

This promissory note is the "Bond Note" referred to in the Financing Agreement, dated as of \_\_\_\_\_ 1, 2018 (the "Financing Agreement") among the Issuer, the Company, P/R Mortgage & Investment Corp., United Fidelity Bank, fsb ("United") and International City Bank, N.A. ("International" and with United the "Purchasers"), the terms, conditions and provisions of which are hereby incorporated by reference.

This Note and the payments required to be made hereunder are irrevocably assigned, without recourse, representation or warranty, and pledged for payment of the Bonds to the Purchasers under the Financing Agreement, and such payments will be made directly to the Purchasers for the account of the Issuer pursuant to such assignment. Such assignment is made as security for the payment of \$ \_\_\_\_\_ aggregate principal amount of Housing Authority of Clackamas County Multifamily Housing Revenue Bonds (Rosewood Terrace Apartments Project), Series 2017 (the "Bonds"). All the terms, conditions and provisions of the Financing Agreement and the Bonds are hereby incorporated as a part of this Note.

Notwithstanding any provision of this Note to the contrary, the Borrower's obligations hereunder are non-recourse to the Borrower and its partners and are: (1) payable solely from

Surplus Cash and Sale Proceeds (as defined and as provided in the Financing Agreement); (2) except for that portion of interest constituting Additional Interest, discharged and satisfied to the extent that the principal of and interest on the Bonds is paid from the Ginnie Mae Certificates (as defined in the Financing Agreement) and (3) with respect to that portion constituting Additional Interest, discharged and satisfied to the extent that Additional Interest on the Bonds is paid from the Subordinate Mortgage Notes of the Company (as defined in the Financing Agreement); however, to the extent that Additional Interest is payable from Surplus Cash, such payments shall be payable from up to 75% of such available Surplus Cash.

The Company may at its option, and may under certain circumstances be required to, prepay together with accrued interest, all or any part of the amount due on this Note, as provided in the Financing Agreement.

Presentation, demand, protest and notice of dishonor are hereby expressly waived by the Company.

The Company hereby promises to pay reasonable costs of collection and reasonable attorneys' fees in case of default on this Note.

\* \* \* \* \*

This Note shall be governed by, and construed in accordance with, the laws of the State of Oregon.

PEDCOR INVESTMENTS-2016-CLV, LIMITED  
PARTNERSHIP

By: Rosewood Terrace Housing Company, LLC,  
its General Partner

By: Pedcor Investments, A Limited Liability  
Company, its Managing Member

By: \_\_\_\_\_  
Name: Thomas G. Crowe  
Title: Executive Vice President, Development &  
Finance



**ENDORSEMENT**

Pay to the order of United Fidelity Bank, UFB and International City Bank, without recourse, the Purchasers named in the Financing Agreement referred to in the within mentioned Note, as security for the Bonds issued under such Financing Agreement. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Note.

HOUSING AUTHORITY OF CLACKAMAS  
COUNTY

By: \_\_\_\_\_  
\_\_\_\_\_, President

Dated: \_\_\_\_\_, 2017

**EXHIBIT E**  
**PRINCIPAL AMORTIZATION**

**EXHIBIT F**  
**PROJECT SITE**

## BOND PURCHASE AGREEMENT

Housing Authority of Clackamas County  
Multifamily Housing Revenue Bonds  
(Rosewood Terrace Apartments Project), Series 2017

April \_\_\_, 2017

Housing Authority of Clackamas County  
13900 South Gain Street  
P.O. Box 1510  
Oregon City, OR 97045

Pedcor Investments-2016-CLV  
c/o Pedcor Investments, LLC  
770 3rd Avenue SW  
Carmel, Indiana 46032

Ladies and Gentlemen:

International City Bank, N.A. (the "Purchaser"), on its own behalf and not as your fiduciary, hereby offers to enter into this Bond Purchase Agreement (this "Bond Purchase Agreement") with the Housing Authority of Clackamas County (the "Issuer") and Pedcor Investments-2016-CLV, an Oregon limited partnership (the "Borrower"). This offer is made subject to the Issuer's and the Borrower's acceptance on or before 10:00 a.m., Oregon time, on the date hereof, and, upon such acceptance, this Bond Purchase Agreement shall be in full force and effect in accordance with its terms and shall be binding upon the Issuer, the Borrower and the Purchaser, all as of 10:00 a.m., Oregon time, on the date hereof.

The Issuer is authorized to issue the above-captioned bonds in the maximum aggregate principal amount of \$\_\_\_\_\_ (the "Bonds") pursuant to the applicable provisions of Chapters 456 and 287A of Oregon Revised Statutes, as now in effect and as it may from time to time hereafter be amended and supplemented (the "Act") and pursuant to a resolution (the Bond Resolution") duly adopted by the Board of Directors of the Issuer. The Bonds shall be as described in and shall be issued pursuant to a Financing Agreement, dated as of January \_\_\_, 2018 (the "Financing Agreement"), by and among the Issuer, the Borrower, P/R Mortgage & Investment Corp. (the "Lender"), United Fidelity Bank, fsb, as a purchaser and an administrative agent for the Purchaser ("UFB") and the Purchaser. Capitalized terms used herein but not defined herein shall have the meanings assigned thereto in the Financing Agreement.

Purchaser will be purchasing \$\_\_\_\_\_ in principal amount of the Bonds (the "Purchaser Bonds") and UFB will be purchasing the remaining \$\_\_\_\_\_ in principal amount of the Bonds (the "UFB Bonds") pursuant to a Bond Purchase Agreement with UFB, the Issuer and the Borrower (the "UFB Bond Purchase Agreement").

Pursuant to the Financing Agreement, the proceeds of the Bonds will be loaned by the Issuer to the Borrower (the "Bond Loan") for the purpose of financing the acquisition, construction and equipping of an apartment complex known as Rosewood Terrace Apartments and located in the City of Happy Valley, Oregon (the "Project"). To evidence its repayment obligations under the Financing Agreement, the Borrower will execute a promissory note, dated the Closing Date (as defined below) (the "Bond Note").

The Bonds are limited obligations of the Issuer, and the principal of and interest thereon will be payable solely from the revenues and other moneys pledged and assigned by the Financing Agreement to secure such payment. The Bonds will be secured in part from payments made from fully modified pass-through mortgage backed securities issued by the Lender, which are guaranteed as to timely payment of principal and interest by the Government National Mortgage Association ("GNMA").

The Project is required to be operated in compliance with a Regulatory Agreement and Declaration of Restrictive Covenants, dated as of the date of the Financing Agreement (the "Regulatory Agreement"), by and among the Borrower, the Issuer and UFB.

The Project will utilize a mortgage loan (the "Senior Mortgage Loan") insured by the Federal Housing Administration ("FHA") under Section 221(d)(4) of the National Housing Act of 1934, as amended, and applicable regulations promulgated thereunder. In connection with the Senior Mortgage Loan, the Borrower will execute an FHA-insured Note (Multistate) (the "Senior Mortgage Note"). The Borrower's repayment obligations under the Senior Mortgage Note will be secured by a first lien Senior Multifamily Deed of Trust, Assignment of Rents and Security Agreement (the "Senior Mortgage") on the Project. The Borrower will also execute a Regulatory Agreement required by FHA (the "HUD Regulatory Agreement") with respect to the Project in order to provide for, among other things, a reserve fund for replacements, which will be held by the Lender. The Lender will hold a reserve for replacements as well as escrows for taxes, insurance and mortgage insurance premiums. In the event of conflict between the provisions of the Senior Mortgage Note, the Senior Mortgage, the HUD Regulatory Agreement and certain other documents required by FHA or the Lender (collectively, the "Senior Mortgage Loan Documents"), the Financing Agreement, the Bond Note or the Regulatory Agreement, the Senior Mortgage Loan Documents will control. The owners of the Bonds will have no rights under the Senior Mortgage Loan Documents and will not have a lien on the real estate on which the Project is located under the Senior Mortgage Loan Documents.

Purchaser and UFB will execute and deliver an Administrative Agency Agreement (the "Agency Agreement"), dated as of April 1, 2017, pursuant to which the Purchaser authorizes UFB to act as the Administrative Agent of the Purchaser for the purposes set forth in the Financing Agreement, the Regulatory Agreement and other related agreements with respect to the Bonds and authorizes the Lender, the Issuer, the Borrower and UFB to rely upon the powers granted to UFB in the Agency Agreement.

As additional inducement to the Purchaser to purchase the Bonds, the Borrower has agreed to pay and the Issuer agrees to pay, to the extent of payment by the Borrower, Additional Interest (as defined in the Financing Agreement) in the manner provided in the Financing Agreement.

On or prior to the Closing Date, the Purchaser shall have received a copy of each of the following documents, duly executed by all parties thereto or certified to the satisfaction of the Purchaser:

- (a) Financing Agreement;
- (b) Regulatory Agreement;
- (c) Senior Mortgage;
- (d) Senior Mortgage Note;
- (e) Bond Note;
- (f) Subordinate Note;
- (g) Subordinate Mortgage
- (h) Bonds;
- (i) This Bond Purchase Agreement;
- (j) The UFB Bond Purchase Agreement;
- (k) The Agency Agreement;
- (l) Subordination Agreement;
- (m) Tri Party Agreement; and
- (n) Third Position Deed of Trust.

The foregoing documents are hereinafter collectively referred to as the "Bond Documents." The Bond Documents executed by the Issuer shall be referred to herein as the "Issuer Documents." The Bond Documents executed by the Borrower shall be referred to herein as the "Borrower Documents."

## **SECTION 1. Purchase and Sale of the Bonds**

On the basis of the representations, warranties and agreements contained herein, but subject to the terms and conditions herein, the Purchaser hereby agrees to purchase from the Issuer, and the Issuer hereby agrees to sell to the Purchaser, all, but not less than all, of the Purchaser Bonds for a purchase price of 100% of the principal amount of the Purchaser Bonds. The Bonds shall bear interest as provided in the Financing Agreement, and shall mature on \_\_\_\_\_.

The Issuer will deliver the Purchaser Bonds to or for the account of the Purchaser against payment of the initial advance in the amount of \$\_\_\_\_\_ by wire transfer of immediately available funds to the Lender (the "Closing") at or prior to 10:00 a.m., Oregon time, on \_\_\_\_\_, 2017, or at such other time not later than seven days thereafter as the Purchaser, the Borrower and

the Issuer shall mutually agree (the "Closing Date"). The Purchaser Bonds may be in printed, engraved, typewritten or photocopied form, and each such form shall constitute a "definitive" form.

**SECTION 2. Issuer's Representations and Warranties and Agreements.** The Issuer represents, warrants to, and covenants and agrees with, the Purchaser and the Borrower that:

(a) The Issuer is a duly organized and existing housing authority of the State of Oregon (the "State"), established by and acting pursuant to the Act, and has, and at the Closing Date will have, full legal right, power and authority under the Constitution and the laws of the State: (i) to enter into the Issuer Documents; (ii) to adopt the Bond Resolution; (iii) to issue, sell and deliver the Purchaser Bonds to the Purchaser under the Financing Agreement and as provided herein; (iv) to pledge and assign the revenue, other money, securities, funds, accounts, guarantees, insurance, and other items pledged under the terms of the Financing Agreement, as provision of and security for the payment of the principal of and interest on the Bonds, and to similarly pledge all money, securities and earnings held in the funds and accounts held under the Financing Agreement, all in the manner described in the Bond Resolution and the Financing Agreement; and (v) to carry out, give effect to and consummate all the other transactions contemplated by the Issuer Documents and the Bond Resolution.

(b) The Issuer has duly and validly adopted the Bond Resolution, has duly authorized and approved the execution and delivery of the Bonds, the Financing Agreement, the Regulatory Agreement, this Bond Purchase Agreement, the UFB Bond Purchase Agreement and the Subordinate Loan Documents to which the Issuer is a party. The Financing Agreement, the Regulatory Agreement, this Bond Purchase Agreement and the UFB Bond Purchase Agreement are referred to in this Bond Purchase Agreement collectively as the "Issuer Documents." The Bond Resolution is in full force and effect and the Issuer has duly authorized and approved the performance by the Issuer of all action as may be necessary for the Issuer to execute and deliver the Bonds and the Issuer Documents on the Closing Date, and the Bonds and the Issuer Documents will constitute the valid, legal and binding obligations of the Issuer (assuming due authorization, execution and delivery by the other parties thereto, where necessary) enforceable against the Issuer in accordance with their respective terms, except as enforceability may be limited by or rendered ineffective by (i) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws affecting creditors' rights generally; (ii) the application of equitable principles and the exercise of judicial discretion in appropriate cases; (iii) common law and statutes affecting the enforceability of contractual obligations generally; (iv) principles of public policy concerning, affecting or limiting the enforcement of rights or remedies against governmental entities such as the Issuer.

(c) The Issuer's execution and delivery of the Bonds and the Issuer Documents, the Issuer's consummation of the transactions contemplated by such documents, and the Issuer's fulfillment of or compliance with the terms, conditions or provisions thereof will not conflict with, violate or result in the breach of any of the terms, conditions or provisions of any constitutional provision or statute of the State or of any agreement, instrument, statute, governmental rule or regulation, law and order, judgment or decree to which the Issuer is now a party or by which it is now bound, and will not constitute a default under any of the foregoing which has not been waived or consented to in writing by the appropriate party or parties, and will not result in the creation or imposition of any lien, charge, security interest or encumbrance of any nature upon any property

or assets of the Issuer prohibited under the terms of any such agreement, instrument, statute, governmental rule or regulation, court order, judgment or decree.

(d) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending or to the best of the Issuer's knowledge threatened against the Issuer in any way:

(i) Affecting the organization of the Issuer, or the legal or corporate existence of the Issuer, or the title of the officers of the Issuer to their respective offices, or any powers of the Issuer under the Constitution or the laws of the State pursuant to which the Issuer was created;

(ii) Seeking to prohibit, restrain or enjoin the issuance, sale or delivery of the Bonds or the collection of revenues from the Borrower derived from payments under the Financing Agreement, or the pledge thereof;

(iii) Contesting or affecting the validity or enforceability of the Bonds or the Issuer Documents;

(iv) Contesting the power of the Issuer to enter into, execute and deliver the Issuer Documents or to consummate the transactions contemplated by such documents;

wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Issuer Documents, the revenues the Issuer has pledged in the Financing Agreement to pay the Bonds, or the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

(e) The Issuer has complied, and will at the Closing Date be in compliance, in all respects with the Bond Resolution and the Issuer Documents.

(f) All approvals, consents, authorization, elections and orders of or filings or registrations with any governmental authority, board, agency or issuer having jurisdiction which would constitute a condition precedent to, or the absence of which would materially adversely affect, the performance by the Issuer of its obligations hereunder or under the Bonds or any of the Issuer Documents have been obtained and are in full force and effect.

(g) The Purchaser Bonds, as and when delivered in accordance with the Financing Agreement and paid for by the Purchaser as provided in the Financing Agreement and herein, will be validly issued and outstanding limited obligations of the Issuer entitled to all the benefits and security of the Financing Agreement.

(h) Any certificate signed by the Executive Director of the Issuer shall be deemed a representation and warranty by the Issuer to the Purchaser as to the truth and accuracy of statements made therein.

(i) The execution and delivery of this Bond Purchase Agreement by the Issuer shall constitute a representation to the Purchaser that the representations and warranties contained in this Section are true as of the date hereof.



**SECTION 3. Representations, Warranties and Agreements of the Borrower.** The Borrower represents and covenants with the Issuer and the Purchaser as follows:

(a) The Borrower is duly organized and existing as a limited partnership under the laws of the State of Oregon, has full legal right, power and authority to own its properties and to conduct its business and to enter into and to carry out and consummate the transactions contemplated by the Borrower Documents, and is duly qualified to do such business and is in good standing wherever such qualification and/or standing are required, including the State.

(b) By all necessary action, the Borrower has duly authorized the Borrower Documents and approved the execution and delivery of the Borrower Documents, and the performance by the Borrower of its obligations in connection with the issuance of the Bonds on its part contained in the Borrower Documents and the consummation by it of all other transactions contemplated by the Financing Agreement and the Borrower Documents in connection with the issuance of the Bonds.

(c) On the Closing Date, the Borrower Documents will constitute the valid, legal and binding obligations of the Borrower (assuming due authorization, execution and delivery by the respective other parties thereto, where necessary), enforceable in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws of general applicability affecting the enforcement of creditors' rights and to general principles of equity, regardless of whether such enforceability is considered in equity or in law.

(d) As of the date hereof, the Borrower is not in any material respect in violation of, breach of or default under any applicable constitutional provision or law of any state or of the United States, or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Borrower or any of its activities, properties or assets, or any indenture, mortgage, deed of trust, resolution, note agreement (including, without limitation, the Borrower Documents) or other agreement or instrument to which the Borrower is a party or by which the Borrower or any of its property or assets is bound, which violation or breach of or default would have a material adverse effect upon the transactions contemplated by this Bond Purchase Agreement, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a default or event of default under any such instruments; and the execution and delivery of the Borrower Documents, and compliance with the provisions on the Borrower's part contained therein, to the best of Borrower's knowledge, do not and will not conflict with or constitute on the part of the Borrower a violation or breach of or default under any constitutional provision or law of any state or of the United States, or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Borrower or any of its activities, properties or assets, or any indenture, mortgage, deed of trust, resolution, note agreement (including, without limitation, the Borrower Documents) or other agreement or instrument to which the Borrower is a party or by which the Borrower or any of its property or assets is bound which violation, breach or default would have a material adverse effect upon the transactions contemplated by this Bond Purchase Agreement, nor will any such execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower or under the terms of any such law, regulation or instrument, except as provided by the Bonds or the Borrower Documents.

(e) All consents, approvals, authorizations, and orders of or filings or registrations with any governmental authority, board, agency or issuer of any state or of the United States having jurisdiction required in connection with, or the absence of which would materially adversely affect, the execution and delivery by the Borrower of the Borrower Documents or the performance by the Borrower of its obligations thereunder have been obtained or made and are in full force and effect.

(f) As of the date hereof, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any judicial or administrative court or governmental agency or body, state, federal or other, pending or, to Borrower's actual knowledge, threatened against the Borrower, affecting the existence of the Borrower or the titles of its officers executing this Bond Purchase Agreement to their respective offices, or contesting or affecting as to the Borrower the validity or enforceability of the Act, the Bonds, any Borrower Document or the execution and delivery or adoption by the Borrower of any Borrower Document, or in any way contesting or challenging the powers of the Borrower or its authority with respect to the Borrower Documents or the consummation of the transactions contemplated hereby or thereby; nor, to the best knowledge of the Borrower, is there any basis for any such action, suit, proceeding, inquiry or investigation, wherein an unfavorable decision, ruling or finding would materially adversely affect the Borrower's financial condition or operations, the validity of the authorization, execution, delivery or performance by the Borrower of any Borrower Document or the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

(g) Any certificate signed by an Authorized Representative of the Borrower and delivered to the Purchaser or the Issuer pursuant to the Financing Agreement or the Borrower Documents shall be deemed a representation and warranty by the Borrower to the Purchaser and the Issuer as to the statements made therein as of the date thereof.

(h) The Borrower will not take or omit to take any action, within its direct or indirect control, which action or omission will adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

(i) The Borrower shall honor all other Borrower covenants contained in the Borrower Documents, which agreements are incorporated herein and made a part of this Bond Purchase Agreement.

(j) The execution and delivery of this Bond Purchase Agreement by the Borrower shall constitute a representation to the Purchaser that the representations and warranties contained in this Section are true and correct in all material respects as of the date hereof.

#### **SECTION 4. Indemnification**

(a) The Borrower agrees to pay, defend, protect, indemnify, save and hold harmless the Purchaser and each affiliate, member, officer, director, official, supervisor, counsel, employee, attorney and agent past, present and future of the Purchaser and each person, if any, who controls any of the foregoing within the meaning of Section 15 of the Securities Act of 1933, as amended, or Section 20 of the Securities Exchange Act of 1934, as amended (collectively referred to herein as the "Indemnified Parties"), against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees), causes of action (whether in contract, tort or otherwise),

suits, claims, demands and judgments of any kind, character and nature (collectively referred to herein as the "Liabilities"), except any Liability arising from the gross negligence or willful misconduct of the Purchaser, caused by or directly or indirectly arising from or in any way relating to the Bonds, the Project, the Bond Loan, the Financing Agreement, this Bond Purchase Agreement, the UFB Bond Purchase Agreement or any document related to the Bonds, the Project, the Bond Loan (the "Transaction Documents") or any transaction or agreement, written or oral, pertaining to the foregoing.

(b) The Borrower agrees to pay, defend, protect, indemnify, save and hold harmless the Issuer and each affiliate, member, officer, director, official, supervisor, counsel, employee, attorney and agent past, present and future of the Issuer and each person, if any, who controls any of the foregoing within the meaning of Section 15 of the Securities Act of 1933, as amended, or Section 20 of the Securities Exchange Act of 1934, as amended (collectively referred to herein as the "Indemnified Parties"), against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees), causes of action (whether in contract, tort or otherwise), suits, claims, demands and judgments of any kind, character and nature (collectively referred to herein as the "Liabilities"). except any Liability arising from the gross negligence or willful misconduct of the Issuer, caused by or directly or indirectly arising from or in any way relating to the Bonds, the Project, the Bond Loan, the Financing Agreement, this Bond Purchase Agreement, the UFB Bond Purchase Agreement or any document related to the Bonds, the Project, the Bond Loan (the "Transaction Documents") or any transaction or agreement, written or oral, pertaining to the foregoing.

(c) The Borrower also agrees to pay, defend, protect, indemnify, save and hold harmless the Purchaser and each affiliate, member, officer, director, official, employee and agent of the Purchaser from and against the Liabilities directly or indirectly arising from or relating to any errors or omissions of any nature whatsoever contained in any legal proceedings or other official representation or inducement made by the Issuer pertaining to the Bonds.

(d) The Purchaser agrees to pay, defend, protect, indemnify, save and hold harmless the Issuer and each affiliate, member, officer, director, official, supervisor, counsel, employee, attorney and agent past, present and future of the Issuer and each person, if any, who controls any of the foregoing within the meaning of Section 15 of the Securities Act of 1933, as amended, or Section 20 of the Securities Exchange Act of 1934, as amended (collectively referred to herein as the "Indemnified Parties"), against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees), causes of action (whether in contract, tort or otherwise), suits, claims, demands and judgments of any kind, character and nature (collectively referred to herein as the "Liabilities"), except any Liability arising from the gross negligence or willful misconduct of the Issuer or the Borrower caused by or directly or indirectly arising from or in any way relating to the Purchaser's sale or transfer of the Bonds to third parties in violation of state or federal securities laws or the restrictions on such sales or transfers in the Financing Agreement.

(e) Any Indemnified Party shall notify the indemnifying party of the existence of any Liability to which this indemnification obligation would apply and shall give to the indemnifying party an opportunity to defend the same at the indemnifying party's expense and with counsel satisfactory to the Indemnified Party, provided that the Indemnified Party shall at all times also have the right to fully participate in the defense and shall have the right to review and approve or

disapprove any compromise or settlement which approval shall not be unreasonably withheld. If there may be legal defenses available to the Indemnified Party that are different from or in addition to those available to the indemnifying party, if conflicts of interest exist or arise between the indemnifying party and the Indemnified Party or if the indemnifying party shall, after this notice and within a period of time necessary to preserve any and all defenses to any claim asserted, fail to assume the defense or to employ counsel for that purpose satisfactory to the Indemnified Party, the Indemnified Party shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle the claim or other matter on behalf of, for the account of, and at the risk and expense of, the indemnifying party.

(f) In order to provide for just and equitable contribution in circumstances in which the indemnity provided for in paragraph (a) or (b) of this Section is for any reason held to be unavailable, the Borrower and the Purchaser shall contribute proportionately to the aggregate Liabilities to which the Borrower and the Indemnified Parties may be subject, so that the Purchaser is responsible for that portion represented by the percentage that the fees paid by the Borrower to the Purchaser in connection with the issuance of the Bonds bear to the aggregate offering price of the Bonds, with the Borrower responsible for the balance; provided, however, that in no case shall the Purchaser be responsible for any amount in excess of the fees paid by the Borrower to the Purchaser in connection with the issuance of the Bonds and provided further that the Borrower shall not be required to contribute for Liabilities arising from the gross negligence or willful misconduct of the Purchaser. No person guilty of fraudulent misrepresentation (within the meaning of Section 10(b) of the Securities Act of 1933) shall be entitled to contribution from any person who was not guilty of such misrepresentation.

(g) The Indemnified Parties, other than the Issuer and the Purchaser, shall be considered to be third-party beneficiaries of this Bond Purchase Agreement for purposes of this Section. The provisions of this Section will be in addition to all liability that the Borrower may otherwise have and shall survive any termination of this Bond Purchase Agreement, the offering and sale of the Bonds and the payment or provisions for payment of the Bonds.

(h) The indemnification hereunder shall be in addition to, and shall not limit, any indemnity granted by the Borrower pursuant to the Financing Agreement, the Regulatory Agreement or any other document.

## **SECTION 5. Closing**

At 10:00 a.m., Oregon time, on the Closing Date, or at such time on such earlier or later date as shall be agreed upon in writing by the Issuer, the Borrower and the Purchaser, the Issuer shall deliver the Purchaser Bonds to the Purchaser in definitive form, duly executed by an authorized officer of the Issuer. Subject to the terms and conditions hereof, the Issuer shall deliver at the Issuer's offices the Bond Documents and the Purchaser shall accept delivery of the Purchaser Bonds and the Bond Documents and pay the first advance on the purchase price for the Purchaser Bonds, for the account of the Issuer.

## **SECTION 6. Closing Conditions of the Purchaser**

The obligation of the Purchaser to purchase the Purchaser Bonds and the obligation of the Issuer to sell the Purchaser Bonds to the Purchaser shall be subject to the following conditions precedent:

(a) The representations of the Issuer and the Borrower in this Bond Purchase Agreement and the representations and warranties made in each of the Bond Documents by the respective parties shall be true and correct on this date and on the Closing Date, as if made on the Closing Date, and each such party to the Bond Documents shall deliver a certificate to such effect. The Issuer and the Borrower shall have performed all of their obligations under this Bond Purchase Agreement, and the Issuer and the Borrower shall deliver certificates to such effect.

(b) Except as may have been agreed to by Purchaser, as of the Closing Date, each of the Bond Documents and all other official action of the Issuer relating thereto shall be in full force and effect and shall not have been amended, modified or supplemented.

(c) The Issuer and the Purchaser shall have received the approving opinions of \_\_\_\_\_ ("Issuer's Counsel") and the opinion of (or a reliance letter therefore) Hawkins Delafield & Wood LLC ("Bond Counsel"), in substantially the forms set forth respectively in Exhibit A and Exhibit B hereto, addressed to the Issuer, together with a reliance letter to the Purchaser; and the Purchaser shall have received a supplemental opinion of Bond Counsel dated the Closing Date and addressed to the Purchaser in substantially the form set forth in Exhibit C hereto.

(d) No default or event of default (as defined in any of the Bond Documents) shall have occurred and be continuing, and no event shall have occurred and be continuing which, with the lapse of time or the giving of notice or both, would constitute such a default or event of default.

(e) No material adverse change shall have occurred, nor shall any development involving a prospective material and adverse change in, or affecting the affairs, business, financial condition, results of operations, prospects or properties (including the Project) of, the Issuer or the Borrower have occurred between the date hereof and the Closing Date.

(f) On or prior to the Closing Date, all actions required to be taken as of the Closing Date in connection with the Bonds and the Bond Documents by the Issuer and the Borrower shall have been taken, and the Issuer and the Borrower shall each have performed and complied with all agreements, covenants and conditions required to be performed or complied with by the Bond Documents on or prior to the Closing Date, and the Issuer and the Borrower shall deliver a certificate to such effect insofar as the foregoing actions, agreements, covenants and conditions apply to each such party, and each of such agreements shall be in full force and effect and shall not have been amended, modified or supplemented, except as has been agreed to by the Purchaser.

(g) Each of the Bond Documents shall have been executed and delivered by each of the respective parties thereto, all such documents shall be in forms exhibited to Purchaser on this date with only such changes as the Purchaser may approve, and each of the Bond Documents shall be in full force and effect.

(h) None of the events referred to in Section 7 of this Bond Purchase Agreement shall have occurred.

(i) The Purchaser and the Issuer shall have received the opinion or opinions of counsel to the Borrower in form and substance satisfactory to the Purchaser.

(j) The Purchaser shall have received a certificate of the Borrower to the effect that: (A) each of the representations and warranties set forth in the Borrower Documents is true and correct in all material respects on the Closing Date with the same effect as if made on the Closing Date, and (B) Borrower has complied with all agreements and satisfied all the conditions on its part to be performed or satisfied under the Borrower Documents at or prior to the Closing Date.

(k) The Purchaser shall have received certificates, dated the Closing Date, and signed by an authorized official of the Issuer, to the effect that the representations and warranties of the Issuer contained in this Bond Purchase Agreement are true and correct in all material respects on the Closing Date with the same effect as if made on the Closing Date; and that the Issuer has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied under the Bonds and the Issuer Documents at or prior to the Closing Date.

(l) The Purchaser shall have received tax certificates of the Issuer and the Borrower, each dated the Closing Date, in a form acceptable to Bond Counsel, Purchaser's Tax Counsel (as defined herein) and Purchaser, with respect to the facts, estimates and circumstances and reasonable expectations pertaining to Sections 141 – 150 of the Code to support the conclusions that, among other things, none of the Bonds will be an "arbitrage bond" and that the Bonds will constitute a qualified residential rental project "exempt facility bond."

(m) The Purchaser shall have received such additional legal opinions, certificates, proceedings, instruments and other documents as the Purchaser or Bond Counsel may reasonably request.

(n) The Issuer shall have received Investor Letters from the Purchaser and UFB, in substantially the form attached to the Financing Agreement, addressed to the Issuer, the Borrower and the Lender.

(o) The Purchaser shall have received an opinion of Purchaser's Tax Counsel in a form acceptable to Purchaser.

(p) UFB, the Issuer and the Borrower shall have executed and delivered the UFB Bond Purchase Agreement and UFB shall have purchased the UFB Bonds.

If any conditions to the obligations of the Purchaser or Issuer contained in this Bond Purchase Agreement are not satisfied and the satisfaction of such conditions shall not be waived by the Purchaser and the Issuer, then, at the option of the Purchaser or the Issuer, (i) the Closing Date shall be postponed for such period, not to exceed seven (7) days, as may be necessary for such conditions to be satisfied or (ii) without limiting the generality of Section 7 of this Bond Purchase Agreement, the obligations of the Purchaser and Issuer under this Bond Purchase

Agreement shall terminate, and neither the Purchaser nor Issuer shall have any further obligations or liabilities under this Bond Purchase Agreement.

All of the legal opinions, certificates, proceedings, instruments and other documents mentioned above or elsewhere in this Bond Purchase Agreement shall be deemed to be in compliance with the provisions of this Bond Purchase Agreement if, but only if, they are in form and substance reasonably satisfactory to the Purchaser, the Borrower and the Issuer.

## **SECTION 7. Termination**

The Purchaser may terminate its obligations under this Bond Purchase Agreement by written notice to the Issuer and the Borrower if, at any time subsequent to this date and on or prior to the Closing Date:

(a) (i) Legislation shall have been enacted by the Congress, or recommended to the Congress for passage by the President of the United States or the Department of the Treasury of the United States or the Internal Revenue Service or any member of the United States Congress, or favorably reported for passage to either House of the Congress by any Committee of such House to which such legislation has been referred for consideration, or (ii) a decision shall have been rendered by a court established under Article III of the Constitution of the United States, or the United States Tax Court, or (iii) an order, ruling, regulation or communication (including a press release) shall have been issued by the Department of the Treasury of the United States or the Internal Revenue Service, in each case referred to in clauses (i), (ii) and (iii), with the purpose or effect, directly or indirectly, of imposing federal income taxation upon interest to be received on obligations of the general character of the Bonds.

(b) Legislation shall have been enacted or a decision by a court of the United States shall be rendered or any action taken by the Securities and Exchange Commission which, in the opinion of counsel to the Purchaser, has the effect of requiring the offer or sale of the Bonds to be registered under the Securities Act of 1933, as amended, or the Financing Agreement to be qualified under the Trust Indenture Act of 1939, as amended.

(c) (i) In the judgment of the Purchaser, the market price of the Bonds is adversely affected because: (A) additional material restrictions not in force as of the date of this Agreement shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange; (B) the New York Stock Exchange or other national securities exchange, or any governmental authority, shall impose, as to the Bonds or similar obligations, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, the Purchaser; (C) a general banking moratorium shall have been established by federal, New York or State authorities; or (D) a war involving the United States of America shall have been declared, or any other national or international calamity shall have occurred, or any conflict involving the armed forces of the United States of America shall have escalated to such a magnitude as to materially affect the ability of the Purchaser to market the Bonds; or (ii) any litigation shall be instituted, pending or threatened to restrain or enjoin the issuance or sale of the Bonds or in any way contesting or affecting any authority or security for or the validity of the Bonds, or the existence or powers of the Issuer.

(d) There shall have occurred any change that, in the reasonable judgment of the Purchaser, makes unreasonable or unreliable any of the assumptions upon which: (i) payment of debt service on the Bonds or (ii) the basis for the exclusion from gross income for federal income tax purposes of interest on the Bonds, is predicated.

(e) There exists any event or circumstance that, in the reasonable opinion of the Purchaser, either makes untrue or incorrect in a material respect any statement or information concerning the Borrower contained in the Bond Documents or is not reflected in the Bond Documents, but is required to be reflected therein or should be reflected therein to make the statements and information contained in the Bond Documents not misleading in any material respect.

## **SECTION 8. Expenses**

The Purchaser shall be under no obligation to pay, and the Borrower hereby agrees to pay, any expenses incident to the performance of the Issuer's obligations hereunder, including, but not limited to, (a) the costs of printing and preparation for printing of the Financing Agreement and the Bond Resolution, as well as any delivery costs incurred in connection with the distribution of the foregoing documents; (b) the cost of preparing the definitive Bonds; (c) the fees and disbursements of Issuer's Counsel and Bond Counsel in connection with the authorization and issuance of the Bonds; the fees and expenses of Issuer's counsel; fees and expenses of Ice Miller LLP ("Purchaser's Tax Counsel"); any application or administrative fee of the Issuer; and the fees and disbursements of the Issuer's financial advisor and any other experts or consultants retained by the Issuer; (d) the fees and expenses of Village Capital Corporation (the "Advisory Agent"); (e) the fees and expenses of the Purchaser; (f) the expenses relating to the meals, transportation, lodging, and entertainment incidental to implementing this Bond Purchase Agreement; and (g) all other expenses in connection with the sale of the Bonds. The Issuer shall have no obligation to pay any fees, expenses or costs associated with or resulting from the issuance and delivery of the Bonds. The Borrower shall pay for any expenses incurred on behalf of the Issuer's employees which are incidental to implementing this Bond Purchase Agreement.

## **SECTION 9. Notices**

Any notice or other communication to be given to the Issuer or the Borrower under this Bond Purchase Agreement may be given by delivering the same in writing to the Issuer or the Borrower at their respective addresses set forth on the first page hereof. Any notice or other communication to be given to the Purchaser under this Bond Purchase Agreement may be given by delivering the same in writing to International City Bank, N.A., 249 East Ocean Boulevard, Long Beach, CA 90802, Attention: Michael C. Miller, President and CEO.

## **SECTION 10. Parties in Interest**

This Bond Purchase Agreement is made solely for the benefit of the Issuer, the Borrower and the Purchaser (including any successor or assignees of the Purchaser), and, except as provided in Section 4 hereof, no other party or person shall acquire or have any right hereunder or by virtue hereof.



## **SECTION 11. Amendments**

This Bond Purchase Agreement may not be amended without the written consent of the Issuer, the Borrower and the Purchaser.

## **SECTION 12. Survival of Representations and Warranties**

The representations and warranties of the Issuer and the Borrower shall not be deemed to have been discharged, satisfied or otherwise rendered void by reason of the Closing and regardless of any investigations made by or on behalf of the Purchaser (or statements as to the results of such investigations) concerning such representations and statements of the Issuer and the Borrower and regardless of delivery of and payment for the Purchaser Bonds.

## **SECTION 13. Execution in Counterparts**

This Bond Purchase Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

## **SECTION 14. No Prior Agreements**

This Bond Purchase Agreement supersedes and replaces all prior negotiations, agreements and understandings between the parties hereto in relation to the sale of the Purchaser Bonds for the Issuer.

## **SECTION 15. Effective Date**

This Bond Purchase Agreement shall become effective and binding upon the respective parties hereto upon the execution of the acceptance hereof by the Issuer and the Borrower and shall be valid and enforceable as of the time of such acceptance.

## **SECTION 16. Governing Law**

This Bond Purchase Agreement shall be governed by the internal laws of the State without giving effect to the conflict of law principles of the State; provided that the corporate powers and legal capacity of the Purchaser shall be governed by, and construed and interpreted in accordance with, the laws of the State of Indiana.

## **SECTION 17. HUD Provisions**

The Borrower, the Purchaser and the Issuer acknowledge that this Bond Purchase Agreement, and all of the Borrower's obligations hereunder, are subject and subordinate to the Senior Mortgage Loan Documents. Notwithstanding any provision in this Bond Purchase Agreement to the contrary, no obligations of the Borrower hereunder shall be payable except from (A) Surplus Cash (as defined in the HUD Regulatory Agreement) or (B) funds that are not derived from revenues of the Project (as defined in the Senior Mortgage), any proceeds of the Senior Mortgage Note, any reserve or deposit made with the Lender or any other party as required by HUD in connection with the Senior Mortgage Loan Documents (collectively, "Non-Project

Sources"). No claims or actions shall be made (or payable) under this Bond Purchase Agreement against the Project, the Lender, the proceeds of the Senior Mortgage Note, or the assets of the Borrower, except for Surplus Cash of the Borrower. In addition, the rights and obligations of the parties under this Bond Purchase Agreement and all other documents evidencing, implementing, or securing this Bond Purchase Agreement (collectively, the "Subordinate Bond Documents") are and shall be subordinated in all respects to the rights and obligations of the parties to and under the Senior Mortgage Loan Documents. In the event of any conflict between the provisions of (i) this Bond Purchase Agreement or the Subordinate Bond Documents and (ii) the provisions of the Senior Mortgage Loan Documents or the Program Obligations (as defined in the Senior Mortgage), the provisions of the Senior Mortgage Loan Documents or the Program Obligations shall control. The provisions of this Section 17 shall control over any inconsistent provisions in this Bond Purchase Agreement or the Subordinate Bond Documents. No amendment to this Bond Purchase Agreement shall conflict with the Senior Mortgage Loan Documents or the Program Obligations.

#### **SECTION 18. Purchaser Not Acting as Municipal Advisor or Fiduciary**

The Purchaser is not acting as a Municipal Advisor (as defined in Section 15B of the Securities Exchange Act of 1934, as amended and as in effect), broker, dealer, underwriter or municipal securities advisor, nor shall the Purchaser have a fiduciary duty, to the Issuer or the Borrower in connection with the matters contemplated by this Bond Purchase Agreement. The Issuer and the Borrower agree that the primary role of the Purchaser is to purchase securities in an arm's length commercial transaction between the Issuer and the Purchaser and the Purchaser's financial and other interests that differ from those of the Issuer and the Borrower. The Issuer further agrees that the Purchaser is acting solely as a principal and is not acting as a municipal advisor, financial advisor or fiduciary to the Issuer or the Borrower and has not assumed any advisory or fiduciary responsibility to the Issuer or the Borrower with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto. The Issuer and the Borrower further agree that the only obligations the Purchaser has to the Issuer and the Borrower with respect to the transaction contemplated hereby are expressly set forth in this Bond Purchase Agreement and the other Bond Documents. The Issuer and the Borrower have consulted their own financial and/or municipal, legal, accounting, tax, financial and other advisors, as applicable, to the extent they have deemed appropriate. If the Issuer or the Borrower would like a municipal advisor in this transaction that has legal fiduciary duties to the Issuer or the Borrower, then the Issuer or the Borrower is free to engage a municipal advisor to serve in that capacity.

[Signature pages follow]

[Purchaser Signature Page to Bond Purchase Agreement]

If the foregoing is in accordance with your understanding of the Bond Purchase Agreement, please sign and return to us the enclosed duplicate copies hereof, whereupon it will become a binding agreement among the Issuer, the Borrower and the Purchaser in accordance with its terms.

**INTERNATIONAL CITY BANK, N.A.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Signatures continue on next page]

[Issuer Signature Page to Bond Purchase Agreement]

**HOUSING AUTHORITY OF CLACKAMAS  
COUNTY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Executive Director

[Signatures continue on next page]

[Borrower Signature Page to the Bond Purchase Agreement]

**PEDCOR INVESTMENTS-2016-CLV**

By: \_\_\_\_\_, LLC  
Its General Partner

By: Pedcor Investments, A Limited Liability  
Company, its Managing Manager

By: \_\_\_\_\_  
Name: Thomas G. Crowe  
Title: Executive Vice President, Development &  
Finance

**EXHIBIT A**

**APPROVING OPINION OF ISSUER'S COUNSEL**

April \_\_\_\_, 2017

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**EXHIBIT B**

**OPINION OF BOND COUNSEL**

April \_\_\_\_, 2017

**EXHIBIT C**

**SUPPLEMENTAL OPINION OF BOND COUNSEL**

[Letterhead of Hawkins Delafield & Wood LLC]

April \_\_, 2017

Housing Authority of Clackamas County  
13900 South Gain Street  
P.O. Box 1510  
Oregon City, OR 97045

Subject: \$[principal] Housing Authority of Clackamas County, Oregon,  
Multifamily Housing Revenue Bonds (Rosewood Terrace Apartments Project),  
Series 2017

Ladies and Gentlemen:

We have acted as bond counsel to the Housing Authority of Clackamas County, Oregon (the "Issuer") in connection with the Issuer's \$[principal] Multifamily Housing Revenue Bonds (Rosewood Terrace Apartments Project), Series 2017 (the "Bonds"). The Bonds are being sold to United Fidelity Bank, fsb and International City Bank, N.A. (collectively, the "Purchasers") pursuant to the terms of Bond Purchase Agreements for the Bonds that are dated as of even date herewith (the "Bond Purchase Agreements"). The Bonds are being issued pursuant to the authority of Oregon Revised Statutes Chapter 456, the applicable provisions of Oregon Revised Statutes Chapter 287A, and Issuer Resolution No. \_\_ adopted on \_\_\_\_, \_\_\_\_, (the "Resolution"), for the purpose of assisting Pedcor Investments-2016-CLV (the "Borrower") in financing a portion of the costs associated with the acquisition and construction of Rosewood Terrace Apartments (the "Project") as provided in the Financing Agreement among the Issuer, the Borrower, the Purchasers and P/R Mortgage & Investment Corp. that is dated as of even date herewith (the "Financing Agreement").

We have examined the law and such certified proceedings and other documents as we deem necessary to render this opinion.

We are not expressing any opinion or view on, and are assuming and relying on, the validity, accuracy and sufficiency of such representations, proceedings and certifications, including the accuracy of all factual matters represented (without undertaking to verify the same by independent investigation). We have assumed the genuineness of all signatures (other than those of the Issuer), the authenticity of all documents submitted to us as originals and the conformity to authentic original documents of all documents submitted to us as certified, conformed or photostatic copies.

On the basis of the foregoing, it is our opinion as bond counsel that:



1. The Bond Purchase Agreements have been duly authorized, executed and delivered by the Issuer, and (assuming due authorization, execution and delivery by the other parties thereto) constitute legal, valid and binding obligations of the Issuer. The portion of this opinion that is set forth in this paragraph 1, is qualified only to the extent that enforceability of the Bond Purchase Agreements may be limited by or rendered ineffective by (i) bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws affecting creditors' rights generally; (ii) the application of equitable principles and the exercise of judicial discretion in appropriate cases; (iii) common law and statutes affecting the enforceability of contractual obligations generally; and (iv) principles of public policy concerning, affecting or limiting the enforcement of rights or remedies against governmental entities such as the Issuer.

2. Under existing law, the offer and sale of the Bonds are not subject to registration with the Securities and Exchange Commission under the Securities Act of 1933, as amended. We expressly disclaim any responsibility for rendering an opinion on any security other than the Bonds.

3. The Financing Agreement is exempt from qualification under the Trust Indenture Act of 1939, as amended.

We are opining only upon those matters set forth herein and we assume no obligation to advise you of any changes in the foregoing subsequent to the delivery of this opinion letter.

The Purchasers have represented and warranted in the Financing Agreement that they will acquire the Bonds for their own accounts and that they have no present intention to make any distribution or disposition of the Bonds. We have not been provided with or engaged to review any offering material relating to the Bonds, and we express no opinion relating thereto.

This opinion is limited to matters of Oregon law and applicable Federal law, and we assume no responsibility as to the applicability of laws of other jurisdictions.

This opinion is provided to you as a legal opinion only, and not as a guaranty or warranty of the matters discussed herein. No opinions may be inferred or implied beyond the matters expressly stated herein. No qualification, limitation or exception contained herein shall be construed in any way to limit the scope of the other qualifications, limitations and exceptions. For purposes of this opinion, the terms "law" and "laws" do not include unpublished judicial decisions, and we disclaim the effect of any such decision on this opinion.

We have served as bond counsel only to the Issuer in connection with the initial purchase of the Bonds and have not represented and are not representing any other party in connection with the Bonds. This opinion is given solely for the benefit of the Issuer in connection with the Bonds and may not be relied on in any manner or for any purpose by any person or entity other than the Issuer and any person to whom we may send a formal reliance letter indicating that the recipient is entitled to rely on this opinion.

Very truly yours,

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REGULATORY AGREEMENT AND  
DECLARATION OF RESTRICTIVE COVENANTS

By and Among

HOUSING AUTHORITY OF CLACKAMAS COUNTY,  
as Issuer

PEDCOR INVESTMENTS-2016-CLV, LIMITED PARTNERSHIP,  
as Borrower

and

UNITED FIDELITY BANK, FSB,  
as Administrative Agent

Relating to:

Housing Authority of Clackamas County  
Multifamily Housing Revenue Bonds  
(Rosewood Terrace Apartments Project),  
Series 2018

Dated as of \_\_\_\_\_, 2018

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After Recording Send to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_  
Attention: \_\_\_\_\_

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**REGULATORY AGREEMENT AND DECLARATION  
OF RESTRICTIVE COVENANTS**

THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (including the Exhibits and HUD Rider attached hereto), dated as of \_\_\_\_\_, 2018 (as amended, modified or supplemented from time to time, this "*Regulatory Agreement*"), is entered into by and among HOUSING AUTHORITY OF CLACKAMAS COUNTY, a housing authority of the State of Oregon (together with its successors and assigns, the "*Issuer*"), PEDCOR INVESTMENTS-2016-CLV, L.P., a limited partnership duly organized and validly existing under the laws of the State of Oregon (together with its permitted successors and assigns, the "*Borrower*"), and UNITED FIDELITY BANK, fsb, as Administrative Agent (the "*Administrative Agent*");

**WITNESSETH:**

WHEREAS, the Borrower will be the owner of a building and related improvements, furnishings, equipment and related property to be installed therein, located in the City of Happy Valley, Clackamas County, Oregon, on a fee simple interest in the real property legally described in *Exhibit A* attached hereto and made a part hereof (the "*Project Site*" or the "*Land*"), comprising 212 units of housing for residential rental purposes, a portion of such units which are to be rented to individuals and families of low or moderate income (such building, improvements, furnishings, equipment and related property being collectively referred to as the "*Project Facilities*" and, together with the Project Site, the "*Development*"); and

WHEREAS, the acquisition, construction and equipping of the Development will be financed in part from a portion of the proceeds of the sale of the \$\_\_\_\_\_ aggregate principal amount of the Issuer's Multifamily Housing Revenue Bonds (Rosewood Terrace Apartments Project), Series 2018 (the "*Bonds*"), issued by the Issuer under the Financing Agreement dated as of \_\_\_\_\_, 2018 (the "*Financing Agreement*"), among the Issuer, the Borrower, P/R Mortgage & Investment Corp., and the Administrative Agent, and pursuant to the provisions of Chapters 456 and 287A, Oregon Revised Statutes, as amended (the "*Act*"); and

WHEREAS, interest on the Bonds is excludable from gross income of the owners thereof for federal tax purposes, *provided*, among other things, the Development continuously complies with Section 142(d) of the Internal Revenue Code of 1986, as amended (the "*Code*"), and the regulations promulgated thereunder (the "*Regulations*"); and

WHEREAS, compliance of the Development with the requirements of Section 142(d) of the Code and the Regulations for treatment of the Bonds as "exempt facility bonds" used to provide a qualified residential rental project (as defined therein) is within the control of the Borrower; and

WHEREAS, it is necessary for the Borrower to agree to this Regulatory Agreement, and thereby consent to be regulated as herein set forth to preserve the excludability of interest on the Bonds from gross income of the owners thereof under Section 103(a) of the Code and the Regulations.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the Issuer, the Borrower and the Administrative Agent hereby agree, as follows:

Section 1.      *Term of Restrictions.*

(a)      *Occupancy Restrictions:* The term of the Occupancy Restrictions set forth in Section 3 hereof (the "*Occupancy Restrictions*") with respect to the Development shall commence on the first day after the acquisition, construction and installation of the Development by the Borrower on which at least ten percent (10%) of the residential units in the Development are first occupied, and end with respect to the Development on the latest of the date (i) which is fifteen (15) years after the date on which at least fifty percent (50%) of the residential units in the Development are first occupied following the acquisition, construction and installation thereof by the Borrower, (ii) which is the first day on which no Bonds or other tax-exempt private activity bonds (as defined in Section 141(a) of the Code) issued with respect to the Development are outstanding (including any refunding of any such obligations), or (iii) on which any assistance provided with respect to the Development under Section 8 of the United States Housing Act of 1937, as amended, terminates (which Occupancy Restrictions period is hereinafter referred to as the "*Qualified Project Period*" for the Development).

(b)      *Rental Restrictions:* The Rental Restrictions set forth in Section 4 hereof (the "*Rental Restrictions*") with respect to the Development shall remain in effect during the Qualified Project Period for the Development set forth in paragraph (a) of this Section 1.

(c)      Notwithstanding the provisions of paragraphs (a) and (b) of this Section 1, this Regulatory Agreement and all other restrictions hereunder shall cease to apply in the event of an involuntary noncompliance caused by fire, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in a federal law or an action of a federal agency after the date of issue of the Bonds which prevents the Administrative Agent from enforcing the provisions of this Regulatory Agreement, or condemnation or similar event, *provided* that within a reasonable time period either (i) the Bonds are retired; or (ii) any insurance proceeds or condemnation award or other amounts received as a consequence of such event are used to provide a project which meets the requirements of Section 142 of the Code and applicable Regulations, or any successor law or regulation. However, the provisions of this subsection (c) shall cease to apply (and the provisions of subsections (a) and (b) shall apply for the remainder of the Qualified Project Period) in the event of foreclosure, transfer of title by deed in lieu of foreclosure, or similar event if, at any time subsequent to such event and during the Qualified Project Period, the Borrower or any transferee or assignee of the Development or a related person to any of the foregoing (as defined in Section 147(a)(2) of the Code) (a "*Related Person*") obtains an ownership interest in the Development for federal tax purposes.

(d)      This Regulatory Agreement shall terminate with respect to the Development upon the earlier of (i) termination of the Occupancy Restrictions and the Rental Restrictions, as provided in subsections (a) and (b) of this Section 1 for the Development, or (ii) termination pursuant to the provisions of subsection (c) of this Section 1 for the Development, or (iii) delivery to the Issuer, the Borrower and the Administrative Agent of an opinion of a nationally recognized municipal bond counsel ("*Bond Counsel*") in form and substance

satisfactory to the Issuer to the effect that continued compliance with the Rental Restrictions and the Occupancy Restrictions for the Development is not required in order for interest on the Bonds to remain excludable from gross income of the owners of the Bonds for federal income tax purposes.

(e) Upon delivery by the Borrower to the Issuer and the Administrative Agent of an opinion of independent counsel acceptable to the Issuer that the conditions to termination of this Regulatory Agreement have been met, the Issuer and the Administrative Agent shall, upon request by the Borrower or its assigns, file any documentation necessary to remove this Regulatory Agreement from the real estate records of Clackamas County, Oregon.

Section 2. *Development Restrictions.* The Borrower represents and warrants as of the date hereof, and covenants that:

(a) The Borrower has reviewed the provisions of this Regulatory Agreement with its counsel and understands said provisions.

(b) Any functionally related and subordinate facilities (*e.g.*, parking areas, laundry facilities, tenant offices, physical therapy rooms, dining rooms, meeting rooms, common areas, swimming pools, tennis courts, etc.) (*"Related Facilities"*) to the Development will be made available to all tenants of the Development on an equal basis. Fees charged to residential tenants for use of the Related Facilities will be commensurate with fees charged for similar facilities at similar residential rental properties in the surrounding area and, in no event will any such fees charged to tenants of the Development be discriminatory or exclusionary as to the low-income tenants of the Development. No Related Facilities will be made available to persons other than tenants or their guests. Parking, if available, will be made available to all tenants on a first come, first served basis.

(c) For the Qualified Project Period, the Borrower shall not: (1) except upon a sale or transfer of the Development in accordance with the terms of this Regulatory Agreement, the Financing Agreement, the Senior Mortgage (as defined in the Financing Agreement) and the Subordinate Mortgage (as defined in the Financing Agreement), encumber any portion of the Development or grant commercial leases of any portion thereof or permit the conveyance, transfer or encumbrance of any portion of the Development (except for apartment leases), it being understood that the terms of the financing will be subordinate to this Regulatory Agreement; or (2) demolish any part of the Development or substantially subtract from any real or personal property of the Development; *provided*, that nothing herein shall prohibit the Borrower from granting operating leases and/or licenses of those facilities constituting part of the Development which are functionally related and subordinate to the residential units, such as laundry or recreational facilities, for the purpose of providing for the operation of such facilities for the benefit of the Development.

(d) For the Qualified Project Period, the Borrower shall exercise reasonable diligence to comply with the requirements of this Regulatory Agreement and shall correct any noncompliance within sixty (60) days after such noncompliance is first discovered or would have been discovered by the exercise of reasonable diligence.

(e) The Borrower shall cause the Development to meet the requirements of this Regulatory Agreement.

(f) Upon completion of construction, the Development will consist of a building or structure or several proximate buildings or structures of similar construction each containing one or more similarly constructed residential units located on a single tract of land or contiguous tracts of land which are owned, for Federal tax purposes, at all times by one person or entity, and may include facilities functionally related and subordinate thereto. Each such building or structure will be a discrete edifice or other man-made construction consisting of an independent foundation, outer walls and roof and containing five or more similarly constructed units.

(g) All of the units in the Development will contain complete living, sleeping, eating, cooking and sanitation facilities for a single person or a family. Each unit will contain a kitchen that includes a stove, cooking range, full-size refrigerator and sink.

(h) None of the units in the Development will at any time be utilized on a transient basis, or used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home or trailer park or court.

(i) The Borrower has incurred, or will incur within six (6) months after the Closing Date, a substantial binding obligation to acquire, construct, or equip the Project, pursuant to which the Borrower is or will be obligated to expend at least five percent (5%) of the principal amount of the Bonds.

(j) The Borrower will promptly commence the acquisition, construction, and equipping of the Project and will proceed with due diligence to complete the same.

(k) The Borrower reasonably expects to complete the acquisition, construction, and equipping of the Project and to expend the full amount of the Loan prior to the date which is three (3) years after the Closing Date.

(l) Not more than twenty-five percent (25%) of the net proceeds of the Bonds will be used (directly or indirectly) for the acquisition of land or an interest therein.

(m) All of the amounts received by the Issuer from the proceeds of the Bonds and earnings from the investment of such proceeds will be used to pay Project Costs; at least ninety-five percent (95%) of such amounts will be used to pay or reimburse the Lender for payment of Qualified Project Costs as certified by the Borrower on requisitions in the form required by the Financing Agreement; and no more than two percent (2%) of the Sale Proceeds of the Bonds shall be used to pay, or reimburse the Borrower for payment of, Costs of Issuance of the Bonds, within the meaning of section 147(g) of the Code.

(n) None of the dwelling units in the Project will at any time be utilized on a transient basis or will ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, rest home or trailer court or park. No unit within the Project will be rented for a period of less than thirty (30) days.

(o) No part of the Project will at any time be owned by a cooperative housing corporation, nor shall the Borrower take any steps in connection with a conversion to such ownership or uses. The Borrower shall not take any steps in connection with a conversion of the Project to condominium ownership during the Qualified Project Period.

(p) All of the dwelling units will be available for rental on a continuous basis to members of the general public (subject to rent, income, and other restrictions), and the Borrower will not give preference to any particular class or group in renting the dwelling units in the Project, except to the extent that dwelling units are required to be leased or rented to Low Income Tenants and Eligible Tenants.

Section 3. *Occupancy Restrictions.* Pursuant to Section 142 of the Code, the Issuer has elected, and the Borrower hereby agrees, that the requirements of subparagraph B of such Section 142(d)(1) of the Code shall apply to the Development. The Borrower represents, warrants and covenants that:

(a) At all times during the Qualified Project Period, subject to the provisions of Revenue Procedure 2004-39, at least forty percent (40%) of the completed residential units in the Development shall be continuously occupied (or, only after the initial occupancy thereof, treated as occupied as provided herein) by individuals whose aggregate adjusted income (computed in the manner described in Section 1.167(k)-3(b)(3) of the Regulations, prior to its removal by T.D. 8474, 1993-1 C.B. 242) (hereinafter, "*Adjusted Gross Income*") does not exceed sixty percent (60%) of the median gross income, adjusted for family size, for the area in which the Development is located, determined in a manner consistent with determinations of lower income families and median gross income under Section 8 of the United States Housing Act of 1937, as amended, as adjusted under Section 142(d)(2)(E) (a "*Qualifying Tenant*"); *provided*, that if all the occupants of a unit are students (as defined in Section 151(c)(4) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code, the occupants of that unit shall not be deemed to be "Qualifying Tenants." The determination of whether an individual or family meets the income requirement set out above shall be made at the earlier of the time occupancy commences or the execution of the current lease with respect thereto and on an annual basis thereafter and shall be based upon Income Certifications (as hereinafter defined). Any residential unit occupied by an individual or family who is a Qualifying Tenant shall continue to be treated as occupied by a Qualifying Tenant during their tenancy in such unit, even though they subsequently cease to be of low or moderate income, unless the most recent determination of their income indicates that their income exceeds one hundred and forty percent (140%) of the applicable income limit (whether as a result of an increase in income or a decrease in family size or otherwise) and after such determination but before the next determination any residential unit of comparable or smaller size in the Development is occupied by a new resident whose income exceeds the then applicable income limit. Any residential unit vacated by a Qualifying Tenant shall be treated as occupied by a Qualifying Tenant until reoccupied, other than for a temporary period not to exceed thirty-one (31) days, at which time the character of such unit with respect to occupancy by a Qualifying Tenant shall be redetermined. In applying the foregoing forty percent (40%) requirement, 0.40 shall be multiplied by the total number of completed residential units, and if the resulting number contains a fraction, it shall be rounded up to the next highest whole unit.



(b) As a condition to occupancy, each individual or family who is intended to be a Qualifying Tenant shall, prior to occupying a residential unit or signing a lease, be required to sign and deliver to the Borrower, a "Certification of Income" attached hereto as *Exhibit B* (the "*Income Certification*") in which the prospective Qualifying Tenant certifies that he and his family, if applicable, are Qualifying Tenants and pursuant to the lease signed by a Qualifying Tenant, said tenant shall be required to submit, at least annually, a new Income Certification on the basis of the current income of the tenant. In addition, such Qualifying Tenant shall be required to provide whatever other information, documents or certifications, including employment verifications and income tax returns, as are reasonably deemed necessary by the Borrower, the Issuer or the Administrative Agent to substantiate the initial or subsequent Income Certification.

(c) The Borrower shall use or cause to be used, in renting any residential units in the Development to a prospective Qualifying Tenant, a lease that provides for termination of the lease and consent by such person to immediate eviction, subject to applicable provisions of Oregon law, for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by such person with respect to the Income Certification.

(d) All Income Certifications will be maintained on file at the Development so long as any Bonds are outstanding and for five (5) years thereafter with respect to each Qualifying Tenant who occupied a residential unit in the Development during the period the restrictions hereunder are applicable, and the Borrower shall, upon request, make such Income Certifications available for inspection by the Administrative Agent and the Issuer.

(e) On the first day of the month after any residential unit in the Development is available for occupancy and on the first day of each calendar quarter thereafter, the Borrower will submit to the Issuer, with a copy to the Administrative Agent, the "Certificate of Continuing Program Compliance," in the form attached hereto as *Exhibit C*, executed by the Borrower stating the percentage of completed residential units in the Development which were occupied or held available for occupancy by Qualifying Tenants (but only after initial occupancy by a Qualifying Tenant) at all times during the preceding month or quarter, as appropriate, and identifying Qualifying Tenants who commenced or terminated occupancy in the Development during such month or quarter, as appropriate.

(f) On the annual anniversary of the issuance of the Bonds (or at such other times, as prescribed by the Secretary of the United States Treasury Department), the Borrower will submit to the Secretary of the United States Treasury Department (with a copy to the Administrative Agent) a certificate in the form that the Secretary prescribes, that the Development continues to meet the requirements of Section 142 of the Code.

Section 4. *Rental Restrictions.* The Borrower represents, warrants and covenants that once available for occupancy, each residential unit in the Development will be rented or available for rental on a continuous basis to members of the general public (other than residential units for a resident manager and/or maintenance personnel and residential units for individuals or families of low or moderate income as provided for in Section 3). Each Qualifying Tenant occupying a unit in the Development shall be required to execute a written lease which shall be

effective for a term of at least six (6) months. No meals or other services will be provided to the tenants of the Development on a regularly scheduled basis.

Section 5.     *Transfer Restrictions.* For the Qualified Project Period, the Borrower shall sell, transfer, assign, convey, change title to or otherwise dispose of the Development or any interest therein (a "*Transfer*"), in whole or in part, only with consent of the Issuer and in accordance with the terms of the Financing Agreement. Further, any such sale, transfer, assignment, conveyance, change in title or other disposition shall only be permitted if: (1) the Borrower shall not be in default hereunder; (2) the purchaser or assignee shall execute any necessary or appropriate document reasonably requested by the Administrative Agent or the Issuer with respect to assuming its obligations under this Regulatory Agreement and the Financing Agreement (together, the "*Assumption Agreement*"), which document shall be recorded in the Clackamas County, Oregon, Recorder's Office; (3) the Administrative Agent and the Issuer shall have received an opinion of Bond Counsel, which opinion is reasonably acceptable to the Issuer and the Administrative Agent, to the effect that such transfer will not adversely affect the excludability of the interest on the Bonds from gross income of the owners thereof for federal income tax purposes; (4) the Borrower shall deliver to the Administrative Agent and the Issuer a certificate, reasonably acceptable in form to the Issuer and the Administrative Agent, to the effect that the Borrower did not develop the Development with the intention of sale upon completion; (5) the Borrower shall deliver to the Administrative Agent and the Issuer an opinion of counsel to the transferee, which opinion is reasonably acceptable to the Issuer, that the transferee has duly assumed the obligations of the Borrower under this Regulatory Agreement and that such obligations and this Regulatory Agreement are binding on the transferee; and (6) such other conditions are met as are set forth in or referred to in the Financing Agreement or as the Administrative Agent or the Issuer may reasonably impose as part of the Assumption Agreement (i) to protect the excludability of the interest on the Bonds from gross income of the owners thereof for federal income tax purposes; (ii) to ensure that the Development is not acquired by a person which has pending against it, or which has a history of, building code violations, as identified by county, state or federal regulatory agencies; and (iii) to provide that all indemnification obligations for the benefit of the Administrative Agent and the Issuer pursuant to Section 9 of this Regulatory Agreement and elsewhere are assumed by the purchaser or assignee. Once the Assumption Agreement has been delivered and all conditions of this Section 5 have been satisfied, and the Borrower has obtained the consent to such transfer of any other party required under the terms of the Financing Agreement, the Administrative Agent and the Issuer shall deliver a release to the Borrower with respect to any future compliance with the provisions of this Regulatory Agreement with respect to the Development, and the Issuer shall deliver a release with respect to any future compliance with the provisions of the Financing Agreement (subject to any further transfer restrictions in the Financing Agreement). The Borrower shall deliver the form of Assumption Agreement to the Administrative Agent and the Issuer at least ten (10) business days prior to a proposed Transfer.

Section 6.     *Enforcement.*

(a) The Borrower shall permit, after three (3) business days' prior notice, any duly authorized representative of the Administrative Agent or the Issuer to inspect any books and records of the Borrower regarding the Development and with respect to the incomes of

Qualifying Tenants which pertain to compliance with the provisions of this Regulatory Agreement.

(b) In addition to the information provided for in Section 3(e), the Borrower shall submit any other information, documents or certifications reasonably requested by the Issuer or the Administrative Agent which the Issuer or the Administrative Agent deems reasonably necessary to substantiate continuing compliance with the provisions of this Regulatory Agreement.

(c) The Issuer, the Administrative Agent and the Borrower each covenants that it will not knowingly take, fail to take or permit any action within its control that would adversely affect the excludability of interest on the Bonds from gross income of the owners thereof for federal income tax purposes. Moreover, each covenants to take any lawful action within its control (including amendment of this Regulatory Agreement as may be necessary, in the opinion of Bond Counsel) to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statement promulgated or proposed by the Department of the Treasury or the Internal Revenue Service from time to time pertaining to obligations issued under Section 142(d) of the Code and affecting the Development.

(d) If the Borrower shall fail to observe or perform any covenant, condition or agreement contained herein on its part to be observed or performed, and such failure continues for sixty (60) days after the Borrower discovers, or by the exercise of reasonable diligence should have discovered, or receives notice from the Issuer or the Administrative Agent of, such failure, then and in such event, the Administrative Agent, the Issuer and, to the extent permitted by the Financing Agreement, any owner of a Bond shall be entitled, individually or collectively, and in addition to all other remedies provided by law or in equity:

(i) to compel specific performance by the Borrower of its obligations under this Regulatory Agreement, it being recognized that the beneficiaries of the Borrower's obligations hereunder cannot be adequately compensated by monetary damages in the event of a default by the Borrower; and

(ii) to cause the Borrower to pay to the Issuer an amount equal to all rent received by the Borrower with respect to the units occupied, or held available for occupancy by, Qualifying Tenants, if such units are knowingly or negligently rented to persons who do not comply with the requirements of such units. Such payment shall not reduce the amount due under the Financing Agreement.

(e) The Borrower and the Administrative Agent each acknowledge that the primary purpose for requiring compliance with the restrictions provided in this Regulatory Agreement is to preserve the excludability from gross income for federal income tax purposes of interest on the Bonds to the owners thereof, and that the Administrative Agent on behalf of the owners of the Bonds, who are declared to be third party beneficiaries of this Regulatory Agreement, shall be entitled, for any breach of the provisions hereof, to all remedies both at law and in equity in the event of any default hereunder.

(f) The Issuer and the Administrative Agent hereby agree that the cure of any default hereunder made or tendered by the Investor Member (as defined in the Financing Agreement) shall be accepted or rejected by the Issuer and the Administrative Agent on the same basis as if tendered by the Borrower.

Section 7. *Covenants to Run with the Land; Successors Bound.* The Borrower hereby subjects the Development to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The Administrative Agent, the Issuer and the Borrower hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants, reservations and restrictions running with the land to the extent permitted by law and shall pass to and be binding upon the Borrower's successors in title to the Development throughout the term of this Regulatory Agreement. Each and every contract, deed, mortgage or other instrument hereafter executed covering or conveying the Development or any portion thereof or interest therein shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

Section 8. *Recording and Filing.* The Borrower shall cause this Regulatory Agreement and all amendments and supplements hereto to be recorded and filed in the conveyance and real property records of Clackamas County, Oregon, and in such other places as the Administrative Agent may reasonably request. The Borrower shall pay all fees and charges incurred in connection with any such recording.

Section 9. *Indemnification.* THE BORROWER SHALL BE REQUIRED AND HEREBY AGREES TO PAY, INDEMNIFY AND HOLD THE ISSUER AND THE PURCHASERS, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, OFFICIALS, EMPLOYEES AND AGENTS (EXCEPT FOR CLAIMS ARISING OUT OF ACTS OR OMISSIONS OF THE ISSUER RESULTING FROM WILLFUL MISCONDUCT) AND THE OWNERS OF THE BONDS HARMLESS FROM, ANY AND ALL LOSS, DAMAGE, COST, EXPENSE, SUIT, JUDGMENT, ACTION, INJURY OR LIABILITY WHICH THEY, OR ANY OF THEM, MAY SUFFER OR INCUR (INCLUDING WITHOUT LIMITATION ANY COSTS, FEES AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, COSTS AND EXPENSES, INCURRED IN CONNECTION WITH THE ENFORCEMENT OF THIS REGULATORY AGREEMENT) BY REASON OF (A) THE DESIGN, CONSTRUCTION, INSTALLATION, OPERATION, USE, OCCUPANCY, MAINTENANCE OR OWNERSHIP OF THE DEVELOPMENT (INCLUDING COMPLIANCE WITH LAWS, ORDINANCES AND RULES AND REGULATIONS OF PUBLIC AUTHORITIES RELATING THERETO); OR (B) ANY WRITTEN STATEMENTS OR REPRESENTATIONS WITH RESPECT TO THE BORROWER, THE DEVELOPMENT OR THE BONDS MADE OR GIVEN TO THE ISSUER OR THE PURCHASER, OR ANY UNDERWRITERS OR PURCHASERS OF ANY OF THE BONDS, BY THE BORROWER, OR ANY OF ITS PARTNERS OR AGENTS, INCLUDING, BUT NOT LIMITED TO, STATEMENTS OR REPRESENTATIONS OF FACTS, FINANCIAL INFORMATION OR BORROWER AFFAIRS; OR (C) ANY FRAUDULENT ACT BY OR ON BEHALF OF THE BORROWER OR ANY OFFICER OF THE BORROWER, INCLUDING WITHOUT LIMITATION ANY INTENTIONAL MISREPRESENTATION OF, OR INTENTIONAL FAILURE TO DISCLOSE, A MATERIAL FACT IN CONNECTION WITH THE ISSUANCE AND SALE OF THE BONDS OR THE APPLICATION OF THE PROCEEDS THEREOF; OR (D) ANY VIOLATION OF THE RESTRICTIONS CONTAINED IN SECTION 2 OR THE OCCUPANCY RESTRICTIONS CONTAINED IN SECTION 3 AND THE CONTINUANCE OF SUCH VIOLATION OF SECTION 2 OR SECTION 3 FOR THIRTY (30) DAYS AFTER WRITTEN NOTICE OF SUCH VIOLATION SHALL BE GIVEN TO THE BORROWER BY THE ISSUER OR THE PURCHASER OR ANY OWNER OF THE BONDS, OR FORTY-FIVE (45) DAYS AFTER

THE DATE SUCH VIOLATION SHOULD HAVE BEEN DISCOVERED BY THE BORROWER BY EXERCISE OF REASONABLE DILIGENCE; OR (E) ANY VIOLATION OF THE RENTAL RESTRICTIONS CONTAINED IN SECTION 4 OR THE TRANSFER RESTRICTIONS CONTAINED IN SECTION 5. THE FOREGOING INDEMNIFICATION SHALL BE IN ADDITION TO ANY INDEMNIFICATION PROVISIONS SET FORTH IN THE FINANCING AGREEMENT OR ANY OF THE OTHER BOND DOCUMENTS.

THE BORROWER ALSO SHALL PAY AND DISCHARGE AND SHALL INDEMNIFY AND HOLD HARMLESS THE PURCHASER AND, TO THE EXTENT APPLICABLE, THE ISSUER FROM (X) ANY LIEN OR CHARGE UPON PAYMENTS BY THE BORROWER TO THE PURCHASER HEREUNDER AND (Y) ANY TAXES (INCLUDING, WITHOUT LIMITATION, ALL AD VALOREM TAXES AND SALES TAXES), ASSESSMENTS, IMPOSITIONS AND OTHER CHARGES IN RESPECT OF ANY PORTION OF THE DEVELOPMENT. IF ANY SUCH CLAIM IS ASSERTED, OR ANY SUCH LIEN OR CHARGE UPON PAYMENTS, OR ANY SUCH TAXES, ASSESSMENTS, IMPOSITIONS OR OTHER CHARGES, ARE SOUGHT TO BE IMPOSED, THE PURCHASER OR THE ISSUER SHALL GIVE PROMPT NOTICE TO THE BORROWER, AND THE BORROWER SHALL HAVE THE SOLE RIGHT AND DUTY TO ASSUME, AND WILL ASSUME, THE DEFENSE THEREOF, WITH FULL POWER TO LITIGATE, COMPROMISE OR SETTLE THE SAME IN ITS SOLE DISCRETION; *PROVIDED*, THAT THE PURCHASER OR THE ISSUER SHALL HAVE THE RIGHT TO EMPLOY SEPARATE COUNSEL IN ANY SUCH ACTION OR PROCEEDING AND TO PARTICIPATE IN THE DEFENSE THEREOF; BUT UNLESS SUCH SEPARATE COUNSEL IS EMPLOYED WITH THE APPROVAL AND CONSENT OF THE BORROWER (WHICH APPROVAL AND CONSENT SHALL NOT BE UNREASONABLY WITHHELD), OR PURSUANT TO A COURT ORDER, THE BORROWER SHALL NOT BE REQUIRED TO PAY THE FEES AND EXPENSES OF SUCH SEPARATE COUNSEL.

THE FOREGOING INDEMNIFICATIONS SHALL EXTEND TO AND INCLUDE THE ORDINARY NEGLIGENCE AND GROSS NEGLIGENCE OF THE ISSUER, SHALL SURVIVE THE TERMINATION OF THIS REGULATORY AGREEMENT, AND SHALL BE A PERSONAL LIABILITY OBLIGATION OF THE INDEMNITOR, NOTWITHSTANDING ANY PROVISION OF ANY AGREEMENT TO THE CONTRARY. NO PROVISION OF THIS REGULATORY AGREEMENT SHALL BE CONSTRUED TO RELIEVE THE ADMINISTRATIVE AGENT FROM LIABILITY FOR ITS OWN NEGLIGENCE OR WILLFUL MISCONDUCT.

For purposes of this Section 9, the term "agent" shall not include legal counsel.

*Section 10. Agent of the Issuer and the Administrative Agent.* The Issuer and the Administrative Agent shall have the right to appoint an agent or administrator to carry out any of their respective duties and obligations hereunder, and shall inform the other parties hereto of any such agency appointment by written notice. Neither the Issuer nor the Administrative Agent shall be responsible for the negligence or misconduct of such agent if appointed with due care-

*Section 11. No Conflict with Other Documents.* The Borrower warrants that it has not executed and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Regulatory Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede all other requirements in conflict herewith.

*Section 12. Interpretation.* Any terms not defined in this Regulatory Agreement shall have the same meaning as terms defined for purposes of Section 142 of the Code and in the Regulations and the Financing Agreement.

Section 13. *Amendment.* This Regulatory Agreement may be amended by the parties hereto to reflect changes in the Code, the Regulations and revenue rulings promulgated thereunder, or in the interpretation thereof, subject to the delivery to the Administrative Agent and the Issuer of an opinion of Bond Counsel that such amendment will not adversely affect the excludability from gross income of the interest on the Bonds for federal income tax purposes.

Section 14. *Severability.* The invalidity of any clause, part or provision of this Regulatory Agreement shall not affect the validity of the remaining portions of this Regulatory Agreement.

Section 15. *Notices.* Any notice, demand or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if and when personally delivered and receipted for, or, if sent by private courier service or sent by overnight mail service, shall be deemed to have been given if and when received (unless the addressee refuses to accept delivery, in which case it shall be deemed to have been given when first presented to the addressee for acceptance), or on the third business day after being deposited in United States registered or certified mail, return receipt requested, postage prepaid. Any such notice, demand or other communication shall be addressed to a party at its address set forth below or to such other address the party to receive such notice may have designated to all other parties by notice in accordance herewith:

To the Borrower:	Pedcor Investments-2016-CLV, L.P. c/o Pedcor Investments One Pedcor Square 770 3rd Avenue, S.W. Carmel, Indiana 46032 Attention: Thomas G. Crowe
with a copy to:	Pedcor Investments, A Limited Liability Company One Pedcor Square 770 3rd Avenue, S.W. Carmel, Indiana 46032 Attention: Jeremy R. Buchanan, Vice President and Legal Counsel
The Administrative Agent:	United Fidelity Bank, fsb 18 NW Fourth Street Evansville, Indiana 46698 Attention: Donald R. Neel, President and CEO
The Issuer:	Housing Authority of Clackamas County 13900 South Gain Street P.O. Box 1510 Oregon City, Oregon 97045 Attention: Executive Director

with copies to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_  
Telecopy: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

Section 16. *Governing Law.* This Regulatory Agreement shall be construed in accordance with and governed by the laws of the State of Oregon, and, where applicable, the laws of the United States of America.

Section 17. *HUD Rider.* The terms and conditions of the HUD Rider attached to this Regulatory Agreement are incorporated herein and made a part of this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Regulatory Agreement to be signed by their respective, duly authorized representatives, as of the day and year first above written.

HOUSING AUTHORITY OF CLACKAMAS COUNTY

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_



UNITED FIDELITY BANK, fsb, Administrative Agent

By: \_\_\_\_\_  
Kirby J. Purciful  
Senior Vice President & CFO

[Signature Page to Regulatory Agreement]

PEDCOR INVESTMENTS-2016-CLV, L.P.

By: Rosewood Terrace Housing Company, LLC  
Its: General Partner

By: Pedcor Investments, A Limited Liability  
Company, its Managing Member  
Its: Managing Member

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

STATE OF OREGON                    )  
  ) SS  
COUNTY OF CLACKAMAS        )

I, \_\_\_\_\_, a Notary Public, do hereby certify that \_\_\_\_\_, personally known to me to be the same person whose name is, as \_\_\_\_\_ of the Housing Authority of Clackamas County, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he, being thereunto duly authorized, signed, and delivered the said instrument as the free and voluntary act of said entity and as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

---

Notary Public in and for  
the State of Oregon

(Seal)

My commission expires:

STATE OF INDIANA                    )  
  ) SS  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public, do hereby certify that Kirby Purciful, personally known to me to be the same person whose name is, as a Senior Vice President and CFO of United Fidelity Bank, fsb, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he, being thereunto duly authorized, signed, and delivered the said instrument as the free and voluntary act of said entity and as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

---

Notary Public in and for  
the State of Oregon

(Seal)

My commission expires:

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public, do hereby certify that \_\_\_\_\_, personally known to me to be the same person whose name is, as \_\_\_\_\_ of Pedcor Investment, a limited liability company, managing member of Rosewood Terrace Housing Company, LLC, general partner of Pedcor Investments-2016-CLV, L.P., subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he, being thereunto duly authorized, signed, and delivered the said instrument as the free and voluntary act of said entity and as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

---

Notary Public in and for  
the State of \_\_\_\_\_

(Seal)

My commission expires:

**EXHIBIT A**

**LEGAL DESCRIPTION**

ALL OF THAT LAND in Clackamas County, Oregon which is described as follows:

**EXHIBIT B**

**CERTIFICATION OF INCOME**

NAME OF DEVELOPMENT: \_\_\_\_\_

ADDRESS OF DEVELOPMENT: \_\_\_\_\_

DATE: \_\_\_\_\_

The undersigned does hereby declare, depose and certify, under penalty of perjury, as follows:

If additional space is needed in filling out this form, attach sheets identifying the additional information referenced to the appropriate line number.

Line:

1.	2.	3.	4.	5.
Name of Head of Household, Spouse and Members of Your Family living in Unit	Relationship to Head of Household	Age	Social Security Number	Place of Employment
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Each line hereinafter is for the income of *all of the above persons* during the 12-month period beginning on this date or, if you signed a lease prior to this date, the date of the signing of your lease or the latest anniversary date of the signing of your lease, whichever is applicable. Please refer to Part I of the Instruction Sheet for detailed explanations as to the income information required. Part II of the Instruction Sheet provides information on income which may be excluded.

- 6. (a) Wages, salaries, tips, etc. \$ \_\_\_\_\_
- (b) Interest, dividends, and other net income of any kind from real or personal property (also enter on line 13(b)) \$ \_\_\_\_\_
- 7. Net income from the operation of a business or profession \$ \_\_\_\_\_
- 8. The full amount of periodic amounts received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic payment \$ \_\_\_\_\_
- 9. Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay \$ \_\_\_\_\_
- 10. Welfare assistance (*i.e.*, welfare or other payments to families or individuals, based on need, that are made under programs funded, separately or jointly, by federal, state or local governments) \$ \_\_\_\_\_
- 11. Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the unit \$ \_\_\_\_\_
- 12. All regular pay, special pay, and allowances of a member of the Armed Forces \$ \_\_\_\_\_

The individual incomes of all the persons listed in Line 1 above during the 12-month period beginning this date is as follows:

NAMES	TOTALS
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____



13. If any of the persons described above has any income of any kind from real property, savings, stocks, bonds, and other forms of capital investment (excluding interests in Indian trust land and excluding equity accounts in the Department of Housing and Urban Development ("*HUD*") homeownership programs), provide the following:

(a) The total value of all such assets owned by all such persons \$ \_\_\_\_\_

(b) The total amount of income expected to be derived from such assets in the 12-month period commencing this date or, if you signed a lease prior to this date, the date of the signing of your lease or the latest anniversary date of the signing of your lease \$ \_\_\_\_\_  
(from line 6(b))

14.(a) Will all of the persons listed in Column 1 above be or have they been full time students during five calendar months of this calendar year (i) at an educational organization which normally maintains regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on, or (ii) in institutional on-farm training under the supervision of an accredited agent of an educational organization described in clause (i) or of a state or political subdivision of a state?

Yes \_\_\_\_\_

No \_\_\_\_\_

(b) If the answer to 14(a) is yes, is any such person married and eligible to file a joint federal income tax return?

Yes \_\_\_\_\_

No \_\_\_\_\_

I/WE, the undersigned, state that I/WE have read and answered fully and truthfully each of the preceding questions for all persons who are to occupy the unit in the above apartment development for which application is made, all of whom are listed above, and I/WE declare under penalty of perjury that the foregoing representations are true and correct.

HEAD OF FAMILY

SPOUSE

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public [SEAL]

My commission expires:

## INSTRUCTION SHEET

Part I of this Instruction Sheet contains line-by-line instructions to assist your completion of the Certification of Income. The Certification of Income is a statement of the total anticipated amounts, monetary or not, which go to, or on behalf of, the Head of the Family or Spouse (even if temporarily absent) or to any other member of the family who proposes to live in the unit during the 12-month period commencing on this date or, if you signed a lease prior to this date, the date of the signing of your lease or the latest anniversary date of the signing of your lease, whichever is applicable, including (i) amounts which are anticipated to be received from a source outside the Family during the 12-month period commencing on this date and (ii) all net income derived from assets to which any member of the Family has access. Excluded therefrom is income specified in PART II of this section.

### PART I:

1. *"Family"* means two or more persons related by blood, marriage, adoption, or operation of law.

6. (a) Provide the total of all wages, salaries, commissions, tips, bonuses, over-time pay, fees and other compensation for personal services, without regard to payroll deductions.

(b) For this purpose, expenditures for amortization of capital indebtedness shall not be deducted to determine income. An allowance for depreciation of assets may be deducted based on straight-line depreciation as provided in regulations of the United States Treasury. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the Family.

7. For this purpose, expenditures for business expansion or amortization of capital indebtedness shall not be deducted to determine the net income from a business. An allowance for depreciation of assets used in a business or profession may be deducted based on straight-line depreciation as provided in regulations of the United States Treasury. Any withdrawal of cash or assets from the operation of a business or profession will be included in net income from a business or profession except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the Family.

8. Periodic amounts do *not* include deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.

9. Payments in lieu of earnings do *not* include lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlements for personal or property losses.

10. If the Welfare Assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the Welfare Assistance agency in accordance with the actual cost of shelter and utilities, the amount of Welfare Assistance income to be included as income shall consist of:

(i) the amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities, plus

(ii) the maximum amount that the Welfare Assistance agency could in fact allow the Family for shelter and utilities. If the Family's Welfare Assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.

12. This does *not* include the special pay to a Family member serving in the Armed Forces who is exposed to hostile fire.

13. The amount entered on line 13(a) should include the net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds or other forms of capital investment,

(a) *excluding* an interest in Indian trust land, equity accounts in HUD ownership programs, the value of necessary items of personal property such as furniture and automobiles, the value of a trust fund which is not revocable by, or under the control of, any member of the Family or household, so long as the fund continues to be held in trust and the value of a home currently purchased with assistance under 24 C.F.R. Part 982, subpart M (limited, however, to the first 10 years after the purchase date of the home), but

(b) *including*, in the case of the disposition of any business or family assets for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of this certificate, the excess of the fair market value of the assets disposed over the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the household member receives important consideration not measurable in dollar terms.

## PART II:

The determination of income for the Certification of Annual Income does *not* include any of the following:

A. Temporary, nonrecurring or sporadic income (including gifts).

B. Income from the employment of children (including foster children) under the age of 18 years.

C. Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the Family, who are unable to live alone).

D. Amounts received by the Family that are specifically for, or in reimbursement of, the cost of medical expenses for any Family member.

E. The full amount of student financial assistance paid directly to the student or to the educational institution.

F. (i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program;

(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the public housing agency or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination and serving as a member of the public housing agency's governing board. No resident may receive more than one such stipend during the same period of time; and

(v) Incremental earnings and benefits resulting to any Family member from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the Family member participates in the employment training program.

G. Income of a live-in aide. A "live-in aide" means a person who resides with one or more elderly or near-elderly persons (i.e., persons who are at least 50 years of age), or persons with disabilities, and who:

(a) is determined to be essential to the care and well-being of the person(s);

(b) is not obligated for the support of the person(s); and

(c) would not be living in the unit except to provide the necessary supportive services.

A "person with disabilities" means a person who: (a) has a disability as defined in 42 U.S.C. § 423; (b) is determined, pursuant to certain regulations, to have a physical, mental, or emotional impairment which (i) is expected to be of long-continued and indefinite duration, (ii) substantially impedes his or her ability to live independently, and (iii) is of such a nature that such ability could be improved by more suitable housing conditions; or (c) has a developmental disability as defined in 42 U.S.C. § 6001. The term does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome. The term does not include a person whose disability is based solely on any drug or alcohol dependence.

H. Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the United States Housing Act of 1937, as amended, as published in the Federal Register from time to time.

I. Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era.

J. Earnings in excess of \$480 for each full time student 18 years old or older (excluding the Head of Household and Spouse).

K. Adoption assistance payments in excess of \$480 per adopted child.

L. Amounts received by the Family in the form of refunds or rebates under state or local law for property taxes paid on the unit.

M. Amounts paid by a state agency to a Family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled Family member at home.

FOR COMPLETION BY DEVELOPMENT OWNER ONLY:

I. CALCULATION OF ANNUAL INCOME:

1. Enter the amount of income for the entire family by adding line 6(a) with lines 7 through 12: \$ \_\_\_\_\_
- 2.(a) If the amount entered in 13(a) is *greater* than \$5,000, enter the *greater* of:
  - (i) the amount entered in 13(b) *or*

(ii) a percentage of the total entered in 13(a) based on the current passbook savings rate as determined by HUD

(b) If the amount entered in 13(a) is less than \$5,000, enter the amount entered in 13(b): \$ \_\_\_\_\_

3. Add number (1) and (2) to determine ANNUAL INCOME: \$ \_\_\_\_\_

II. DETERMINATION OF TENANT ELIGIBILITY:

1. Is the amount entered in line 3 above less than or equal to 60 percent of area median gross income for the area in which the Development is located, completed taking into account the area in which the Development is located and size of the Family occupying the unit for which this Certification of Income is being completed, as adjusted by Section 142(d)(2)(E)?

Yes \_\_\_\_\_ No \_\_\_\_\_

2. Check one of the following:

(a) Line (1) above is No, therefore the Household does not qualify as a Qualified Tenant. \_\_\_\_\_

(b) Line (1) above is Yes, and 14(a) above is No, therefore the Household qualifies as a Qualified Tenant. \_\_\_\_\_

(c) Line (1) above is Yes and 14(b) above is Yes, therefore the Household qualifies as a Qualified Tenant. \_\_\_\_\_

(d) Line (1) above is Yes and 14(a) above is Yes and 14(b) above is No, therefore the Household does not qualify as a Qualified Tenant. \_\_\_\_\_

3. Number of apartment unit assigned: \_\_\_\_\_

\_\_\_\_\_  
Apartment Owner

EXHIBIT C

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

Date: \_\_\_\_\_

Property Name: ROSEWOOD TERRACE

On Site Property Mgr: \_\_\_\_\_

Address: \_\_\_\_\_ Telephone No. \_\_\_\_\_

To: Housing Authority of Clackamas County  
13900 South Gain Street  
P.O. Box 1510  
Oregon City, Oregon 97045  
Attn: Executive Director

United Fidelity Bank, fsb  
18 NW Fourth Street  
Evansville, IN 46698  
Attention: Donald R. Neel

The undersigned, as the authorized representative of Pedcor Investments-2016-CLV, L.P. (the "Borrower"), hereby certifies that he or she has read and is thoroughly familiar with the provisions of the various documents associated with the issuance of Housing Authority of Clackamas County Multifamily Housing Revenue Bonds (Rosewood Terrace Apartments Project), Series 2018, including the related Regulatory Agreement and Declaration of Restrictive Covenants, dated as of \_\_\_\_\_, 2018 (the "Regulatory Agreement"), among Housing Authority of Clackamas County (the "Issuer"), the Borrower and United Fidelity Bank, fsb, and the Financing Agreement dated as of \_\_\_\_\_, 2018 (the "Financing Agreement"), among the Borrower, the Issuer, United Fidelity Bank, fsb, and P/R Mortgage & Investment Corp., as well as other procedures and instructions and guidelines to maintain tax-exempt multiple family status, and certifies the following as of the date of this certificate:

\_\_\_\_\_ Total Occupied Units in Development  
\_\_\_\_\_ Total Vacant Units  
\_\_\_\_\_ Total Units

\_\_\_\_\_ Units Occupied by Eligible Tenants (as defined in the Regulatory Agreement)  
\_\_\_\_\_ Units Held Vacant for Eligible Tenants  
\_\_\_\_\_ Total (At least 90% of Total Units) = \_\_\_\_\_ Units

\_\_\_\_\_ Units Occupied by Qualifying Tenants (as defined in the Regulatory Agreement)  
\_\_\_\_\_ Units Held Vacant for Occupancy Continuously Since Last Occupied by Qualifying Tenant  
\_\_\_\_\_ Total (At least 40% of Total Units) = \_\_\_\_\_ Units

No default has occurred in observance of the covenants in the Regulatory Agreement, the Financing Agreement or the other documents governing the Development.

To my knowledge, no Determination of Taxability (as defined in the Financing Agreement) has occurred.

CERTIFIED BY:

PEDCOR INVESTMENTS-2016-CLV, L.P.

By: SHFC Heights on Parmer Phase Two, LLC,  
Its: General Partner

By: Housing Authority of Clackamas County  
Its: Sole Member

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_



**HUD RIDER TO REGULATORY AGREEMENT AND DECLARATION OF  
RESTRICTIVE COVENANTS**

THIS HUD RIDER TO REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS is made as of \_\_\_\_\_, 2018, by PEDCOR INVESTMENTS-2016-CLV, L.P., an Oregon limited partnership (the "*Borrower*"), HOUSING AUTHORITY OF CLACKAMAS COUNTY, a housing authority of the State of Oregon (the "*Agency*") and UNITED FIDELITY BANK, FSB (together with its successors and assigns, the "*Administrative Agent*").

WHEREAS, Borrower has obtained financing from P/R Mortgage & Investment Corp. (the "*Lender*") for the benefit of the project known as Rosewood Terrace Apartments (the "*Project*"), which loan is secured by a Senior Multifamily Deed of Trust, Assignment of Rents and Security Agreement (the "*Security Instrument*") dated as of \_\_\_\_\_, 2017, and recorded in the official public records of the Recorder of the County of Travis, Oregon (the "*Records*") on \_\_\_\_\_, 2018, as Document Number \_\_\_\_\_, and is insured by the United States Department of Housing and Urban Development ("*HUD*");

WHEREAS, Borrower has received tax-exempt bond financing from the Agency, which Agency is requiring certain restrictions be recorded against the Project; and

WHEREAS, HUD requires as a condition of its insuring Lender's financing to the Project, that the lien and covenants of the Restrictive Covenants (as defined herein) be subordinated to the lien, covenants, and enforcement of the Security Instrument; and

WHEREAS, the Agency has agreed to subordinate the Restrictive Covenants to the lien of the Mortgage Loan in accordance with the terms of this Rider.

NOW THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Rider, the provision contained in this Rider shall govern and be controlling in all respects as set forth more fully herein.

(b) The following terms shall have the following definitions:

"*Code*" means the Internal Revenue Code of 1986, as amended.

"*HUD*" means the United States Department of Housing and Urban Development.

"*HUD Regulatory Agreement*" means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

"*Lender*" means P/R Mortgage & Investment Corp., its successors and assigns.

"*Mortgage Loan*" means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

*"Mortgage Loan Documents"* means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

*"National Housing Act"* means the National Housing Act of 1934, as amended.

*"Program Obligations"* has the meaning set forth in the Security Instrument.

*"Residual Receipts"* has the meaning specified in the HUD Regulatory Agreement.

*"Restrictive Covenants"* means the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of \_\_\_\_\_, 2018, between the Agency, the Administrative Agent and the Borrower, as such agreement may be amended, modified or supplemented from time to time

*"Security Instrument"* means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

*"Surplus Cash"* has the meaning specified in the HUD Regulatory Agreement.

(c) Notwithstanding anything in the Restrictive Covenants to the contrary, the provisions of the Restrictive Covenants are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the *"HUD Requirements"*). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Agency's ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower's knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.

(d) In the event of foreclosure (or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate.

(e) Borrower and the Agency acknowledge that Borrower's failure to comply with the covenants provided in the Restrictive Covenants does not and shall not serve as a basis for default under the HUD Requirements, unless a default also arises under the HUD Requirements.

(f) Except for the Agency's reporting requirement, in enforcing the Restrictive Covenants the Agency will not file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

- (i) Available surplus cash, if the Borrower is a for-profit entity;

(ii) Available distributions of surplus cash and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity;

(iii) Available residual receipts authorized by HUD, if the Borrower is a non-profit entity; or

(iv) A HUD-approved collateral assignment of any HAP contract.

(g) For so long as the Mortgage Loan is outstanding, Borrower and Agency shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD's prior written consent.

(h) Subject to the HUD Regulatory Agreement, the Agency may require the Borrower to indemnify and hold the Agency harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Agency relating to the subordination and covenants set forth in the Restrictive Covenants; *provided, however*, that Borrower's obligation to indemnify and hold the Agency harmless shall be limited to available Surplus Cash and/or residual receipts of the Borrower.

(i) No action shall be taken in accordance with the rights granted herein to preserve the tax exemption of the interest on the notes or bonds, or prohibiting the owner from taking any action that might jeopardize the tax-exemption, except in strict accord with Program Obligations.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have caused this HUD Rider to be signed by their respective, duly authorized representatives, as of the day and year first written above.

PEDCOR INVESTMENTS-2016-CLV, L.P.

By: Rosewood Terrace Housing Company, LLC  
Its: General Partner

By: Pedcor Investments, A Limited Liability  
Company, its Managing Member  
Its: Managing Member

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

HOUSING AUTHORITY OF CLACKAMAS COUNTY

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

UNITED FIDELITY BANK, fsb, Administrative Agent

By: \_\_\_\_\_  
Kirby J. Purciful  
Senior Vice President & CFO

November 22, 2017

Board of County Commissioners Sitting as the  
Housing Authority of Clackamas County Board

Members of the Board:

Approval of Resolution #1924 Authorizing the Execution, Acknowledgement and Delivery of Transaction Documents for the Rosewood Terrace Apartments Project

<b>Purpose/Outcomes</b>	Approve Resolution No. 1924 authorizing: a. Transaction Documents b. Housing Authority Disposition Loan Documents c. Authorization for the Housing Authority's Executive Director to sign on behalf of the Board and to execute and deliver Ancillary Documents in connection with the financing, development and operation of the Rosewood Terrace Project
<b>Dollar Amount and Fiscal Impact</b>	\$65,626,456
<b>Funding Source(s)</b>	Rental Income, Low Income Housing Tax Credits, Multi-Family Revenue Bonds, Home Loan, Community Development Block Grant Loan, Disposition Funds Loan
<b>Duration</b>	60 years
<b>Previous Board Action</b>	The Board was provided a draft of the Transaction Documents, discussed the financing plan and the signing authority at a planning session on October 31, 2017
<b>Strategic Plan Alignment</b>	Ensure safe, healthy and secure communities Sustainable and Affordable Housing
<b>Contact Person</b>	Chuck Robbins, HACC Executive Director (503) 650-5666
<b>Contract Number</b>	N/A

**BACKGROUND:**

The Clackamas County Housing Authority (HACC) a Division of the Health, Housing & Human Services Department requests the approval of the Transaction Documents, Disposition Loan Documents and the signing authority of Ancillary Documents for the Rosewood Terrace Apartment project.

These documents detail the purpose and structure of the partnership, and the financial and managerial rights and responsibilities. Approval of the documents allows the project to move forward to closing.

Rosewood Terrace is a multifamily affordable housing complex located at 8810 & 8850 Otty Road in Happy Valley. It consists of (6) 4-story, wood framed structures with an elevator servicing each building. It is centrally located with easy access to services and within short walking distance of the MAX Green Line as well as several TriMet bus stops.

The development includes (112) 1 Bedroom/1 Bath units, (92) 2 Bedroom/2 Bath units, and (8) 3 Bedroom/2 Bath Units. With 2 BR/2 Bath units renting for over \$1,330/month in the metro area, this project would hold rents to \$761/Mo for 1BR/ Bath, \$909/Mo for 2BR/2Bath, and \$1,044/Mo for 3 BR/2 Bath making it affordable to households making less than 60% of the Area Median Income. These units are required to remain affordable for a period of 60 years.

All of the following documents have been prepared and reviewed by outside legal counsel. HACC has retained Rob Sullivan, P.C., as our Tax Credit Counsel. Mr. Sullivan has thoroughly reviewed and edited all of the Transaction Documents. The documents have also been reviewed by David Rosen and Associates, HACC's financial consultant, and County Counsel for compliance with the Memo of Understanding (MOU) and Term Sheet for the Rosewood Terrace project

The primary Transaction Documents to be approved by the Board are:

1. **Limited Partnership Agreement (LPA):** The LPA is a contract between all partners, which spells out the authority of the general partner and the rights of all limited partners. The LPA is set in place to define the purpose and structure of the partnership, partner contributions to the project and the terms, rights and obligations of each entity in the partnership. Partners included in this LPA are Rosewood Terrace Housing Company, LLC (General Partner); The Housing Authority of Clackamas County (Special Limited Partner); Pedcor Investments (Withdrawing Limited Partner) and US Bancorp Community Development Corporation (substitute Limited Partner). This document was prepared by Kutak Rock, LLP, a national legal firm, on behalf of US Bank, Pedcor and HACC.
2. **Operating Agreement for the General Partner:** The Operating Agreement is an agreement among Limited Liability Company (LLC) Members, governing the LLC's business and Member's financial and managerial rights and duties. This Operating Agreement will be used to define project partners; terms; management rights, powers and duties; conditions and general provisions. Parties to this agreement include Rosewood Terrace Housing Company; the Housing Authority of Clackamas County; Pedcor Investments and 2018 Housing Participants, LLC. This document was prepared by in house counsel for Pedcor Investments and Rob Sullivan, P.C.
3. **Disposition Loan Documents:** These agreements define the terms and conditions between HACC and the LLC allowing for the use of these funds for construction of the project. Included in the documents are (a) Loan Document, (b) Promissory Note, (c) Trust Deed and (d) Declaration of Land Use Restrictive Covenants.

Once these documents have been approved the project will quickly proceed to closing. In order to ensure an efficient and timely process for approving the numerous documents that are part of the project, HACC is requesting authorization for the HACC Executive Director to execute and deliver the remaining Transaction Documents. These Ancillary Documents are included in a non-exhaustive list in Exhibit A. The request for Signing Authority is consistent with what was granted for the Easton Ridge redevelopment project.

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Rosewood Terrace is a vital part of the Housing Authority's development strategy in meeting its goal of creating 1,000 new units of affordable housing in the next 5 years. Approval of these documents constitutes the County's binding commitment to complete this project and will allow the Rosewood Terrace Project to move forward on schedule. Signing of these documents will occur 1–2 weeks before closing. Closing is expected to happen in early January 2018, at which time the remaining agreements between issuer, buyer, and developer will be signed.

The financial impacts (current year and ongoing) to HACC include:

Rental Income generated during construction	\$2,143,851
Limited Partner Equity (Tax Credits)	\$22,580,000
First Mortgage (Bond Proceeds)	\$29,150,621
HOME Loan	\$550,000
Community Development Block Grant (CDBG) Loan	\$345,000
HACC Disposition Fund Loan	\$1,605,000
Deferred Developer Fee	<u>\$9,251,981</u>
TOTAL	\$65,626,453

All documents have been reviewed and approved by Clackamas County Counsel.

**RECOMMENDATION:**

Staff recommends the Board approve Resolution 1924

- a. authorizing execution of the LPA and Operating Agreement;
- b. authorizing the Board Chair to sign these documents once they have been finalized and closing is near at hand; and
- c. authorizing HACC Director to sign Ancillary Documents on behalf of the Housing Authority of Clackamas County.

Respectfully submitted,

Richard Swift, Director  
Health, Housing and Human Services

**ATTACHMENTS:**

- a. Housing Authority Resolution # 1924
- b. Limited Partnership Agreement for Rosewood Terrace
- c. Operating Agreement for General Partnership at Rosewood Terrace
- d. Exhibit A - Rosewood Terrace List Of Transaction Documents
- e. Disposition Loan Documents (4): (a) Loan Document, (b) Promissory Note, (c) Trust Deed and (d) Declaration of Land Use Restrictive Covenants

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In the Matter of Authorizing the Execution,  
Acknowledgement and Delivery of  
Transaction Documents to Evidence the  
Rosewood Terrace Apartments Project and  
providing for related matters

RESOLUTION NO. 1924

WHEREAS, the Housing Authority of Clackamas County (“Authority”) works to provide affordable multifamily housing for persons and families of lower income pursuant to Oregon Revised Statutes (“ORS”) 456.005 through 456.235; and,

WHEREAS, on December 15, 2016 the Authority approved a non-binding Memorandum of Understanding with Pedcor Investments (the “Developer”) relating to the development, financing, construction and operation, with participation by the Authority, in the Rosewood Terrace Apartments project (the “Project”); and,

WHEREAS, the Project will consist of approximately 212 units of rental housing and related facilities that will be owned by Pedcor Investments – 2017-LCV, Limited Partnership, an Oregon limited partnership (“Pedcor”); and,

WHEREAS, the Project, except for staff units, will be rented to persons or families with incomes of 60% of area median or less, and operated as a “housing project” as defined in ORS 456.065; and,

WHEREAS, the Authority has committed to loan \$1,605,000 of Public Housing Disposition funds to Pedcor that will be evidenced by a Loan Agreement, Loan Declaration of Land Use Restrictive Covenants, Promissory Note, and Trust Deed, Assignment of Rents, Security Agreement, and Fixture Filing(the “Disposition Loan”); and,

WHEREAS, the Authority will be admitted as a special limited partner of Pedcor pursuant to an Amended and Restated Agreement of Limited Partnership of Pedcor (the “Partnership Agreement”) ; and,

WHEREAS, the Authority needs to execute and deliver the Partnership Agreement ; and,

WHEREAS, the Developer formed Rosewood Terrace Housing Company, LLC, an Indiana limited liability company (the “General Partner”) to act as the general partner of Pedcor; and,

WHEREAS, the Authority formed HACC Rosewood Station, LLC, an Oregon limited liability company (“HACC Rosewood”) to act as a member of the General Partner of Pedcor pursuant to an Amended and Restated Operating Agreement of the General Partner (the “Operating Agreement”); and,



In the Matter of Authorizing the Execution,  
Acknowledgement and Delivery of  
Transaction Documents to Evidence the  
Rosewood Terrace Apartments Project and  
providing for related matters

RESOLUTION NO. 1924  
(Cont'd)

WHEREAS, the Authority needs to execute and deliver the Operating Agreement ; and

WHEREAS, drafts of the documents listed on Exhibit A (the "Transaction Documents") are on file with the Authority, and are available for review and will be further reviewed and approved by Authority staff and counsel prior to execution and delivery; and,

WHEREAS, the documents on Exhibit A, the Transaction Documents, is not an exhaustive list but anticipates substantially all of the documents required to evidence the transaction; and,

WHEREAS, the Transaction Documents contain significant rights and obligations of the Authority in connection with the Project, have been reviewed by Authority staff, Counsel and transaction counsel, and are not currently expected to change significantly; and,

WHEREAS, Pedcor has requested that the Authority approve, execute, acknowledge and deliver the Transaction Documents either Directly as the Authority or with the Authority acting as the sole member of the HACC Rosewood in its role as a member of the General Partner.

NOW, THEREFORE, BE IT RESOLVED BY THE AUTHORITY

Section 1. Authorization to Execute, Acknowledge and Deliver the Transaction Documents. The Authority is authorized in its own right or as the sole member of HACC Rosewood to execute, acknowledge and deliver the Transaction Documents for the Rosewood Terrace Apartments Project and to complete the Project as contemplated by the Transaction Documents listed on Exhibit A, including but not limited to the Disposition Loan, Partnership Agreement and Operating Agreement.

Section 2. Delegation. The Chair of the Board of the Housing Authority of Clackamas County or, if the Chair is not available, the Executive Director of the Authority or the Director of Health, Housing and Human Services for Clackamas County (each of whom is referred to in this resolution as a "Director") may, on behalf of the Authority and without further action by the Board:

Finalize the terms of, and execute, acknowledge and deliver the Transaction Documents. Before executing and delivering the Transaction Documents, the Director may, after consulting with Counsel and transaction counsel, make changes to those documents that are reasonable and necessary in the Director's discretion to facilitate the closing of the transaction as contemplated in the Transaction Documents. However, the changes authorized by the preceding sentence shall not materially change the Transaction Document listed on Exhibit A.

In the Matter of Authorizing the Execution,  
Acknowledgement and Delivery of  
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Rosewood Terrace Apartments Project and  
providing for related matters

RESOLUTION NO. 1924  
(Cont'd)

NOW, THEREFORE, BE IT RESOLVED, that the Chair or one of the Directors may finalize negotiations, execute, acknowledge and deliver the Transaction Documents and any other documents and take any actions that are necessary or desirable to complete the Transaction Documents, this Resolution and Order.

DATED THIS 22<sup>nd</sup> DAY OF NOVEMBER, 2017.

BOARD OF COMMISSIONERS FOR THE HOUSING  
AUTHORITY OF CLACKAMAS COUNTY

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

APPROVED AS TO FORM

\_\_\_\_\_  
COUNSEL FOR HOUSING AUTHORITY  
OF CLACKAMAS COUNTY, OREGON.

## **EXHIBIT A**

### **ROSEWOOD TERRACE LIST OF TRANSACTION DOCUMENTS**

#### **SECTION I - AUTHORITY DISPOSITION LOAN DOCUMENTS**

1. Disposition Loan Agreement
2. Disposition Loan Declaration of Land Use Restrictive Covenants
3. Disposition Loan Promissory Note
4. Disposition Loan Trust Deed

#### **SECTION II PARTNERSHIP DOCUMENTS**

5. Amended and Restated Agreement of Limited Partnership of Pedcor Investments-2016-CLV, Limited Partnership (“Pedcor”)
6. Authorizing Resolution of Pedcor
7. Development Services Agreement
8. Development Fee Sharing Agreement
9. Partnership Management Agreement
10. Amended & Restated Operating Agreement of Rosewood Terrace Housing Company, LLC, the general partner (“Rosewood”)
11. Authorizing Resolution of Rosewood

#### **SECTION III - OTHER TRANSACTION DOCUMENTS**

12. METRO Grant Agreement
13. Property Tax Exemption Documents and Certificates
14. Bridge Loan Documents

#### **SECTION IV – BOND RELATED DOCUMENTS**

15. Surplus Cash Note – Note covering the payment of Additional Interest
16. Allonge to Surplus Cash Note – Directs the Borrower to pay Additional Interest to Bond Purchasers
17. Second Position Deed of Trust – Secures payment of Additional Interest
18. Subordination Agreement regarding Second Position Deed of Trust – Required by HUD to subordinate Second Deed of Trust to the HUD-insured Deed of Trust
19. Assignment of Second Position Deed of Trust – Assigns rights in Second Deed of Trust to Bond Purchasers
20. Tri-Party Agreement – Outlines structure of Developer Fee loan from Developer to Authority and Authority to Partnership
21. Promissory Note Authority to Developer – Documents loan from Developer to Authority
22. Promissory Note Partnership to Authority – Documents loan from Authority to Partnership

Rosewood Terrace List of Financing Documents

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23. Third Position Deed of Trust – Secures payment of the loan from Authority to Partnership
24. HUD to subordinate Third Deed of Trust to the HUD-insured Deed of Trust
25. Construction Fund Agreement

# LOAN AGREEMENT HACC DISPOSITION PROCEEDS

## Name of Project: Rosewood Terrace

This Loan Agreement (this “**Agreement**”) is entered into between Pedcor Investments-2016-CLV, Limited Partnership, a Oregon Limited Partnership (“**Owner**”) and the Housing Authority of Clackamas County (“**HACC**”) for the use of Public Housing Disposition Proceeds, as defined in Section 1 below, (“**Proceeds**”) for the Rosewood Terrace.

This Agreement includes the following attachments:

- |                      |  |
|----------------------|--|
| A. Legal Description | C. HUD 52531 Housing Assistance Payment (HAP) Contract     |
| B. Sources and Uses  | D. PBV Affordability Requirements                          |
|                      | E. Affirmative Marketing and MBE/WBE Outreach Requirements |

The parties, in consideration of the mutual promises and obligations set forth below, agree as follows:

1. **DEFINITIONS.** Capitalized terms in this Agreement and in the other Loan Documents have the following definitions:
  - a. **Agreement to enter into a Housing Assistance Payments Contract (AHAP).** An agreement to enter into a written contract between the Owner and HACC, and approved by HUD, for the purpose of providing Project Based Voucher (PBV) housing assistance payments to the Owner on behalf of Eligible Families. (HUD Form 52531A – Attachment D)
  - b. **Affordability Requirements.** The Affordability Requirements refer to the restrictions on rents and tenant incomes set forth in Section 10 below.
  - c. **Annual Income.** Reported income from all sources for the householder and other household members related to the householder for a 12 month period as defined in See 24 CFR §5.609
  - d. **Contract units.** The housing units covered by AHAP contract. The contract units are described in Exhibit A.
  - e. **Eligible Family.** The persons approved by HACC to reside in a contract unit with assistance under the PBV program.
  - f. **Housing Choice Voucher Program (HCV).** Federal rental assistance program where tenant pays no less than 30% of income on rent plus utilities and program covers the remaining balance. Rents are limited to not exceed 120% of Fair Market Rents. Participants must be at or below 50% of Area Median Income to qualify for assistance. Two types of assistance:
    - i. **Tenant Based** where rent is tied to family that finds private market rental unit; or
    - ii. **Project Based** where rent is tied to a particular unit.
  - g. **Housing Assistance Payment (HAP) Contract.** The HAP Contract is a written agreement entered upon completion of Construction between the Owner and HACC. (Part 1 and Part 2 included as Attachment E).
  - h. **Income.** Refers to all sources of revenue received by every adult household member. For PBV’s a family must be at least very low income. Income limits are defined as:
    - i. **Low-Income.** A Low-Income household is one whose total income does not exceed 80% of the County’s Median Income
    - ii. **Very Low-Income.** A Very Low-Income household is one whose total income does not exceed 50% of the County’s Median Income

- iii. **Extremely Low-Income.** An Extremely Low-Income household is one whose total income does not exceed 30% of the County's Median Income.
- iv. **Median Income.** Median Income means the median income for Clackamas County, adjusted for family size, as published by HUD.
- i. **Loan Documents.** The Loan Documents are this Agreement, the Promissory Note, the Trust Deed, and the Declaration of Land Use Restrictive Covenants, all of which are incorporated into this Agreement by reference.
- j. **PBV Unit.** Those units in the Project which have rental assistance with HUD funding that limits the tenant portion of rent paid not to exceed 30% of income and balance remaining of rent is subsidized by the U.S. Department of Housing and Urban Development (HUD). The PBV units are designated in Section 5 below.
- k. **PBV Regulation.** HUD's regulations and requirements for the PBV units are located at 24 CFR 983. Should anything in this Agreement or the other Loan Document conflict with the PBV regulations, the PBV regulations shall prevail.
- l. **Period of Affordability.** As set forth in Section 9 below.
- m. **Project.** The project is for new construction of 212 units of affordable housing to serve families at or below 60% AMI to be built on the Property defined below. Additionally, the project involves the demolition of existing structures currently located at the Property.
- n. **Property.** The property is located at 8810 & 8850 SE Otty Rd, Happy Valley, OR 97086. The legal description of the property is set forth in Attachment A.
- o. **Public Housing Disposition Proceeds ("Proceeds").** Funds generated from the demolition and disposition of public housing units as authorized under Section 18 of the Housing Act of 1937, as amended, and 24 CFR 970.
- p. **Section 8.** Same as definition and also known as HCV.
- q. **Use Agreement.** Contract between HACC, the Owner and HUD that binds the Owner to specific requirements concerning the use of Proceeds.
- r. **Transfer.** For purposes of this Agreement, "Transfer" shall mean any sale, assignment or transfer, whether voluntary or involuntary, of (i) any rights and/or obligations under the **Loan Documents** and/or (ii) any interest in the Project; provided, however, that "Transfer" shall not mean (a) the leasing of one or more Units to an occupant in compliance with the Regulatory Agreement; or (b) the transfer of the Project to a limited partnership of which **Owner** (or a limited liability company of which **Owner** is the sole member) is the general partner or to a limited liability company of which **Owner** is the managing member. County shall approve other Transfers requested by **Owner** if the proposed transferee has the necessary qualifications and experience to construct the Project and/or own, operate and maintain the Project, as applicable, as contemplated by this Agreement and the Regulatory Agreement, as reasonably determined by **HACC**.

## 2. USE OF PROCEEDS

- a. Owner acknowledges that the approved use of **Proceeds** is limited to the development of units that will be used exclusively as units assisted with funds from Section 8 of the U.S. Housing Act of 1937 for a period of not fewer than 30 years. Prior to expending any **Proceeds**, **HACC** shall enter into a Use Agreement in a form acceptable to the Portland Office of Public Housing to assure the units are developed and operated as Section 8 units for a period of not less than 30 years. The required Use Agreement must be recorded in first priority position against each property where **Proceeds** are used.

## 3. PROCEED LOAN TERMS

- a. **Amount and Purpose:** **HACC** shall loan **Proceeds** in the amount of One Million, Six Hundred and Five Thousand Dollars (\$1,605,000) to the **Owner** for the Project. The **Proceeds** will be used for the development of the Project. Eligible activities include acquisition, demolition, construction, engineering and architectural services and other related activities. Use of the Proceeds for any other purpose,

without the expressed written consent of **HACC** is prohibited and may constitute a breach of this Agreement.

b. **Loan Terms:**

- i. The **Proceeds** will be provided as a 3.0% simple interest loan, deferred until maturity, sale or refinance with a term of Fifty-Five (55) years.
- ii. The **Proceeds** are tied to affordability restrictions of not less than 60 years, recorded against the land of the Project in the form of a regulatory agreement acceptable to the Parties.
- iii. Loan repayment, satisfaction or reconveyance shall not relieve Borrower of any performance, affordability or programmatic obligations and requirements of the HAP Contract.
- iv. Notwithstanding the loan terms described above, the entire amount of the loan (\$1,605,000) together with any accrued interest or fees, shall be paid in full upon the sale, assignment or other transfer of title to the Property; or the date **Owner** or its agents or subcontractors is otherwise in default under any of the **Loan Documents** (including but not limited to the failure to meet the Affordability Requirements of Section 10 below). Exceptions: Neither a transfer nor assignment of a limited partner's interest in **Owner** nor the removal of a general partner for cause, shall cause the Loan to be due and payable, or a sale pursuant to the **Owner's** buyout option and right of first refusal will not cause the Loan of **Proceeds** to be due and payable. The repayment of the principal amount, together with any accrued interest or fees, shall be payable pursuant to and in accordance with the cash flow waterfall as outlined within the Amended & Restated Agreement of Limited Partnership of the Owner.

- c. **Recording Requirement:** The **Owner** agrees to record, or cause to be recorded, the Trust Deed and the Declaration of Land Use Restrictive Covenants, promptly after signing and acquisition of the real property.

4. **PAYMENT OF OBLIGATION.**

- a. The loan and accrued interest shall be repaid in full upon the earlier of the Maturity Date, the sale, assignment or other transfer of title to the Property without Lender's consent, or the date Owner or its agents or subcontractors is otherwise in default under any of the Loan Documents.
- b. All payments on the Loan shall be applied first to the interest due on the Loan and the then the remaining balance shall be applied to the principal.
- c. Payments shall be made at such place as **HACC** may designate in writing and shall be in the manner and amount as is described in the Promissory Note between the parties relating to this project.

5. **PBV UNITS**

- a. 20 units in the project are PBV Units. The PBV units are as follows:

<b>Bedroom Size</b>	<b>TOTAL UNITS</b>
1-bedroom (tenant) unit:	11
2-bedroom (tenant) unit:	8
3-bedroom (tenant) unit:	1
<b>TOTALS</b>	20

- b. The PBV units are fixed units as defined at by the HAP Contract.
- c. See Section 10 below and Attachment E for rent and income limits for the PBV Units.
- d. Any change in units must be done through a formal amendment to the HAP Contract.
- e. During the term of the HAP contract, the owner must lease all contract units to eligible families selected and referred by **HACC** (24 CFR 983.251).

6. **SOURCES AND USES OF FUNDS**

All sources and uses of funds for the acquisition phase of the Project are set forth in Attachment B. The Uses Statement shall specify by line item the source of funds for each such line item. Owner certifies that (a) it has, or will obtain, commitments of the funds from each of the sources identified, (b) the sources of funds are sufficient to fund the project in full, and (c) **Proceeds** shall only be used for the development of units that will be used exclusively as PBV assisted units.

**7. PBV REGULATIONS**

The **Owner** agrees to comply with the PBV Regulations and with the other requirements of the **Loan Documents**.

**8. ENVIRONMENTAL REVIEW**

- a. The environmental effects of each activity carried out with the **Proceeds** and PBV funds must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), as amended, and the related authorities in 24 CFR Parts 50 and 58.
- b. **HACC** is responsible for environmental review, decision-making, and action for each activity that it carries out with Proceeds, in accordance with 24 CFR part 58. **HACC** will not commit any **Proceeds** toward construction of the Project before completion of the environmental review and approval of the request for release of funds and related certification, except as authorized by 24 CFR Part 58.
- c. **Proceeds** cannot be used for acquisition or construction in identified special flood hazard areas unless the Project is subject to the mandatory purchase of flood insurance as required by Section 102(a) of the Flood Disaster Protection Act of 1973, as amended from time to time.
- d. In the event that changes or modifications to the approved **Proceed** activities are necessary, the **Owner** must, prior to any additional commitment or expenditure of funds, submit all necessary supplemental environmental review information and data to **HACC** for the purpose of updating the environmental review record.

**9. PERIOD OF AFFORDABILITY**

- a. The Period of Affordability for this Project shall be 60 years beginning on the first day after the final Certificate of Occupancy is issued for the Project, without regard to the term of the Loan, or the transfer of ownership, except as noted in subsection b below.
- b. Termination of Period of Affordability. In accordance with the Use Agreement, the Period of Affordability shall be terminated upon foreclosure or transfer in lieu of foreclosure, but shall be revived according to the original terms if during the original Period of Affordability, the owner of record before the foreclosure or deed in lieu of foreclosure, or any entity that includes the former **Owner** or any partner or those with whom the former **Owner** has or had family or business ties, or Corporate parent, subsidiary, or entity under the control of a majority of the Owners of the Owner, obtains an ownership interest in the Project or Property.

**10. AFFORDABILITY REQUIREMENTS (RENTS AND TENANT INCOMES)**

- a. To ensure compliance with the PBV Rules all of the PBV Units must be rented to tenants whose incomes at the time of the tenant's initial occupancy, are less than or equal to fifty percent (50%) of the Median Income.
- b. Project-based rent subsidy will be in accordance with 24 CFR 983.301: At time of award, **HACC** determined this Property is located in census tract 222.01, a qualified census tract.
- c. **HACC** has determined per the terms of the original RFP rent to owner including the utility allowance for PBV's with **Proceeds** must not exceed the lowest of:
  - i. 110% of the Fair Market Rents;
  - ii. The reasonable rent; or
  - iii. The rent requested by the **Owner**.
- b. Over-income Tenants: If tenant rent equals rent to the **Owner**, the unit shall be removed from the HAP Contract 180 days following the last housing assistance payment on behalf of the family. Owner may request to substitute a different unit for the unit removed as a HAP Contract Amendment.



- c. If a unit is vacant for a period of 120 or more days since **Owner** notice of vacancy (and notwithstanding the good faith efforts of the PHA to fill such vacancies) **HACC** may give notice to the **Owner** to remove the unit from the HAP contract resulting in the loss of PBV assistance for that unit pursuant to 24 CFR 983.211.
- d. Certification and Recertification of Tenant Income: **HACC** will certify tenant income annually.

#### **11. TENANT SELECTION CRITERIA; LEASE REQUIREMENTS**

- a. The **Owner** is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. The **Owner** must promptly notify in writing any rejected applicant of the grounds for any rejection pursuant to 24 CFR 983.253 a)(2) and (a)(3).
- b. The **Owner** must promptly notify **HACC** in writing (mail, fax, or e-mail) within 5 business days of learning about any vacancy or expected vacancy in a contract unit. After receiving such notice, **HACC** will make every reasonable effort to refer families to the **Owner** within 10 business days of receiving such notice from the **Owner**.
- c. Tenants must be offered renewable lease agreements with an initial duration of at least one year, unless a shorter time period is mutually agreed upon by the tenant and the landlord.
- d. **HACC** will require PBV unit leases include HACC's lease and form HUD 52530.c Tenancy Addendum for Section 8 Project Based Voucher Program and must comply with 24 CFR 983.256.
- e. During the course of the tenant's lease, the **Owner** may not terminate the lease without good cause. "Good cause" does not include a business or economic reason or desire to use the unit for an individual, family or non-residential rental purpose. Upon expiration of the lease the **Owner** may renew the lease; refuse to renew the lease for good cause; or refuse to renew the lease without good cause. To terminate or refuse to renew tenancy, **Owner** must serve written notice on the tenant specifying the grounds for the action at least 30 days before the termination of the tenancy.

#### **12. Agreement to Enter into a Housing Assistance Payment Contract**

The **Owner** acknowledges that in order to offer PBV assistance and **Proceeds** on new construction, **HACC** and the **Owner** must enter into an AHAP Contract in the form required by HUD at 24 CFR 983.152 (a). The AHAP must be executed before any construction begins and after the subsidy layering review and environmental reviews are completed.

#### **13. PROPERTY STANDARDS**

- a. Upon completion, PBV units must meet all of the applicable Property Standards in 24 CFR 983.11 for new construction. **HACC** staff will periodically inspect the Project during construction and at completion per 24 CFR 983.103 to assure compliance with the Property Standards.
- b. Upon project completion and throughout the Period of Affordability, the Project must be maintained so that it continues to meet the property standards set forth in 24 CFR 92.251 and 24 CFR 983.103.
- c. The **Owner** must maintain the unit in accordance with HQS standards. Failure to maintain in accordance with HQS may result in termination, suspension or reduction of housing assistance payments and termination of the HAP contract pursuant to 24 CFR 982.404.

#### **14. INDEMNIFICATION AND INSURANCE**

**Owner** agrees to indemnify, defend and hold harmless **HACC** and its elected officials, officers, agents and employees against all liability, loss and costs arising from actions, suits, claims or demands, except when due to the **HACC's** sole negligence or intentional misconduct, arising from performance of this **Agreement**.

**Owner** shall maintain all-risk property insurance in the amount of the full replacement value of the property, commercial general liability insurance in the minimum amount of \$ 21,000,000 per occurrence, \$42,000,000 aggregate with a \$5,000,000 umbrella, and Rent Loss insurance in an amount equal to 12 months rental income. **Owner** shall provide **HACC** proof of insurance in the required amounts upon execution of this **Agreement**, and at any other time upon request of **HACC**. **Owner** shall give **HACC** no less than 30 days'

notice if there is a cancellation, nonrenewal or material change of **Owner's** insurance. See paragraph 1.12 of the Trust Deed for additional insurance requirements.

#### **15. EVENTS OF DEFAULT**

As included in the HAP Contract any of the following is a default by the **Owner** under the **Loan Documents**:

- a. The **Owner** has violated any obligation under any other housing assistance payments contract under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).
- b. Nonpayment. Failure to pay any amount due under the **Loan Documents**, before the due date.
- c. Failure of **Owner** to comply with the Affordability Requirements at any time during the Period of Affordability.
- d. Breach of Other Covenants. Material failure to perform or abide by any other condition of the **Loan Documents**.
- e. Misinformation. Falsity when made in any material respect of any representation, warranty, or information furnished in the **Loan Documents** or in the application for Proceeds.
- f. Other Default. As included in the **Trust Deed**.

**HACC** agrees that any cure of any default made or tendered by Investor Member shall be deemed to be a cure by **Owner** and shall be accepted or rejected on the same basis as if made or tendered by **Owner**.

#### **16. REMEDIES FOR DEFAULT**

- a. In the event of default, either party may pursue any legal or equitable remedy available to it. Without limiting the foregoing, **HACC** may (i) declare the entire amount of the Loan due and payable at once, or (ii) extend the Period of Affordability for a period equal to the length of the period during which noncompliance with the Affordability Requirements existed.
- b. **HACC** and any tenant or applicant who meets the income limitation applicable under 24 CFR 983 (whether prospective, present or former occupant) shall be entitled, for any breach of the provisions hereof, and in addition to all other remedies provided by law or in equity, to enforce specific performance by the Owner and/or Recipient of its obligations under this Agreement in state court.

#### **17. AFFIRMATIVE MARKETING**

The **Owner** agrees to implement and follow a Clackamas County and HUD approved Affirmative Marketing Plan. The **Owner** shall maintain records evidencing compliance with the Plan.

#### **18. MINORITY/WOMEN'S BUSINESS**

In accordance with Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise), the **HACC** has adopted procedures and requirements for projects for the purpose of encouraging the use of minority and women's business enterprises. The Owner certifies that it will follow and implement the adopted procedures and requirements in **Attachment E**.

#### **19. NON-DISCRIMINATION**

- a. The **Owner** must comply with all applicable federal, state, and local laws prohibiting discrimination on the basis of age, sex, marital status, familial status, religion, race, creed, color, sexual orientation, nationality, the presence of any sensory, mental or physical handicap, or other protected class. These requirements apply to both employment opportunities and the provision of housing and are specified in
  - i. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 200d et seq.);
  - ii. Title VI; Civil Rights Act of 1968, Title VIII, as amended;
  - iii. Equal Employment Opportunity, Executive Order 11246, as amended;
  - iv. Section 3 of the Housing and Urban Development Act of 1968 as may be amended;
  - v. Section 504 of the Rehabilitation Act of 1973 as may be amended;
  - vi. The Fair Housing Act of 1988 as may be amended (42 U.S.C. 3601-3620);

- vii. Equal Opportunity in Housing (Executive Order 11063, as amended by Executive Order 12259);
  - viii. Age Discrimination Act of 1975, as amended (42 U.S.C. 6101); and
  - ix. Americans with Disabilities Act of 1990 as may be amended (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225).
- b. **Owner** shall maintain data on the extent to which each racial and ethnic group and single-headed household (by gender of head of household) have applied for and rented units in the Project.

## **20. DISBURSEMENT OF FUNDS**

- a. **Owner** agrees to request funds under this Agreement only when they are needed for payment by **Owner** of specific allowable costs and only in amounts needed to pay such costs. The payment request must be accompanied by source documentation for actual expenses.
- b. **HACC** shall verify requested amounts for satisfactory completion prior to payment. Payments shall be based upon work completed and approved by **HACC**.
- c. **HACC** will not disburse any **Proceeds** until all the Loan Documents are signed and the following documents are received:
  - i. Copy of the Management Agreement;
  - ii. Affirmative Marketing Plan;
  - iii. Proof of Insurance;
  - iv. Copy of PBV tenant lease; and
  - v. Copy of the written tenant selection criteria.
- d. **Owner** agrees to submit the following documents to **HACC**:
  - i. Cost certification audit (this item should be submitted within 60 days of completion of construction and lease up, and is required to receive IRS Form 8609;
  - ii. Annual operating budget 60 days prior to beginning of the fiscal year for the Project;
  - iii. Replacement reserve withdrawals within 30 days of such withdrawals, unless HACC approval is required in advance of any withdrawal;
  - iv. Operating reserve withdrawals within 30 days of such withdrawals, unless HACC approval is required in advance of any withdrawal; and
  - v. Annual project financial statements/audit within 90 days of the end of the Project's fiscal year.

## **21. CONTRACTOR DEBARMENT AND SUSPENSION**

In order to comply with the requirements of 24 CFR 983.154(d) and (e), the **Owner** must obtain a certification guaranteeing that no participants in lower tier covered transactions, having to do with the Project financed in whole or in part by **Proceeds**, are currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in federal projects.

## **22. SECTION 3 REQUIREMENTS**

Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations of 24 CFR part 135, as amended, applies to:

- Projects for which HUD's share of the project cost exceeds \$200,000; and
- Contracts and subcontracts awarded on projects for which HUD's share of project costs exceeds \$200,000 and the contract or subcontract exceeds \$100,000.

Section 3 requires that to the greatest extent feasible opportunities for training and employment in connection with planning and carrying out the Project be given to low-income residents of the Project area, and contracts for work in connection with the Project be awarded to business concerns, including but not limited to individuals for firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the Project area.

### **23. LABOR STANDARDS**

Since the agreement covers the development of nine or more PBV units, the **Owner** and the **Owner's** contractors and subcontractors acknowledge and agree that they will comply with 24 CFR 983.154, Davis-Bacon, and the Contract Work Hours and Safety Standards Act, Department of Labor Regulations in 29 CFR part 5 and other applicable federal labor relations laws and regulations.

### **24. HAZARDOUS MATERIAL AND LEAD BASED PAINT**

For all units in the Project (not just PBV Units) and for common areas, the **Owner** shall comply with the **Trust Deed** and HUD Lead-Based Paint Regulations (24 CFR Part 35 and 24 CFR 982.401(j)) issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 USC Sections 4831 et. seq. and 24 CFR 983.101) as amended.

### **25. DISPLACEMENT, RELOCATION, ACQUISITION, AND REPLACEMENT**

**Owner** shall comply with all the regulations and laws regarding displacement, relocation, acquisition and replacement of housing, including those contained in 24 CFR 92.353 and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (42 USC 4601-4655).

### **26. CONFLICT OF INTEREST**

Unless an exception is granted by **HACC** pursuant to 24 CFR 92.356(f)(2), no developer, owner or sponsor of the Project, or officer, employee, agent or consultant of the, developer or sponsor, may occupy a PBV Unit in the Project.

### **27. FAITH BASED ACTIVITIES**

- a. **Owner** acknowledges that Organizations that are directly funded with **Proceeds** may not engage in inherently religious activities, such as worship, religious instruction, or proselytizing as part of the assistance funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the assistance funded under this part, and participation must be voluntary for the beneficiaries of the assistance provided.
- b. **Owner** acknowledges that an organization that participates in a **Proceeds** funded program shall not, in providing program assistance, discriminate against a program beneficiary, or prospective program beneficiary, on the basis of religion or religious belief.
- c. **Owner** acknowledges that **Proceeds** may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. **Proceeds** may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part.

### **28. RECORDS**

- a. **Owner** shall keep such records as are necessary to demonstrate compliance with all parts of this **Agreement**, including but not limited to the affordability requirements, tenant lease provisions, property standards, affirmative marketing, anti-discrimination, Section 3, MBE/WBE, environmental review, relocation/displacement/property acquisition, labor requirements, lead-based paint, conflict of interest, debarment and suspension and intergovernmental review.
- b. **Owner** must annually provide tenant eligibility records to **HACC**.
- c. Record Retention Periods
  - i. Except as stated in this subparagraph, records must be retained for five years following the Date of the Certification of Occupancy.
  - ii. **Owner** shall maintain records pertaining to each tenant's income verifications, project rents and project inspections for at least the most recent five year period, until five years after the Period of Affordability has expired.
  - iii. Written agreements must be retained for five years after the **Agreement** terminates.
  - iv. Records covering displacement and acquisition must be retained for five years after the date by which all persons displaced from the Property and all persons whose property is acquired

for the Project have received the final payment to which they are entitled under 24 CFR 990.325.

- v. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.
- d. Access to Records. HUD, the Comptroller General of the U.S., **HACC**, and any of their representatives, have the right of access to any pertinent books, documents, papers or other records, in order to make audits, examinations, excerpts or transcripts, or otherwise determine compliance with PBV regulations.
- e. Any duly authorized representative of the Secretary of HUD, the Comptroller General of the United States, or **HACC** shall at all reasonable times have access to and the right to inspect, copy audit, and examine all books, records and other documents relating directly to the Owner's receipt and disbursement of the Proceeds, as well as access to the Project. Upon request, the Recipient must assist, or must cause Owner to assist, **HACC** by serving notice to affected tenants, as required under Oregon Law.

### **29. MONITORING**

- a. HACC staff may make an on-site visit to monitor compliance with the PBV rent and occupancy standards at any reasonable time.
- b. HACC will monitor the performance of the Owner to ensure compliance with the requirements of this Agreement. During the Period of Affordability, the monitoring will be conducted in accordance with 24 CFR 982.405 and will include on-site inspections and a review of all records required in Section 26 above.
- c. Upon completion of the project, the owner shall provide evidence of completion to HACC as prescribed by 24 CFR 983.155 (b).

### **30. WAIVER**

Failure by either party to enforce any right under this **Agreement** shall not be deemed to be a waiver of that right or of any other right.

### **31. SUCCESSORS AND ASSIGNS**

This **Agreement** shall be binding on and inure to the benefit of the heirs, successors, and assigns of each party, provided that written consent is obtained from the other party for such assignment.

### **32. AUTHORITY TO SIGN**

Each party signing this **Agreement**, and the other **Loan Documents**, represents that it has full power and authority to enter into this **Agreement** and all other documents contemplated thereby, and the persons signing this **Agreement** for such party, if such party is not an individual, have full power and authority to sign for such party and to bind it to this **Agreement**, and to sell, transfer and convey all right, title, and interest in and to the Property in accordance with the **Loan Documents**. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority, or other party is required.

### **33. Restrictions on Transfers**

- a. Transfer shall not mean (i) the leasing of one or more Units to an occupant in compliance with the Regulatory Agreement; or (ii) the transfer of the **Project** to a limited partnership of which **Owner** (or a limited liability company of which **Owner** is the sole member) is the general partner or to a limited liability company of which **Owner** is the Managing Partner.
- b. HACC must approve other Transfers requested by **Owner** if the proposed transferee has the necessary qualifications and experience to construct the **Project** and/or own, operate and maintain the **Project**, as applicable, as contemplated by this Agreement and the Regulatory Agreement, as reasonably determined by HACC.

**34. EFFECTIVE DATE**

The Effective Date of this Agreement is the date it is signed by all parties.

**Pedcor Investments-2016-CLV, Limited Partnership an Oregon limited partnership**

By: Rosewood Terrace Housing Company, LLC  
Its General Partner

By: Pedcor Investments, A Limited Liability Company  
Its Manager

By: \_\_\_\_\_  
Thomas G. Crowe  
Executive Vice President

**HOUSING AUTHORITY OF CLACKAMAS COUNTY**

Chair: Jim Bernard  
Commissioner: Sonya Fischer  
Commissioner: Ken Humberston  
Commissioner: Paul Savas  
Commissioner: Martha Schrader  
Resident Commissioner: Paul Reynolds

Signing on Behalf of BCC:

\_\_\_\_\_  
Printed Name: Thomas G Crowe  
Title: Executive Vice President  
Phone: (317) 587-0320  
Email: tgcrowe@pedcor.net  
Tax ID#

\_\_\_\_\_  
Date

\_\_\_\_\_  
*(signature)*  
Printed Name:  
Title:

\_\_\_\_\_  
Date

## **Attachment A. Legal Description**

### PARCEL 1:

Part of Section 28, Township 1 South. Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows, to-wit:

Beginning 88 rods East of the Southwest corner of the Samuel W. McMahan Homestead Claim Notification No.5746, as described in Volume "S". Page 295. Deed Records, which beginning point is the Southeast corner of the Orren Battin tract described in Book 120. Page 110. Deed Records; thence East along the North line of the W.S. Buckley Donation Land Claim, a distance of 16 rods to the Southwest corner of the Shepherd tract described in Book 235, Page 235. Deed Records ; thence North along the West line of said Shepherd tract 40 rods to the North line of the Thomas E. Battin tract described in Book "H". Page 216. Deed Records; thence West along said North line 16 rods to the Northeast corner of the Orren Battin tract aforementioned; thence South 40 rods to the point of beginning.

EXCEPTING THEREFROM that portion lying within that tract described in deed to Clackamas County in Fee No. 77 17914.

ALSO EXCEPTING THEREFROM that portion conveyed to the State of Oregon, by Deed recorded under Recorder's Fee No. 71 30200.

### PARCEL 2:

Part of the Southwest one-quarter of Section 28. Township 1 South. Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning 58 rods East of the Southwest corner of the Donation Land Claim No. 5746, known as the Donation Land Claim of Samuel W. McMahan; running thence North 88° 55' East, 264 feet to an iron pipe which is the true point of beginning of the tract herein described; running thence North 3° 03' West, 640.2 feet to an iron pipe; thence North 88° 57' East, 231 feet to an iron pipe; thence South 3° 03' East, 640.35 feet to an iron pipe; thence South 88° 55' West, 231 feet to the true place of beginning.

EXCEPT that portion conveyed to the State of Oregon by deed recorded under Recorder's Fee No. 72 12686.

**Attachment B. Sources and Uses of Funds**

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Acquisition, Rehabilitation & New Construction

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**Attachment C. HUD 52531 Housing Assistance Payment (HAP) Contract**



## Attachment D. PBV Affordability Requirements

### 1. Fair Market Rents

US Department of Housing and Urban Development  
Portland-Vancouver, OR-WA  
Effective: October 2017

	Fair Market Rent (FMR)	110% FMR
1 Bedroom	\$1132	\$1245
2 Bedroom	\$1330	\$1463
3 Bedroom	\$1935	\$2128

### 2. Utility Allowance

All Electric Only  
Effective: March 2017

1 Bedroom	\$74
2 Bedroom	\$92
3 Bedroom	\$106

**Notes:**

Utility Allowance: The utility allowances prepared by the HACC shall be used when adjusting rents. Engineered Utility Allowances may be proposed by Recipient for the Project, but must be approved by the State and County.

### 3. Initial Rents to Owner:

	0 Br	1 Br	2 Br	3 Br	4 Br	5 Br	TOTAL
Total Property Configuration including non-PBV		112	92	8			212
Total Project Based Vouchers		11	8	1			20
Bathrooms		1	2	2			
504 Physically Accessible Units		6	5	1			12
504 Sensory Accessible Units		3	2	1			6
Proposed PBV Rents (Gross Rent)		1245	1463	2128			
All Electric - Utility Allowance		74	92	106			
<b>Contract Rent</b>		<b>1171</b>	<b>1371</b>	<b>2022</b>			

#### 4. Redetermination of Rent to Owner

Census Tract 222.01 is a Qualified Census Tract; therefore, Rent to owner upon the redetermination, cannot exceed the lowest of:

- (1) An amount determined by the PHA, not to exceed 110 percent of the applicable fair market rent for the unit bedroom size minus any utility allowance;
- (2) The reasonable rent; or
- (3) The rent requested by the owner

HACC (the "PHA") may elect (within the AHAP or HAP contract, as applicable) to not reduce the rents to Owner below the Initial Rent to Owner per § 983.301(e) which states:

*"The rent to the owner for each contract unit may at no time exceed the reasonable rent, except in cases where, the PHA has elected within the HAP contract not to reduce rents below the initial rent to owner and, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent."*

HACC will make every effort to not reduce rents below the Initial rents if Congressional funding is adequate, FMRs do not drop more than 10% and rent reasonableness can be passed.

#### 5. Project Based Voucher Tenant Income Limits

US Department of Housing and Urban Development  
Effective: April 2017

Family Size	Very Low-50%	Extremely Low 30%
1	26150	15700
2	29900	17950
3	33650	20420
4	37350	24600
5	40350	28780
6	43350	32960
7	46350	37140
8	49350	41320
9	52300	34450
10	55300	36450
11	58300	38400
12	61300	40350
13	64300	42350

Note: All schedules will be updated from time to time when adjustments are required by HUD.

## ATTACHMENT E.

### OUTREACH TO MINORITY-OWNED AND WOMEN-OWNED BUSINESSES ENTERPRISES (MBE/WBE)

Clackamas County Community Development Division (CCCDD) will take the following steps to ensure, to the maximum extent possible, that small and minority-owned business enterprises and women-owned business enterprises (MBE/WBE) are used whenever possible and economically feasible:

- ◆ Include language in all notices and advertisements related to the HOME Program which states that MBE/WBE are encouraged to apply for such funds and to participate as suppliers, contractors, professional service providers, etc. on projects assisted with HOME funds. All informational and documentary materials will also include this language.
- ◆ Include qualified MBE/WBE on any contractor or solicitation lists.
- ◆ Coordinate with the Oregon Office of Minority, Women and Emerging Small Business to maintain a list of eligible MBE/WBE. This list will be made available to HOME recipients.
- ◆ When necessary and appropriate, utilize the services and assistance of the US Department of Commerce's Small Business Administration and Minority Business Development Agency.
- ◆ Through contractual agreement, ensure that recipients of HOME program funds solicit MBE/WBE whenever they are potential sources.
- ◆ When feasible, divide total requirements into smaller tasks or quantities to permit maximum participation by MBE/WBE.
- ◆ When feasible, establish delivery schedules which will encourage participation by MBE/WBE.
- ◆ In conjunction with HOME-Assisted Projects, CCCDD will:
  - ◆ Encourage project sponsors, developers and Recipients to include, to the maximum extent feasible, the use of MBE/WBE in providing supplies, professional and construction services.
  - ◆ Request that project sponsors/developers maintain statistical data and identify jobs which have been bid by MBE/WBE. CCCDD may inspect the project site to confirm the percentage of minority and women laborers working at the site.

Monitor project sponsors, developers and Recipients to determine their compliance efforts in promoting the use of MBE/WBE in specific procurement areas, i.e. supplies, professional services, and construction services.

**B.O.**

AFTER RECORDING RETURN TO:  
Housing Authority of Clackamas County  
13930 S. Gain Street  
Oregon City, OR 97045

STATUTORY NOTICE:  
The name and address of the entity holding a lien or other interest created by this instrument are set forth below, and the tax account number of the property subject to the lien or in which the interest is created is: Housing Authority of Clackamas County

Legal Description – Exhibit "A" Attached

## DECLARATION OF LAND USE RESTRICTIVE COVENANTS

### HOUSING AUTHORITY OF CLACKAMAS COUNTY DISPOSITION PROCEEDS

#### **Name of Project: Rosewood Terrace Apartments**

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS ("**Declaration**") dated \_\_\_\_\_, 2017 by Pedcor Investments-2016-CLV and its successors and assigns ("**Owner**") is given as a condition precedent to the award of U.S. Department of Housing and Urban Development ("**HUD**") Disposition Proceeds ("**PROCEEDS**") by the Housing Authority of Clackamas County, a public corporation created pursuant to the Housing Authorities Law of ORS 456, having its office at 13930 S. Gain Street, Oregon City, OR 97045 ("**HACC**") together with any successor to its rights, duties, and obligations.

Owner is the owner of the Rosewood Terrace Apartments, a new-construction 212-unit affordable rental housing apartment complex located at \_\_\_\_\_ ("**Project**"). The Legal Description of the property on which the Project is located ("**Property**") is attached as Exhibit A.

Owner has applied to the HACC and entered into HACC Loan Agreements (plurally referred to as "**Agreement**") for an award to the Project of PROCEEDS in amounts not to exceed **\$1,605,000.00**. Pursuant to the terms of the Agreement, Owner has represented to the HACC restrictions regarding rents and tenant eligibility that Owner will maintain for the Period of Affordability specified in the Agreement. HACC has entered into agreements with Owner pursuant to which Owner assumes all responsibilities of the Project pursuant to the Agreement. This Declaration is subject to the terms and conditions of the Loan Agreement.

In consideration of the promises and covenants set forth below and of other valuable consideration, the receipt and sufficiency of which is acknowledged, the Owner and the HACC agree as follows:

#### **SECTION 1 - DEFINITIONS**

All the words and phrases used in this Declaration shall have the same meaning as when used in the Agreement and in 24 CFR 900 ("**HUD Public Housing Regulations**") unless the context requires otherwise.

#### **SECTION 2 - RECORDING AND FILING; COVENANTS TO RUN WITH THE LAND**

- (A) Promptly after this Declaration is signed by Owner and HACC, Owner shall record this Declaration and all amendments and file in the official public land deed records of Clackamas County, and shall pay all fees and charges incurred in connection therewith. Upon recording, the Owner shall immediately transmit to the HACC a signed original or certified copy of the recorded Declaration showing the date, deed book and page numbers of record.
- (B) The Owner intends, declares, and covenants, on behalf of itself and all future Owners and operators of the Project during the term of this Declaration, that this Declaration, and the covenants and restrictions set forth in this Declaration regulating and restricting the use, occupancy and transfer of the Project: (1) shall be and are covenants running with the Project land, encumbering the Project for the term of this Declaration, binding upon the Owner's successors in title and all subsequent Owners and Operators of the Project; (2) are not merely personal covenants of the Owner; and (3) shall bind the Owner (and the benefits shall inure to the HACC and any past, present or prospective tenant of the Project) and its respective successors and assigns during the term of this Declaration. The Owner agrees that any and all requirements of the laws of the State of Oregon to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements of privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the Project. For the term of this Declaration, each and every contract, deed or other instrument hereafter signed conveying the Project or portion thereof shall expressly provide that such conveyance is subject to this Declaration, provided, however, the covenants contained herein shall survive

and be effective regardless of whether such contract, deed, or other instrument hereafter signed conveying the Project or portion thereof provides that such conveyance is subject to this Declaration.

- (C) The Owner covenants to obtain the consent of any prior recorded lienholder on the Project to this Declaration.

### **SECTION 3 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER**

**The Owner represents, covenants, and warrants as follows:**

- (A) The Owner (1) is qualified to transact business under the laws of the State of Oregon, (2) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (3) has the full legal right, power and authority to sign and deliver this Declaration.
- (B) The execution and performance of this Declaration by the Owner (1) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, (2) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it or the Project is bound, and (3) will not result in the creation or imposition of any prohibited encumbrance of any nature.
- (C) The Owner will, at the time of execution and delivery of this Declaration, have good and marketable title to the Property free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Declaration, any Loan Documents relating to the Project or other permitted encumbrances).
- (D) There is no action, suit, or proceeding at law or in equity, or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Declaration) or would materially adversely affect its financial condition.
- (E) The Project constitutes or will constitute a qualified low-income building or qualified low-income project, as applicable, as defined in 24 CFR Part 983 and applicable regulations.
- (F) **Twenty units in the Project are Project Based Voucher (HACC-Assisted) Units.**

During the term of this Declaration:

- All of the HACC-Assisted Units must be leased, rented or made available to members of the general public whose incomes are less than or equal to 50% of the median income.
- Rents for the HACC-Assisted Units will not exceed the gross rent allowable under 24 CFR 983.301.

The determination of whether a tenant meets the income requirement shall be made by the HACC or its designated agent at least annually in accordance with 24 CFR 983.

- (G) During the term of this Declaration, Owner will maintain the Project and each HACC-Assisted unit in accordance with the Property Standards requirements of 24 CFR 983.103.
- (H) Subject to the requirements of 24 CFR Part 983 and this Declaration, the Owner may sell, transfer or exchange the entire Project at any time, but the Owner shall notify in writing and obtain the prior agreement of any buyer or successor or other person acquiring the Project or any interest therein that such acquisition is subject to the requirements of this Declaration and to the requirements of 24 CFR Part 983 and applicable regulations. This provision shall not act to waive any other restriction on sale, transfer, or exchange of the Project or any low-income portion of the Project. The Owner agrees that the HACC may void any sale, transfer, or exchange of the Project if the buyer or successor or other person fails to assume in writing the requirements of this Declaration and the requirements of 24 CFR Part 983.

Notwithstanding any other provisions herein, the sale, transfer, assignment or exchange of all or a portion of the interest of \_\_\_\_\_ (the "Investor Partner"), in Owner shall not require the HACC's consent and shall not constitute a sale, transfer or assignment for purposes of this Agreement.

In addition, the withdrawal, or removal of the General Partner of the Owner for cause pursuant to the terms of the Owner's Amended and Restated Agreement of Limited Partnership shall not constitute a default hereunder or under the Agreement, provided that the substitute Managing Partner is reasonably acceptable to the HACC and is admitted to Owner within ninety days thereafter.

- (I) The Owner will notify the HACC in writing prior to any sale, transfer, or exchange of the entire Project or any low-income portion of the Project.
- (J) The Owner shall not demolish any part of the Project, substantially subtract from any real or personal property of the Project, or permit the use of any residential rental unit for any purpose other than rental housing during the term of this Declaration unless required by law or unless the HACC has given its prior written consent.
- (K) The Owner represents, warrants, and agrees that if the Project, or any part thereof, shall be damaged, destroyed, shall be condemned, or acquired for public use, the Owner will use its best efforts, subject to the rights of any mortgagee, to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Declaration.
- (L) The Owner warrants that it has not and will not sign any other Declaration with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Declaration are

paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

#### **SECTION 4 - TERM OF DECLARATION**

- (A) This Declaration, and the Terms of Affordability specified herein, applies to the use of PROCEEDS in the Project immediately upon recordation, and the Owner shall comply with all restrictive covenants herein not later than the first day in the Project period on which any building which is part of the Project is placed in service. This Declaration shall terminate on the later of 60 years after the Project Completion Date or the date on which the loan is paid in full.
- (B) This Declaration and the Terms of Affordability shall remain in effect for not less than the period described in section (A) above without regard to the term of the mortgage of other underlying security and without regard to any transfer of ownership; provided however, that the requirements herein, shall be terminated upon foreclosure or transfer in lieu of foreclosure, but shall be revived according to the original terms if during the original term, the owner of record before the foreclosure or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property.

#### **SECTION 5 – HACC’S RIGHT TO INSPECT; OWNER’S OBLIGATION TO REPORT**

- (A) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the HACC, to inspect any books and records of the Owner regarding the Project with respect to the incomes of Low-Income tenants which pertain to compliance with the HACC’s Occupancy Restrictions specified in this Declaration.
- (B) The Owner shall submit any other information, documents, or certifications requested by the HACC which the HACC shall deem reasonably necessary to substantiate the Owner’s continuing compliance with the provisions of the HACC’s Occupancy Restrictions specified in this Declaration.

#### **SECTION 6 - ENFORCEMENT OF 24 CFR 983 AFFORDABLE HOUSING AND INCOME TARGETING REQUIREMENTS**

- (A) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of 24 CFR Part 983 and applicable regulations of this Declaration. Moreover, Owner covenants to take any lawful action (including amendment of this Declaration as may be necessary, in the opinion of the HACC) to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed and published by HUD from time to time pertaining to Owner’s obligations under 24 CFR Part 983 and affecting the Project.
- (B) The Owner acknowledges that the primary purpose for requiring compliance by the Owner with restrictions provided in this Declaration is to assure compliance of the Project and the Owner with 24 CFR 983 and the applicable regulations, AND BY REASON THEREOF, THE OWNER, IN CONSIDERATION FOR RECEIVING HACC INVESTMENT PARTNERSHIPS PROGRAM FUNDS FOR THIS PROJECT, AGREES AND CONSENTS THAT THE HACC AND ANY TENANT WHO MEETS THE INCOME LIMITATION APPLICABLE UNDER 24 CFR 983 (WHETHER PROSPECTIVE, PRESENT OR FORMER OCCUPANT) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS DECLARATION IN A STATE COURT OF COMPETENT JURISDICTION. The Owner further specifically acknowledges that the beneficiaries of the Owner’s obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.
- (C) The Owner agrees that the representations and covenants set forth herein may be relied upon by the HACC and all persons interested in Project compliance under 24 CFR Part 983 and the applicable regulations.
- (D) The Owner agrees to take any and all actions reasonably required by the HACC to substantiate the Owner’s compliance with occupancy restrictions of 24 CFR Part 983 as now constituted or subsequently amended and other occupancy restrictions of the HACC as now constituted or subsequently adopted.
- (E) This Declaration and the Agreement of which it is a part may be enforced by the HACC or its designee in the event the Owner fails to satisfy any of the requirements herein. In addition, this Declaration shall be deemed a contract enforceable by one or more Tenants as third-party beneficiaries of the Declaration and Agreement. In the event the Owner fails to satisfy the requirements of this Declaration or the Agreement and legal costs are incurred by the HACC or one or more of the tenants or beneficiaries, such legal costs, including reasonable attorney fees and court costs (including costs of appeal), are the responsibility of, and may be recovered from, the Owner.

**SECTION 7 - MISCELLANEOUS**

- (A) Severability. The invalidity of any clause, part, or provision of this Declaration shall not affect the validity of the remaining portions thereof.
- (B) Notices. All notices to be given pursuant to this Declaration shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

TO THE HACC:                   Housing Services Manager  
                                       Housing Authority of Clackamas County  
                                       13930S. Gain Street, Oregon City, OR 97045

TO THE OWNER:             \_\_\_\_\_

                                      \_\_\_\_\_

                                      \_\_\_\_\_

WITH A COPY TO:         \_\_\_\_\_

                                      \_\_\_\_\_

                                      \_\_\_\_\_

The HACC, Owner and its Investor Partner, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

- (C) Amendment. The Owner agrees that it will take all actions necessary to effect amendment of this Declaration as may be necessary to comply with 24 CFR Part 983, any and all applicable rules, regulations, policies, procedures, rulings, or other official statements pertaining to the HACC assistance. The HACC, together with Owner, may sign and record any amendment or modification to this Declaration and such amendment or modification shall be binding on third-parties granted rights under this Declaration.
- (D) Governing Law. This Declaration shall be governed by the laws of the State of Oregon, and, where applicable, the laws of the United States of America, without giving effect to the conflict of law provisions there of.
- (E) Survival of Obligations. The obligations of the Owner as set forth herein and in the Application shall survive the reservation of HACC funds and shall not be deemed to terminate or merge with the awarding of the funds.

Owner has caused this Declaration to be signed by its duly authorized representatives, as of the day and year first written above.

Dated: \_\_\_\_\_, 2017

Pedcor Investment-2016-CLV, Limited Partnership  
 an Oregon limited partnership

By:     Rosewood Terrace Housing Company, LLC  
           It's General Partner

By:     Pedcor Investments, A Limited Liability Company  
           It's Manager

By:     \_\_\_\_\_  
           Thomas G. Crowe  
           Executive Vice President

STATE OF OREGON                    )

County of \_\_\_\_\_) ss.

On \_\_\_\_\_, 2017, before me personally appeared \_\_\_\_\_,  
 who being duly sworn, stated that he/she is the \_\_\_\_\_ of  
 \_\_\_\_\_ and acknowledged the foregoing instrument to be the voluntary act  
 and deed of the Borrower, signed by authority of Borrower.

\_\_\_\_\_  
 Notary Public for Oregon  
 My commission expires: \_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**

PARCEL 1:

Part of Section 28, Township 1 South. Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows, to-wit:

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EXCEPTING THEREFROM that portion lying within that tract described in deed to Clackamas County in Fee No. 77 17914.

ALSO EXCEPTING THEREFROM that portion conveyed to the State of Oregon, by Deed recorded under Recorder's Fee No. 71 30200.

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EXCEPT that portion conveyed to the State of Oregon by deed recorded under Recorder's Fee No. 72 12686.



PROMISSORY NOTE  
HOUSING AUTHORITY OF CLACKAMAS COUNTY  
DISPOSITION PROCEEDS

Name of Project: Rosewood Terrace Apartments

**\$1,605,000** \_\_\_\_\_, **2017**

For value received, \_\_\_\_\_, ("Borrower"), promises to pay to the order of the Housing Authority of Clackamas County ("Lender"), the sum of **One Million, Six hundred and Five Thousand and no/100 Dollars (\$1,605,000.00 )**, or so much thereof as may be advanced, together with interest thereon at the rate of **three percent (3.0%) per year**. The loan is evidenced by this Promissory Note ("Note"), a Loan Agreement, a Trust Deed, and a Declaration of Land Use Restrictive Covenants (together, "Loan Documents"). Unless otherwise defined herein, capitalized terms have the meaning assigned to them in the Loan Agreement, as amended.

This Note is subject to the terms of the Loan Agreement and the following terms and conditions. To the extent there may be a conflict between the terms of the Note and the Loan Agreement, the terms of the Loan Agreement shall control.

- 1) **Payment of Obligation**. Lender makes this loan for the development of Rosewood Terrace apartments (the "Project"), from funds generated by the sale of public housing units under Section 18 of the U.S. Housing Act of 1937, and 24 CFR 970 ("Proceeds").
  - a) The loan shall bear simple interest at a rate of **three percent (3.0%)** per year.
  - b) The term of the loan is 55 years.
  - c) The Maturity Date is December 31, 2072.
  - d) The loan shall begin to accrue interest on the Project Completion Date.
  - e) The loan and accrued interest shall be repaid in full upon the earlier of the Maturity Date, the sale, assignment or other transfer of title to the Property without Lender's consent, or the date Owner or its agents or subcontractors is otherwise in default under any of the Loan Documents.
  - f) Payments shall be made at such place as Lender may designate in writing.
- 2) **Governing Law**. This Note shall be governed by and construed in accordance with the laws of Oregon without giving effect to the conflict of law provisions thereof.
- 3) **Security**. This Note shall be secured by an assignment of the trust deed securing advances by Borrower to Owner.
- 4) **Nonrecourse Obligation**. This Note and the obligations contained herein are without recourse to Borrower. The sole recourse of Lender with respect to Borrower's obligations shall be to exercise its rights under the deed of trust with respect to the Project and/or enforce the terms of the Loan Documents signed by Borrower in favor of Lender.

If the undersigned is a corporation, it has caused its name to be signed and its seal, if any, affixed by an officer or other person duly authorized to do so by order of its board of directors.

Dated \_\_\_\_\_, 2017

Pedcor Investment-2016-CLV, Limited Partnership  
an Oregon limited partnership

By: Rosewood Terrace Housing Company, LLC  
It's General Partner

By: Pedcor Investments, A Limited Liability Company  
It's Manager

By: \_\_\_\_\_  
Thomas G. Crowe  
Executive Vice President

STATE OF OREGON )

County of \_\_\_\_\_) ss.

On \_\_\_\_\_, 2017, before me personally appeared  
\_\_\_\_\_, who being duly sworn, stated that he/she is the  
\_\_\_\_\_ of  
\_\_\_\_\_ and acknowledged the foregoing instrument to be  
the voluntary act and deed of the Borrower, signed by authority of Borrower.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: \_\_\_\_\_

B.O.

AFTER RECORDING RETURN TO:  
Housing Authority of Clackamas County  
13930 S. Gain Street  
Oregon City, OR 97045

STATUTORY NOTICE:  
The name and address of the entity holding a lien or other interest created by this instrument are set forth below, and the tax account number of the property subject to the lien or in which the interest is created is: Housing Authority of Clackamas County

Legal Description – Exhibit "A" Attached

**TRUST DEED, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING  
HOUSING AUTHORITY OF CLACKAMAS COUNTY DISPOSITION PROCEEDS**

**Name of Project: Rosewood Terrace Apartments**

THIS TRUST DEED, ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FIXTURE FILING (this "Trust Deed") is made as of \_\_\_\_\_, 2017 by Pedcor Investments-2016-CLV ("**Grantor**" or "**Borrower**"), having its office at \_\_\_\_\_, to \_\_\_\_\_ ("**Trustee**" or "**Title Company**"), for the benefit of the Housing Authority of Clackamas County, a public corporation created pursuant to the Housing Authorities Law of ORS 456, having its office at 13930 S. Gain Street, Oregon City, OR 97045 ("**Beneficiary**" or "**HACC**").

HACC has offered to make a **three percent (3.0%) interest** loan to Borrower in the sum of **One Million Six Hundred and Five Thousand and no/100 dollars (\$1,605,000.00)** from funds generated by the sale of public housing units under Section 18 of the U.S. Housing Act of 1937, and 24 CFR 970 "**Proceeds**." The loan is evidenced by this Trust Deed, a Promissory Note, a Loan Agreement and a Declaration of Land Use Restrictive Covenants, as they may be amended or supplemented from time to time, together referred to as the "**Loan Documents**." Capitalized terms have the meaning set forth in the Loan Agreement, except as otherwise defined in this Trust Deed. The purpose(s) of the loan are set forth in the Loan Agreement entered into between the parties.

The loan is due and payable in full at the earliest of: the Maturity Date which is exactly **Fifty-Five years from the executed date of this Trust Deed** except as otherwise provided in (i) the Loan Agreement, (ii) the date the property is sold, (iii) title is transferred or (iv) the Borrower defaults on any of its obligations under the Loan Documents (see Article 5.01 below).

As a condition to the making of the loan to Borrower, Borrower has agreed to sign, deliver and record this Trust Deed.

For good consideration, receipt of which is acknowledged, and for the purpose of securing the Obligations described in Section 1.01 below, Borrower irrevocably grants, bargains, sells, conveys, assigns, and transfers to Title Company in trust for the benefit and security of the HACC, with power of sale and right of entry and possession, all of Borrower's right, title, and interest in and to the real property located in Clackamas County, Oregon, described as:

See **Exhibit A** attached hereto and incorporated herein,

Together with all the tenements, hereditaments and appurtenances and all other rights thereunto belonging or in any way now or hereafter appertaining, and the rents, issues and profits thereof, (the "Property"); together with all rights, titles and interests of Grantor, now owned or hereafter acquired, in and to any and all buildings and other improvements of every nature now or hereafter located on the Property and all fixtures now or hereafter attached to or used in connection with the Property and all appurtenances and additions to and substitutions and replacements of them (the "Improvements"). All of the above is sometimes referred to below as the "Trust Property."

PROVIDED ALWAYS, that if all the Obligations (as defined in Section 1.01 below) shall be paid, performed, and satisfied in full, then the lien and estate granted by this Trust Deed shall be reconveyed.

**BORROWER COVENANTS AND AGREES AS FOLLOWS:**

**ARTICLE I**

**Particular Covenants and Warranties of Borrower**

**1.01 Obligations Secured.** This Trust Deed secures the prompt payment of all indebtedness and other monetary obligations, including but not limited to principal and interest, and the prompt performance of all covenants and obligations of Borrower, under this Trust Deed and the other Loan Documents, whether such payment and performance is now due or becomes due in the future ("Obligations").

**1.02 Property.** Borrower warrants that it holds good and merchantable title to the Property and the Improvements, free and clear of all liens, encumbrances, reservations, restrictions, easements, and adverse claims except those specifically listed in **Exhibit B**. Borrower covenants that it shall forever defend HACC's and Title Company's rights under this Trust Deed against the adverse claims and demands of all persons.

**1.03 [Reserved]**

**1.04 Further Assurances; Filing; Refiling; Etc.**

- 1) Borrower shall sign, acknowledge, and deliver, from time to time, such further instruments as HACC or Title Company may require to accomplish the purposes of this Trust Deed.
- 2) Borrower, immediately upon the signing and delivery of this Trust Deed, and thereafter from time to time, shall cause this Trust Deed, any supplemental security agreement, mortgage, or deed of trust and each instrument of further assurance, to be recorded and re-recorded in such manner and in such places as may be required by any present or future law in order to perfect, and continue perfected, the lien and estate of this Trust Deed.
- 3) Borrower shall pay all filing and recording fees, and all expenses incident to the signing, filing, recording, and acknowledgment of this Trust Deed; any security agreement, mortgage, or deed of trust supplemental hereto and any instrument of further assurance; and all federal, state, county, and municipal taxes, assessments and charges arising out of or in connection with the signing, delivery, filing, and recording of this Trust Deed, any supplemental security agreement, mortgage, or deed of trust and any instrument of further assurance.

**1.05 Compliance with Laws.** Borrower represents, warrants, and covenants that:

- 1) The Trust Property has been or will be developed, and all improvements, if any, have been or will be constructed and maintained, in full compliance with all applicable laws, statutes, ordinances, regulations, and codes of all federal, state, and local governments, including the Housing Choice Voucher Program Requirements (collectively "Laws"), and all covenants, conditions, easements, and restrictions affecting the Trust Property (collectively "Covenants"); and
- 2) Borrower and its operations upon the Trust Property currently comply, and will comply in all material respects with all applicable Laws and Covenants.

**1.06 Definitions; Environmental Covenants; Warranties and Compliance.**

- 1) For purposes of this section, "Environmental Law" means any federal, state, or local law, statute, ordinance, or regulation pertaining to Hazardous Substances, health, industrial hygiene, or environmental conditions, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 USC §9601-9675, and the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended, 42 USC §6901-6992.
- 2) For the purposes of this section, "Hazardous Substance" includes, without limitation, any material, substance, or waste that is or becomes regulated or that is or becomes classified as hazardous, dangerous, or toxic under any federal, state, or local statute, ordinance, rule, regulation, or law.
- 3) Borrower will not use, generate, manufacture, produce, store, release, discharge, or dispose of on, under or about the Property or the Property's groundwater, or transport to or from the Property, any Hazardous Substance and will not permit any other person to do so, except for such Hazardous Substances that may be used in the ordinary course of Borrower's business and in compliance with all Environmental Laws, including but not limited to those relating to licensure, notice, and record keeping.
- 4) Borrower will keep and maintain the Property in compliance with, and shall not cause or permit all or any portion of the Property, including groundwater, to be in violation of any Environmental Law.
- 5) Borrower shall give prompt written notice to HACC of:
  - (a) Any proceeding, inquiry, or notice by or from any governmental authority with respect to any alleged violation of any Environmental Law or the presence of any Hazardous Substance on the Property or the migration of any Hazardous Substance from or to other premises;
  - (b) All known claims made or threatened by any person against Borrower or with respect to the Property or Improvements relating to any loss or injury resulting from any Hazardous Substance or the violation of any Environmental Law;
  - (c) The existence of any Hazardous Substance on or about all or any portion of the Property in violation of Environmental Law; or
  - (d) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could in Borrower's judgment cause any restrictions on the ownership, occupancy, transferability, or use of the Property under any Environmental Law.
- 6) Borrower shall promptly provide to HACC copies of all reports, documents, and notices provided to or received from any agency administering any Environmental Laws. HACC shall have the right to join and participate, in its own name if it so elects, in any legal proceeding or action initiated with respect to the Property or Improvements in connection with any Environmental Law and have its attorney fees in connection with such an action paid by Borrower, if HACC determines that such participation is reasonably necessary to protect its interest in the Trust Property.
- 7) If, at any time, HACC has reason to believe that any release, discharge, or disposal of any Hazardous Substance affecting the Property or Improvements in violation of Environmental Law has occurred or is threatened, or if HACC has reason to believe that a violation of an Environmental Law has occurred or may occur with respect to the Property or Improvements, HACC may require Borrower to obtain or may itself obtain, at Borrower's expense, an environmental assessment of such condition or threatened condition by a qualified environmental consultant. Borrower shall promptly provide to HACC a complete copy of any environmental assessment obtained by Borrower.
- 8) In the event that any investigation, site monitoring, containment, cleanup, removal, restoration, or other remedial work of any kind or nature (the "Remedial Work") is required under any applicable Environmental Law, any judicial order, or by any governmental agency or person because of, or in connection with, the current or future presence, suspected presence, release or suspected release of a Hazardous Substance on, under, or about all or any portion of the Property, or the contamination (whether presently existing or occurring after the date of this Trust Deed) of the buildings, facilities, soil, groundwater, surface water, air, or other elements on or under any

other property as a result of Hazardous Substances emanating from the Property, Borrower shall, within 30 days after written demand by HACC for Borrower's performance under this provision (or such shorter period of time as may be required under any applicable law, regulation, order, or agreement), commence and thereafter diligently prosecute to completion, all such Remedial Work. All costs and expenses of such Remedial Work shall be paid by Borrower including, without limitation, HACC's reasonable professional fees and costs incurred in connection with monitoring or review of the legal aspects of such Remedial Work. In the event Borrower shall fail to timely commence, or cause to be commenced, such Remedial Work, HACC may, but shall not be required to, cause such Remedial Work to be performed. In that event, all costs and expenses incurred in connection with the Remedial Work shall become part of the Obligations secured by this Trust Deed and shall bear interest at a rate of 8% per annum, compounded annually, until paid at the rate provided in the Note.

- 9) Borrower shall hold HACC, its elected officials, directors, officers, employees, agents, successors, and assigns, harmless from, indemnify them for, and defend them against any and all losses, damages, liens, costs, expenses and liabilities directly or indirectly arising out of or attributable to any violation of any Environmental Law, any breach of Borrower's warranties in this Section 1.06, or the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under, or about the Property, including without limitation the costs of any required repair, cleanup, containment, or detoxification of the Property, the preparation and implementation of any closure, remedial or other required plans, attorney fees and costs (including but not limited to those incurred in any proceeding and in any review or appeal), fees, penalties, and fines.
- 10) To the best of Borrower's knowledge, Borrower represents and warrants to HACC that:
  - (a) Neither the Property nor Borrower is in violation of any Environmental Law or subject to any existing, pending, or threatened investigation by any governmental authority under any Environmental Law.
  - (b) Borrower has not and is not required by any Environmental Law to obtain any permit or license other than those it has obtained to construct or use the Improvements.
  - (c) To the best of Borrower's knowledge, no Hazardous Substance has ever been used, generated, manufactured, produced, stored, released, discharged, or disposed of on, under, or about the Property in violation of any Environmental Law.
- 11) All representations, warranties, and covenants in this Section 1.06 shall survive the satisfaction of the Obligations, the reconveyance of the Trust Property, or the foreclosure of this Trust Deed by any means.

**1.07 Maintenance and Improvements.** Borrower shall not permit all or any part of the Improvements to be removed, demolished, or materially altered without HACC's prior written consent; provided, however, that Borrower may remove, demolish, or materially alter such Improvements as become obsolete in the usual conduct of Borrower's business, if the removal or material alteration does not materially detract from the operation of the Borrower's business and if all Improvements that are demolished or removed are promptly replaced with Improvements of like value and quality. Borrower shall maintain every portion of the Property and Improvements in good repair, working order, and condition, so that it continues to meet the property standards set forth in 24 CFR 983.11 for new construction, and shall at HACC's election, and at Borrower's cost, restore, replace, or rebuild all or any part of the Improvements now or hereafter damaged or destroyed by any casualty (whether or not insured against or insurable) or affected by any Condemnation (as defined in Section 2.01 below) pursuant to Sections 1.14 and 2.01, as applicable. Borrower shall not commit, permit, or suffer any waste, strip, or deterioration of the Trust Property, reasonable wear and tear excepted.

**1.08 Liens.** Subject to subparagraph 1.09(2), Borrower shall pay when due all claims for labor, materials, or supplies that if unpaid might become a lien on all or any portion of the Trust Property. Subject to subparagraph 1.09(2), Borrower shall not create, or suffer, or permit to be created, any mortgage, deed of trust, lien, security interest, charge, or encumbrance upon the Trust Property prior to, on a parity with, or subordinate to the lien of this Trust Deed, except as specifically provided in **Exhibit B**.

**1.09 Impositions**

- 1) Borrower shall pay or cause to be paid, when due and before any fine, penalty, interest, or cost attaches, all taxes, assessments, fees, levies, and all other governmental and nongovernmental charges assessed or levied against any part of the Trust Property (the "Impositions"); provided, however, that if such Imposition may be paid in installments, Borrower may pay the same in installments, together with accrued interest on the unpaid balance, as the same become due, before any fine, penalty, or cost attaches.
- 2) Borrower may, at its expense and after prior notice to HACC, contest by appropriate legal, administrative, or other proceedings conducted in good faith and with due diligence, the amount, validity, or application of any Imposition or lien on the Trust Property or any claim of any laborer, material man, supplier, or vendor or lien, and may withhold payment of the same pending completion of such proceedings if permitted by law, provided that (a) such proceedings shall suspend collection from the Trust Property; (b) no part of or interest in the Trust Property will be sold, forfeited, or lost if Borrower pays the amount or satisfies the condition being contested, and Borrower would have the opportunity to do so in the event of Borrower's failure to prevail in the contest; (c) neither HACC nor Title Company shall, by virtue of such permitted contest, be exposed to any risk of liability for which Borrower has not furnished additional security as provided in clause (d) below; and (d) Borrower shall have furnished to HACC cash, corporate surety bond, or other additional security in the amount determined by HACC with respect of the claim being contested or the loss or damage that may result from Borrower's failure to prevail in such contest in an amount sufficient to discharge the Imposition and all interest, costs, attorney fees, and other charges that may accrue in connection with the Imposition. Borrower shall promptly satisfy any final judgment.
- 3) Borrower shall furnish to HACC, promptly upon request, satisfactory evidence of the payment of all Impositions. HACC is authorized to request and receive from the responsible governmental and non-governmental personnel written statements with respect to the accrual and payment of all Impositions.

**1.10 Books and Records; Inspection of the Property.** Borrower shall keep complete and accurate records and books of account with respect to the Trust Property and its operation in accordance with generally accepted accounting principles consistently applied, and in accordance with the record-keeping requirements of the Loan Agreement. Borrower shall permit Title Company, HACC, the Secretary of the U.S Department of Housing and Urban Development (HUD) and the Comptroller General of the U.S., and their authorized representatives to enter and inspect the Property and the Improvements, and to examine and make copies or extracts of the records and books of account of the Borrower with respect to the Property and the Improvements, all at such reasonable times as HACC or Title Company may choose.

**1.11 Limitations of Use.** Borrower shall not initiate, join in, or consent to any rezoning of the Property or any change in any Covenant or other public or private restrictions limiting or defining the uses that may be made of all or any part of the Property and the Improvements without the prior written consent of HACC.

**1.12 Insurance.**

- 1) Property and Other Insurance. Borrower shall obtain and maintain in full force and effect during the term of this Trust Deed:
  - (a) Causes of Loss – Special Form property insurance together with endorsements for replacement cost, inflation adjustment, malicious mischief, and sprinkler damage coverages, 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, coverages, and risks insured acceptable to HACC, and in no event less than \$1,000,000 per occurrence and \$2,000,000 aggregate coverage and \$5,000,000 umbrella; and
  - (c) Unless HACC otherwise agrees in writing, rent loss or business interruption insurance in an amount no less than the total annual rents provided for in all leases for the Trust Property. In addition, Borrower shall obtain and maintain all such other insurance coverages, which at the time are commonly carried for similar property, in such amounts as HACC may require.
- 2) Insurance Companies and Policies. All insurance shall be written by a company or companies reasonably acceptable to HACC with a rating of A VIII or better as provided in Best's Rating Guide and authorized to do business in the State of Oregon; shall contain a long form mortgagee clause in favor of HACC with loss proceeds under any policy payable to HACC, subject to the terms of this Trust Deed and the rights of any superior mortgagee or trust deed beneficiary or as provided in Section 6.10 below; shall require 30 days' prior written notice to HACC of cancellation or reduction in coverage; shall contain waivers of subrogation and endorsements that no act or negligence of Borrower or any occupant, and no occupancy or use of the Property for purposes more hazardous than permitted by the terms of the policy will affect the validity or enforceability of such insurance as against HACC; shall be in full force and effect on the date of this Trust Deed; and shall be accompanied by proof of premiums paid for the current policy year. HACC shall be named as additional insured on all liability policies. Borrower shall forward to HACC, upon request, certificates evidencing the coverages required under this Trust Deed and copies of all policies.
- 3) Blanket Policy. If a blanket policy is issued, a certified copy of such policy shall be furnished together with a certificate indicating that the Trust Property and HACC are insured under such policy in the proper designated amount.
- 4) Insurance Proceeds. All proceeds from any insurance on the Trust Property shall be used in accordance with the provisions of Section 1.14.

**1.13 Assignments of Policies upon Foreclosure.** In the event of foreclosure of the lien of this Trust Deed or other transfer of title, or assignment of the Trust Property in whole or in part, all right, title, and interest of Borrower in and to all policies of insurance procured under Section 1.12 shall inure to the benefit of and pass to the successors in interest of Borrower or the purchaser or grantee of all or any part of the Trust Property.

**1.14 Casualty/Loss Restoration.**

- 1) After the occurrence of any casualty to the Property, whether or not required to be insured against as provided in this Trust Deed, Borrower shall give prompt written notice of the casualty to HACC, specifically describing the nature and cause of such casualty and the extent of the damage or destruction to the Trust Property. HACC may make proof of loss if it is not made promptly and to HACC's satisfaction by Borrower.
- 2) Subject to the rights of any superior mortgagee or trust deed beneficiary as provided in Section 6.10 below, Borrower assigns to HACC all insurance proceeds that Borrower may be entitled to receive with respect to any casualty. All insurance proceeds shall be held by HACC as collateral to secure performance of the Obligations secured by this Trust Deed. Provided that Borrower is not in default under this Trust Deed, HACC shall permit such amounts of the insurance proceeds to be used by Borrower for repair or restoration of the Improvements (subject to disbursement procedures established by HACC) if Borrower can demonstrate, to HACC's satisfaction, that subsequent to such repair or restoration, the Trust Property shall have a value of not less than 100% of the then-outstanding balance of the indebtedness secured by this Trust Deed. Any excess insurance proceeds shall be applied by HACC toward payment of all or part of the indebtedness secured by this Trust Deed in such order as HACC may determine.

**1.15 Actions to Protect Trust Property; Reserves.**

- 1) If Borrower shall fail to obtain the insurance required by Section 1.12, make the payments required by Section 1.09 (other than payments that Borrower is contesting in accordance with Section 1.09(2)), or perform or observe any of its other covenants or agreements under this Trust Deed, HACC may, without obligation to do so, obtain or pay the same or take other action that it deems appropriate to remedy such failure; provided that HACC shall first give notice to Borrower of such failure and a reasonable opportunity to cure such failure. All sums, including reasonable attorney fees, so expended or expended to maintain the lien or estate of this Trust Deed or its priority, or to protect or enforce any of HACC's rights, or to recover any indebtedness secured by this Trust Deed, shall be

a lien on the Trust Property, shall be secured by this Trust Deed, and shall be paid by Borrower upon demand, together with interest at the rate provided in the Note. No payment or other action by HACC under this section shall impair any other right or remedy available to HACC or constitute a waiver of any default.

- 2) If Borrower fails to promptly perform any of its obligations under Section 1.09 or 1.12 of this Trust Deed, HACC may require Borrower thereafter to pay and maintain with HACC reserves for payment of such obligations. In that event, Borrower shall pay to HACC each month a sum estimated by HACC to be sufficient to produce, at least 20 days before due, an amount equal to the Impositions and/or insurance premiums. If the sums so paid are insufficient to satisfy any Imposition or insurance premium when due, Borrower shall pay any deficiency to HACC upon demand. The reserves may be commingled with HACC's other funds, and HACC shall not be required to pay interest to Borrower on such reserves. HACC shall not hold the reserve in trust for Borrower, and HACC shall not be the agent of Borrower for payment of the taxes and assessments required to be paid by Borrower.

**1.16 Insurance Warning. Unless Borrower provides HACC with evidence of the insurance coverage required by the Loan Documents, HACC may purchase insurance at Borrower's expense to protect HACC's interest.** This insurance may, but need not, also protect Borrower's interest. If the Trust Property becomes damaged, the coverage HACC purchases may not pay any claim Borrower makes or any claim made against Borrower. Borrower may later cancel this coverage by providing evidence that Borrower has obtained property coverage elsewhere.

Borrower is responsible for the cost of any insurance purchased by HACC. The cost of this insurance may be added to Borrower's loan balance. If the cost is added to Borrower's loan balance, the interest rate of 8% per annum compounded annually will apply to this added amount. The effective date of coverage may be the date Borrower's prior coverage lapsed or the date Borrower failed to provide proof of coverage.

The coverage HACC purchases may be considerably more expensive than insurance Borrower can obtain on its own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

**1.17 Estoppel Certificates.** Borrower, within five days of the request, shall furnish Title Company and HACC a written statement, duly acknowledged, of the amount of the Obligations secured by this Trust Deed and whether any offsets or defenses exist against such Obligations. If Borrower shall fail to furnish such a statement within the time allowed, HACC shall be authorized, as Borrower's attorney-in-fact, to sign and deliver such statement.

**1.18 Financial Information.** Borrower shall furnish to HACC within 90 days after the end of each of Borrower's fiscal years a complete copy of Borrower's financial statement for such year, audited or reviewed by a certified public accountant (including balance sheet, income statement, and statement of changes in financial position). Borrower shall promptly furnish to HACC any and all such other financial information as HACC shall reasonably request from time to time.

## **ARTICLE II Condemnation**

### **2.01 Condemnation.**

- 1) Should any part of or interest in the Trust Property be taken or damaged by reason of any public improvement, eminent domain, condemnation proceeding, or in any similar manner (a "Condemnation"), or should Borrower receive any notice or other information regarding such action, Borrower shall give immediate notice of such action to HACC.
- 2) Subject to the rights of any superior mortgagee or trust deed beneficiary as provided in Section 6.10 below, HACC shall be entitled to all compensation, awards, and other payments or relief ("Condemnation Proceeds") up to the full amount of the Obligations, and shall be entitled, at its option, to commence, appear in, and prosecute any Condemnation proceeding in its own or Borrower's name and make any compromise or settlement in connection with such Condemnation. In the event the Trust Property is taken in its entirety by condemnation, all Obligations secured by this Trust Deed, at HACC's election, shall become immediately due and collectible.
- 3) All condemnation proceeds shall be held by HACC as collateral to secure performance of the Obligations secured by this Trust Deed. Provided that Borrower is not in default under this Trust Deed, HACC shall permit such amounts of the condemnation proceeds to be used by Borrower for repair or restoration of the Improvements (subject to reasonable disbursement procedures established by HACC) if Borrower can demonstrate, to HACC's reasonable satisfaction, that subsequent to such repair or restoration, the Trust Property shall have a value of not less than 100% of the then-outstanding balance of the indebtedness secured by this Trust Deed. Any excess condemnation proceeds shall be applied by HACC toward payment of all or part of the indebtedness secured by this Trust Deed in such order as HACC may determine.

## **ARTICLE III Assignment of Leases, Rents, Issues, and Profits**

**3.01 Assignment.** Borrower assigns and transfers to HACC (1) all leases, subleases, licenses, rental contracts, and other agreements, whether now existing or hereafter arising, and relating to the occupancy or use of all or any portion of the Trust Property, including all modifications, extensions, and renewals thereof (the "Leases"), and (2) all rents, revenues, issues, profits, income, proceeds, and benefits derived from the Trust Property and the lease, rental, or license of all or any portion thereof, including but not limited to lease and security deposits (collectively, the "Rents"). Borrower certifies that the Rents have not been currently assigned to any third party. This assignment is intended by Borrower and HACC to create a present and unconditional assignment to HACC subject only to the license set forth in Section 3.04 below.

**3.02 Rights of HACC.** Subject to the provisions of Section 3.04 below giving Borrower a revocable, limited license, HACC shall have the right, power, and authority to:

- 1) Notify any and all tenants, renters, licensees, and other obligors under any of the Leases that the same have been assigned to HACC and that all Rents are to be paid directly to HACC, whether or not HACC shall have foreclosed or commenced foreclosure proceedings against the Trust Property, and whether or not HACC has taken possession of the Trust Property;
- 2) Discount, settle, compromise, release, or extend the time for payment of, any amounts owing under any of the Leases and any Rents, in whole or in part, on terms acceptable to HACC;
- 3) Collect and enforce payment of Rents and all provisions of the Leases, and to prosecute any action or proceeding, in the name of Borrower or HACC, with respect to any and all Leases and Rents; and
- 4) Exercise any and all other rights and remedies of the lessor in connection with any of the Leases and Rents.

**3.03 Application of Receipts.** HACC shall have the right, power, and authority to use and apply any Rents received under this Trust Deed (1) for the payment of any and all costs and expenses incurred in connection with enforcing or defending the terms of this assignment or the rights of HACC, and in collecting any Rents; and (2) for the operation and maintenance of the Trust Property and the payment of all costs and expenses (including internal personnel costs) in connection therewith, including but not limited to the payment of utilities, taxes, assessments, governmental charges, and insurance. After the payment of all such costs and expenses and after HACC shall have set up such reserves as it shall deem necessary in its sole discretion for the proper management of the Trust Property, HACC shall apply all remaining Rents collected and received by it to the reduction of the Obligations in such order as HACC shall determine. The exercise or failure by HACC to exercise any of the rights or powers granted in this assignment shall not constitute a waiver of default by Borrower under this Trust Deed, the Note, or any of the other Loan Documents.

**3.04 License.** HACC grants to Borrower a revocable license to collect and receive the Rents. Such a license may be revoked by HACC, without further notice to Borrower, other than the notice required by Article 5.01, if Borrower defaults under Article III or any other term of the loan documents. Unless and until a license is revoked, Borrower agrees to apply the proceeds of Rents to ownership obligations, taxes, assessments, governmental charges, insurance premiums, and other obligations associated with the Trust Property, and to maintenance of the Trust Property, before using Rent proceeds for any other purpose.

Borrower agrees:

- 1) To observe and perform all Lease obligations;
- 2) To enforce, or secure the performance of, every obligation required of lessees and other parties under the Leases;
- 3) To appear in and defend any action or proceeding arising out of, or connected with, the Leases or Rents, at Borrower's sole expense; and
- 4) To obtain HACC's prior written approval of the form and content of all future Leases.

Upon request of HACC, Borrower agrees:

- 1) To collect Rents no earlier than 30 days in advance of the day when they are due; and
- 2) Not to accept any payments under the Leases other than Rent, except for bona fide security deposits up to an amount equivalent to two months' rent.

**3.05 Limitation of HACC's Obligations.** Notwithstanding the assignment provided for in this Article III, HACC shall not be obligated to perform or discharge, and HACC does not undertake to perform or discharge, any obligation or liability with respect to the Leases or the Rents. This assignment shall not operate to place responsibility for the control, care, maintenance, or repair of the Trust Property upon HACC, or to make HACC responsible for any condition of the Property. HACC shall be accountable to Borrower only for the sums actually collected and received by HACC pursuant to this assignment. Borrower shall hold HACC fully harmless from, indemnify HACC for, and defend HACC against any and all claims, demands, liabilities, losses, damages, and expenses, including reasonable attorney fees, arising out of any of the Leases, with respect to any of the Rents, or in connection with any claim that may be asserted against HACC on account of this assignment or any obligation or undertaking alleged to arise therefrom, other than such claims resulting from the gross negligence or willful misconduct of HACC.

**3.06 Termination.** The assignment provided for in this Article III shall continue in full force and effect until all the Obligations have been fully paid and satisfied. At such time, this assignment and the authority and powers herein granted by Borrower to HACC shall cease and terminate.

**3.07 Attorney-in-Fact.** Borrower irrevocably constitutes and appoints HACC, and each of its officers and agents, as its true and lawful attorney-in-fact, with power of substitution, to undertake and sign any and all of the rights, powers, and authorities described in this Article III with the same force and effect as if undertaken or performed by Borrower, and Borrower ratifies and confirms any and all such actions that may be taken or omitted to be taken by HACC, its employees, agents, and attorneys.

## ARTICLE IV

### Security Agreement and Fixture Filing

**4.01 Security.** To secure the Obligations, Borrower grants to HACC a security interest in the following: (1) the Trust Property to the extent the same is not encumbered by this Trust Deed as a first priority real estate lien, subordinate only to those liens previously approved by the HACC; (2) all personal property that is used or will be used in the construction of any Improvements on the Trust Property; (3) all personal property that is now or will be placed on or in the Trust Property or Improvements; (4) all personal property that is derived from or used in connection with the use, occupancy, or enjoyment of the Trust Property; (5) all property defined in the Uniform Commercial Code as adopted in the state of Oregon, as accounts, equipment, fixtures, and general intangibles, to the extent the same are used at, or arise in connection with the ownership, maintenance, or operation of, the Trust Property; (6) all causes of action, claims, security



deposits, advance rental payments, utility deposits, refunds of fees or deposits paid to any governmental authority, refunds of taxes, and refunds of insurance premiums relating to the Trust Property; and (7) all present and future attachments, accessions, amendments, replacements, additions, products, and proceeds of every nature of the foregoing. This Trust Deed shall constitute a security agreement and "fixture filing" under the Uniform Commercial Code Secured Transactions statutes of the State of Oregon. The mailing address of Borrower and the address of HACC from which information may be obtained are set forth in the introductory paragraph of this Trust Deed.

## ARTICLE V Events of Default; Remedies

**5.01 Events of Default.** Each of the following shall constitute an event of default under the Loan Documents; provided that the party declaring a default has first provided to the other party thirty days written notice specifying the alleged default and giving such other party the opportunity to cure the alleged default during that 30-day period, or during such longer period as is agreed to. Any such written notice and opportunity to cure provided to the **Borrower** must be provided to Rosewood Terrace Housing Company, LLC ("General Partner"), the general partner of the Borrower, \_\_\_\_\_ ("Investor Partner"), the limited partner of the Borrower. HACC agrees that any cure of any default made or tendered by Investor Member shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

- 1) The Owner has violated any obligation under any other housing assistance payments contract under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).
- 2) Nonpayment. Failure to pay any amount due under the Loan Documents, before the due date.
- 3) Failure of Owner to comply with the Affordability Requirements at any time during the Period of Affordability.
- 4) Breach of Other Covenants. Material failure to perform or abide by any other condition of the Loan Documents.
- 5) Misinformation. Falsity when made in any material respect of any representation, warranty, or information furnished in the Loan Documents or in the application for Disposition Proceeds.
- 6) Other Default. The occurrence of any other event of default under the Loan Documents.
- 7) Cross-Defaults. Owner's default, after expiration of any applicable notice and cure periods, under any other documents related to the Project, including but not limited to the documents which evidence the other sources of funds listed in the Loan Documents.
- 8) Bankruptcy. The occurrence of any of the following with respect to Owner or any guarantor of the Obligations: (a) appointment of a receiver, liquidator, or Title Company for any such party or any of its properties; (b) adjudication as a bankrupt or insolvent; (c) filing of any petition by or against any such party under any state or federal bankruptcy, reorganization, moratorium or insolvency law; (d) institution of any proceeding for dissolution or liquidation; (e) inability to pay debts when due; (f) any general assignment for the benefit of creditors; or (g) abandonment of the Trust Property.
- 9) Transfer; Due-on-Sale. Any sale, conveyance, contract for conveyance, transfer, assignment, encumbrance, pledge, or grant of a security interest in all or any part of the Property, or any interest therein, either voluntarily, involuntarily, or by the operation of law (a "Transfer"), without HACC's prior written consent, shall constitute an event of default. In the case of an LIHTC project, this section shall not apply to a transfer to an affiliate of the Managing Partner or the Investor Member of the Borrower, to a successor or assignee of the Managing Partner or the removal of any general partner of the Borrower by Investor Member for cause in accordance with Borrower's Amended and Restated Agreement of Limited Partnership Agreement. If a general partner of Borrower is so removed, HACC shall not unreasonably withhold its consent to the substitute general partner, provided that HACC's consent shall not be required if the Investor Member or an entity which is directly or indirectly owned and/or controlled by \_\_\_\_\_, is the substitute general partner.
- 10) The failure by Owner to (a) perform any obligation under the Loan Documents not involving the payment of money, or (b) comply with any other term or condition applicable to Owner under any of the Loan Documents, and the expiration of thirty (30) days after notice of such failure from County to Owner and Owner's limited partner investor, provided that if such failure cannot reasonably be cured within such thirty (30) day period but is capable, with reasonable diligence, of being cured within a total of ninety (90) days, Owner shall have an additional sixty (60) days in which to effect such cure provided that Owner commences to cure such failure within the initial thirty (30) day period, at all times diligently pursues the cure to completion, and in fact completes such cure within the subsequent sixty (60) day period; provided, however, that the cure periods provided by this Section shall not apply to any such failures to perform or comply that are described elsewhere.
- 11) Any representation or warranty by Owner in any of the Loan Documents is materially incorrect or incomplete or otherwise misleading as of the date made or deemed made, and, if such breach is reasonably susceptible of being cured, the expiration of thirty (30) days after notice of such breach from County to Owner and Owner's limited partner investor without the same being cured.
- 12) Owner (a) is unable, or admits in writing its inability, to pay its monetary obligations as they become due, (b) makes a general assignment for the benefit of creditors, or (c) applies for, consents to or acquiesces in the appointment of a trustee, receiver or other custodian for itself or its property, or, in the absence of such application, consent or acquiescence, a trustee, receiver or other custodian is appointed for Owner or the property of Owner (including the Project), and such appointment is not discharged within sixty (60) days.
- 13) The commencement of any case under the Bankruptcy Code or commencement of any other bankruptcy, arrangement, reorganization, receivership, custodianship or similar proceeding under any federal, state or foreign law by or against Owner, provided that if any such case or other bankruptcy, arrangement, reorganization, receivership, custodianship or similar proceeding is commenced against Owner, such case or other bankruptcy, arrangement, reorganization, receivership, custodianship or similar proceeding is not dismissed within sixty (60) days after its commencement.
- 14) A final judgment or decree for monetary damages or a monetary fine or penalty (not subject to appeal or as to which the time for appeal has expired) is entered against Owner by any Governmental Authority, and such

judgment, decree, fine or penalty is not paid and discharged or stayed within sixty (60) days after the entry thereof.

- 15) The assets of Owner are attached, levied on or otherwise seized by legal process, and such attachment, levy or seizure is not quashed, stayed or released within sixty (60) days of the date thereof.
- 16) Owner shall have voluntarily suspended or terminated its business, or otherwise dissolved or liquidated.
- 17) The commencement of any action or proceeding that seeks as one of its remedies the dissolution or liquidation of Owner, if such action or proceeding is not dismissed within sixty (60) days after its commencement.
- 18) There shall be filed any claim of lien (other than liens approved by County) against the Project or the service of any notice to withhold proceeds of the Loan and the continued maintenance of such claim of lien or notice to withhold for a period of sixty (60) days without discharge or satisfaction thereof or provision therefor (including the posting of bonds) satisfactory to County.
- 19) The construction of the Development is abandoned or halted prior to the Completion of Construction for any period of fifteen (15) consecutive days for any cause not beyond the reasonable control of Owner, any contractor or any subcontractor.
- 20) Any Governmental Authority with jurisdiction over the Project orders or requires that the construction of the Development be stopped, or any Entitlement that is required therefor is withdrawn or suspended, and the order, requirement, withdrawal or suspension remains in effect for a period of thirty (30) days, provided that if such order, requirement, withdrawal or suspension cannot reasonably be cured within such thirty (30) day period but is capable, with reasonable diligence, of being cured within a total of ninety (90) days, Owner or Owner's limited partner shall have an additional sixty (60) days in which to effect such cure provided that Owner or Owner's limited partner commences to cure the order, requirement, withdrawal or suspension within the initial period of thirty (30) days, at all times diligently pursues the cure to completion, and in fact completes such cure within the subsequent period of sixty (60) days.
- 21) Owner is in material default under any material Project Agreement or Entitlement for a period of thirty (30) days, provided that if such default cannot reasonably be cured within such thirty (30) day period but is capable, with reasonable diligence, of being cured within a total of ninety (90) days, Owner or Owner's limited partner shall have an additional sixty (60) days in which to effect such cure provided that Owner or Owner's limited partner commences to cure the default within the initial period of thirty (30) days, at all times diligently pursues the cure to completion, and in fact completes such cure within the subsequent period of sixty (60) days.

**5.02 Remedies in Case of Default.** If an Event of Default shall occur, subject to the terms of Section 13 of the Loan Agreement, HACC or Title Company may exercise any one or more of the following rights and remedies, in addition to any other remedies that may be available by law, in equity, or otherwise:

- 1) **Extend Period of Affordability.** If Borrower fails to provide the required rents, fails to rent to eligible tenants, or fails to maintain the units according to applicable Property Standards, HACC may extend the Period of Affordability for the period during which such failure existed.
- 2) **Acceleration.** HACC may declare all or any portion of the Obligations immediately due and payable.
- 3) **Receiver.** HACC may have a receiver appointed for the Trust Property. HACC shall be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the Trust Property exceeds the amount of the indebtedness secured by this Trust Deed. Employment by Title Company or HACC shall not disqualify a person from serving as receiver. Borrower consents to the appointment of a receiver at HACC's option and waives any and all defenses to such an appointment.
- 4) **Possession.** HACC may, either through a receiver or as lender-in-possession, enter and take possession of all or any part of the Trust Property and use, operate, manage, and control it as HACC shall deem appropriate in its sole discretion. Upon request after an Event of Default, Borrower shall peacefully relinquish possession and control of the Trust Property to HACC or any receiver appointed under this Trust Deed.
- 5) **Rents.** HACC may revoke Borrower's right to collect the Rents and may, either itself or through a receiver, collect the same. HACC shall not be deemed to be in possession of the Property solely by reason of exercise of the rights contained in this subsection (5). If Rents are collected by HACC under this subsection(5), Borrower irrevocably appoints HACC as Borrower's attorney-in-fact, with power of substitution, to endorse instruments received in payment thereof in the name of Borrower and to negotiate such instruments and collect their proceeds. After payment of all Obligations, any remaining amounts shall be paid to Borrower and this power shall terminate.
- 6) **Power of Sale.** HACC may direct Title Company, and Title Company shall be empowered, to foreclose the Property by advertisement and sale under applicable law.
- 7) **Foreclosure.** HACC may judicially foreclose this Trust Deed and obtain a judgment foreclosing Borrower's interest in all or any part of the Property.
- 8) **Fixtures and Personal Property.** With respect to any Improvements and other personal property subject to a security interest in favor of HACC, HACC may exercise any and all of the rights and remedies of a secured party under the Uniform Commercial Code.
- 9) **Abandonment.** HACC may abandon all or any portion of the Trust Property by written notice to Borrower.

**5.03 Sale.** In any sale under this Trust Deed or pursuant to any judgment, the Trust Property, to the extent permitted by law, may be sold as an entirety or in one or more parcels and in such order as HACC may elect, without regard to the right of Borrower, any person claiming under Borrower, or any guarantor or surety to the marshalling of assets. The purchaser at any such sale shall take title to the Trust Property or the part thereof so sold, free and clear of the estate of Borrower, the purchaser being discharged from all liability to see to the application of the purchase money. Any person, including HACC, its elected officials, officers, agents, and employees, may purchase at any such sale. HACC and each of its officers are irrevocably appointed Borrower's attorney-in-fact, with power of substitution, to make all appropriate transfers and deliveries of the Trust Property or any portions thereof so sold and, for that purpose, HACC and its officers

may sign all appropriate instruments of transfer. Nevertheless, Borrower shall ratify and confirm, or cause to be ratified and confirmed, any such sale or sales by executing and delivering, or by causing to be signed and delivered, to HACC or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of HACC, for such purpose.

**5.04 Cumulative Remedies.** All remedies under this Trust Deed are cumulative and not exclusive. Any election to pursue one remedy shall not preclude the exercise of any other remedy. An election by HACC to cure under Section 1.15 shall not constitute a waiver of the default or of any of the remedies provided in this Trust Deed. No delay or omission in exercising any right or remedy shall impair the full exercise of that or any other right or remedy or constitute a waiver of the default.

**5.05 Receiver or Trustee-in-Possession.** Upon taking possession of all or any part of the Trust Property, Title Company, HACC, or a receiver may:

- 1) **Management.** Use, operate, manage, control, and conduct business with the Trust Property and make expenditures for such purposes and for such maintenance and improvements as are deemed reasonably necessary.
- 2) **Rents and Revenues.** Collect all rents, revenues, income, issues, and profits from the Trust Property and apply such sums to the reasonable expenses of use, operation, management, maintenance, and improvements.
- 3) **Construction.** At its option, complete any construction in progress on the Property, and in that connection pay bills, borrow funds, employ contractors, and make any changes in plans and specifications as it deems appropriate.
- 4) **Additional Indebtedness.** If the revenues produced by the Trust Property are insufficient to pay expenses, HACC, Title Company, or the receiver may borrow or advance such sums upon such terms as it deems reasonably necessary for the purposes stated in this section. All advances shall bear interest, unless otherwise provided, at the rate set forth in the Note, and repayment of such sums shall be secured by this Trust Deed.

**5.06 Application of Proceeds.** All proceeds realized from the exercise of the rights and remedies under this Section 5 shall be applied as follows:

- 1) **Costs and Expenses.** To pay all costs of exercising such rights and remedies, including the costs of maintaining and preserving the Trust Property, the costs and expenses of any receiver or lender-in-possession, the costs of any sale, and the costs and expenses provided for in Section 6.07 below.
- 2) **Indebtedness.** To pay all Obligations, in such order as HACC shall determine in its sole discretion.
- 3) **Surplus.** The surplus, if any, remaining after satisfaction of all the Obligations shall be paid to the clerk of the court in the case of a judicial foreclosure proceeding, otherwise to the person or persons legally entitled to the surplus.

**5.07 Deficiency.** No sale or other disposition of all or any part of the Trust Property pursuant to this Section 5 shall be deemed to relieve Borrower of any of the Obligations, except to the extent that the proceeds are applied to the payment of such Obligations.

**5.08 Waiver of Stay, Extension, Moratorium, and Valuation Laws.** To the fullest extent permitted by law, Borrower waives the benefit of any existing or future stay, extension, or moratorium law that may affect observance or performance of the provisions of this Trust Deed and any existing or future law providing for the valuation or appraisal of the Trust Property prior to any sale.

**5.09 Continued LIHTC obligations.** This Trust Deed shall to the extent provided below, be subordinate to such extended use agreements and/or land use restrictive covenants as may be recorded from time to time in favor of the State of Oregon acting by and through its Housing and Community Services Department with respect to the property. This subordination shall cease to be effective as of the earlier of (i) the date the property is acquired by foreclosure (or instrument in lieu of foreclosure), or (ii) upon the termination of the "extended use period," as defined in Section 42(h)(6)(D) of the Internal Revenue Code, as amended, or any successor provision (the "Code"), for such other reason provided in Section 42(h)(6)(E) of the Code. Provided, however, a limitation on the eviction of existing low-income tenants, for the term and to the extent provided in Section 42(h)(6)(E)(ii) of the Code, shall survive such foreclosure or other termination of the extended use period applicable to the property. This subordination shall be interpreted to constitute a subordination of this Trust Deed, but only to the extent, necessary to meet the requirements established under Section 42(h)(6)(B) of the Code.

## **ARTICLE VI General Provisions**

**6.01 Time is of the Essence.** Time is of the essence with respect to all covenants and obligations of Borrower under this Trust Deed.

**6.02 Reconveyance by Title Company.** At any time upon the request of HACC, payment of Title Company's fees, if any, and presentation of this Trust Deed, without affecting liability of any persons for the payment of the Obligations, Title Company may reconvey, without warranty, all or any part of the Trust Property. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any facts shall be conclusive proof of the truthfulness thereof.

**6.03 Notice.** Except as otherwise provided in this Trust Deed, all notices pertaining to this Trust Deed shall be in writing and may be delivered by hand, or mailed by first class, registered, or certified mail, return-receipt requested, postage prepaid, and addressed to the appropriate party at its address set forth at the outset of this Trust Deed. Any party may change its address for such notices from time to time by notice to the other parties. Notices given by mail in accordance with this paragraph shall be deemed to have been given upon the date of mailing; notices given by hand shall

be deemed to have been given when actually received. Any notice to Owner shall be accompanied by a notice to the Investor Member of Owner at \_\_\_\_\_

**6.04 Substitute Trustee.** In the event of dissolution or resignation of Title Company, HACC may substitute one or more trustees to sign the trust created, and the new trustee(s) shall succeed to all the powers and duties of the prior trustee(s).

**6.05 Trust Deed Binding on Successors and Assigns.** This Trust Deed shall be binding upon and inure to the benefit of the successors and assigns of Borrower, Title Company, and HACC. If the Trust Property or any portion thereof shall at any time be vested in any person other than Borrower, HACC shall have the right to deal with such successor regarding this Trust Deed, the Trust Property, and the Obligations in such manner as HACC deems appropriate in its sole discretion, without notice to or approval by Borrower and without impairing Borrower's liability for the Obligations.

**6.06 Indemnity.** Borrower shall hold HACC and Title Company and their respective elected officials, directors, officers, employees, and agents, harmless from and indemnify them for any and all claims, demands, damages, liabilities, and expenses, including but not limited to attorney fees and court costs, arising out of or in connection with Title Company's or HACC's interest under this Trust Deed, except Borrower shall not be liable for acts performed by HACC or Title Company in violation of applicable law or resulting from the gross negligence or willful misconduct of HACC or Title Company.

**6.07 Expenses and Attorney Fees.** If HACC refers any of the Obligations to an attorney for collection or seeks legal advice following a default; if HACC is the prevailing party in any litigation instituted in connection with any of the Obligations; or if HACC or any other person initiates any judicial or nonjudicial action, suit, or proceeding in connection with any of the Obligations or the Trust Property (including but not limited to proceedings under federal bankruptcy law, eminent domain, under probate proceedings, or in connection with any state or federal tax lien), and an attorney is employed by HACC to (1) appear in any such action, suit, or proceeding, or (2) reclaim, seek relief from a judicial or statutory stay, sequester, protect, preserve, or enforce HACC's interests, then in any such event Borrower shall pay reasonable attorney fees, costs, and expenses incurred by HACC or its attorney in connection with the above-mentioned events or any appeals related to such events, including but not limited to costs incurred in searching records, the cost of title reports, and the cost of surveyors' reports. Such amounts shall be secured by this Trust Deed and, if not paid upon demand, shall bear interest at the rate specified in the Note.

**6.08 Applicable Law.** The Trust Deed and the validity, interpretation, performance, and enforcement of the Trust Deed shall be governed by the laws of the state of Oregon without giving effect to the conflict of law provisions thereof.

**6.09 Captions.** The captions to the sections and paragraphs of this Trust Deed are included only for the convenience of the parties and shall not have the effect of defining, diminishing, or enlarging the rights of the parties or affecting the construction or interpretation of any portion of this Trust Deed.

**6.10 Rights of Prior Mortgagee.** In the event that all or any portion of the Trust Property is subject to a superior mortgage or trust deed specifically permitted under Exhibit B, the rights of HACC with respect to insurance and condemnation proceeds as provided in Sections 1.14 and 2.01, and all other rights granted under this Trust Deed that have also been granted to such a superior mortgagee or trust deed, shall be subject to the rights of the superior mortgagee or trust deed beneficiary. Borrower authorizes all such superior mortgagees and beneficiaries, on satisfaction of the indebtedness secured by their mortgage or trust deed, to remit all remaining insurance or Condemnation proceeds and all other sums held by them to HACC to be applied in accordance with this Trust Deed.

**6.11 Person Defined.** As used in this Trust Deed, the word person shall mean any natural person, partnership, trust, corporation, or other legal entity of any nature.

**6.12 Severability.** If any provision of this Trust Deed shall be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Trust Deed, and such other provisions shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Trust Deed.

**6.13 Entire Agreement.** This Trust Deed and the other Loan Documents contain the entire agreement of the parties with respect to the Trust Property. No prior agreement, statement, or promise made by any party to this Trust Deed that is not contained therein shall be binding or valid.

**6.14 Commercial Property.** Borrower covenants and warrants that the Property and Improvements are used by Borrower exclusively for business and commercial purposes. Borrower also covenants and warrants that the Property and Improvements are not now, and at no time in the future will be, occupied as the principal residence of Borrower, Borrower's spouse, or Borrower's minor or dependent child.

**6.15 Standard for Discretion**

In the event this Mortgage is silent on the standard for any consent, approval, determination, or similar discretionary action, the standard shall be sole and unfettered discretion as opposed to any standard of good faith, fairness, or reasonableness.

6.16 **ORS 93.040 Warning.** BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR HACC PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92. 010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Pedcor Investment-2016-CLV, Limited Partnership  
an Oregon limited partnership

By: Rosewood Terrace Housing Company, LLC  
It's General Partner

By: Pedcor Investments, A Limited Liability Company  
It's Manager

By: \_\_\_\_\_  
Thomas G. Crowe  
Executive Vice President

STATE OF OREGON )

County of \_\_\_\_\_) ss.

On \_\_\_\_\_, 2017, before me personally appeared \_\_\_\_\_, who being duly sworn, stated that he/she is the \_\_\_\_\_ of \_\_\_\_\_ and acknowledged the foregoing instrument to be the voluntary act and deed of the Borrower, signed by authority of Borrower.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: \_\_\_\_\_

## EXHIBIT A

### LEGAL DESCRIPTION

#### PARCEL 1:

Part of Section 28, Township 1 South. Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows, to-wit:

Beginning 88 rods East of the Southwest corner of the Samuel W. McMahan Homestead Claim Notification No.5746, as described in Volume "S". Page 295. Deed Records, which beginning point is the Southeast corner of the Orren Battin tract described in Book 120. Page 110. Deed Records; thence East along the North line of the W.S. Buckley Donation Land Claim, a distance of 16 rods to the Southwest corner of the Shepherd tract described in Book 235, Page 235. Deed Records ; thence North along the West line of said Shepherd tract 40 rods to the North line of the Thomas E. Battin tract described in Book "H". Page 216. Deed Records; thence West along said North line 16 rods to the Northeast corner of the Orren Battin tract aforementioned; thence South 40 rods to the point of beginning.

EXCEPTING THEREFROM that portion lying within that tract described in deed to Clackamas County in Fee No. 77 17914.

ALSO EXCEPTING THEREFROM that portion conveyed to the State of Oregon, by Deed recorded under Recorder's Fee No. 71 30200.

#### PARCEL 2:

Part of the Southwest one-quarter of Section 28. Township 1 South. Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning 58 rods East of the Southwest corner of the Donation Land Claim No. 5746, known as the Donation Land Claim of Samuel W. McMahan; running thence North 88° 55' East, 264 feet to an iron pipe which is the true point of beginning of the tract herein described; running thence North 3° 03' West, 640.2 feet to an iron pipe; thence North 88° 57' East, 231 feet to an iron pipe; thence South 3° 03' East, 640.35 feet to an iron pipe; thence South 88° 55' West, 231 feet to the true place of beginning.

EXCEPT that portion conveyed to the State of Oregon by deed recorded under Recorder's Fee No. 72 12686.

**EXHIBIT B**

**EXCEPTIONS TO CLEAR TITLE**

Insert any Exceptions here

KUTAK ROCK LLP  
DRAFT 11/09/17

**AMENDED AND RESTATED AGREEMENT**  
**OF**  
**LIMITED PARTNERSHIP**  
**OF**  
**PEDCOR INVESTMENTS-2016-CLV, LIMITED PARTNERSHIP**



**AMENDED AND RESTATED AGREEMENT OF  
LIMITED PARTNERSHIP  
OF  
PEDCOR INVESTMENTS-2016-CLV, LIMITED PARTNERSHIP**

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**AMENDED AND RESTATED AGREEMENT**

**OF**

**LIMITED PARTNERSHIP**

**OF**

**PEDCOR INVESTMENTS-2016-CLV, LIMITED PARTNERSHIP**

This Amended and Restated Agreement of Limited Partnership of Pedcor Investments-2016-CLV, Limited Partnership, dated and effective as of the [ ] day of January, 2018, is made by and among:

Rosewood Station Housing Company, LLC  
an Indiana limited liability company,  
as the General Partner,

The Housing Authority of Clackamas County  
an Oregon public body corporate and politic,  
as the Special Limited Partner,

Pedcor Investments, A Limited Liability Company,  
a Wyoming limited liability company,  
as the Withdrawing Limited Partner,

and

U.S. Bancorp Community Development Corporation,  
a Minnesota corporation,  
as the substitute Limited Partner.



## RECITALS

Pedcor Investments-2016-CLV, Limited Partnership (the “*Partnership*”) was originally formed as an Oregon limited partnership with the filing of the Certificate of Limited Partnership with the Secretary of State of Oregon on August 4, 2016. The Partnership has been operating pursuant to a written partnership agreement dated August 2, 2016, having Rosewood Station Housing Company, LLC, an Indiana limited liability company, as General Partner, and Pedcor Investments, A Limited Liability Company, a Wyoming limited liability company, as the Limited Partner (the “*Initial Partnership Agreement*”). The parties hereto desire to further amend and restate the Initial Partnership Agreement in order to cause the withdrawal of the Withdrawing Limited Partner, the admission of the Limited Partner and Special Limited Partner each as a limited partner, and to set forth more fully the rights, obligations, and duties of the General Partner, the Limited Partner and Special Limited Partner.

Accordingly, in consideration of the foregoing, of the mutual promises of the parties hereto, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending legally to be bound, hereby agree as follows:

## ARTICLE I

### CONTINUATION AND BUSINESS PURPOSE

#### 1.1 Restatement and Continuation of Partnership

Effective immediately after admission to the Partnership of the Limited Partner and the Special Limited Partner, said admission to be evidenced by full execution of this Agreement, the Withdrawing Limited Partner hereby withdraws as a limited partner of the Partnership. The General Partner, the Special Limited Partner and the Limited Partner, constituting all of the Partners of the Partnership, hereby amend and restate the Initial Partnership Agreement in its entirety and continue the Partnership under the Act. By execution of this Agreement, the Withdrawing Limited Partner hereby confirms and agrees that it hereby waives, remises and forever quitclaims any and all right, title, claim or interest in the Partnership, its Partnership Interest, the Project and/or in Partnership and Project assets, and waives and releases any and all right, title and interest in and to its Capital Account and any and all amounts contributed or advanced to the Partnership on or prior to the date hereof. Further, the Withdrawing Limited Partner hereby represents and warrants that it (i) has not assigned, pledged, or transferred its Partnership Interest, or any part thereof or any interest therein, on or prior to the date hereof, and (ii) has owned the same, free from encumbrances and third party claims and interests therein since the date of commencement of the term of the Partnership.

#### 1.2 Partnership Name

The name of the Partnership is “Pedcor Investments-2016-CLV, Limited Partnership”

#### 1.3 Principal Place of Business

The principal office of the Partnership and the office to be maintained pursuant to the Act shall be located at One Pedcor Square, 770 3<sup>rd</sup> Avenue, Carmel, Indiana 46032. The principal

place of business of the Partnership shall be located at One Pedcor Square, 770 3<sup>rd</sup> Avenue, Carmel, Indiana 46032.

#### **1.4 Registered or Resident Agent**

The name and address of the registered or resident agent of the Partnership for service of process are Corporation Service Company, 1127 Broadway Street, N.E., Suite 310, Salem, Oregon 97301.

#### **1.5 Title to Project**

Legal title to the Project shall be in the name of the Partnership, and no Partner, individually, shall have any ownership of such Project.

#### **1.6 Purposes of the Partnership**

The purposes, nature, and general character of the business of the Partnership shall consist of:

(a) Acquiring, owning, developing, constructing and/or rehabilitating, leasing, managing, operating, and, if appropriate or desirable, selling or otherwise disposing of the Project or any substantial part thereof;

(b) During the Compliance Period, operating the Credit Units in compliance with the provisions of Section 42 of the Code; and

(c) Carrying on any and all activities ancillary or otherwise related to the foregoing in accordance with this Agreement.

The Partnership shall have all powers necessary to accomplish such purposes. Except as provided above, the Partnership shall engage in no other business or activity and the purposes of this Partnership and the nature and character of its business shall not be extended, by implication or otherwise, except by Consent of the Limited Partner.

#### **1.7 Partnership Term**

The term of the Partnership commenced on August 4, 2016, and shall continue until December 31, 2066, unless sooner terminated in accordance with Article XII. Upon dissolution of the Partnership, the General Partner shall take all actions necessary to terminate the Partnership in accordance with requirements of the Act.

#### **1.8 Filing of Certificate**

The Certificate creating the Partnership was filed August 4, 2016 with the Oregon Secretary of State. Immediately after the execution of this Agreement by the Partners, the General Partner shall, if required, cause the Certificate to be amended and filed in accordance with the Act. The General Partner shall immediately cause a copy of such Certificate, and all

amendments, with evidence that the Certificate, and all such amendments, were filed in accordance with the Act, to be furnished to the Limited Partner.

## ARTICLE II

### CERTAIN DEFINITIONS

#### 2.1 General Terms

The following defined terms used in this Agreement shall have the meanings specified below:

*Accountants:* Baker Tilly Virchow Krause, LLP (“**BT**”) as to the Partnership financial projections and the determination of any Credit adjuster calculations under Section 3.3, and Dauby, O’Connor and Zaleski, LLC (“**DOZ**”) or such other firm of independent certified public accountants that receives the Consent of the Limited Partner in all other events, including but not limited to, the Cost Certifications, the calculation of the Credits under Section 3.3, the determination of profits and losses, annual tax returns, K-1’s and all other accounting matters for the Partnership.

*Act:* The Oregon Uniform Limited Partnership Act or any corresponding provision or provisions of succeeding law, as it or they may be amended from time to time.

*Additional Interest:* The interest due on the Bonds in excess of the Pass-Through Rate. Payment of Additional interest shall be subject to and payable solely from available Surplus Cash and Sale Proceeds; provided however to the extent that additional interest is payable from Surplus Cash such payments shall be payable solely from up to 75% of such available Surplus Cash.

*Admission Date:* The date on which the Limited Partner is admitted to the Partnership, which shall be deemed to be the date of execution of this Agreement by all parties hereto.

*Affiliate:* As to any Partner: (i) any such Partner, (ii) any entity of which a majority of the voting interests is owned by any one or more of the Persons referred to in the preceding clause (i); (iii) any officer, director, trustee, stockholder or member (ten percent (10%) or more) or partner or member of any Person referred to in the preceding clauses (i) and (ii); and/or (iv) any Person directly or indirectly controlling (ten percent (10%) or more), or under direct or indirect common control with or by, any Person referred to in the preceding clauses (i), (ii), (iii). The term Affiliate shall include, but not be limited to Pedcor Development Associates, LLC, Pedcor Investments, A Limited Liability Company, Pedcor Management Corporation, Pedcor Construction Management, LLC and Signature Construction.

*Agreement:* This Amended and Restated Agreement of Limited Partnership of Pedcor Investments-2016-CLV, Limited Partnership, including all of the exhibits attached hereto and made a part hereof, as amended (in accordance with Section 15.1) and in effect from time to time.

*Agreement for Construction Services:* The Agreement for Construction Services dated January \_\_\_\_, 2018, by and between the Partnership and Pedcor Construction Management, LLC. The parties acknowledge that the General Contractor may subcontract certain construction obligations to Signature Construction.

*Annual Operating Budget:* A budget prepared in accordance with Section 13.3(a)(3) for the ownership and operation of the Project and the Partnership, reflecting the reasonably projected income and expenses for the following Fiscal Year and payments budgeted into, and disbursements budgeted from, Reserves for such year, that has been reviewed by the Limited Partner pursuant to Section 13.3(a)(3).

*Architect:* DELV Design Studio LLC, its successors (provided that the same party actually providing such services to the Partnership continues to provide such services) or permitted assigns.

*Architectural and Engineering Services Agreement:* The Architectural and Engineering Services Agreement dated January \_\_\_\_, 2018 made by and between the Partnership and Pedcor Investments, A Limited Liability Company.

*Asset Management Fee:* The annual fee payable to USBCDC respecting Project and Partnership review, as set forth in Section 11.2.

*Bonds:* Up to [**\$29,579,128**] Housing Authority of Clackamas County Multifamily Housing Revenue Bonds (Rosewood Station Apartments Project), Series 2017 anticipated to be purchased by the Bond Purchaser.

*Bond Issuer:* Housing Authority of Clackamas County, an Oregon public body corporate and politic.

*Bond Loan:* The Loan made by the Bond Issuer to the Partnership pursuant to that certain Financing Agreement dated as of January 1, 2018, and secured by certificates, which will be guaranteed as to the timely payment of principal and interest by the Government National Mortgage Association (“Ginnie Mae”) pursuant to the National Housing Act and the regulations promulgated thereunder.

*Bond Purchaser:* United Fidelity Bank FSB and/or International City Bank, N.A and their successors and assigns.

*Bridge Loan:* That certain Loan described in Exhibit A-4 hereof.

*Capital Account:* The capital account maintained by the Partnership for each Partner, determined in accordance with Section 7.5.

*Capital Contribution:* The total amount of cash or any cash equivalents and the agreed upon value of any property contributed or agreed to be contributed to the Partnership by each Partner, including all adjustments thereto, as provided in this Agreement and Exhibit A. Any reference in this Agreement to the Capital Contribution of a substituted Partner shall include all Capital Contributions previously made by any predecessor or former Partner of the Interest

acquired by the substituted Partner, and shall be subject to all adjustments thereto pursuant to this Agreement.

*Capital Installment:* Each installment of Capital Contribution as set forth on Exhibit A-1.

*Capital Installment Due Date:* The date on which any Capital Installment (or portion thereof) is due and payable pursuant to Section 3.2(d).

*Capital Installment Notice:* The Notice to be delivered to the Limited Partner by the General Partner set forth on Exhibit A-2.

*Capital Percentage:* Each Partner's Interest in Capital Proceeds, as set forth in Section 8.2 and Exhibit A-3.

*Capital Proceeds:* The proceeds from (i) any sale or exchange of any of the assets of the Partnership, (ii) any casualty, condemnation, or other loss affecting the Project or any portion thereof resulting in the receipt of insurance proceeds (other than rent loss or business interruption insurance) or condemnation payments, except to the extent of proceeds applied to the restoration, reconstruction, or replacement of the Project, (iii) any financing or refinancing of the Project (including the disbursement of any proceeds of any such loan, whenever made, that are available to be distributed to the Partners), or (iv) any other transaction the proceeds of which are deemed attributable to capital under generally accepted accounting principles less (a) all costs and expenses incurred by the Partnership in connection with the transaction giving rise to such proceeds, including, if applicable, a market (at the time of sale) broker fee payable to a third party broker; (b) all principal and interest payments and other sums paid on or with respect to any indebtedness of the Partnership then due and payable (excluding the Disposition Loan and the HOME Loan, amounts due and owing with respect to Additional Interest, Partner Loans and Development Fee Advances); (c) amounts required by this Agreement or amounts receiving the Consent of the Limited Partner to be set aside in reserves; and (d) any Partnership Expenses then due and payable and for which there are insufficient Partnership gross revenues to pay; provided, that in no event shall the making of any Capital Contribution or Partner Loan give rise to any Capital Proceeds.

*Cash Flow:* The amount determined by the Partners for any Fiscal Year, or portion thereof, equal to the excess, if any, of all (i) gross revenue collected directly or indirectly from the operations of the Project (excluding Loans and advances made on the Disposition Loan and the HOME Loan, condemnation and casualty proceeds, Capital Proceeds, and tenant security deposits, and interest thereon, unless forfeited to the Partnership) and of the Partnership (excluding Capital Contributions and interest earned on Reserves which is retained as part of the Reserve, until released from the Reserve) ("*Partnership Net Revenues*"), as reduced, dollar for dollar, by Partnership Expenses.

*Certificate:* The Certificate of Limited Partnership that was prepared and filed in accordance with the Act, as such Certificate may be amended from time to time.

*CDBG Loan:* That certain loan as detailed on the attached Exhibit A-4.

*Change in Law:* An amendment to the Code or Treasury Regulations that is applicable to the Project.

*City:* The City of Happy Valley, Oregon.

*Civil Engineer:* Cardno, Inc.

*Closing IRR:* An internal rate of return (“IRR”) of 6.00% calculated using a tax rate of 25%, provided, however, for purposes of the Closing IRR calculation set forth in Section 3.3(a)(i) and (ii) and 3.3(b) hereof, no more than two quarters of any delay by the Limited Partner in funding the Third and/or Fourth Capital Installments due to the Project not achieving the end of the Stabilization Period shall be given effect in determining this calculation.

*Code:* The Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of succeeding law.

*Completion Date:* The last to occur of the following: (i) the date which is expected to occur on or prior to the Target Completion Date, on which the construction of all of the buildings and Units constituting the Project have been completed, in a good and workmanlike manner, defect-free and free from mechanic’s and materialmen’s liens, and in accordance with all applicable laws and codes and the relevant Project Documents and all environmental remediation laws, as evidenced by an AIA G704 certificate of substantial completion prepared and executed by the Architect (and concurrence therewith by the Limited Partner’s independent inspection construction and disbursement advisor), indicating that construction of the Project, and all improvements, have been completed in accordance with the relevant Project Documents, except for non-material punch list items that do not impede the rental of the space in the Project on a full rent paying basis and an ALTA as built survey of the Project, each of which receive the Consent of the Limited Partner, provided funds have been placed in escrow to provide for the completion of such punch list items in form, substance and amount acceptable to the Limited Partner, and (ii) the receipt of a permanent certificate of occupancy for the buildings comprising the Project and one hundred percent (100%) of the Units in the Project or, if not available, a written statement from the City of Happy Valley certifying that construction of the Project is complete.

*Compliance Manager:* As defined in Section 11.1.

*Compliance Period:* When used with respect to a building in the Project, means the period specified in Section 42(i)(1) of the Code with respect to such building and when used with respect to the Project as a whole, means the period starting with the beginning of the first period under Section 42(i)(1) to start for any building in the Project and ending with the end of the last period under Section 42(i)(1) to end for any building in the Project.

*Consent of the General Partner:* The written consent, approval or direction of the General Partner, which shall be obtained prior to the taking of any action for which it is required hereunder. If there is more than one General Partner, Consent of the General Partner shall require the affirmative consent of General Partners holding at least a majority of the aggregate Percentage Interests of the General Partners.

*Consent of the Limited Partner:* The written consent, approval or direction of the Limited Partner which shall be obtained prior to the taking of any action for which it is required hereunder. If there is more than one Limited Partner, Consent of the Limited Partner shall require the affirmative consent of Limited Partners holding at least a majority of the aggregate Percentage Interests of the Limited Partners.

*Consent of the Special Limited Partner:* The written consent, approval or direction of the Special Limited Partner which shall be obtained prior to the taking of any action for which it is required hereunder. If there is more than one Special Limited Partner, Consent of the Special Limited Partner shall require the affirmative consent of Special Limited Partners holding at least a majority of the aggregate Percentage Interests of the Special Limited Partners.

*Construction Contract:* Collectively, the Agreement for Construction Services and that certain HUD Form 92442M Construction Contract, as dated January \_\_\_\_, 2018, by and between the Partnership and General Contractor.

*Construction Documents:* The Construction Contract and the Architectural and Engineering Services Agreement.

*Construction Inspector:* Capital Consultants, Inc., a Missouri corporation.

*Contractor Fee:* The fee payable to the General Contractor in the amount of fourteen percent (14%) of the cost of the “Work” (as such term is defined in the Construction Contract).

*Contractor Fee Advance:* An advance to the Partnership by the General Partner, pursuant to Section 5.12 and Exhibit A-5.

*Cost Certification:* Certification of the costs of the Project and the amount of the applicable Credit, based on the eligible basis, the qualified basis and Credit percentage applicable to the Project, prepared by the Accountants and acceptable to the Limited Partner.

*Credit:* The Low-Income Housing Tax Credit provided for under Section 42 of the Code, including the thirty percent (30%) present value credit (the “**Federal Low-Income Credits**”) available respecting the Project.

*Credit Adjuster Advance:* A payment made by the General Partner, pursuant to Section 3.3.

*Credit Deficiency:* All adjustments to Credit pursuant to Section 3.3, other than any Upward Adjusters pursuant to Section 3.3(a)(ii).

*Credit Period:* The credit period with respect to all buildings in the Project, as defined in Section 42(f) of the Code.

*Credits at Completion:* The aggregate amount of Credits to be received by the Limited Partner based upon the Cost Certification.

*Credit Units:* Units that are operated in a manner so as to qualify as low-income units within the definition of Section 42(i)(3) of the Code, which in this Project shall consist of two hundred and twelve (212) of the total Units, constituting 100% of the Project.

*Deferred Development Fee:* As set forth in the Development Services Agreement.

*Developer:* Pedcor Development Associates, LLC, its successors (provided that the same party actually providing such services to the Partnership continues to provide such services) and permitted assigns.

*Development Advances:* The advances to the Partnership to be made by the General Partner in the amounts and under the circumstances provided in Section 5.9(b).

*Development Fee:* The fees earned and payable pursuant to the Development Services Agreement.

*Development Fee Advance:* An advance to the Partnership by the General Partner pursuant to Section 5.11.

*Development Fee Sharing Agreement:* The Development Fee Sharing Agreement between Developer and Special Limited Partner dated as of January \_\_\_, 2018.

*Development Services Agreement:* The Development Services Agreement attached hereto as Exhibit C.

*Disposition Loan:* That certain Loan in an amount not to exceed **[\$1,605,000]** made by the Housing Authority to the Partnership.

*Easements:* All of those easements for utilities, waterline, sanitary sewage, drainage and access encumbering or benefitting the Project, whether identified in Schedule A and/or Schedule B to the Title Policy or not.

*Environmental Hazard:* Any hazardous or toxic substance, waste or material, or any other substance, pollutant, or condition that poses a risk to human health or the environment, including, but not limited to: (i) any “hazardous substance” as that term is defined under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq. as amended; (ii) petroleum in any form, lead-based paint, asbestos, urea formaldehyde insulation, methane gas, polychlorinated biphenyls (“PCBs”), radon, mold or lead in drinking water, except for ordinary and necessary quantities of office supplies, cleaning materials and pest control supplies stored in a safe and lawful manner and petroleum products contained in motor vehicles; (iii) any underground storage tanks; (iv) accumulations of mining debris or spent batteries; or (v) any other condition that could result in liability for an owner or operator of the Project under any Environmental Law.

*Environmental Laws:* (i) The Clean Air Act, as amended, 42 U.S.C. Sections 7401-7642; (ii) the Clean Water Act, as amended, 33 U.S.C. Sections 1251-1387; (iii) the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Sections 6901-6991K; (iv) the Toxic Substance Control Act, as amended, 15 U.S.C. Sections 2601-2671; (v) the Safe Drinking



Water Control Act, as amended, 42 U.S.C. Sections 300f-300i-26; (vi) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq. as amended; (vii) the Occupational Safety and Health Act of 1970, as amended, 19 U.S.C. Section 651, et. seq.; (viii) the Residential Lead-Based Paint Hazard Reduction Act of 1992, as amended; and (ix) any other federal, state, or local law, regulation, rule, or ordinance applicable to the Project pertaining to public health or employee health and safety.

*Environmental Reports:* The Phase I Environmental Site Assessment dated August 30, 2017, prepared by Arkose Environmental, Inc., and the following supplemental reports: The Limited Phase II Investigation report, dated February 15, 2016, prepared by Arkose Environmental, Inc.; the HUD Form 4128 report, August 30, 2017, prepared by Arkose Environmental, Inc.; the Underground Storage Tank Decommissioning report, dated April 2016, prepared by PBS Engineering and Environmental; the Pre-Demolition Asbestos and Lead Paint Survey report dated April 2016, prepared by PBS Engineering and Environmental and the Geotechnical Investigation Foundation & Pavement Thickness Recommendations, dated November 2016, prepared by MLA Labs, Inc.

*Event of Bankruptcy:* With respect to any Person:

(a) The commencement by such Person of a voluntary case under applicable federal bankruptcy laws, or any other applicable federal or state bankruptcy, insolvency or similar law, or the consent by such Person to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) for such Person or for any substantial part of his or its property, or the making by such Person of any assignment for the benefit of creditors, or the taking of action by such Person in furtherance of any of the foregoing;

(b) The commencement against such Person of an involuntary case under applicable federal bankruptcy laws, or any other applicable federal or state bankruptcy insolvency or similar laws which has not been vacated or discharged within sixty (60) days, or the entry of a decree or order for relief by a court having jurisdiction in respect of such person or the appointment of a receiver, liquidator, trustee (or other similar official) for such person and the continuance of such decree, order or appointment unstayed for a period of sixty (60) days;

(c) The admission by such Person of his or its inability to pay his or its debts as they become due; or

(d) Such Person becoming “insolvent”, as insolvency is or may be defined pursuant to the federal bankruptcy laws, the Uniform Fraudulent Conveyances Act, any state or federal act or law, or the ruling of any court.

*Event of Default:* Any event set forth in Section 9.2(a) of this Agreement.

*Extended Use Agreement:* The agreement to be entered into between the Partnership and the HCA as required pursuant to Section 42(h)(6) of the Code.

*Extended Use Period:* The period specified in Section 42(h)(6)(D) of the Code which will be thirty (30) years with respect to the Project.

*Fair Market Value:* A valuation of the applicable asset or Interest based upon an appraisal, pursuant to Section 14.2, and as regards valuation of an Interest, the applicable calculations of the Accountants.

*FHA:* The Federal Housing Administration of the United States Department of Housing and Urban Development.

*Final Determination:* With respect to any issue, the earliest to occur of: (i) a decision, judgment, decree, or other order being issued by any court of competent jurisdiction, which decision, judgment, decree, or other order has become final (i.e., all allowable appeals requested by the parties to the action have been exhausted or the time for such appeals has expired); (ii) the IRS having entered into a binding agreement with the Partnership or a Partner or having reached a final administrative or judicial determination which, whether by law or agreement, is not subject to appeal (or for which the period of appeal has expired without appeal); (iii) the expiration of the applicable statute of limitations; or (vi) the filing of a federal information return or an amended federal information return by the Partnership or a Partner.

*First Mortgage Loan:* The first mortgage construction/permanent loan made by P/R Mortgage & Investment Corp., an Indiana corporation, to the Partnership in the amount of up to **[\$29,579,128]** to be insured by the FHA pursuant to Section 221(d)(4) of the National Housing Act of 1934, as amended, and secured by a first mortgage lien on the Project, as further described in Exhibit A-4 hereof.

*Fiscal Year:* The fiscal year of the Limited Partner or such other year that the Partnership is required by the Code to use as its taxable year. As of the Admission Date, the Fiscal Year is the year ending December 31, subject to modifications with the Consent of the Limited Partner and/or as required by the Code.

*General Contractor:* Pedcor Construction Management, LLC, and its successors (provided that the same party actually providing such services to the Partnership continues to provide such services) and permitted assigns.

*General Partner:* Rosewood Station Housing Company, LLC, an Indiana limited liability company, its successors and permitted assigns, and any additional or substitute general partners of the Partnership named in any duly adopted amendment to this Agreement. If there is more than one general partner, the term “General Partner” shall refer individually, collectively, jointly and severally, to all such general partners.

*Guarantor:* Pedcor Development Associates, LLC, Pedcor Investments, A Limited Liability Company, Bruce A. Cordingley, Gerald K. Pedigo and Phillip J. Stoffregen; provided, however, that the guaranty of Gerald K. Pedigo shall terminate as of the Completion Date and the assets of Mr. Pedigo which are subject to the Guaranty shall be limited as more particularly set forth in the Guaranty. If there is more than one Guarantor, the term “Guarantor” means each and every Guarantor, jointly and severally.

*Guaranty:* The Guaranty of even date herewith, a copy of which is attached hereto as Exhibit D.

*HACC Interest:* Together, the Special Limited Partner Interest owned by the Housing Authority and the interest in the General Partner owned by the Housing Authority GP Member.

*HAP Contract:* That certain Housing Assistance Payments Contract between the Partnership and the Housing Authority of Clackamas County, under which rental subsidy payments respecting twenty (20) Credit Units shall be provided to the Partnership, over an initial term of at least fifteen (15) years.

*HCA:* Oregon Housing and Community Services.

*HOME Loan:* That certain loan not to exceed the amount of up to **[\$1,105,000]** made by the Housing Authority to the Partnership.

*Housing Authority:* The Housing Authority of Clackamas County, a public body corporate and politic of the State of Oregon.

*Housing Authority GP Member:* **[HACC Rosewood Station, LLC]**, an Oregon limited liability company, which is wholly owned by the Special Limited Partner.

*Housing Authority Loan:* That certain loan not to exceed the amount of up to **[\$1,605,000]** made by the Housing Authority to the Partnership solely to pay applicable Additional Interest with respect to the Bond Loan, secured by a third priority deed of trust.

*HUD:* The Department of Housing and Urban Development.

*HUD Final Endorsement:* The final Endorsement of the First Mortgage Loan by FHA for FHA insurance pursuant to Section 221(d)(4) of the National Housing Act.

*HUD Loan Documents:* The HUD Regulatory Agreement, the Multifamily Deed of Trust, Assignment of Leases and Rents and Security Agreement evidencing the First Mortgage Loan, and the Note evidencing the First Mortgage Loan, each dated as of even date herewith.

*HUD Regulatory Agreement:* The Regulatory Agreement for Multifamily Housing Projects by and between HUD and the Partnership pursuant to which the Partnership has agreed to comply with the terms of the mortgage insurance program under Section 221(d)(4) of the National Act.

*Interest:* As to any Partner, such Partner's right, title, and interest in and to any and all assets, distributions, losses, profits and shares of the Partnership, whether cash or otherwise, and any other interests and economic incidents and obligations of ownership whatsoever of such Partner in the Partnership.

*IRS:* The Internal Revenue Service.

*Lease-up Period:* The period commencing on the date that the first Unit in the Project is marketed for occupancy and ending when the Project achieves initial one hundred percent (100%) Qualified Occupancy for the two hundred and twelve (212) Credit Units and ninety-three percent (93%) current physical occupancy of all Units. Initial 100% Qualified Occupancy for the Credit Units is expected on or before December 1, 2020 and 93% physical occupancy of all Units is expected on or before December 1, 2020.

*Lender:* The payee under each of the Loans, together with any successors or assigns in such capacity.

*Limited Partner:* U.S. Bancorp Community Development Corporation, a Minnesota corporation, its successors and permitted assigns, and any Person who becomes a Substitute Limited Partner as provided herein, in each such person's capacity as a limited partner. If there is more than one limited partner of the Partnership, the term "Limited Partner" shall refer collectively to all such limited partners, but provided, however, that the term "limited partner" shall in no event include the Special Limited Partner unless otherwise specifically provided herein.

*Loan Documents:* With respect to each Loan, any and all documents executed by the Partnership in connection with such Loan.

*Loan Notes:* The notes executed by the Partnership in favor of the Lender of each of the Loans.

*Loans:* The loans shown on Exhibit A-4.

*Management Agent:* Pedcor Management Corp., an Indiana corporation, or any successor management agent retained in accordance with this Agreement.

*Management Agreement:* The management agreement between the Management Agent and the Partnership, together with the Addendum to the Management Agreement thereto, dated as of January [\_\_\_], 2018, or any subsequent management agreement acceptable to the Limited Partner which may be entered into between the Partnership and the Management Agent in the future.

*Market Rate Units:* Units that are not Credit Units; this Project has zero (0) Market Rate Units.

*METRO Loan:* That certain loan as detailed on the attached Exhibit A-4 hereto.

*Mortgages:* The mortgages or deeds of trust and security agreements which secure the applicable Loans.

*MOU:* The Memorandum of Understanding between the Special Limited Partner and Pedcor Investments, LLC dated as of February 4, 2015.

*Notice:* A writing containing the information required by this Agreement and sent by registered or certified mail, postage prepaid, return receipt requested, or sent by commercial

delivery service, by recognized overnight delivery service, by hand delivery, or telecopy to a Partner at the last address or addresses designated for such purpose by such Partner pursuant to Section 15.2. Any such Notice will be deemed received on the earlier of: (i) the date of receipt of such registered mail or certified mail (or confirmation of refusal thereof); (ii) three (3) business days after deposit of such Notice in the U.S. Mail, postage prepaid, addressed to the Partner at the applicable address for Notices delivered by mailing; (iii) the date of actual receipt of such Notice by commercial delivery service or hand delivery; and (iv) date of confirmation of delivery of a telecopy. A Notice hereunder may be preceded by electronic delivery, but the electronic delivery itself shall not constitute Notice for purposes of this definition.

*Operating Deficit:* The amount by which Partnership Expenses plus any required funding of the Replacement Reserve in accordance with Exhibit A-7 exceed the sum of collected gross receipts from the Project (including government subsidies actually received during such period, but excluding Loans, advance rent payments, nonforfeited tenant deposits, casualty and condemnation proceeds, Capital Contributions and Capital Proceeds).

*Operating Deficit Advance:* A loan to the Partnership by the General Partner, which shall be required under the circumstances described in Section 5.10.

*Operating Reserve:* The reserve to be funded in accordance with Exhibit A-7.

*Partner or Partners:* Each of the General Partner, the Special Limited Partner and the Limited Partner.

*Partner Loan:* A loan to the Partnership by a Partner as permitted by this Agreement, including, without limitation, an Operating Deficit Advance.

*Partnership:* Pedcor Investments-2016-CLV, Limited Partnership, an Oregon limited partnership formed under and pursuant to the Act.

*Partnership Expenses:* All costs, debts and expenses of any type incurred, on an accrual basis, incident to the ownership and operation of the Project and the Partnership, including, without limitation, payments of taxes, insurance, required payments of principal and interest on any Loans not paid out of Cash Flow (and the funding of all Reserves which are not funded from Cash Flow, all as further set forth in Exhibit A-7, and any other reserves required by any Lender or the HCA), audit expenses, HCA compliance costs, and any other Partnership obligations and costs of capital improvements to the Project incurred after the Completion Date, to the extent such Partnership Expenses are not paid from Reserves (described on Exhibit A-7), insurance or condemnation proceeds, Loans, Capital Contributions or Capital Proceeds. By way of clarification, Partnership Expenses shall not include depreciation and amortization taken into account for federal income tax purposes. For purposes of calculating Required Debt Service Coverage, Partnership Expenses shall not include cost of capital improvements.

*Partnership Management Agreement:* That certain agreement by and between the Partnership and the General Partner, attached hereto as Exhibit E, whereby, in exchange for the Partnership Management Fee, the General Partner will perform those certain services as detailed therein.

*Partnership Management Fee:* That certain Partnership management fee payable to the General Partner, pursuant to Exhibit E.

*Partnership Net Revenues:* As defined in item (1) of the definition of “Cash Flow”.

*Pass-Through Rate:* shall mean 2.50%.

*Pedcor Investments, LLC:* Pedcor Investments, A Limited Liability Company, its successors and assigns.

*Percentage Interest:* As to any Partner, the percentage in the Partnership shown opposite the name of such Partner in Exhibit A and Exhibit A-3, as they may be amended from time to time in accordance with this Agreement.

*Person:* An individual or entity, including, but not limited to, a corporation, general partnership, joint venture, limited partnership, limited liability company, trust, cooperative, or association and the heirs, executors, administrators, legal representatives, successors, and assigns of such Person where the context so requires.

*Plans and Specifications:* The final signed and sealed Plans and Specifications along with any and all addendums for the Project, prepared by the Architect, as more specifically set forth on Exhibit O attached hereto, reviewed and accepted by the Limited Partner, and stamped as “approved” by the local jurisdiction together with any change orders approved in accordance with this Agreement and the Loan Documents.

*Project:* The aggregate of the individual buildings, Units, and the common areas constituting the Partnership’s fee interest in the improvements constructed or to be constructed thereon, known as Rosewood Station Apartments, which will contain two hundred twelve (212) Units in six (6) buildings and not less than two hundred twenty one (221) adjacent parking spaces, which Project is located in Happy Valley, Clackamas County, Oregon, the legal description of which is set forth on Exhibit B attached and made a part hereof, together with all easements, servitudes and other rights and benefits appurtenant thereto.

*Project Documents:* The Construction Contracts, Plans and Specifications, agreements with architects, engineers, environmental abatement consultants and contractors and other third party contractors disclosed in writing to the Limited Partner, agreements with the Management Agent, all operating and maintenance plans of the Partnership, including, without limitation, plans entered into in order to implement recommendations of the Environmental Reports, if any, agreements with the General Partner and its Affiliates, agreements with the Special Limited Partner and its Affiliates, the Guaranty, the Extended Use Agreement, the Easements, all documents referenced in Schedule A and/or B to the Title Policy, all documents pertaining to the Property Tax Exemption with respect to the Project, the Agreement for Construction Services, this Agreement and all exhibits hereto, the Loan Documents, the Construction Documents and any other document or instrument executed in connection with any of the aforesaid documents, as such documents may be amended from time to time in accordance with the terms of this Agreement.

*Projected Credit Amount:* The aggregate, or annual, as the context requires, Credit anticipated to be generated by the Project, as specified on Exhibit A-3 and adjusted pursuant to Section 3.3(a), 3.3(b) and 3.3(c).

*Projected Rents:* The monthly rental amounts for each Unit in the Project set forth in the Projections.

*Projections:* The Accountant's projections of the anticipated results of the operation of the Partnership prepared by the Accountants and attached hereto as Exhibit F to this Agreement, which have been reviewed and approved by the General Partner and Special Limited Partner as the same may be adjusted and updated in accordance with Section 3.3(a).

*Property Tax Exemption:* As defined in Section 5.7(x).

*Qualified Occupancy:* The initial occupancy of a Credit Unit pursuant to a lease having an original term of not less than six months by a Qualifying Tenant at rents which do not exceed the lesser of: (A) the rents permitted pursuant to Section 42 of the Code and its implementing regulations and (B) the rents approved by the HCA.

*Qualifying Tenant:* A tenant whose income does not exceed the lesser of (i) the relevant limit set forth in Section 42(g)(1) of the Code, and the Credit application, which is 60% of the applicable area median gross income, as adjusted for family size and (ii) applicable income limitations imposed by the HCA. Further, twenty percent (20%) of the HOME-assisted Units (as determined by applicable HOME Investment Partnership Act requirements) in the Project must be occupied by households with income at or below fifty percent (50%) and (80%) of such area median gross income, as applicable.

*Replacement Reserve:* The Project replacement reserve to be funded pursuant to Exhibit A-7.

*Repurchase Price:* The price to be paid by the General Partner to the Limited Partner in accordance with the provisions of Section 5.14.

*Required Debt Service Coverage:* Following the Completion Date and completion of the Lease-up Period, Cash Flow (computed for purposes of this paragraph before payment of any debt service on the Loans or costs of capital improvements) over a twelve (12) month reporting period which equals or exceeds one hundred fifteen percent (115%) of twelve (12) months of scheduled principal and interest payments on any Loan with fixed and required debt service payments, based upon the actual Project income, and with expenses, on an accrual basis, based upon actual expenses, each acceptable to the Limited Partner. Respecting the determination of the Stabilization Period in Section 5.9, the Required Debt Service Coverage shall be calculated in substantial accordance with Exhibit Q. Respecting the calculation of the Required Debt Service Coverage under Section 5.10, such income and expense numbers shall be supported by the annual audit. Also, in the event the Required Debt Service Coverage is not met as required in Exhibit A-1 of this Agreement, the General Partner, or any of its Affiliates shall be entitled to pay down the principal of any loan and adjust debt service payments to allow the Partnership to meet a Required Debt Service Coverage, of 115%, as permitted by the Lender of the First

Mortgage Loan, or, in the alternative establish the Contingent Debt Service Reserve as further described in Exhibit A-7.

*Reserves:* The Replacement Reserve, the Operating Reserve and those additional Reserves, if any, funded pursuant to Exhibit A-7.

*Sale Administration Fee:* If applicable at the time of a sale of the Project, the fee referenced in Sections 12.2 and 14.1 hereof, payable to the General Partner, as applicable for its services for arranging and executing a sale of the Project to a third party unrelated and unaffiliated with the General Partner, and which shall be a then-current market broker fee mutually agreed upon by the General Partner, and Limited Partner. The Sale Administration Fee is payable only in lieu of, and not in addition to, a third-party broker fee in connection with the sale.

*Sale Proceeds:* Any proceeds derived from the sale or refinancing of the Project after repayment of the Note evidencing the First Mortgage Loan and any other prior obligations owed by the Partnership prior to the payment of the Bonds.

*Soft Loans:* Together, the Disposition Loan, the HOME Loan, the CDBG Loan and the METRO Loan, as determined on the attached Exhibit A-4 entitled “Loans to the Project.”

*SLP Administrative Management Fee:* That certain SLP Administrative Management Fee payable to the Special Limited Partner pursuant to the priority set forth in Exhibit A-5 hereto in the amount of up to \$5,000 per year.

*Special Limited Partner:* The Housing Authority of Clackamas County, an Oregon public body corporate and politic, its successors and permitted assigns.

*Stabilization Period:* The time period described in Section 5.9.

*State:* Oregon.

*Substitute Limited Partner:* Any Person admitted from time to time to the Partnership as a Limited Partner in accordance with the provisions of Article X hereof and so reflected on Exhibit A, as such Exhibit A may be amended from time to time in accordance with this Agreement.

*Surplus Cash:* As defined in the HUD Regulatory Agreement.

*Target Amount:* As defined in the description of “Contingent Debt Service Reserve” in Exhibit A-7.

*Target Completion Date:* August 1, 2020.

*Tax Credit Recapture Event:* The occurrence of any of the following: (i) the filing of a tax return by the Partnership or an amendment to a tax return evidencing a recapture or disallowance of Credit previously allocated to the Limited Partner, (ii) the assessment of a deficiency claimed by the IRS against the Partnership with respect to any Credit previously



claimed in connection with the Project, (iii) a Final Determination resulting in a deficiency with respect to, or recapture of, Credits previously allocated to the Limited Partner, or (iv) any other event which causes a recapture, reallocation or disallowance of a Credit allocated to the Limited Partner under applicable law, other than a disposition by the Limited Partner of its Interest.

*Tax Equivalency Payment:* A payment to the Limited Partner in the amount of the federal and state income tax liability, together with any interest and penalty thereon, that would be imposed on the Limited Partner from the recognition of any net income from operations or gain from capital events or dispositions (in each case, after taking into account such payment), from Cash Flow, Capital Proceeds, Credit Adjuster payments or other amounts resulting in an income tax liability, as well as any tax liability assessed against the Limited Partner, whether upon the cancellation or forgiveness of a Partnership obligation, upon the recharacterization of any Partnership obligation or otherwise, which aggregate payment shall be grossed up by any such tax liability payable respecting the Tax Equivalency Payment itself, assuming that the Limited Partner is subject to tax at a combined rate equal to the greater of (i) twenty eight and forty-six hundredths of a percent (28.46%) or (ii) the actual combined federal and state tax rate payable by the Limited Partner.

*Tax Matters Partner:* The General Partner, as tax matters partner, as defined in Code Section 6231, or, if applicable, as the partnership representative as defined in Code Section 6223 pursuant to Section 1101 of the Bipartisan Budget Act of 2015.

*Term:* The period of time the Partnership shall continue in existence as stated in Section 1.7.

*Title Policy:* That certain owner's title policy issued by First American Title Insurance Company in the amount of \$[65,382,433] (which amount represents the full amount of permanent debt projected to be on the Project and the equity projected to be in the Project) (the "Owner's Title Policy Amount") shown on Exhibit A-3, in favor of the Partnership and in force as of the date hereof insuring the Partnership's fee simple interest to the Project, subject only to such title exceptions as are acceptable to the Limited Partner. The Title Policy shall provide extended coverage (with all standard exceptions removed) and shall include, without limitation, the following endorsements: to the extent available in the State: (i) Non-Imputation, (ii) Fairway, (iii) ALTA 3.2 zoning with parking, if available, or otherwise 3.0 zoning endorsements (with 3.1 zoning endorsement for rehabilitated projects or upon achievement of the Completion Date), (iv) Same as Survey, (v) Single/Multiple Tax Parcel, (vi) Access, (vii) Comprehensive (Owner's-ALTA 9.8), (viii) Contiguity, (ix) Environmental Protection Lien (Owner's-ALTA 8.1), (x) Forced Removal, if applicable, (xi) Subdivision, if applicable, (xii) Waiver of Arbitration, (xiii) Utilities Facility, (xiv) Tax Benefit Endorsement, if available, (xv) Electronic Signature Endorsement, (xvi) such other endorsements as the Limited Partner may reasonably require.

*Treasury Regulations:* The temporary and final regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

*Units:* The individual units of residential rental housing located at the Project.

*USBCDC:* U.S. Bancorp Community Development Corporation, a Minnesota corporation.

*Withdrawing Limited Partner:* Pedcor Investments, A Limited Liability Company, a Wyoming limited liability company.

## **2.2 General Rules of Document Interpretation**

(a) Unless the context clearly indicates to the contrary, the following rules apply to the construction of this Agreement:

i. Words importing the singular number include the plural number and/or words importing the plural number include the singular number;

ii. Words of the masculine gender include correlative words of the feminine and neuter genders, and vice-versa;

iii. The table of contents and the headings or captions used in this Agreement are for convenience of reference and do not constitute a part of this Agreement, nor affect its meaning, construction, or effect;

iv. Words importing persons include any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization, or government or agency or political subdivision thereof;

v. Any reference in this Agreement to a particular "Article," "Section," or other subdivision shall be to such Article, Section, or subdivision of this Agreement unless the context shall otherwise require;

vi. Each reference in this Agreement to an agreement or contract shall include all amendments, modifications, and supplements to such agreement or contract unless the context shall otherwise require; and

vii. When any reference is made in this document or any of the schedules or exhibits attached hereto to the Agreement, it shall mean this Agreement, together with all other schedules and exhibits attached hereto, as though one document.

(b) In the event there is more than one Limited Partner, more than one Special Limited Partner or more than one General Partner, the following additional rules of construction shall apply unless otherwise provided:

i. Allocations to the General Partner, Special Limited Partner and Limited Partner of Gain, Net Profits, Net Losses, Loss and credits under Article VII, and distributions of Cash Flow and Capital Proceeds under Article VIII shall be further allocated and/or distributed between or among the General Partners, the Special Limited Partners and/or Limited Partners in proportion to the General

Partner's, Special Limited Partner's or Limited Partner's respective Percentage Interest as set forth on Exhibit A. Unless otherwise provided herein, no General Partner shall have a superior right to receive distributions than any other General Partner no Special Limited Partner shall have a superior right to receive distributions than any other Special Limited Partner and no Limited Partner shall have a superior right to receive distributions than any other Limited Partner; and

ii. With respect to any matter on which the approval or ratification of the General Partners, Special Limited Partners or Limited Partners is required or may be given, such approval or ratification shall not be deemed to have been given unless given by Consent of the General Partners, the Special Limited Partners or Limited Partners, as the case may be; and

iii. All of the General Partner's obligations hereunder shall be joint and several.

### ARTICLE III

#### PARTNERSHIP INTERESTS AND SOURCES OF FUNDS

##### 3.1 Identity of Partners and Percentage Interests

The names and business addresses of the General Partner, the Special Limited Partner and the Limited Partner are as identified on Exhibit A-6, as such exhibit may be amended from time to time in accordance with this Agreement and each such Partner has the Percentage Interest indicated on Exhibit A.

##### 3.2 Capital Contributions

(a) *General Partner.* The General Partner shall be obligated to (and does hereby covenant and agree to) contribute to the capital of the Partnership, by wire transfer or other form of available funds, the aggregate amount set forth after the General Partner's name on Exhibit A in the amounts and at the times set forth in Exhibit A-1.

(b) *Special Limited Partner.* The Special Limited Partner shall be obligated to (and does hereby covenant and agree to) contribute to the capital of the Partnership, by wire transfer or other form of available funds, the aggregate amount set forth after the Special Limited Partner's name on Exhibit A in the amounts and times set forth in Exhibit A-1.

(c) *Limited Partner.* Subject to the provisions of this Section 3.2 and provided that no Event of Default has occurred and is then continuing and that all conditions precedent thereto have been met, the Limited Partner shall be obligated to (and does hereby covenant and agree to) contribute to the capital of the Partnership, by wire transfer, or other form of available funds, its Capital Contribution in the aggregate amount set forth after the Limited Partner's name on Exhibit A. Such Capital Contribution is payable in Capital Installments, in the

amounts, and upon, and subject to, satisfaction of the conditions precedent thereto set forth on Exhibit A-1. Further, one or more Capital Installment may be payable in portions, from time to time, as Project development work progresses, pursuant to requests for disbursement acceptable to the Limited Partner and in accordance with the requirements set forth in Section 5.9 and in any disbursing agreement entered into by the Partnership. Notwithstanding the foregoing, once the General Partner has satisfied the applicable conditions on Exhibit A-1 for distribution of a Capital Installment by the Limited Partner (as evidenced by its advance of all or an initial portion of such Installment), the conditions to such Capital Installment shall be deemed satisfied for all purposes thereafter, and subsequent advances from such Capital Installment shall be subject only to the draw requirements of Section 5.9. Except as provided in this Section 3.2(b), the Limited Partner shall not be obligated to make any Capital Contributions to the Partnership. All Capital Contributions shall be subject to any applicable adjustments pursuant to this Agreement.

(i) *Capital Installment Notices.* The General Partner shall deliver a Capital Installment Notice to the Limited Partner in the form attached as Exhibit A-2 not more than two (2) business days in advance of the applicable Capital Installment Due Date, following delivery of all documentation needed to evidence achievement of the conditions precedent to payment thereof. The following individuals are authorized to sign the Capital Installment Notice: (A) on behalf of the General Partner: \_\_\_\_\_, and (B) on behalf of the Guarantor: Gerald K. Pedigo, Phillip J. Stoffregen, Bruce A. Cordingley and/or Thomas G. Crowe or (C) if not listed in (A) or (B), those individuals otherwise set forth on an incumbency certificate for the applicable entity provided to the Limited Partner with delivery of the Capital Installment Notice.

(d) *Capital Installment Due Date.* The date on which payment of any Capital Installment (or portion of Capital Installment) (the “**Capital Installment Due Date**”) is due upon (1) achievement of all of the conditions to funding of the applicable Capital Installment (or any portion thereof) in accordance with Exhibit A-1, as evidenced by delivery of all documentation needed to support achievement of the conditions precedent to payment thereof, followed by (2) receipt by the Limited Partner of a Capital Installment Notice (Exhibit A-2) no earlier than two business days prior to Capital Installment Due Date, subject to deferral as set forth in Section 3.2(e) below.

(e) *Deferral or Adjustment of Capital Installment.* If any of the following occurs: (i) should the General Partner fail to certify that each of the certifications set forth in the Capital Installment Notice set forth in Exhibit A-2 is true and correct as of any Capital Installment Due Date, or (ii) should any of the certifications set forth in the Capital Installment Notice be in fact untrue, or (iii) should any of the conditions precedent to payment of a Capital Installment (or portion thereof) have not then occurred, or (iv) should any Loan be in default, or (v) should an Event of Default have occurred, the applicable Capital

Installment Due Date shall be deferred and extended until ten (10) business days after such time as any or all of the events described in Subsections (i) through (v) no longer exist. Failure to pay any Capital Installment or any portion thereof prior to such time shall not constitute a default of the Limited Partner.

Further, any Capital Installment is subject to adjustment as set forth in Section 3.3 to reflect Credit Deficiencies, which will include, without limitation, Credit Deficiencies reasonably anticipated, based upon information from the Accountants, the Limited Partner's advisors, actual Schedule K-1's received or other Capital Installment or Project documentation received.

(f) *Discretion to Waive Preconditions.* The Limited Partner, in its sole and absolute discretion, may waive, in whole or in part, any one or more preconditions to the payment of any Capital Installment, or portion thereof, and may accelerate or otherwise pay all or a portion of the amount of such Capital Installment that would have been due had all of the preconditions been satisfied. The waiver of any precondition, in whole or in part, shall not prevent the Limited Partner from asserting the failure of the precondition as a defense against the requirement of paying the remainder of a Capital Installment or any other Capital Installment. Upon request from the Limited Partner, the General Partner, with the assistance of the Accountants, shall provide the information necessary for the Limited Partner to determine the necessity and amount of an acceleration of any Capital Installment.

(g) *Default.* In the event that the Limited Partner fails to pay any portion of any Capital Installment (as such Capital Installment may be adjusted in accordance with Section 3.3) by the applicable Capital Installment Due Date (as defined in Section 3.2(d) above), and any such failure is not cured within thirty (30) days after written Notice of such failure, the Limited Partner shall be deemed to be in default of its obligations under this Agreement and the General Partner shall be entitled to institute a suit at law or in equity to enforce payment thereof; provided, however, in the event of a Final Determination (pursuant to subsection (i) of such defined term) in favor of the Partnership, the Limited Partner shall pay to the Partnership all Capital Installments then due, and accrued interest thereon at an interest rate of eight percent (8%) per annum. Such payment shall constitute the sole remedy of the Partnership for such default. Notwithstanding any provisions of Section 3.2 to the contrary, payment of all amounts owed pursuant to the terms of this Section 3.2(h) shall constitute full cure thereof, as though a default under this Section 3.2(h) had not occurred.

(h) *Disputes.* In the event of a dispute between the Limited Partner on the one hand, and the General Partner and/or the Partnership and/or the Special Limited Partner on the other hand, as to the obligation to make, or the amount of, any Capital Installment, the Limited Partner shall deposit such Capital Installment in an escrow account at a bank (which may be U.S. Bank National Association) or a title company acceptable to the Limited Partner, pending a resolution of such dispute. Upon resolution of such dispute (whether pursuant to a Final Determination (pursuant to subsection (i) of such defined term) or pursuant to written agreement between the Limited Partner and the General Partner, Special Limited Partner and/or the Partnership), interest earned on such Capital

Installment shall be paid to the Partnership, if such Capital Installment is determined to be payable to the Partnership, or shall be returned to the Limited Partner, together with the escrowed amount, if determined not to be payable. In the event that a Limited Partner so deposits a Capital Installment, or any disputed portion thereof, in such an escrow account, such Limited Partner shall not be in default under Section 3.2(h).

### **3.3 Credit Adjustments to Capital Contributions**

(a) *Adjustment at Cost Certification Receipt of IRS Form 8609 and at the conclusion of the Lease Up Period.* If (1) at the time of receipt of the Cost Certification and receipt of IRS Form 8609 (it being the intent of the parties that this adjustment shall be made upon receipt of all IRS Forms 8609 with respect to the Project) and/or (2) at the conclusion of the Lease Up Period, the actual amount of Credits are greater than or less than the Projected Credit Amount for such Credits, as set forth for the applicable Credit Period on Exhibit A-3, then the Projections shall be updated by the Accountants, using the same methodology used in preparing the initial Projections, but taking into account actual receipt dates by the Partnership of each Capital Installment, the time and amount of Credits received theretofore, the Credits at Completion, losses previously allocated and projected losses, based on information available to the Accountants at that time, except that the projected losses set forth in the revised Projections cannot exceed those set forth in the initial Projections (excluding depreciation losses) by more than (10%) in any year or years. Notwithstanding any provisions of this Agreement to the contrary, any Losses allocated to the Limited Partner in excess of those originally projected as of the date of this Agreement, shall require full and complete substantiating documentation which shall be subject to the reasonable review and approval of the Limited Partner. The revised Projections shall assume no distributions to the Limited Partner other than those required pursuant to this Section 3.3.

i. *Downward Adjuster.* At any time the Projections are updated in accordance with 3.3(a) above, the Capital Contributions of the Limited Partner shall be reduced by an amount calculated by the Accountants, which causes the Limited Partner to maintain the Closing IRR (the “Downward Adjuster”) pursuant to the revised Projections. Any such Downward Adjuster shall be applied first to reduce any unfunded Capital Contributions of the Limited Partner in chronological order and, if the Downward Adjuster amount is greater than the amount of all unfunded Capital Contributions, then the General Partner shall immediately make a Credit Adjuster Advance pursuant to Section 3.3(e) hereof. Upon receipt by the Limited Partner of the full amount of any Downward Adjuster, the Projected Credit Amount shall be adjusted to reflect the change in Credit.

ii. *Upward Adjuster.* At any time the Projections are updated in accordance with 3.3(a) above, the Capital Contributions of the Limited Partner shall be increased by an amount calculated by the Accountants, which causes the Limited Partner to achieve and maintain the Closing IRR (the “Upward

*Adjuster*”) pursuant to the revised Projections. Any such Upward Adjuster shall increase the Limited Partner’s Capital Contribution, but, in all events, not to exceed an aggregate increase in Capital Contribution of 10% of the Limited Partner’s total agreed upon capital contributions determined as of the Admission Date as set forth on Exhibit A-1 (the “**Maximum Upward Adjuster**”), taking into account all other increases in the Limited Partner’s Capital Contribution pursuant to Section 3.3. In the event such limitation applies, the General Partner may be allocated a proportionately increased interest in the Partnership, and the General Partner’s share of the profits and loss (and, correspondingly, depreciation and Tax Credits) will be increased, and the Limited Partner’s share decreased. Any such Upward Adjuster amount shall be payable on the later of the (a) date of the Limited Partner’s final Capital Installment set forth in Exhibit A-1 or (b) the date which is at least ten (10) days after the General Partner gives the Limited Partner written notice of such increased Capital Installment accompanied by documentation of such Upward Adjuster amount reasonably acceptable to the Limited Partner. Upon receipt by the General Partner of the full amount of the Upward Adjuster amount, the Projected Credit and Annual Credit Allocation (if applicable) set forth on Exhibit A-3 shall be adjusted to reflect the change in Credits.

(b) *[Intentionally omitted]*.

(c) *Annual Adjustments.* In the event that the portion of Federal Low-Income Credits passed through to the Limited Partner on its Schedule K-1 in any year following 2020 is less than the annual amount of such Credits reflected in the Projected Credit Amount for such year, to the extent such Credit adjustment has not already been taken into account in Section 3.3(a) hereof (an “**Annual Credit Reduction**”), such Annual Credit Reduction shall be applied first to reduce any unfunded Capital Contributions of the Limited Partner in chronological order and, if the Annual Credit Reduction amount is greater than the amount of all unfunded Capital Contributions, then the General Partner shall immediately make a Credit Adjuster Advance pursuant to Section 3.3(e) hereof.

If, in connection with an Annual Credit Reduction, it is projected that there will be Annual Credit Reductions in one or more subsequent years, the Limited Partner’s unfunded Capital Contributions (in the chronological order of such unfunded Capital Contributions) shall be further reduced, on a dollar for dollar basis, by the aggregate amount of such projected Annual Credit Reductions (a “**Continuing Credit Reduction**”), and the Projected Credit Amount shall be correspondingly reduced by the Continuing Credit Reduction. If, during the Compliance Period, at any time or from time to time, the Continuing Credit Reduction is greater than the amount of the then unfunded Capital Contributions of the Limited Partner (as previously reduced pursuant to this Article III), then the General Partner shall immediately make a Credit Adjuster Advance pursuant to Section 3.3(e) hereof.

(d) *Recapture.* Upon the occurrence of a Tax Credit Recapture Event, or in the event BT or DOZ (or their respective successor) recommends in writing

that the Partnership must recapture any of the Credit allocated to the Limited Partner that the Partnership claimed in any previous Fiscal Year (other than any such event caused solely by the transfer by the Limited Partner of its Interest), the dollar amount of such recaptured Credit, together with any Continuing Credit Reduction (as such term is defined in Section 3.3(b) above), resulting therefrom, plus applicable interest, penalties, costs of enforcement and a Tax Equivalency Payment with respect to the foregoing amounts (collectively, the “*Recapture Adjustment Amount*”) shall be applied to reduce, on dollar per dollar basis, the Limited Partner’s then unfunded Capital Contributions. If, during the Compliance Period, at any time, or from time to time, the Recapture Adjustment Amount is greater than the amount of the unfunded Capital Contributions of the Limited Partner (as previously reduced pursuant to this Article III), the General Partner shall immediately make a Credit Adjuster Advance, pursuant to Section 3.3(e).

(e) *Credit Deficiencies.* All of the adjustments in Credit, pursuant to this Section 3.3 other than Upward Adjusters pursuant to Section 3.3(a)(ii) shall constitute Credit Deficiencies. In calculating Credit Deficiencies, the Limited Partner shall be considered to have received Credit in the amount allocated to the Limited Partner on the Partnership’s federal and state income tax returns reduced by: (i) any adjustment of the Credit reported on the Partnership’s tax return that is made by the Accountants, or by the IRS or applicable State authority pursuant to notice to the Partnership, or by a court in a Final Determination; and (ii) the amount of any recapture, reallocation or disallowance, or claimed recapture, reallocation or disallowance, of such Credit, other than recapture caused solely by the transfer by the Limited Partner of its Interest, and, in each of subsections (i) and (ii) above, interest and penalties thereon. Further, payment of any Development Fee payable pursuant to the Development Services Agreement, attached hereto as Exhibit C, shall be deferred to the extent necessary to pay any Credit Deficiency which is then payable or which is otherwise anticipated to become payable, whether based upon delays in leasing of Credit Units or otherwise.

(f) *Credit Adjuster Advance.* A Credit Adjuster Advance shall be paid to the Partnership as an interest-free loan, repayable solely pursuant to Section 8.1 and Exhibit A-5, and Sections 8.2(a) and 12.2(a)(4), and the Partnership shall immediately make a special distribution to the Limited Partner in such amount, without regard to Cash Flow or Article VIII hereof. Alternatively, at the sole election of the Limited Partner, the Credit Adjuster Advance shall be made directly to the Limited Partner. All Credit Adjuster Advances shall be increased by interest, penalties, costs of enforcement and by any Tax Equivalency Payments. All Credit Adjuster Advances shall be due within 20 days of Notice by the Limited Partner. Any Credit Adjuster Advances not promptly paid when due shall bear interest at the prime rate of interest of U.S. Bank National Association prevailing at the end of the preceding calendar month, plus two percent (2.0%) per annum, from the date payable, until paid in full. Credit Adjuster Advances are recourse obligations of the General Partner and are guaranteed by the Guarantor pursuant to the Guaranty which is attached as Exhibit D to this



Agreement. Notwithstanding the foregoing, in lieu of making a Credit Adjuster Advance owing under Section 3.3(a), the General Partner may, with the consent of the Limited Partner, defer all or any portion of the Development Fee due and payable to the Developer or any other fees due and payable to the General Partner or an Affiliate of the General Partner in an amount necessary to satisfy all or a portion of the Credit Adjuster Advance. In addition, the General Partner may, with the consent of the Limited Partner, elect to make an accounting adjustment to treat any fees that have previously been paid to the General Partner or its Affiliates as not having been paid, provided such accounting adjustment is made prior to Cost Certification and provided any actual cash payment received by the General Partner or its Affiliate is refunded to the Partnership.

(g) *Change in Law.* Notwithstanding anything to the contrary contained in this Agreement, to the extent that any Credit Deficiencies under this Section 3.3 are solely attributable to a Change in Law, then the portion of any Credit Deficiency resulting from said Change in Law and otherwise owed shall be payable to the Limited Partner only from available Cash Flow in the order of priority set forth in Exhibit A-5 or from Capital Proceeds pursuant to Section 8.2(a) and 12.2(a)(4).

### **3.4 No Interest on Capital Contributions**

No interest shall accrue or be payable to any Partner by reason of its Capital Contribution or its Capital Account.

### **3.5 Right to Require Repayment of Capital**

A Partner shall not have the right to withdraw from the Partnership all or any part of its Capital Contribution. No Partner shall have any right to demand and receive property of the Partnership in return for its Capital Contribution or in respect of its Interest, except as provided in this Agreement. No Limited Partner shall have priority over any other Limited Partner as to any return of Capital Contributions or as to any distributions made by the Partnership under Article VIII.

### **3.6 No Third-Party Beneficiary**

None of the provisions of this Agreement shall be construed as existing for the benefit of any creditor of the Partnership, for the benefit of any creditor of any Partner, or for the benefit of any other Person, other than the Partners, and no provision shall be enforceable by a Person not a signatory to this Agreement, except where granting of a security interest or pledge has been made by the Partnership, with the Consent of the Limited Partner.

## **ARTICLE IV**

### **RIGHT TO MORTGAGE; GENERAL PARTNER BOUND BY LOAN DOCUMENTS**

#### **4.1 Right to Mortgage**

(a) The Partnership shall be authorized to borrow the Loans, pursuant to the Loan Notes, in connection with the acquisition, development, construction and/or rehabilitation of the Project, and the meeting of the expenses of operating the Project (including, without limitation, any items for which the Lenders may provide Loan funds), and may secure the same by Mortgages on the Project. The General Partner shall not have any authority to enter into any loan, nor to refinance or otherwise modify, forgive or extend any loan (which will include, without limitation, the Loans), without the Consent of the Limited Partner; provided, however, that the General Partner may refinance the Permanent First Mortgage Loan without the Limited Partner's consent if the General Partner (1) provides 60 days' prior written Notice to the Limited Partner, (2) provides to the Limited Partner a complete set of loan documents within 10 business days prior to loan closing, which loan documents include, if generally available from the applicable lender, a provision granting notice and cure rights to USBCDC. In addition, the terms of the replacement financing shall (1) enable the Project to achieve and maintain the Required Debt Service Coverage in accordance with the terms and provisions of this Agreement and determined based upon the greater of (i) actual Project expenses for the then current calendar year, (ii) average Project expenses for the immediately preceding three calendar years, or the maximum period available if a full three year period has not yet expired, or (iii) the Project expenses set forth in the Projections attached hereto; (2) provide for a loan term and a fixed interest rate for at least the term of the Compliance Period; (3) enable the Project to maintain the Required Debt Service Coverage throughout the Compliance Period assuming a 7% vacancy rate, a 2% annual increase in income and a 3% annual increase in Project expenses, and further assuming that the Replacement and Operating Reserves remain as described in Exhibit A-7 to this Agreement; (4) provide for a maturity date that is not prior to the end of the Compliance Period; (5) provide that the replacement financing is non-recourse to the Partners. The General Partner and Guarantor will continue to comply with the terms and provisions of the Operating Deficit guaranty, as set forth in Section 5.10, including that the obligation to fund amounts owed pursuant to the Operating Deficit guaranty in connection with the refinancing shall continue for the entire term of such replacement financing in the event that such replacement financing results in a higher annual debt service than the original financing. It is further understood and agreed to by the Partners that if the loan documents evidencing the replacement financing do not include notice and cure rights for the benefit of USBCDC, the same shall not be a basis for USBCDC withholding consent to the replacement financing, if the applicable lender does not generally provide notice and cure rights to equity investors.

(b) The Partnership is a single asset entity whose sole asset is the Project, the General Partner is presently a single asset entity whose sole asset is its General Partner interest. The General Partner will not acquire other assets, nor conduct business activities, other than serving as the General Partner of the Partnership, without the Consent of the Limited Partner. In addition, the General Partner covenants and agrees as follows:

i. The General Partner shall not engage, has not engaged and does not engage, in any business other than the business of making housing available to persons, including persons of low and moderate income and promoting social welfare through acquisition, investment, funding, construction, or any other means consistent with its purposes.

ii. Except as provided by Section 5.13, the General Partner shall not enter into and has not entered into any contract or agreement with any Affiliate of the General Partner, any constituent party of the General Partner, or any Affiliate of any constituent party, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's length basis with third parties other than any such party.

iii. To the extent that the General Partner and any of its Affiliates: (i) occupy any premises in the same location; (ii) share the same officers and other employees; (iii) jointly contract or do business with vendors or service providers or share overhead expenses; and (iv) contract or do business with vendors or service providers where the goods or services are wholly or partially for the benefit of its Affiliates, the General Partner and shall always allocate fairly, appropriately and nonarbitrarily any expenses and costs among and between such respective entities with the result that each entity bears its fair share of all such rent and expenses.

iv. The General Partner has and shall continue to pay its debts and liabilities from its own assets as the same shall become due. No Affiliate of the General Partner has paid any debts or liabilities on behalf of such Partner, except in accordance with this Agreement.

v. The General Partner has and shall continue to maintain books, financial records and bank accounts that are separate and distinct from the books, financial records and bank accounts of any other Person including any of its Affiliates.

vi. The General Partner has and shall continue to maintain separate annual financial statements prepared in accordance with generally accepted accounting principles, consistently applied, showing its assets and liabilities separate and distinct from those of any other entity; in the event the financial statements of the General Partner are consolidated with the financial statements of any other entity, the General Partner has and shall continue to cause to be included in such consolidated financial statements: (i) a narrative description of the separate assets, liabilities, business functions, operations and existence of the General Partner to ensure that such separate assets, liabilities, business functions, operations and existence are readily distinguishable by any entity receiving or relying upon a copy of such consolidated financial statements; and (ii) a statement that the General Partner's assets and credit are not available to satisfy the debts of such other entity or any other person.

vii. The General Partner has and shall continue to file its own tax returns and pay its own taxes required to be paid under applicable law.

viii. The General Partner has and shall continue to (i) hold itself out as an entity separate and distinct from any other Person; (ii) not identify itself or any of its Affiliates as a division or part of the other; and (iii) correct any known misunderstanding regarding its separate status.

ix. The General Partner has and shall continue to conduct its business in its own name so as to avoid or correct any misunderstanding on the part of any creditor concerning the fact that any invoices and other statements of account from creditors of such Partner are to be addressed and mailed directly to such Partner, though this provision shall not prohibit such mail to be delivered to such Partner c/o any other entity.

x. The General Partner has and intends to maintain, adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

xi. The General Partner has not and shall not commingle any of its assets, funds or liabilities with the assets, funds or liabilities of any other Person or respective Affiliate.

xii. The General Partner has and shall continue to maintain, its respective assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any party.

xiii. Except with respect to the guaranty and the pledge of its respective partner interest in the Partnership to the Lender of the Bridge Loan, as of the date hereof, the General Partner has not and shall not (i) assume or guaranty the debts of any other Person in a manner that includes a pledge, encumbrance, transfer or hypothecation (whether by operation of law or otherwise) of any assets or interests of the Partnership or, (ii) hold itself out to be responsible for the debts of another Person in a manner that includes the pledge, encumbrance, transfer or hypothecation of any assets or interests of the Partnership (whether by operation of law or otherwise), or (iii) otherwise pledge, encumber, transfer or hypothecate the assets of the Partnership for the benefit of another Person or permit the same to occur, or (iv) hold the Partnership's credit as being available to satisfy the obligations of any other Person.

(c) All transactions carried out by the General Partner have been and will be, in all instances, made in good faith and without intent to hinder, delay or defraud creditors of the General Partner.

(d) With the exception of, during the construction phase, the First Mortgage Loan, and any Loans from the General Partner or its Affiliates, the Mortgages with respect to such Loans shall provide that no Partner or an Affiliate shall have any personal liability for the payment of all or any part of such Loan Notes, or interest therein, except

for those customary exclusions for such matters as fraud, misappropriation of funds, environmental hazards or waste that, in the opinion of counsel to the Limited Partner, do not cause the Mortgages to become debt instruments as to which a Partner has an economic risk of loss under Treasury Regulation Section 1.752-2, or any successor provision.

## **ARTICLE V**

### **RIGHTS, POWERS AND OBLIGATIONS OF THE GENERAL PARTNER AND SPECIAL LIMITED PARTNER**

#### **5.1 Authority of General Partner**

(a) Subject to the terms of this Agreement, the General Partner shall have the right, power, and authority, acting for and on behalf of and in the name of the Partnership, to: (i) execute and deliver on behalf of the Partnership any contract, agreement, or other instrument or document required or otherwise appropriate to acquire, construct, rehabilitate, renovate, improve, lease, operate, sell, encumber, mortgage, convey, or refinance the Project (or any part thereof); (ii) convey the Project by deed, mortgage, certificate, bill of sale, agreement, or otherwise, as appropriate; and (iii) bring, compromise, settle, and defend actions at law or in equity. Any action required or permitted to be taken by the General Partner hereunder may be taken by such of its proper officers or agents as it shall validly designate and duly authorize for such purpose.

(b) Except for items for which Consent of the Limited Partner is required, all decisions made for and on behalf of the Partnership by the General Partner shall be binding upon the Partnership. Except as expressly otherwise set forth in this Agreement, the General Partner (acting for and on behalf of and in the name of the Partnership), in extension and not in limitation of the rights and powers given it by law or by the other provisions of this Agreement, shall, in its sole discretion, have the full and entire right, power and authority, in the management of the Partnership's day-to-day business, to do any and all acts and things necessary, proper, ordinary, customary or advisable to effectuate the purposes of the Partnership. In so doing, the General Partner shall take all actions necessary or appropriate to protect the interests of the Limited Partner and of the Partnership. In furtherance and not in limitation of the foregoing provisions of this Article V and of the other provisions of this Agreement and subject to any applicable Consent of the Limited Partner, the General Partner is, as is more fully set forth in Section 5.1(a), specifically authorized and empowered to execute any and all instruments and documents as shall be required by any lender in connection with any loan or loans, including but not limited to executing the Mortgages, Loan Notes, any contract, loan agreement, bank resolution and signature card, release, discharge, or any other document or instrument in any way related thereto or necessary or appropriate in connection therewith, all of which must be in accordance with this Agreement.

(c) The General Partner shall maintain the books and records of the Partnership, and shall be responsible, on a timely basis, for (i) preparing all required tax returns and related information, (ii) making any tax elections approved in writing by the

Limited Partner, from time to time, and (iii) preparing all financial information, all in accordance with Sections 5.7(d), 13.3 and 13.4 hereof.

(d) The General Partner may delegate certain of its authority, power, and right to manage the Project to the Management Agent; provided, however, that any such delegation shall not relieve the General Partner of its obligations and responsibilities to ensure the proper management of the Project.

## **5.2 Limitations on the Authority of the General Partner and the Special Limited Partner**

**5.2.1.** Notwithstanding any other provision of this Agreement, the General Partner shall not have the authority to perform any act in violation of any applicable law or regulations, the Loan Documents, or the Project Documents; to do any act required to be approved, consented to, voted on, or ratified by the Limited Partner under the Act or under this Agreement unless such approval, vote, consent, or ratification has been obtained; to cause the Partnership to engage in any business other than as set forth in Section 1.6; or do any act that would make it impossible to carry out the business of the Partnership as contemplated herein. The General Partner shall not have the authority to engage in the following activities without the Consent of the Limited Partner and, if required, the consent of the Lenders and HCA:

(a) Effect a sale of all or any portion of the Project, including, without limitation, the Units and any commercial and/or community space;

(b) Except as authorized by Section 4.1 hereof, effect a financing, refinancing, encumbrance, mortgage, conveyance, pledge, transfer, exchange or other disposition of all or any portion of the Project; provided that the Limited Partner hereby consents to the Loans (but any extension, refinancing, increase, decrease, modification, amendment, of any such Loans (or repayment other than in accordance with its scheduled term of amortization) or consent to any transfer, pledge or conveyance of any Loan by an existing Lender will require the Consent of the Limited Partner);

(c) Lease as an entirety the Project, or lease any portion of the Project, except leases of the Units to residential tenants in the normal course of business;

(d) Following the Completion Date, construct any new capital improvements or replace any existing capital improvements, other than those contemplated in the Plans and Specifications or those approved by the Limited Partner in an Annual Operating Budget;

(e) Change the Plans and Specifications or permit any individual change orders that increase or decrease the budget if the cost associated with any one such change is more than \$25,000 or if the cost of all change orders in the aggregate exceeds \$100,000, provided further that change orders shall not be executed that (i) change any material component of the approved Plans and Specifications, (ii) involve the implementation of an alternative construction material or construction methodology inconsistent with the Plans and Specifications that would result in a material

diminishment of the quality of the construction of the Project, or (iii) involve a change in the timing of the Completion Date;

(f) Acquire any real property in addition to the Project (other than easements or similar rights necessary or convenient for the operation of the Project);

(g) During the Compliance Period, lease or otherwise operate any of the Credit Units in such a manner that such Credit Unit would fail to be treated as a “low-income unit” under Section 42(i)(3) of the Code, or lease or operate the Project in such a manner that the Project would fail to be treated as a qualified low-income housing project under Section 42(g)(1)(B) of the Code;

(h) Incur any liability, obligation or debt other than the Loans (and any Operating Deficit Advances) and debt approved by the Limited Partner in an Annual Operating Budget;

(i) Change the nature of the Partnership’s business;

(j) Do any act which would make it impossible to carry on the ordinary business of the Partnership;

(k) Assign rights in assets of the Partnership for other than a Partnership purpose and in no event may the Partnership pledge or assign any of the Partnership’s rights with respect to all or any portion of the Limited Partner’s Capital Contribution or the proceeds thereof other than any pledge or assignment of the Limited Partner’s Capital Contribution to the Lender of the Bridge Loan;

(l) Voluntarily file a bankruptcy petition on behalf of the Partnership or execute or deliver an assignment for the benefit of creditors;

(m) Dissolve or wind up the Partnership;

(n) Confess any judgment against the Partnership, or commence litigation on behalf of the Partnership, except for tenant eviction matters in the normal course of business or compromise any claim or liability owed by the Partnership or consent to a settlement with respect to any claim, lawsuit or other legal or administrative proceeding involving the Partnership as a party in excess of \$5,000;

(o) Modify or amend this Agreement or any of the Project Documents;

(p) Prepay the Loan Notes (other than the Note for the Bridge Loan or in connection with a refinancing of the First Mortgage Loan pursuant to Section 4.1 of this Agreement);

(q) Admit any Person as a Partner, except as otherwise provided in this Agreement;

(r) Borrow from the Partnership or commingle Partnership funds with the funds of any Person, or loan any money on behalf of the Partnership or guarantee on behalf of the Partnership the indebtedness of any other Person;

(s) Permit the Partnership to pay directly or indirectly to the General Partner (or any Affiliate thereof) or the Special Limited Partner (or any Affiliate thereof) a commission or fee in connection with the reinvestment or distribution of Capital Proceeds or liquidating distributions belonging to the Partnership, except as provided for herein, provided, however, reimbursement for reasonable in-house counsel or paralegal expenses incurred by the General Partner or its Affiliates, or the Special Limited Partner or its Affiliates, on behalf of the Partnership shall be permitted;

(t) Receive any rebates or give-ups or participate in any reciprocal business relationships in circumvention of this Agreement;

(u) Cause the Partnership to be merged or consolidated with or acquired by any other Person;

(v) Except as provided in Section 4.1(a), make application for, or accept, increases in the principal amount of Loans or otherwise modify, restructure, extend or refinance the Loans, or any other Partnership indebtedness,

(w) Contract with, dismiss or replace the Management Agent, except as provided in Section 11.1 hereof;

(x) Transfer, assign, pledge or hypothecate the General Partner's interest as a General Partner in the Partnership or the Special Limited Partner's interest as a Special Limited Partner in the Partnership, including, without limitations, its interest in Partnership allocations or distributions, other than the pledge or assignment to the Lender of the Bridge Loan or the Pledge and Security Agreement referenced in Section 5.18. Notwithstanding the foregoing, the Consent of the Limited Partner shall not be required for (i) any pledge of the right to receive distributions of Cash Flow and Capital Proceeds to an Affiliate of the General Partner or Special Limited Partner or (ii) assignment of the interest of the General Partner to any entity controlled by Gerald K. Pedigo, Bruce A. Cordingley, and/or Phillip J. Stoffregen, so long as the requirements of 9.2(a)(12) continue to be satisfied following any such transfer;

(y) Engage in transactions in which the General Partner or an Affiliate of the General Partner, or the Special Limited Partner or an Affiliate of the Special Limited Partner has an actual or potential conflict of interest with either the Limited Partner or the Partnership and which could have a material adverse effect on the Partnership or the Project;

(z) Except as permitted by Section 5.13, cause or permit the Partnership to enter into any material contract or agreement with the General Partner or any Affiliate of any General Partner, or with the Special Limited Partner or any Affiliate of the Special Limited Partner which relates to the Project, or any other Partnership business;



(aa) Make any unbudgeted expenditure (or series of unbudgeted expenditures) except as permitted by Section 13.3(a)(3) hereof, except for such expenditures, of up to \$3,000 in the aggregate which are expressly permitted under the terms of the agreement with the Management Agent for management of the Project and, which, in the General Partner's reasonable judgment are necessary for continued operations of the Project and/or Units or to deter deferred maintenance, provided notice of such expenditures is provided to the Limited Partner within 30 days; and further provided that the General Partner may make unbudgeted expenditures in the event the General Partner determines, in its reasonable judgment, that an emergency repair is necessary for continued operations of the Project and/or Units and the General Partner notifies the Limited Partner within 10 days of completing such emergency repair;

(bb) Change any accounting method or practice of the Partnership or replace the Accountants;

(cc) Take any action which would cause the termination of the Partnership for federal income tax purposes or the dissolution of the Partnership for state law purposes; or

(dd) Take any action for which the Consent of the Limited Partner is required under any other provision of this Agreement.

(ee) Other than the First Mortgage Loan, Bond Loan, the Disposition Loan and/or the HOME Loan, during the construction phase, or in connection with the Bridge Loan otherwise expressly set forth herein, cause or permit the Partnership or any Partner to become, in the reasonable opinion of counsel to the Limited Partner, subject to any economic risk of loss within the meaning of Treasury Regulation Section 1.752-2, or any successor provision, with respect to the Loan Notes, the Mortgages, or any of the Loan Documents.

**5.2.2.** Notwithstanding any other provision of this Agreement, the Special Limited Partner shall not have the authority to perform any act in violation of any applicable law or regulations, the Loan Documents, or the Project Documents; to do any act required to be approved, consented to, voted on, or ratified by the Limited Partner under the Act or under this Agreement unless such approval, vote, consent, or ratification has been obtained. The Special Limited Partner shall not have the authority to engage in the following activities without the Consent of the Limited Partner and, if required, the consent of the Lenders and HCA:

(a) Transfer, assign, pledge or hypothecate the Special Limited Partner's interest as a Special Limited Partner in the Partnership, including, without limitations, its interest in Partnership allocations or distributions. Notwithstanding the foregoing, the Consent of the Limited Partner shall not be required for (i) any pledge of the right to receive distributions of Cash Flow and Capital Proceeds to an Affiliate of the General Partner or Special Limited Partner;

(b) Engage in transactions in which the General Partner or an Affiliate of the General Partner, or the Special Limited Partner or an Affiliate of the Special

Limited Partner has an actual or potential conflict of interest with either the Limited Partner or the Partnership and which could have a material adverse effect on the Partnership or the Project;

(c) Take any action which would cause the termination of the Partnership for federal income tax purposes or the dissolution of the Partnership for state law purposes.

### **5.3 Outside Activities**

The General Partner shall devote to the management of the business of the Partnership so much of its time as is necessary to operate the Partnership and the Project in accordance with this Agreement, and to fully and timely comply with this Agreement.

### **5.4 Liability to Partnership and Limited Partner**

Neither the General Partner nor the Special Limited Partner shall be liable, responsible, or accountable in damages or otherwise to the Limited Partner or to the Partnership for any acts performed in good faith and within the scope of authority of the General Partner and Special Limited Partner pursuant to this Agreement; provided, however, that the General Partner and the Special Limited Partner shall be liable for, and shall indemnify, defend, and hold harmless the Partnership and the Limited Partner from and against any loss, liability, damage, cost or expense (including reasonable attorneys' fees) arising out of, the General Partner's or Special Limited Partner's actions and/or omissions to the extent they are attributable to gross negligence, fraud, willful misconduct, malfeasance, material breach of any representation, warranty, covenant or agreement under this Agreement, breach of its fiduciary duties, or actions performed outside the scope of its authority, and further provided that this will not affect the General Partner's or Special Limited Partner's applicable guaranties and obligations hereunder, which remain in full force and effect, unaffected by this provision, and further provided that, the General Partner's and Special Limited Partner's obligations to indemnify, defend and hold harmless under this Section 5.4 shall only relate to each Partner's own acts and/or omissions.

### **5.5 Indemnification of General Partner and Special Limited Partner**

(a) The Partnership shall indemnify, defend, and hold harmless the General Partner and Special Limited Partner from and against any loss, liability, damage, cost, or expense (including reasonable attorneys' fees) arising out of any demands, claims, suits, actions, or proceedings against the General Partner or Special Limited Partner, by reason of any act or omission performed by it (including its employees and agents) while acting in good faith on behalf of the Partnership and within the scope of the authority of the General Partner or Special Limited Partner pursuant to this Agreement, and any amount expended in any settlement of any such claim of liability, loss, or damage; provided, however, that: (i) the General Partner and/or Special Limited Partner must have in good faith believed that such action was in the best interests of the Partnership and in accordance with applicable law, and such course of action or inaction must not have constituted gross negligence, fraud, willful misconduct, malfeasance,

material breach of any representation, warranty, covenant or agreement set forth in this Agreement, or breach of its fiduciary duties; and (ii) any such indemnification shall be recoverable solely from the assets of the Partnership (other than any Partnership assets which would cause a recapture or disallowance of Credit under applicable law) and not from the assets of the Limited Partner, and no Partner shall be personally liable therefor. This indemnity shall be operative only in the context of third-party suits, and not in connection with demands, claims, suits, actions or proceedings initiated by any Partner or any Affiliate thereof against another Partner, nor in connection with any violation by the General Partner or Special Limited Partner of its obligations hereunder.

(b) The Partnership shall not pay for any insurance covering liability of the General Partner or Special Limited Partner for actions or omissions for which indemnification is not permitted hereunder, without the Consent of the Limited Partner.

(c) Notwithstanding anything contained in this Section 5.5, neither the General Partner nor the Special Limited Partner shall be indemnified or saved harmless from any liability, loss, damage, cost, or expense incurred by it in connection with: (i) any civil or criminal fines or penalties imposed by law; (ii) any claim or settlement involving the allegation that federal or state securities laws were violated by the General Partner, Special Limited Partner or the Partnership; or (iii) any claim involving the General Partner's or Special Limited Partner's gross negligence, fraud, willful misconduct, malfeasance, material breach of any representation, warranty, covenant or agreement set forth in this Agreement, or breach of a fiduciary duty, unless (A) the General Partner or Special Limited Partner is successful in defending such action on the merits, (B) such claims have been finally dismissed in favor of the General Partner or Special Limited Partner with prejudice on the merits by a court of competent jurisdiction, or (C) a court of competent jurisdiction approves a settlement and finally determines that the General Partner or Special Limited Partner is entitled to costs.

(d) The indemnification rights contained in this Section 5.5 shall be limited to actual out-of-pocket losses or expenses of the General Partner and Special Limited Partner, and the payment of indemnification amounts shall be limited to the assets of the Partnership. There shall be no recourse to the Limited Partner and nothing contained herein shall constitute a waiver by the Limited Partner or its Affiliates of any right that it may have against any party under federal, state, or common law principles.

## **5.6 Representations, Warranties and Covenants of the General Partner and Special Limited Partner and Environmental Matters**

**5.6.1.** The General Partner (as to itself and/or its Affiliates) hereby represents and warrants to the Limited Partner that the following are true and correct as of the date hereof and will be true and correct for the Term, unless specifically updated in writing and delivered to the

Limited Partner, from time to time, and such representations, warranties and covenants may be relied upon by counsel to the Limited Partner for purposes of any opinion such counsel may give in connection with the Limited Partner's investment in the Partnership;

(a) The Partnership is a duly organized limited partnership validly existing and in good standing under the laws of the State of Oregon, and has undertaken all acts, including without limitation, the filing of all certificates and the payment of all fees, taxes, and other sums necessary for the Partnership to operate as a limited partnership in the State of Oregon and to enable the Partnership to engage in its business and operate the Project in accordance with this Agreement.

(b) No event has occurred that has caused, and neither the General Partner nor the Special Limited Partner has acted in any manner that will cause: (i) the Partnership to be treated for federal income tax purposes as an association taxable as a corporation, (ii) the Partnership to fail to qualify as a limited partnership under the Act, or (iii) the Limited Partner to be liable for Partnership obligations.

(c) All consents or approvals of any governmental authority, or any other Person, necessary to admit the Limited Partner to the Partnership have been obtained by the General Partner, and the Partnership has taken all action under the laws of the State of Oregon, and any other applicable jurisdiction and has complied with all filing requirements necessary under the Act for the preservation of the limited liability of the Limited Partner, and all consents or approvals of any governmental authority, or any other Person, necessary in connection with the transactions contemplated by this Agreement have been or will be obtained by the General Partner in the ordinary course of business.

(d) To the best of the General Partner's knowledge, after due inquiry and investigation, it has delivered to the Limited Partner true copies of all documents material to the Limited Partner's investment in the Partnership and true copies of all amendments to such documents and all other material information relevant to the Project or to the admission of the Limited Partner to the Partnership. To the best of the General Partner's knowledge, all such information provided to the Limited Partner is accurate and complete in all material respects and the General Partner has not failed to provide the Limited Partner with any information necessary to make the information provided by the General Partner complete and accurate in all material respects.

(e) The Partnership is under no obligation, and neither the General Partner, the Special Limited Partner nor any of their respective Affiliates have taken any action that would cause the Partnership to be obligated, under any federal or state law, rule, or regulation to register the Interests and the Partnership, the Special Limited Partner and the General Partner have fully complied with any and all federal and state securities laws, as well as all applicable exemptions available for the sale of Interests without registration.

(f) The General Partner (A) is a limited liability company validly existing and in good standing under the laws of the State of Oregon, and (B) has full limited liability company power to enter into and consummate this Agreement and all instruments pertaining hereto and to perform all acts related thereto. The consummation of all transactions contemplated herein and in the Loan Documents and the Project Documents to be performed by the General Partner and/or its Affiliates does not and will not result in any material breach or violation of, or default under, the organizational documents and authorizing resolutions of the General Partner and/or its Affiliates or any agreements by which the General Partner and/or its Affiliates or any of its property is bound, or under any applicable law, administrative regulation, or court decree. From and after the date of formation of the Partnership, the General Partner has not pledged or otherwise encumbered its Interest in the Partnership and no third party has any interest therein, other than the pledge to the Lender of the Bridge Loan. The organizational documents and authorizing resolutions of the General Partner submitted to the Limited Partner on or prior to the date hereof are true, correct and complete and have not been amended. The General Partner will not change its organizational structure except as expressly permitted by this Agreement (provided that, the foregoing shall not limit or prohibit changes in the directors of the General Partner's sole member) and will not make any changes or amendments to its organizational documents and authorizing resolutions which would impair its ability to act as General Partner in accordance with this Agreement without the Consent of the Limited Partner. The performance by the General Partner of its obligations hereunder is in full accordance with, and in furtherance of, the Housing Authority GP Member's tax-exempt public purpose.

(g) No Event of Bankruptcy (or events which, in the course of time, would result in an Event of Bankruptcy) has occurred with respect to the General Partner, the Special Limited Partner any Guarantor or any of their respective Affiliates; provided that, with respect to the Special Limited Partner and its Affiliates, the foregoing excludes any representations regarding individual board members of the Special Limited Partner.

(h) Except as otherwise disclosed to the Limited Partner, no litigation, action, investigation, event, or proceeding is pending against the Partnership, the General Partner, the Special Limited Partner the Guarantor and/or the Project that would have a material adverse effect on the Partnership, the General Partner, the Special Limited Partner, any Guarantor or the Project. Further, to the best of its knowledge (after due inquiry) no such litigation, action, investigation, event or proceeding is threatened, that, if adversely resolved, would: (i) have a material adverse effect on the Partnership, the General Partner, the Special Limited Partner, any Guarantor or the Project; (ii) have a material adverse effect on the ability of the General Partner, the Special Limited Partner, any of their Affiliates or any Guarantor to perform their respective obligations under this Agreement, and/or the Project Documents, as applicable; (iii) have a material adverse effect on the financial condition of the General Partner, the Special Limited Partner, the Partnership or any Guarantor; or (iv) constitute or result, if true, in a material

breach of any representation, warranty, covenant, or agreement set forth in this Agreement, the Loan Documents and/or the Project Documents, as applicable.

(i) The General Partner have provided the Limited Partner with true and correct copies of all Project Documents, and neither the Partnership nor the General Partner has any obligations to any third parties, except for matters previously disclosed to the Limited Partner in writing which have received the Consent of the Limited Partner.

(j) The General Partner represents and warrants that all Project Documents are in accordance with applicable laws, codes and regulations and the construction of the Project will be completed in accordance therewith.

(k) No default (or event that, with the giving of notice or the passage of time or both, would constitute a default) has occurred and is continuing under any of the Project Documents, or any other contract, agreement, or instrument to which the Partnership, or the General Partner or Special Limited Partner is subject, and the Project Documents are in full force and effect and the Partnership is entitled to the benefit of the Project Documents.

(l) Neither the General Partner nor any of its Affiliates nor the Partnership have entered into any agreement or contract for the payment or offset of any construction loan or loan discounts, additional interest, yield maintenance or other charges or financing fees or any agreement to incur any financial responsibility with respect to the Project or providing for the guaranty of payment of any such interest charges or financing fees relating to the Loan Documents or for any kickback or rebate of fees under any Loan Document or other Project Document, other than those disclosed in this Agreement or the Project Documents; and in no event has the General Partner or the Partnership entered into any such agreement or guaranty of any kind whatsoever (such as an escrow arrangement or letter of credit arrangement) that may in any way affect allocation of the anticipated Credit to the Limited Partner.

(m) Neither the Partnership nor the General Partner (or any Affiliate thereof) is presently under any commitment to any real estate broker, rental agent, finder, syndicator or other intermediary with respect to the Partnership, the Project, or any portion thereof, except for any arrangements specifically described in this Agreement, the Project Documents and arrangements previously disclosed in writing to the Limited Partner, which have received the Consent of the Limited Partner.

(n) As of the date hereof, there are no outstanding loans or advances from the General Partner to the Partnership and the Partnership has no unsatisfied obligation to make any loan or advance repayments of any kind to the General Partner or its Affiliates other than the Development Fee, the Property Management Fees, legal fees, architect fees, construction management fees, general contractor fees, development completion fees and financing fees.

(o) As of the date hereof, the General Partner reasonably believe that, during the entire Term of the Partnership, (i) the fair market value of the Project will exceed the amount of indebtedness, and any accrued interest thereon, secured by the Project, (ii) the Partnership will be able to repay the Loans as they mature and (iii) the Project will remain solvent.

(p) There are no restrictions on the sale or refinancing of the Project, other than the restrictions set forth in the Loan Documents, the Project Documents, under Section 42 of the Code or under other applicable state or federal law respecting the Credits.

(q) The Partnership owns the Project, the buildings comprising the Project, and each of the Units (and the tangible and intangible personal property thereof), free and clear of any liens, charges, or encumbrances other than the Mortgages, matters set forth in the Title Policy, and mechanics' or other liens that have been disclosed to the Limited Partner in writing and affirmatively insured over or bonded against in such a manner as to effectively preclude the holder of such lien from having any recourse to the Project, any of the Units, or the Partnership for payment of any debt secured thereby and with all construction related actions, claims, litigation or proceedings (other than liens bonded over as described above) resolved in a manner acceptable to the Limited Partner. As of the date hereof, neither the General Partner nor the Special Limited Partner has received notice of any such liens, charges, encumbrances, actions, claims, litigation or proceedings.

(r) The General Partner represents and warrants that all building, zoning, and other applicable certificates, permits, and licenses necessary to permit the construction, use, occupancy, and operation of the Project have been obtained (or in the case of those as will be issued only after the Completion Date of the Project or any specified portion thereof, will be obtained), all improvements constructed or to be constructed on the Project, including, without limitation, any infrastructure requirements contemplated by the Project Documents, if any, have been or will be constructed and equipped in full compliance with the requirements of the Project Documents, of the Lenders and of all governmental authorities having jurisdiction over the Project including, without limitation, the Federal Fair Housing Act, as amended. Neither the Partnership, nor the General Partner or the Special Limited Partner, has received any notice as of the date hereof, or has any knowledge, of any violation with respect to the Project of any law, rule, regulation, order, or decree of any governmental authority having jurisdiction that would have a material adverse effect on the Project or the Partnership's investment in the Project (including the Partnership's ability to transfer the Project in accordance with terms of this Agreement) or the construction, use, occupancy, or operation thereof. The General Partner represents and warrants that the completion of any improvements, construction, alteration or rehabilitation on or of the Project or any portion thereof will not require the dedication of any portion of the Project to any applicable governmental entities.

(s) The General Partner represents and warrants the following: The Project has and will continue to have permanent unrestricted access to appropriate public roadways. All public utilities necessary to the operation of the Project, including, but not limited to, sanitary and storm sewers, water, gas (if applicable) telephone and electricity, are or will by the date each Unit in the Project is placed in service be, and will remain available to and connected to, the Project and each of the Units. The Project is an independent unit which does not rely on any drainage, sewer, access, parking, structural or other facilities located on any property not included in the Project or on public or utility easements, including the Easements, for the (i) fulfillment of any zoning, building code or other requirement of any governmental entity that has jurisdiction over the Project; (ii) structural support, or (iii) the fulfillment of the requirements of any lease or other agreement affecting the Project. The Partnership, directly or indirectly, has the right to use all amenities, easements, public or private utilities, parking, access routes or other items necessary for the construction or operation of the Project. The Project is either (i) contiguous to, or (ii) benefits from an irrevocable unsubordinated easement permitting access from the Project to, a physically open, dedicated public street, and has all necessary permits for ingress and egress and adequate public water, sewer systems and utilities are available to the Project. No building or other improvement not located on the Project relies on any part of the Project to fulfill any zoning requirements, building code or other requirement of any governmental entity that has jurisdiction over the Project for structural support or to furnish to such building or improvement any essential building systems or utilities.

(t) The General Partner represents and warrants that no amendments, modifications, or other changes or additions have been made to the Environmental Reports. Further, the General Partner represents, warrants and covenants to the Limited Partner, as follows:

i. To the best of the General Partner's knowledge, after due inquiry, except as set forth on the Environmental Reports, there presently are not in, on or under the Project, and from and after the Completion Date, there will be, no Environmental Hazard subject to regulation under applicable Environmental Laws.

ii. To the best of the General Partner's knowledge, after due inquiry, except for any matters set forth in the Environmental Reports, that the Project is in compliance with all applicable Environmental Laws and neither Partner has received notice of any violations of the Environmental Laws. The General Partner covenants and agrees to take all necessary action within its control to ensure that the Project is in compliance with the Environmental Laws at all times, and shall implement all recommendations set forth in the Environmental Reports prior to the Completion Date. The General Partner shall promptly deliver any notice it may receive of any violation of the Environmental Laws to the Partnership. For purposes of this Section 5.6(t), in addition to General Partner's actual knowledge, due inquiry consists of review of said Environmental Reports,



and any additional reports or testing of the Project required or suggested in said Environmental Reports.

iii. The General Partner shall cause the prompt (a) remediation of any and all existing mold and moisture problems; and (b) implementation of a moisture management and control program for the Project when applicable. Such moisture management program shall comply with all Environmental Laws, with all applicable requirements set forth in the Environmental Reports and with any then-current industry best practices and shall be subject to the Consent of the Limited Partner.

iv. The General Partner shall take all actions necessary to ensure that the Project contains no, and is not affected by the presence of, any Environmental Hazard, and to ensure that the Project is not in violation of any Environmental Law. The General Partner shall promptly deliver to the Limited Partner any notice received from any source whatsoever of the existence of any Environmental Hazard on the Project or of a violation of any Environmental Law with respect to the Project. If any Environmental Hazard (including, without limitation, lead-based paint, radon, mold, PCBs and/or asbestos) is found to exist or be present, the General Partner shall commence promptly the taking of action to assure it will be either removed from the Project and disposed of or encapsulated and/or otherwise corrected, contained and made safe and inaccessible, all in strict accordance with applicable federal, state and local statutes, laws (including any Environmental Laws), regulations, rules and ordinances, any recommendations set forth in the Environmental Reports, and any requirements in the Loan Documents.

v. The Partnership and the General Partner jointly and severally, shall indemnify and hold harmless the Limited Partner (the "Indemnified Party") from and against all claims, actions, causes of action, damages, costs, liability and expense (including, without limitation, reasonable attorneys' fees and expenses, court costs and remedial response costs) incurred or suffered by, or asserted by any Person, entity or governmental agency against the Indemnified Party, based upon a violation of the Environmental Laws, or respecting the presence of Environmental Hazards, subject to regulation by the Environmental Laws in, on or under the Project. Notwithstanding the foregoing, the General Partner shall not have an indemnification liability if the violation of the Environmental Laws or the presence of the Environmental Hazards arises solely after the effective date of the General Partner's removal or following any withdrawal or transfer of its entire Interest. The foregoing indemnification shall be a recourse obligation of the General Partner and the Partnership, and shall survive the dissolution of the Partnership, the death, retirement, incompetency, insolvency, bankruptcy, dissolution, removal or withdrawal of the General Partner and/or transfer of the General Partner's Interest. The indemnification authorized by this Section shall include, but not be limited to, direct and indirect costs and expenses incurred by the Limited Partner (including reasonable attorneys' fees and expenses), including, without limitation, the removal of any liens affecting any property of

the indemnitee as a result of such legal action and any Credit Deficiency. Notwithstanding anything herein to the contrary, the General Partner's obligation to indemnify and hold harmless pursuant to this paragraph shall only be with respect to matters caused by the acts and/or omissions of the General Partner.

If, at any time during the term of the Partnership, the Limited Partner determines that the representations of this subsection (t) may not have been true when made, or may have become untrue, the General Partner shall promptly obtain an environmental audit of the Project. The scope of such audit and the company performing it shall be subject to the Consent of the Limited Partner.

(u) Amounts paid to the General Partner and its respective Affiliates for services are reasonable in relation to the value of services provided and relate solely to the services actually rendered to the Partnership pursuant to agreements disclosed to, and acceptable to, the Limited Partner.

(v) The General Partner represents, warrants and covenants that certifications have been obtained or will be obtained in a timely fashion from the HCA and the issuer of the Project's tax-exempt bond financing, to the extent required in accordance with Code Sections 42(m)(1)(D) and 42(m)(2)(D), which confirm their determinations that (i) the Project satisfies the requirements for allocation of Credits under the qualified allocation plan applicable to the area in which the Project is located, and (ii) the Credits to be claimed with respect to the Project, as set forth in the Projections, do not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified low-income housing project throughout the Compliance Period pursuant to Section 42 of the Code.

(w) The General Partner represents, warrants and covenants that in accordance with Code Section 42(h)(4), at least 50% of the aggregate basis of the Project buildings and land has been or will be financed by the proceeds of bonds (i) the interest from which is exempt from federal income taxation under Section 103 of the Code, (ii) which are taken into account under the State volume cap, pursuant to Section 146 of the Code, and (iii) which will be redeemed within a reasonable period using principal payments on the loans provided from the proceeds of the issuance of the bonds. The General Partner represents, warrants and covenants that the Partnership will elect to lock-in the "applicable percentage" for the Federal Low-Income Credit, within the meaning of Section 42(b) of the Code, prior to the fifth (5<sup>th</sup>) day of the calendar month following the month in which the tax-exempt bond financing closes. Notwithstanding the foregoing, such "applicable percentage" may be a floating rate. In addition, the Project is located in a "qualified census tract" or a "difficult to develop area" as defined in Code Section 42(d)(5)(B)(ii) and (iii) or received a "basis boost" as defined in Code Section 42(d)(5)(B)(v).

(x) The General Partner represents, warrants and covenants that the Partnership will use diligent efforts to construct the Project and thereafter operate the Credit Units as low-income housing as required by the Code in order to qualify for and

maintain the Credit and other tax benefits anticipated in connection therewith, pursuant to the Projections.

(y) The Partnership has not made, and will not make, any elections under the Code without the Consent of the Limited Partner that would affect the amount, timing, availability, or allocation of Credits or losses that would be contrary to the assumptions made in the Projections.

(z) No more than 22.5% of Project is or will be treated as tax-exempt use property as defined in Section 168(h) of the Code, and the General Partner will take all actions necessary or appropriate to prevent more than 22.5% of the Project being subject to such treatment. The General Partner will not file on behalf of the Partnership an election to opt-out of up to 78.5% of bonus depreciation that is otherwise available with respect to the site work and personal property which is part of the Project and is not tax-exempt use property pursuant to Section 168(k) of the Code.

(aa) The General Partner represents, warrants and covenants that the Project has been acquired, has been and will be operated at all times beginning with the first day of the Compliance Period (as defined in Section 42(i)(1) of the Code) in a manner which satisfies all requirements and restrictions, including tenant income and rent restrictions, applicable to projects which qualify for the Credit and all requirements under the Loans and the Extended Use Agreement, including, without limitation, the following:

i. The General Partner represents, warrants and covenants that all of the Units in the Project shall be occupied by households with income at or below sixty percent (60%) of the area median gross income, and twenty percent (20%) of the HOME-assisted Units (as determined by applicable HOME Investment Partnership Act requirements) in the Project must be occupied by households with income at or below fifty percent (50%) and (80%) of such area median gross income, as applicable, and as required by Section 42(g)(1) of the Code or held vacant and available for occupancy by such tenants through the end of the Extended Use Period. The General Partner and Special Limited Partner shall not, by act or omission, permit any act to be taken that would cause the termination or discontinuance of the qualification of each Credit Unit, as a “low income unit” under Section 42(i)(3) of the Code or the qualification of the Project as a “qualified low income housing project” under Section 42(g)(1)(B) of the Code and any Treasury Regulations and rulings promulgated thereunder.

ii. The General Partner represents, warrants and covenants that the gross rents paid by tenants of Credit Units shall not exceed the lesser of (a) the qualifying income standard applicable to the Project pursuant to Code Section 42(g)(2)(A), generally thirty percent (30%) of the qualifying percentage (i.e. 60% of the imputed median gross income as adjusted by the applicable utility allowances), and (b) those rental amounts approved by the HCA from time to time

iii. The Units in the Project will be suitable for occupancy

iv. The General Partner represents, warrants and covenants that the Units in the Project will not be used on a transient basis.

v. The General Partner shall elect to begin the Credit Period in 2019 or such alternate date as shall be acceptable to the Limited Partner. The General Partner shall make a timely election under Section 42(g)(3) of the Code to treat this Project as a multi-building Project.

vi. During the Extended Use Period, the General Partner shall prepare and submit to the Secretary of the Treasury, the HCA (and/or any other governmental authority designated for such purpose), on a timely basis, any and all annual reports, information returns, and other certifications and information and shall take any and all other action required: (i) to ensure that the Partnership (and its Partners) will continue to qualify for the Credit for each of the Credit Units and the Project, and (ii) to avoid recapture, reduction or disallowance of the Credit or the imposition of penalties or interest on the Partnership or any of the Partners for failure to comply with the Code or applicable state law. The General Partner agrees to cause the Partnership to pay, as and when due, any fees charged by the HCA for monitoring credit compliance.

vii. Reserved.

viii. The General Partner shall cause the Project to comply with the applicable tenant income and rental restrictions of FHA in connection with the 221(d)(4) program (the "**FHA Restrictions**"). The General Partner shall cause to be kept all records, and shall timely submit all certifications, financial and tenant reports and any other documentation required to satisfy the FHA Restrictions. The General Partner shall cause the Project to comply with the applicable tenant income and rental restrictions of the HCA (the "**LURA Restrictions**") and the HOME Investment Partnership Act (the "**HOME Restrictions**") respecting the Project. The General Partner shall cause to be kept all records, and shall timely submit all certifications, financial and tenant reports and any other documentation required to satisfy the LURA Restrictions and the HOME Restrictions

ix. The General Partner shall cause the Project to comply with the applicable tenant income and rental restrictions of HUD in connection with the Section 8 project-based voucher program (the "**PBV Restrictions**"). The General Partner shall cause to be kept all records, and shall timely submit all certifications, financial and tenant reports and any other documentation required to satisfy the PBV Restrictions.

x. The General Partner represents, warrants and covenants that all community facilities and common area improvements within the Project are and will be made available only to tenants and invitees and guests of tenants as permitted by the Code, of the Project and at no charge, based on rules uniformly enforced and on a comparable basis, and such facilities and improvements are of a size appropriate for a project of the size of the Project.

xi. The General Partner will cause the Partnership and/or the Management Agent to enter into a Supportive Services Agreement in accordance with the resident services plan as required by the HCA.

(bb) For federal income tax purposes, the Partnership and the General Partner report, and shall continue to report their income on the accrual method of accounting. On behalf of the Partnership, the General Partner has filed,, and will continue to file, any and all certifications and other documents on a timely basis with the IRS, the Oregon taxing authorities and any other federal, state or local governmental agency or political subdivision as have been and may be required to support the annual allocation of Credits, all of which certifications and other documents (including without limitation Forms 8609 and Schedule A thereto) shall be in all respects reasonably acceptable to the Limited Partner as to form and substance and in full accordance with applicable law. The General Partner shall provide the initial Forms 8609 at least 14 calendar days prior to the date such Form is filed with the IRS, and all federal tax returns of the Partnership to the Limited Partner pursuant to Section 13.3(a)(7).

(cc) The General Partner represents and warrants that the Partnership maintains and will continue to maintain insurance on all Partnership activities and the Project which complies with the terms specified in this Agreement.

(dd) No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending or threatened against the Partnership, the Special Limited Partner, any Guarantor, or the General Partner.

(ee) To the best of the General Partner's knowledge, after due inquiry, there is not any plan, study or effort of any applicable governmental entities, which in any way would materially adversely affect the use of the Project for its intended uses or any intended public improvements which will result in any material charge being levied against, or any material lien assessed upon, the Project. The General Partner represents and warrants that there is not any existing, proposed or contemplated plan to widen, modify or realign any street or highway contiguous to the Project.

(ff) To the best of the General Partner's knowledge, after due inquiry, there are no defects or conditions of the soil which will materially adversely affect the use, occupancy and operation of the Project, and no need for unusual or new subsurface excavations, fill, footings, caissons or other installations. The General Partner will cause the Project, as built, to be constructed in a manner compatible with the soil condition at the time of construction and all necessary excavations, fills, footings, caissons and other installations will then have been provided. Further, the General Partner will cause the foundation(s) on the Building(s) in the Project to be located in a manner which is not in violation of applicable Project setbacks and/or which does not encroach on any Project easements and/or over adjacent property lines, and which has been placed in the location and at the correct elevations as were authorized in the site plan for the Project.

(gg) Neither the General Partner nor the Partnership has received any notice from any insurance company or any applicable governmental entity, nor has any knowledge, of any violation of applicable codes or insurance requirements or any defect in, on or about the Project.

(hh) The Partnership has not entered into any contracts for the sale of the Project, nor do there exist any rights of first refusal or options to purchase the Project, except as provided herein.

(ii) To the best knowledge and belief of the General Partner, no circumstances now exist that would materially and adversely affect the reasonable likelihood of achieving the objectives and the benefits set forth in the Projections attached hereto as Exhibit F. To the best knowledge and belief of the General Partner, all of the Project information and assumptions in the Projections, including, without limitation, Project development budget costs, rents, utility costs, based upon tenant utilities being paid by the tenant and other operating and maintenance expenses, depreciation, the Lease-up Period and the funding of Project Loans are accurate and achievable.

(jj) Other than respecting the Bridge Loan and the guaranty to the Lenders by Pedcor Investments, LLC, which shall continue until the release criteria set forth in the Loan Documents have been achieved, and any Loans from the General Partner or its Affiliates, none of the Partners or the Partnership has or will have, pursuant to the terms of the Loans, any personal liability as maker, guarantor, partner or otherwise with respect to the payment of principal or interest on the Loans, and in the event of default thereon, the sole recourse of any Lender or other lender shall be to the Project and pledged collateral.

(kk) The General Partner represents, warrants and covenants that the development and operation of the Project shall be undertaken in a manner that complies with the provisions of all applicable Federal, State or local laws prohibiting discrimination on the grounds of age, race, color, religion, creed, sex, handicap, familial status or national origin, including any applicable requirements of Title VI of the Civil Rights Act of 1964; the Fair Housing Act of 1968 and the Housing for Older Persons Act; the Americans with Disabilities Act; the Age Discrimination Act of 1975; all requirements under Section 42 of the Code respecting use of the Credit Units by the general public; and all requirements imposed by or pursuant to the regulations implementing these authorities.

(ll) The General Partner hereby represents that all Project costs certified by the Accountants as properly includable in the qualified basis of the Project are inextricably connected with the building(s) making up the Project as described in the Technical Advice Memoranda released by the IRS on October 27, 2000 and November 3, 2000 published by the National Office in connection with audits of Credit projects.

(mm) The Project will meet all requirements to qualify for the Property Tax Exemption projected to be available to the Partnership under the Projections.

**5.6.2.** The Special Limited Partner (as to itself and/or its Affiliates hereby represents and warrants to the Limited Partner that the following are true and correct as of the date hereof and will be true and correct for the Term, unless specifically updated in writing and delivered to the Limited Partner, from time to time, and such representations, warranties and covenants may be relied upon by counsel to the Limited Partner for purposes of any opinion such counsel may give in connection with the Limited Partner's investment in the Partnership:

(a) The Special Limited Partner (A) is a public body corporate and politic under the laws of the State of Oregon and (B) has full power to enter into and consummate this Agreement and all instruments pertaining hereto and to perform all acts related thereto. The consummation of all transactions contemplated herein and in the Loan Documents and the Project Documents to be performed by the Special Limited Partner and/or its Affiliates does not and will not result in any material breach or violation of, or default under, the organizational documents and authorizing resolutions of the Special Limited Partner and/or its Affiliates or any agreements by which the Special Limited Partner and/or its Affiliates or any of its property is bound, or under any applicable law, administrative regulation, or court decree. From and after the date of formation of the Partnership, the Special Limited Partner has not pledged or otherwise encumbered its Interest in the Partnership and no third party has any interest therein, other than the pledge to the Lender of the Bridge Loan. The organizational documents and authorizing resolutions of the Special Limited Partner submitted to the Limited Partner on or prior to the date hereof are true, correct and complete and have not been amended.

(b) No Event of Bankruptcy (or events which, in the course of time, would result in an Event of Bankruptcy) has occurred with respect to the Special Limited Partner or any of its respective Affiliates; provided that, the foregoing excludes any representations regarding individual board members of the Special Limited Partner.

(c) Except as otherwise disclosed to the Limited Partner, no litigation, action, investigation, event, or proceeding is pending against the Special Limited Partner that would have a material adverse effect on the Partnership, the General Partner, the Special Limited Partner, any Guarantor or the Project. Further, to the best of its knowledge (after due inquiry) no such litigation, action, investigation, event or proceeding is threatened, that, if adversely resolved, would: (i) have a material adverse effect on the Partnership, the General Partner, the Special Limited Partner, any Guarantor or the Project; (ii) have a material adverse effect on the ability of the General Partner, the Special Limited Partner, any of their Affiliates or any Guarantor to perform their respective obligations under this Agreement, and/or the Project Documents, as applicable; (iii) have a material adverse effect on the financial condition of the General Partner, the Special Limited Partner, the Partnership or any Guarantor; or (iv) constitute or result, if true, in a material breach of any representation, warranty, covenant, or agreement set forth in this Agreement, the Loan Documents and/or the Project Documents, as applicable.

(d) As of the date hereof, there are no outstanding loans or advances from the Special Limited Partner to the Partnership except the HOME Loan and the Disposition Loan, and the Partnership has no unsatisfied obligation to make any loan or advance repayments of any kind to the Special Limited Partner or its Affiliates other than the Development Fee, the Property Management Fees, legal fees, architect fees, construction management fees, general contractor fees, development completion fees and financing fees.

(e) All consents or approvals of any governmental authority, or any other Person, necessary in connection with the transactions to be performed by the Special Limited Partner contemplated by this Agreement have been or will be obtained by the Special Limited Partner in the ordinary course of business.

(f) To the Special Limited Partner's knowledge, after reasonable inquiry and investigation, it has delivered to the Limited Partner true copies of all documents requested by the Limited Partner that it deems material to the Limited Partner's investment in the Partnership and true copies of all amendments to such documents and all other material information relevant to the Project or to the admission of the Limited Partner to the Partnership. To the Special Limited Partner's knowledge, all such information provided to the Limited Partner is accurate and complete in all material respects and the Special Limited Partner has not failed to provide the Limited Partner with any information necessary to make the information provided by the Special Limited Partner complete and accurate in all material respects.

(g) Neither the Special Limited Partner, nor any of its Affiliates have entered into any agreement or contract for the payment or offset of any construction loan or loan discounts, additional interest, yield maintenance or other charges or financing fees or any agreement to incur any financial responsibility with respect to the Project or providing for the guaranty of payment of any such interest charges or financing fees relating to the Loan Documents or for any kickback or rebate of fees under any Loan Document or other Project Document, other than those disclosed in this Agreement or the Project Documents; and in no event has the Special Limited Partner entered into any such agreement or guaranty of any kind whatsoever (such as an escrow arrangement or letter of credit arrangement) that may in any way affect allocation of the anticipated Credit to the Limited Partner

## **5.7 Additional Covenants of the General Partner and Special Limited Partner**

### **5.7.1. The General Partner covenants to the Limited Partner that for the Term:**

(a) The General Partner shall cause the Partnership to do all things necessary to maintain its status as a limited partnership in good standing and to continue to have full limited partnership power and authority to acquire the Project and to develop, construct, operate, and maintain the Project in accordance with the terms of this Agreement and to enable the Partnership to engage in its business.



(b) The General Partner shall not act in any manner that will cause (i) the Partnership to be treated for federal income tax purposes as an association taxable as a corporation, (ii) the Partnership to fail to qualify as a limited partnership under the Act, or (iii) the Limited Partner to be liable for Partnership obligations.

(c) The General Partner shall continue to take all action under the laws of the state of Oregon and any other applicable jurisdiction that is necessary to protect the limited liability of the Limited Partner.

(d) The General Partner shall, during and after the period in which it is a Partner, provide the Partnership with such information and sign such documents as are necessary for the Partnership to make timely, accurate and complete submissions of federal and state income tax returns.

(e) The General Partner shall furnish to counsel for the Limited Partner promptly as and when requested in connection with the rendering of any legal opinion concerning federal income tax relating to the Limited Partner's investment in the Partnership, all documents requested by counsel for the Limited Partner.

(f) The General Partner promptly inform the Partnership of any litigation, action, investigation, event, or proceeding that is pending respecting the Partnership, the General Partner, the Special Limited Partner, the Project and/or any Guarantor, including without limitation, any failed REAC (Real Estate Assessment Center) inspections and any Form 8823 notices of non-compliance received by the Partnership and, further, upon receipt of any notice or knowledge shall promptly inform the Partnership of any such matter which is threatened which, if adversely resolved, would (i) have a material adverse effect on the Partnership or the Project; (ii) have a material adverse effect on the ability of the General Partner, the Special Limited Partner or a Guarantor or any of their respective Affiliates to perform their respective obligations under this Agreement; (iii) have an adverse effect on any adjacent property, which would have a material adverse effect on the Project or the Partnership's investment in the Project; (iv) have a material adverse effect on the financial condition of the General Partner, the Special Limited Partner or any Guarantor; or (v) constitute or result, if true, in a material breach of any representation, warranty, covenant, or agreement set forth in this Agreement.

(g) The General Partner shall promptly inform the Partnership and the Limited Partner upon receiving any notice of or having any knowledge of, any violation with respect to the Project of any law, rule, regulation, order, or decree of any governmental authority having jurisdiction, which would have a material adverse effect on the Project (including the Partnership's ability to transfer the Project in accordance with the terms of this Agreement) or the Project or the construction, rehabilitation, use, occupancy, or operation thereof.

(h) The General Partner shall furnish to the Limited Partner, within three (3) business days of receipt thereof, a copy of any notice of default under the Loan Notes, the Mortgages, any of the Project Documents, or any of the Loan Documents given to the Partnership, the General Partner or the Special Limited Partner.

(i) The General Partner covenants that the Guarantors shall at all times maintain a positive net worth of \$35,000,000, or more, which shall include (1) the individual Guarantor's net worth plus (2) the members' equity of Pedcor Investments, LLC, which is not included in the individual Guarantor's net worth; at least \$2,000,000 of which shall at all times be represented by the Guarantor's combined cash or cash, marketable securities, and cash equivalents and shall take any and all actions as may be necessary from time to time to maintain such net worth. Such calculation shall also include unused lines of credit for the benefit of any one or more of the Guarantors from Pedcor Bancorp, Pedcor Financial, LLC, Pedcor Capital Corporation, Pedcor Funding Corporation, Pedcor Financial Bancorp or Pedcor Residential, LLC for which all conditions to funding are currently capable of being met and provided no other party has rights to any amounts due thereunder.

(j) The General Partner will not cause or allow restrictions on the sale or refinancing of the Project, other than the restrictions set forth in this Agreement, the Loan Documents, the Project Documents, and any applicable requirements of HCA.

(k) The General Partner will cause all of (i) the fixtures, maintenance supplies, tools, equipment and like owned or to be owned by the Partnership or to be appurtenant to, or to be used in the operation of the Project as well as (ii) the rents, revenues and profits earned from the operation of the Project, to be free and clear of all security interests and encumbrances except for the liens and security interests of the Loans described herein.

(l) The General Partner or its Affiliates shall cause the construction of the Project to be completed substantially in accordance with the relevant Project Documents and the Project thereafter operated as low income housing as required by the Code, in order to qualify for and maintain the Credit and other tax benefits anticipated in connection therewith. In addition, the General Partner shall use its best efforts to obtain all applicable permanent certificates of occupancy for the Project no later than the Completion Date. The General Partner shall obtain all building, zoning, environmental, wetland and other applicable certificates, permits, and licenses necessary to permit the construction, use, occupancy, and operation of the Project that are obtainable only after completion of the Project or a specified portion thereof. The General Partner represents, warrants and covenants that all improvements constructed or to be constructed on the Project shall be constructed and equipped in full compliance with the requirements of all governmental authorities having jurisdiction over the Project.

(m) The General Partner will cause the Partnership to keep all public utilities necessary to the operation of the Project, including, but not limited to, sanitary and storm sewers, water, and electricity, operating in working condition, to the extent required by law and pursuant to the residential lease agreement of any of the Units.

(n) The General Partner will cause the Project, including each of the Units, to be operated in compliance with all applicable zoning regulations, ordinances, and subdivision laws, rules, and regulations.

(o) The General Partner will secure from the General Contractor a construction completion guarantee, to be secured with a letter of credit in an amount, issued by an acceptable financial institution, and in form and substance acceptable to the Limited Partner, which amount will not be less than twenty-five percent (25%) of the Project guaranteed maximum price construction contract amount or secured by a one hundred percent (100%) payment and performance bond, naming the Limited Partner as co-obligee thereon pursuant to Co-obligee Rider.

(p) The General Partner will cause the Partnership to maintain insurance against risks that are of a character usually insured by Persons engaged in a similar business and in form and amount and covering such risks as is usually carried by such Persons including, but not limited to, insurance of the type described in the Insurance Requirements Checklist attached as Exhibit G; provided, however, that: (i) in addition to such requirements, the Partnership shall at all times comply with the insurance requirements imposed by the Lenders and/or required by the Limited Partner; (ii) all such insurance policies are and shall be in full force and effect during the Term of the Partnership; and (iii) USBCDC shall be named as certificate holder and an additional insured on each such policy and shall have the right to receive thirty (30) days' notice prior to any termination or reduction of coverage by the insurer.

(q) Except as expressly permitted by this Agreement, the General Partner will not permit any assignment of any agreement between the Partnership and any Affiliate of the General Partner, nor will the General Partner permit a change in the control of any Affiliate that has entered into any agreement with the Partnership unless, in connection with such assignment or change of control, Pedcor Investments, A Limited Liability Company or any combination of Pedcor Investments, A Limited Liability Company, Bruce A. Cordingley, Gerald K. Pedigo and/or Phillip J. Stoffregen continues to maintain a controlling membership interest in and/or manage such Affiliate of the General Partner which remains a party to such agreement.

(r) The General Partner shall investigate and report to the Limited Partner any proposal or offer of any Person, including the General Partner, to acquire the Project or the Interest of the Limited Partner.

(s) The General Partner will cause the Partnership to comply in all material respects with all of the terms and conditions of the residential lease agreement for each of the Units.

(t) The General Partner shall not employ any Person as an employee of the Partnership.

(u) The General Partner (subject to the terms of Section 5.1(b) hereof) will (i) execute on behalf of the Partnership all documents necessary to elect, pursuant to Sections 734, 743, and 754 of the Code, to adjust the basis of the Partnership's property, if, in the sole opinion of the accountants for the Limited Partner, such election would be advantageous to the Limited Partner; (ii) provide to the accountants for the Limited Partner for review and approval before filing each IRS Form 8609 Tax Credit Allocation

and any applicable State credit certifications for the Project; and (iii) make such elections on the IRS Form 8609 Tax Credit Allocation and any applicable State credit certifications which in the sole opinion of the accountants for the Limited Partner, are advantageous to the Limited Partner. In addition, the General Partner shall obtain the Consent of the Limited Partner to make any election under the Code that would affect the amount, timing, availability, or allocation of Credits or losses, or which is otherwise required under Section 13.4 hereof; provided, however, that notwithstanding the foregoing, any elections other than those elections that are already reflected in the Projections shall require the mutual consent of the General Partner and the Limited Partner.

(v) The General Partner will not cause the Partnership to accept any grant of funds not specifically provided for in this Agreement after the Admission Date without the Consent of the Limited Partner.

(w) No separate fee will be charged to the tenants of the Project for the use of any of the common area facilities for which the cost was included in the eligible basis of the Project for determining the amount of Credits.

(x) The General Partner shall not permit its respective members to convey their membership interests in the General Partner, respectively, outstanding at any time without the Consent of the Limited Partner, except as otherwise expressly permitted by this Agreement and except in the event that Pedcor Investments, A Limited Liability Company or any combination of Pedcor Investments, A Limited Liability Company, Bruce A. Cordingley, Gerald K. Pedigo and/or Phillip J. Stoffregen continues to maintain a controlling membership interest in and/or manage the General Partner. The Special Limited Partner shall not permit its member to convey its membership interest in the Special Limited Partner without the Consent of the Limited Partner, unless, following the conveyance, the Property Tax Exemption would continue to remain in full force and effect.

(y) The General Partner shall (i) file any and all documentation, as may be applicable, necessary to obtain and maintain the exemption of one hundred percent (100%) of all property taxes by any applicable state, county, city or other taxing body for the Project authorized pursuant to Section 307.092 of the Oregon Revised Statutes (the “*Property Tax Exemption*”) or (ii) in the event the Property Tax Exemption is no longer effective, fully fund all Operating Deficits and pay all applicable buildings use, sale and property taxes assessed on the Project.

(z) The General Partner shall cause the Partnership to comply with the terms and provisions of the Easements, and the documents pertaining to the Property Tax Exemption.

(aa) Other than those loans disclosed to, and approved by, the Limited Partner in writing, and except as otherwise expressly permitted by this Agreement, neither the General Partner nor any of its Affiliates nor the Partnership, nor any of its Affiliates, shall enter into any agreement or contract for the payment or offset of any construction loan or loan discounts, additional interest, yield maintenance or other interest charges or

financing fees or any agreement to incur any financial responsibility with respect to the Project or providing for the guaranty of payment of any such interest charges or financing fees relating to any loan or enter into any such agreement or guaranty of any kind whatsoever (such as an escrow arrangement or letter of credit arrangement) that would subject the Partnership or any of its Partners, to personal liability or, in the opinion of counsel to the Limited Partner, economic risk of loss as to a loan, nor shall the General Partner make any loan that shall be personally enforceable by any lender of a loan or that may in any way affect allocation of Credit to the Limited Partner.

(bb) The General Partner agrees that it will not cause the Limited Partner to become, and it will take all steps necessary to prevent the Limited Partner at any time from becoming, personally liable for payment or performance under the Loan Notes or the Mortgages. Except for the Bridge Loan and the guaranty to the Lenders by Pedcor Investments, LLC, which shall continue until the release criteria set forth in the Loan Documents have been achieved, or any loans from the General Partner or an Affiliate, (i) the General Partner agrees that neither it nor any of its Affiliates will at any time become, in the opinion of counsel to the Limited Partner, subject to any economic risk of loss within the meaning of Treasury Regulation Section 1.752-2, or any successor provision, with respect to any Partnership obligation, and (ii) the sole recourse of the Lenders under the Loan Notes with respect to the principal thereof, interest thereon or any other obligation thereunder, shall be to the assets of the Partnership and the Loan Notes shall contain similar nonrecourse provisions, in each case except for those customary exclusions for such matters as fraud, misappropriation of funds, environmental hazards or waste that, in the opinion of counsel to the Limited Partner, do not cause the Mortgages to become debt instruments as to which a Partner has an economic risk of loss under Treasury Regulation Section 1.752-2, or any successor provision

(cc) The General Partner is exclusively responsible for negotiating and performing all services incident to (i) the Partnership's acquisition of the land underlying the Project, (ii) the arranging of appropriate zoning and equity and permanent financing with respect to the Project (including, but not limited to, reviewing the HCA's qualified allocation plan, applying for Credits and obtaining such marketing and feasibility studies and appraisals as it deems reasonably necessary) and (iii) organization and formation of the Partnership. In addition, the General Partner, to the extent set forth in this Agreement, are responsible for the management and operation of the Partnership, including the oversight of the rent-up and operational stages of the Project, and it shall promptly take all action that may be necessary or appropriate for the proper development, maintenance and operation of the Project in accordance with the provisions of this Agreement and the Project Documents. In this regard, among other things, the General Partner shall have the obligations to keep the Project in good working order and condition, reasonable wear and tear excepted, to not commit waste with respect to the Project and to promptly repair or replace any damage to the Project, as a Partnership Expense, except for those costs required to be paid by the General Partner pursuant to its guaranties herein.

(dd) [Neither the General Partner nor its Affiliates will cause by its action or inaction, directly or indirectly, any default to occur under the Letter of Credit

Documents. The General Partner shall maintain the letter of credit and/or cash deposit requirements of the FHA Lender for the Operating Deficit Reserve and Working Capital Reserve at all times during the term of the FHA Loan].

(ee) Neither the General Partner nor the Special Limited Partner shall permit or cause to be permitted any amendment or modification of its organizational documents, MOU, Development Fee Sharing Agreement, or otherwise enter into any other agreement (side agreement or otherwise) that would cause the Special Limited Partner or Housing Authority GP Member's share of allocated items hereunder to exceed .005% and 22.5%, respectively.

(ff) The General Partner shall cause the Developer to establish and maintain the Completion Guaranty Collateral Account no later than the Admission Date, in the initial amount of **[\$1,100,000]** (the "**Escrow Amount**") and enter into the Blocked Account Control Agreement and Bank Account Pledge Agreement with respect thereto (collectively, the "**Escrow Agreements**"). The Escrow Amount shall be used to pay Contractor Fees in the event that costs to fund Development Completion Requirements exceed projected amounts resulting in a shortfall to pay Contractor Fees during the construction phase. The Escrow Agreements may be terminated upon the Completion Date at the Limited Partner's discretion to the extent that Project sources and uses are sufficiently balanced at such time to fund Contractor Fees upon the schedule set forth in the Projections.

**5.7.2.** The Special Limited Partner covenants (as to itself only) to the Limited Partner that for the Term:

(a) The Special Limited Partner shall promptly inform the Partnership of any litigation, action, investigation, event, or proceeding that is pending respecting the Partnership, the Special Limited Partner or the Project and, further, upon receipt of any notice or knowledge shall promptly inform the Partnership of any such matter which is threatened which, if adversely resolved, would (i) have a material adverse effect on the Partnership or the Project; (ii) have a material adverse effect on the ability of the General Partner, the Special Limited Partner or a Guarantor or any of their respective Affiliates to perform their respective obligations under this Agreement; (iii) have an adverse effect on any adjacent property, which would have a material adverse effect on the Project or the Partnership's investment in the Project; (iv) have a material adverse effect on the financial condition of the General Partner, the Special Limited Partner or any Guarantor; or (v) constitute or result, if true, in a material breach of any representation, warranty, covenant, or agreement set forth in this Agreement.

(b) The Special Limited Partner shall promptly inform the Partnership upon receiving any notice of or having any knowledge of, any violation with respect to the Project of any law, rule, regulation, order, or decree of any governmental authority having jurisdiction, which would have a material adverse effect on the Project (including the Partnership's ability to transfer the Project in

accordance with the terms of this Agreement) or the Project or the construction, rehabilitation, use, occupancy, or operation thereof.

(c) Except as expressly permitted by this Agreement, the Special Limited Partner will not consent to any assignment of any agreement between the Partnership and any Affiliate of the Special Limited Partner, nor will the Special Limited Partner consent to a change in the control of any Affiliate that has entered into any agreement with the Partnership, except in the event that the Property Tax Exemption will thereafter remain in full force and effect following such change or assignment.

(d) Upon request from the General Partner, Special Limited Partner shall (i) file any and all documentation provided by the General Partner, as may be applicable, necessary to obtain and maintain the exemption of one hundred percent (100%) of all property taxes by any applicable state, county, city or other taxing body for the Project authorized pursuant to Section 307.092 of the Oregon Revised Statutes (the “*Property Tax Exemption*”). In consideration for its services in connection with securing and maintaining the Property Tax Exemption, the Special Limited Partner shall be entitled to receive the SLP Administrative Management Fee in an amount of up to \$5,000 annually, from available Cash Flow in the priority set forth in Exhibit A-5 hereto.

(e) The Special Limited Partner shall furnish to the Limited Partner a copy of any notice of default under the Loan Notes, the Mortgages, any of the Project Documents, or any of the Loan Documents given to the the Special Limited Partner.

(f) The Special Limited Partner will not cause or allow restrictions on the sale or refinancing of the Project, other than the restrictions set forth in this Agreement, the Loan Documents, the Project Documents, and any applicable requirements of HCA.

## **5.8 No Compensation**

Except for fees specifically provided for herein, the General Partner shall not be entitled to receive any compensation in connection with its performance of its duties as General Partner.

## **5.9 Obligation to Complete Construction; Limited Partner Draw Review and Approval; Cost Savings.**

(a) The General Partner shall complete the full construction of the Project and any required or recommended environmental remediation, or cause the same to be completed in a good and workmanlike manner, in accordance with the Plans and Specifications and the Project Documents, free and clear of all defects and mechanics’, materialmen’s, or similar liens and with all construction related actions, claims, litigation or proceedings resolved in a manner acceptable to the Limited Partner. Further, the General Partner shall equip the Project or cause the same to be equipped with all necessary and appropriate

fixtures, equipment and articles of personal property, including, without limitation, refrigerators and ranges, all in accordance with the Loan Documents and the Project Documents, and shall provide for, or cause to be provided for, all other actions and performance required to arrive at Cost Certification and the Completion Date in conformity with the Loan Documents and the Project Documents, and shall meet all requirements for obtaining and maintaining all necessary certificates of occupancy and use permits for all the Units in the Project. Any change in the designation of the General Contractor or the Architect for the Project, or any modification of the Project Documents will require the Consent of the Limited Partner. In addition, General Partner shall cause to be completed and provided to the Limited Partner in a timely manner monthly construction reports commencing with construction and (b) lease-up status reports commencing with lease up and due within five (5) days of month end, in the form requested by the Limited Partner from time to time. Further, the General Partner will submit to the Limited Partner and the Construction Inspector all monthly draws and all change orders in excess of \$25,000 per occurrence or \$100,000 in the aggregate, for the approval of the Limited Partner concurrently with the Lender(s), together with a current change order log. Except as set forth below respecting any materials stored offsite, if Limited Partner does not deliver written comments to the General Partner within ten (10) business days of receipt of the complete package respecting the applicable draw or change order, such draw or change order will be deemed to be approved. The General Partner may not submit a request for disbursement more frequently than once per month without the Consent of the Limited Partner. Each monthly draw disbursement request shall include:

(1) draw disbursement cover sheet to include draw package contents, owner's draw number, total amount of request, and reallocation of funds if applicable:

i. a full project budget outlining all sources and uses of funds along with a flow of funds (including projected funding dates) and showing what has been disbursed to date, the current request, and what remains to be funded, and all other information set forth on Exhibit H attached hereto, or such other form disclosed to and approved by the Limited Partner (the Limited Partner acknowledges that it has approved the HUD audit form provided to the Limited Partner and the financial reports used in Pedcor 104-Village Park),

ii. an itemized payee list for all soft costs including copies of all invoices, (and if such invoices or other backup are more than 90-days old, the Limited Partner may request additional information as to the reason for the delay in submission), together with any supplemental items(s) required by Investor,

iii. General Contractor requests for payment in the form of (HUD-92448 Contractor's Requisition form and the HUD-2328 Contractor's and/or Mortgagor's Cost Breakdown form), which include contractor, mortgagor's, and Architect's certifications, and



to the extent such monthly requisition includes a change order, the applicable change order form (together with all supporting back-up documentation).

iv. updated current construction schedule

v. a conditional lien waiver of mechanic's lien and/or materialman's lien, executed by the General Contractor in the amount of the lienable costs of the Project payable from the requested advance, together with and unconditional lien waiver of mechanic's lien and/or materialman's lien executed by the General Contractor respecting the immediately preceding advance which has been paid,

vi. first tier subcontractor payee list and lien waiver tracking log, and subcontractor pay applications and lien waivers

vii. all other documentation to be provided to the Lender or to the title company in connection with such draw,

viii. satisfactory evidence of mechanic's lien coverage or a date-down of the Title Policy, or, if not available in the State, a current title report, showing no liens or other encumbrances not previously approved by the Limited Partner in writing,

ix. in connection with the final draw, a Form AIA G706/706A with final lien waivers attached or such other form reasonably required by Investor or Title Company from General Contractor,

x. in connection with a final draw request which includes a request to release retention (other than retention held pursuant to any outstanding punch list items):

(i) evidence that the public authorities with jurisdiction over the Project have approved the Project in its entirety for temporary or permanent occupancy to the extent any such approval is a condition of the lawful use and occupancy of the Project.

(ii) a fully executed AIA G704 Certificate of Substantial Completion from the Architect and all available punch lists;

(iii) evidence of the insurance required under this Agreement (such as a rollover from builder's risk to standard property coverage);

(iv) receipt of a written report from the Construction Inspector stating that it has conducted inspections of the Project and that all work has been fully completed in a good workmanlike

manner and substantially in accordance with the Plans and the requirements of all governmental agencies;

xi. contemporaneous with a final draw request in connection with a close out of the Construction Contract:

(i) confirmation that the Partnership has accepted the Project as complete with no outstanding punch list items;

(ii) the Request for Disbursement including a Certified General Contractor's Requisition covering 100% of the construction contract sum.

(iii) a complete set of "as-built" drawings, if requested by the Limited Partner;

(iv) permanent certificate of occupancy for the Project (if applicable and not yet received);

(v) as-built ALTA survey; and

(vi) satisfactory evidence of mechanics lien coverage or final date-down of the Title Policy (or if not available in the State, a current title report) showing no liens or other encumbrances not previously approved by the Limited Partner in writing, and

xii. such other documentation as the Limited Partner may reasonably require.

(2) The draw shall specifically list any materials included in such draw which are stored offsite and that portion of the draw shall only be payable upon receipt of Limited Partner Consent. As prerequisites to such Consent all off-site stored materials ("**Stored Materials**") shall be stored in a physically segregated location in an insured warehouse, and shall be clearly labeled with the name of the Project, name of the Partnership, dated, and documented with photographs evidencing the materials are adequately secured at the warehouse, shall be insured with Limited Partner identified as an additional insured and loss payee, and evidence of a backstop letter whereby General Contractor assumes full responsibility for the storage, safekeeping, including all risk of loss and damage thereto and waives all right, title and interest in and to such materials, title passing to Owner upon payment of the amount requested. The Partnership shall provide Limited Partner, the Project Inspector and any Governmental Agency or testing authority having jurisdiction over the Project with two weeks' notice and access to inspect, test, or otherwise examine the Stored Materials.

(3) Upon completion of construction of the foundation of each building in the Project and prior to commencement of vertical construction of building improvements on such foundation, the surveyor or Project engineer shall issue a

certification satisfactory to the Limited Partner stating that that the foundation has been placed in the location and at the correct elevations as were authorized in the site plan and that the foundation does not encroach into any easement areas, setback or other restricted building area, and if such certification (or similar substitute satisfactory to Limited Partner) is not available, a foundation survey prepared by a registered land surveyor licensed in the State shall be submitted to the Limited Partner for its review and approval, in connection with a simultaneous draw request in connection with the documentation referenced in this subsection , which survey shall depict that the building foundations(s) have been located consistent with the representations made by the General Partner as set forth in Section 5.6(ii).

(b) The funds anticipated to be available to fund Project costs during construction and thereafter during the Stabilization Period (as defined below) are as follows: (i) proceeds of construction Loans; (ii) any insurance proceeds arising out of casualties payable during the Stabilization Period, if any; (iii) net rental and other income during the Stabilization Period (and any excess funds in this subsection 5.9(b)(iii) not needed to balance the development budget during construction and thereafter during the Stabilization Period shall be referred to herein as “*Excess Interim Income*”) and (iv) the General Partner’s Capital Contribution, and the Limited Partner’s Capital Installments due on or before the Completion Date which are to be used for construction of the Project pursuant to the Projections (the “Development Proceeds”). If the Development Proceeds are insufficient to:

i. Complete the full construction of the Project and all buildings, Units and common areas comprising the Project, (together with any and all applicable site work, off-site work, infrastructure work, demolition, environmental abatement and landscaping) of the Project, pursuant to this Section 5.9, or cause the same to be completed in accordance with the Plans and Specifications, in a good and workmanlike manner, free and clear of all defects and mechanics’, materialmen’s, or similar liens, and equip the Project or cause the same to be equipped, all in accordance with the Loan Documents and the Project Documents;

ii. Achieve the Cost Certification and the Completion Date, in conformity with the Loan Documents;

iii. Discharge all Partnership liabilities and obligations arising during the Stabilization Period (as defined in subsection (v) below);

iv. Meet all requirements for obtaining and maintaining all necessary permanent certificates of occupancy and use permits;

v. Pay all Operating Deficits for a period commencing on the date of this Agreement and ending upon achievement of the Required Debt Service Coverage, substituting a three-consecutive month reporting period, in lieu of a twelve-month reporting period and with expenses, on an accrual basis, calculated based on the greater of actual expenses or projected expenses as set forth in the Projections,

which calculation may be evidenced by a verification of the numbers by the Accountants if an annual audit is not yet available for such reporting period (“**Stabilization Period**”), including, without limitation, the payment or accrual in the ordinary course of business of all Partnership Expenses and payment of any accrued Operating Deficits, and the funding of all Partnership Reserves to the extent required by the Loan Documents or hereunder;

vi. Pay and satisfy all conditions to closing and funding, or conversion to non-recourse status, of all permanent Loans and repayment in full, and release of all collateral security for, all construction and bridge financing of the Project, other than construction Loans which have been converted, by their terms, to non-recourse permanent Loans; and

vii. Pay or provide for all amounts necessary to correct latent defects occurring after the Completion Date, including all obligations, expenses, costs, liabilities, or expenditures in respect thereof, applicable to the period prior to the Completion Date;

(all of the above requirements being sometimes referred to collectively hereinafter as the “**Development Completion Requirements**”), then, the General Partner shall pay to the Partnership all funds (“**Development Advances**”), or elect to defer the payment of Development Fees (provided the General Partner can demonstrate that any additional deferred fee can be paid from Cash Flow in accordance with Section 5.11 and any such additional deferred fee does not exceed any cap imposed by the HCA), or, with the Consent of the Limited Partner, elect to defer other fees due to the General Partner or its Affiliates, in an amount that shall be necessary to accomplish the Development Completion Requirements at such time as those costs and expenses become due and payable as an interest-free loan to the Partnership, repayable pursuant to Section 8.1 and Exhibit A-5, and Sections 8.2(d) and 12.2(a)(4). The Development Completion Requirements shall be satisfied by the General Partner (and guaranteed by the Guarantor), as heretofore described, regardless of the terms and provisions of the Construction Documents, and in the event of a conflict between the terms and provisions of the Construction Documents and this Agreement, the terms and provisions of this Agreement shall govern.

Further, if the Completion Date occurs without full utilization of the then available debt and equity proceeds, including without limitation any amounts funded out of escrow proceeds and held to pay interest on the Loans (the parties hereto agree that such debt and equity proceeds shall be used to finance the development of the Project before any use of Cash Flow for such purpose), with the Consent of the Limited Partner, any such construction cost savings and/or unspent construction contingency funds shall be held in reserve and used, with the Consent of the Limited Partner, for Project amenities or other depreciable costs; provided, however, if the eligible basis of the Project (pursuant to Section 42 of the Code) equals an amount sufficient to generate the Projected Credit Amount as specified in Exhibit A-3 hereof, payable at the last to occur of (i) the end of the Stabilization Period, and (ii) loan closing and funding (or release of all applicable payment and performance guaranties such that such loans have been converted to

non-recourse status) of all permanent loans, such funds may be used to pay any deferred Development Fee, with any remaining funds placed in the Operating Reserve.

(c) The obligations of the General Partner under this Section 5.9 shall be guaranteed by the Guarantor, pursuant to the Guaranty, which is attached as Exhibit D to this Agreement.

(d) The General Partner acknowledges that the substantial completion deadline set forth in the Construction Contract is [\_\_\_\_\_]. However, the General Partner acknowledges and agrees that the Target Completion Date set forth in this Agreement is [August 1, 2020], and that the Project construction schedule furnished to the Limited Partner reflects the same. The General Partner covenants and agrees to use all commercially reasonable efforts to, and to cause the General Contractor to, achieve completion of the Project by the Target Completion Date. In connection therewith, the General Partner agrees to, and to cause the General Contractor to, diligently monitor its monthly construction schedule against the Target Completion Date and provide regular updates to Limited Partner and its Construction Inspector in connection therewith.

#### **5.10 Operating Deficit Guaranty**

If, at any time, or from time to time, an Operating Deficit exists (which is not otherwise payable as a Development Advance, pursuant to Section 5.9), then the General Partner shall advance funds (an “*Operating Deficit Advance*”) to the Partnership as a loan in an amount equal to the amount of the Operating Deficit accruing or the General Partner, with the consent of the Limited Partner, not to be unreasonably withheld, may elect to defer the payment of fees due the General Partner or its Affiliates (in addition to the mandatory 60% deferral of affiliated Management Fees per Section 11.1 of this Agreement) in order to fund such Operating Deficit. Obligations under this section shall continue until the end of the Fiscal Year in which occurs the last to occur of (i) the fifteenth anniversary of the end of the Lease-up Period and overall Project occupancy of at least 93%; and (ii) the fifteenth anniversary of the achievement of three months of a debt service coverage ratio of 1.15; provided, however, the expiration of the Operating Deficit obligation shall be extended by one (1) Fiscal Year for each Fiscal Year during the above period that the debt service coverage ratio is less than 1.15 and thereafter until such time as the balance in the Operating Reserve equals or exceeds the sum of the “Operating Reserve Amount” which is shown on Exhibit A-3. The obligations of the General Partner under this Section 5.10 shall be limited to a maximum amount of **\$[4,000,000]**; provided, however, that such limitation shall not apply in the event of fraud, gross negligence or willful misconduct by the Special Limited Partner, General Partner, or the Management Agent, if the Management Agent is an Affiliate of the General Partner. Further, to the extent that the Project fails to receive real estate tax exemption in any year or years during the Compliance Period in which such exemption is projected to be received in the Projections, then the General Partner shall be obligated to fund Operating Deficits during such period in annual amounts equal to the difference between actual Project real estate taxes payable in such year or years and the real estate taxes for such year or years which were projected in the Projections, which obligation shall be unlimited and in addition to the Operating Deficit obligations set forth above. Operating Deficit Advances shall be repayable, without interest, solely as provided in Section 8.1 and Exhibit A-5 and Sections 8.2(d) and 12.2(a)(4) hereof. The obligations of the General Partner under this Section 5.10 shall be

guaranteed by the Guarantor, pursuant to the terms of the Guaranty, in the form attached as Exhibit D.

Notwithstanding anything in this Agreement to the contrary, to the extent advances have been made by the General Partner, such advances shall be considered Operating Deficit Advances only to the extent necessary to ensure positive Cash Flow, with any excess advance amount constituting a voluntary working capital advance by the General Partner. Throughout each Fiscal Year on a monthly basis, to the extent there is excess Cash Flow for such month after the payment of all then-current obligations of the Partnership, the General Partner may be reimbursed from such excess Cash Flow in an amount not to exceed the amount of such voluntary working capital advance, provided further that such reimbursement shall only be made if the General Partner is not in default of any of its obligations under this Agreement and there is no event which would, with the passage of time or the giving of notice constitute a default. Additionally, any voluntary working capital advance which remains outstanding as of the last day of the Fiscal Year, plus any additional advance necessary to reduce outstanding Partnership Expenses to a maximum of thirty (30) days of anticipated Cash Flow (as reasonably determined by the General Partner with the Consent of the Limited Partner) shall be deemed an Operating Deficit Advance and repaid in accordance with the provisions of Section 8.1 and Exhibit A-5.

#### **5.11 Development Fee Guaranty**

To the extent that all or any part of the Development Fee is not paid by the date of payment of the final Capital Installment, whether or not originally budgeted in the Projections as payable from Capital Installments of the Limited Partner or Cash Flow, then and in that event, if such Deferred Development Fee (as defined in the Development Services Agreement), together with applicable interest, shall be paid from Cash Flow, having that payment priority set forth in Section 8.1 and Exhibit A-5 to this Partnership Agreement, or from available Capital Proceeds pursuant to Sections 8.2(b) and 12.2(a)(4). All unpaid Development Fee, together with applicable interest, shall be paid by the General Partner to the Partnership as a Development Fee Advance, on the 14<sup>th</sup> anniversary of the Completion Date. All Development Fee Advances shall constitute interest-free loans from the General Partner to the Partnership, repayable (i) in accordance with HUD requirements pursuant to HUD form surplus cash notes, and (ii) solely pursuant to Section 8.1 and Exhibit A-5, and Sections 8.2(b) and 12.2(a)(4). The obligations of the General Partner under this Section 5.11 shall be guaranteed by the Guarantor pursuant to the terms of the Guaranty, in the form attached as Exhibit D.

Notwithstanding anything contained in this Agreement to the contrary, in the event the Limited Partner removes the General Partner in accordance with Section 9.2, then, immediately prior to such removal of the General Partner shall make a Development Fee Advance to the Partnership in the amount of any accrued and unpaid Development Fee and the Partnership shall use the proceeds of such Development Fee Advance to pay such accrued and unpaid Development Fee to the Developer immediately prior to the removal of the General Partner.

#### **5.12 Contractor Fee Guaranty**

To the extent that all or any part of the Contractor Fee, together with any interest thereon, if any, is not paid by the Completion Date, whether or not originally budgeted in the Projections

as payable from Cash Flow, then and in that event, if such Contractor Fee is included in the Project's qualified basis pursuant to Section 42 of the Code (as established by the Cost Certification) in order to achieve 100% of the Credit available to the Project, such deferred Contractor Fee shall be paid from Cash Flow, having that payment priority set forth in Section 8.1 and Exhibit A-5 to this Partnership Agreement, or from available Capital Proceeds pursuant to Sections 8.2(c) and 12.2(a)(4). To the extent not sooner paid from Cash Flow or Capital Proceeds, in accordance with the terms of this Agreement, all unpaid Contractor Fee shall be paid by the General Partner to the Partnership, as a Contractor Fee Advance, on the 14<sup>th</sup> Anniversary of said Completion Date. All Contractor Fee Advances shall constitute interest-free loans from the General Partner to the Partnership, repayable solely pursuant to Section 8.1 and Exhibit A-5 and Sections 8.2(c) and 12.2(a)(4). The obligations of the General Partner under this Section 5.12 shall be guaranteed by the Guarantor pursuant to the terms of the Guaranty, in the form attached as Exhibit D.

Notwithstanding anything contained in this Agreement to the contrary, in the event the Limited Partner removes the General Partner in accordance with Section 9.2, then, immediately prior to such removal of the General Partner, the General Partner shall make a Contractor Fee Advance to the Partnership in the amount of any accrued and unpaid Contractor Fee and the Partnership shall use the proceeds of such Contractor Fee Advance to pay such accrued and unpaid Contractor Fee to the General Contractor immediately prior to the removal of the General Partner.

#### **5.13 Dealing with Affiliates; Fees**

Subject to the terms of this Agreement, the General Partner may, for, in the name of, and on behalf of, the Partnership, enter into agreements or contracts for performance of services for the Partnership with an Affiliate thereof and may authorize the Management Agent to enter into such agreements and contracts, and the General Partner may obligate the Partnership to pay compensation for and on account of any such services and may authorize the Management Agent to so obligate the Partnership; provided, however, such compensation and services shall be at costs to the Partnership not in excess of those that would be incurred in making arms-length purchases of comparable services on the open market and such agreements shall be acceptable to the Limited Partner. The Limited Partner hereby acknowledges and agrees that the following agreements by and between the Partnership and various affiliates are acceptable: the Management and Accounting Services Agreement, the Addendum to Management and Accounting Services Agreement, the Agreement for Construction Services, the Construction Contract, the Development Services Agreement, and the Architectural and Engineering Services Agreement. In addition, the General Partner shall be permitted to use an Affiliate of the General Partner for cable, internet and phone services, provided the fees and charges for such services are not in excess of those that would be incurred in making arms-length purchases of comparable services on the open market, with notice to the Limited Partner, which notice shall include the above noted information regarding the fees and charges payable to such Affiliate.

#### **5.14 Obligation to Purchase Interest of Limited Partner**

(a) The General Partner shall be obligated, as provided in Section 5.14(b), to purchase the Limited Partner's Interest for the aggregate Repurchase Price set forth in

Section 5.14(b) below, if: (i) as of the Completion Date, as documented by the Cost Certification, less than 50% of the aggregate basis of the Project buildings and land has been or will be financed by the proceeds of bonds, the interest on which is exempt from federal income taxation under Section 103 of the Code and which are taken into account under the State volume cap pursuant to Section 146 of the Code; (ii) all buildings and Units in the Project have not achieved the Completion Date by July 31, 2020, (the Limited Partner shall extend this date by six months if the General Partner provides evidence reasonably acceptable to the Limited Partner that the Project will be completed by January 31, 2021) or 80% of the Credits are unavailable for any reason by the end of the calendar year following the year in which the Project was placed in service pursuant to Section 42 of the Code; (iii) failure to achieve Qualified Occupancy of at least 80% of the Credit Units by **[March 1, 2021]** (the Limited Partner agrees to extend this date by up to six (6) months if the General Partner provides evidence reasonably acceptable to the Limited Partner that the project will achieve 100% occupancy of at least 80% of the Credit Units by **[September 1, 2021]**) and to complete the Stabilization Period by **[June 1, 2021]** (or, if the immediately preceding Qualified Occupancy date is extended, this date shall be extended by the same timeframe; and provided further, failure to meet such date shall not be deemed a repurchase event hereunder if the General Partner provides the Limited Partner with documentation that the Project financing is not adversely affected by such failure to complete the Stabilization Period); (iv) failure to place the Project in service (for purposes of Section 42 of the Code) by the date required by Section 42 or the HCA; (v) expiration or termination of any commitments for permanent Loans, unless replaced with alternate financing acceptable to the Limited Partner within sixty (60) days thereafter; (vi) the occurrence of any Event of Default not cured within any applicable cure period, if any, pursuant to Section 9.2 hereof occurring during the period commencing on the date hereof and ending on the last to occur of (A) Completion Date; (B) the end of the Lease-up Period; and (C) the end of the Stabilization Period; (vii) prior to the Completion Date, any substantial damage to or destruction of the Project shall occur and any funds contributed by the General Partner or its Affiliates along with any insurance proceeds shall not be made available by the Lender for the restoration of the Project or shall not, in the reasonable opinion of the Limited Partner, be sufficient to repair and restore the Project in a manner that would qualify for the aggregate Credit projected to be allocable to the Limited Partner or the Project is not restored prior to the date required by the Code; (viii) prior to the Completion Date, construction of the Project shall have ceased for 45 days or more; or (ix) failure to record the Extended Use Agreement as an encumbrance against the Project prior to the end of the first year of the Credit Period, subject to any cure periods permitted by the Code.

(b) Upon the occurrence of any of the events specified in Section 5.14(a), the General Partner shall, within ten (10) days thereafter, give Notice to the Limited Partner of the occurrence of such event and of the General Partner's obligation to purchase the Limited Partner's Interest. The Limited Partner may by Notice to the General Partner at any time after becoming aware of the events specified in Section 5.14(a), (regardless of whether the General Partner has complied with the ten (10) day Notice requirement described in this Section 5.14(b)), elect to require the General Partner to purchase the Limited Partner's Interest for an amount equal to the sum of the following (collectively, the "Repurchase Price"): 110% of the Limited Partner's Capital Contributions paid to



such date, plus the Limited Partner's third party expenses associated with such repurchase, plus applicable interest and penalties, any Tax Equivalency Payment and all other loans and amounts advanced to such date by the Limited Partner or any Affiliate and not previously repaid, as reduced by the amount of any Federal Low-Income Credits allocated to the Limited Partner for the period prior to the date of repurchase which are not subject to recapture or covered by an ongoing General Partner indemnification or guaranty acceptable to the Limited Partner. If the Limited Partner elects to have its Interest purchased, the General Partner shall purchase such Interest within thirty (30) days after Notice from the Limited Partner of its election to have its Interest purchased and shall indemnify the Limited Partner, and hold it harmless from and against, any and all claims or other liability arising respecting the Limited Partner's Interest occurring or accruing from and after the date of the General Partner's purchase of the Limited Partner's Interest. The Limited Partner may unconditionally waive at any time its right to require the General Partner to purchase its Interest by reason of the application of any of the numbered clauses of Section 5.14(a). After such waiver the General Partner shall have no further obligation to purchase by reason of the application of the clause to which such waiver relates; provided, however, that the Limited Partner's election not to have its interest purchased by reason of the application of one such clauses shall not constitute a waiver with respect to any future obligation of the General Partner to purchase its Interest by reason of the application of any other such clause.

#### **5.15 Reserved.**

The General Partner shall cause the Partnership to establish and maintain the Reserves described on Exhibit A-7.

#### **5.16 Action for Breach**

(a) The representations, warranties, covenants, agreements, and duties of the General Partner contained in this Agreement are being made in order to induce, and in consideration of, the Limited Partner's acquisition of its Interest. Upon the occurrence of any breach by the General Partner of any representation, warranty, covenant or agreement contained herein, the General Partner shall diligently attempt to cure such breach. If such breach is not susceptible to cure, or if the General Partner fails to pursue a cure diligently and within the sure period therefor, if any, set forth in Section 9.2 hereof, then the Limited Partner may pursue any remedy available hereunder or other legal or equitable remedy against the General Partner without being required to dissolve the Partnership and notwithstanding the availability of any other remedy, and shall be entitled to payment of its reasonable attorneys' fees, expenses and other costs, regardless of whether litigation is commenced.

(b) In addition, and not in substitution for any other remedies hereunder, upon any failure by the General Partner and/or any Guarantor to fully and timely satisfy their respective obligations under this Agreement or the Guaranty (past any applicable notice and cure periods), in addition to all of Limited Partner's remedies hereunder, in the Guaranty, at law or in equity, there will be priority Cash Flow distributions as directed by the Limited Partner (the "***Default Cash Flow Priority***"), having that priority set forth in

Section 8.1 and Exhibit A-5, together with interest thereon, if any, to be applied to the payment of the applicable default, until such default has been fully cured; provided, however, any such Default Cash Flow Priority shall not exceed the amount necessary to reimburse the Limited Partner for any and all damages resulting from the General Partner's failure to cure the breach, plus interest thereon, if any.

#### **5.17 Accountants**

The Limited Partner shall have the right, upon delivery of written notice to the General Partner, to require the General Partner to replace the Accountants with alternate independent certified public accountants acceptable to the Limited Partner, from time to time; provided, however, the Limited Partner shall only have the right herein provided in the event of the Accountant's failure to adequately perform the services requested by the General Partner including without limitation timeliness and accuracy of such services, which failure continues for a period of thirty (30) days or more after the receipt of notice from the General Partner of such failure.

#### **5.18 Pledged Interest and Payments**

To secure the payment and performance by the General Partner to the Limited Partner of the General Partner's obligations under this Agreement, as a condition precedent to payment of the First Installment of the Limited Partner's Capital Contributions, the General Partner shall collaterally assign, pledge and grant a security interest to the Limited Partner in the General Partner's Interest in the Partnership and all amounts payable hereunder, by execution and delivery to the Limited Partner of a Pledge and Security Agreement in the form of Exhibit M attached hereto (the "Pledged Payment"). The Partnership and the Partners shall treat any Pledged Payments made to the Limited Partner as a payment by the Partnership to the General Partner of the particular Pledged Payment and thereafter a payment by the General Partner to the Limited Partner. The Pledge and Security Agreement attached hereto as Exhibit M shall constitute a security agreement under applicable law. Notwithstanding the foregoing, the Limited Partner hereby acknowledges and agrees that the pledge and grant of a security interest by the General Partner herein detailed is subordinate and secondary to the Bridge Loan.

#### **5.19 Additional Covenant of Partners**

Notwithstanding anything herein to the contrary, so long as any amounts are due and owing with respect to Additional Interest, each of the Partners hereby agree not to amend or modify Section 8.1 and/or 8.2 of this Agreement, without the prior written consent of the Bond Purchaser.

### **ARTICLE VI**

#### **RIGHTS AND OBLIGATIONS OF THE LIMITED PARTNER**

##### **6.1 Limitation on Liability of the Limited Partner**

Notwithstanding any other provision of this Agreement, the liability of the Limited Partner shall be limited to its Capital Contributions at any given time as and when payable under

the provisions of this Agreement. The Limited Partner shall not have any other liability to contribute money to, or in respect of the liabilities, obligations, debts or contracts of the Partnership, nor shall the Limited Partner be personally liable for any liabilities, obligations, debts or contracts of the Partnership. The Limited Partner shall not be obligated to make loans to the Partnership. No vote, Consent or other action of the Limited Partner shall ever be construed to make the Limited Partner liable as a general partner or cause the Limited Partner to be liable for Partnership obligations.

## **6.2 Indemnification of the Limited Partner**

The General Partner and the Partnership, jointly and severally, shall indemnify and hold the Limited Partner harmless from any claims, demands, losses, damages, liabilities, lawsuits and other proceedings, judgment, awards, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the Limited Partner (A) as a result of actions against the Limited Partner in its capacity as limited partner of the Partnership, except to the extent a court of competent jurisdiction determines the same were incurred by the Limited Partner while not acting in accordance with the terms of this Agreement applicable to the Limited Partner; and (B) relating to the Project Documents, including, without limitation, the documents pertaining to the Property Tax Exemption, with respect to any violation of the terms and provisions thereof by any party thereto; provided that, the General Partner's obligations to indemnify and hold harmless shall only be with respect to each Partner's own violations of the referenced documents. In addition, the General Partner and the Partnership, jointly and severally, shall defend, indemnify, and save harmless the Limited Partner from, and be liable to the Limited Partner for: any loss, liability, claim, damage, cost, expense, or other obligation (including reasonable attorneys' fees and expenses) arising out of the General Partner's gross negligence, fraud, willful misconduct, malfeasance, breach of fiduciary duties, material breach of, or material non-compliance with, any covenant, or agreement set forth in this Agreement, or, as updated in accordance with this Agreement, any representation or warranty set forth in this Agreement, and/or actions performed outside the scope of the authority of the General Partner pursuant to this Agreement; provided that, the General Partner's obligations to indemnify and hold harmless shall only be with respect to each Partner's own actions or inactions described above. The foregoing indemnifications shall be a recourse obligation of the General Partner and the Partnership, and shall survive the dissolution of the Partnership and/or the death, retirement, incompetency, insolvency, bankruptcy, dissolution, or withdrawal of the General Partner. The indemnifications authorized by this Section shall include, but not be limited to, direct and indirect costs and expenses incurred by the Limited Partner (including reasonable attorneys' and accountants' fees and expenses), including, without limitation, costs respecting the removal of any liens affecting any property of the indemnitee as a result of such legal action and any Credit Deficiency. The indemnifications provided herein are in addition to and not a limit on any other right of contribution or indemnity by the Partnership which otherwise might exist in favor of the Limited Partner.

## **6.3 Outside Activities**

Nothing herein contained in this Agreement shall be construed to constitute the Limited Partner hereof the agent of any other Partner hereof or to limit in any manner the Limited Partner in the carrying on of its own businesses or activities. The Limited Partner may engage in and

possess any interest in other business ventures (including, without limitation, limited partnerships and limited liability companies) of every kind, nature and description, independently or with others, whether existing as of the date hereof or hereafter coming into existence, including, without limitation, acting as general partner or limited partner of other partnerships or a member of a limited liability company which own, directly or through interests in other partnerships or limited liability companies, housing projects similar to, or in competition with, the Project. Neither the Partnership nor any of the Partners shall have any rights by virtue of this Agreement in or to any such other business ventures or to the income or profits derived therefrom and nothing shall be construed to render them partners in any such business ventures.

#### **6.4 Inspection of the Project and Compliance Audits**

Upon reasonable advance notice to the General Partner, the Limited Partner and/or its agent or designee (including, without limitation, the Construction Inspector) shall have the right to inspect the Project at any time, and from time to time, and to conduct compliance audits, and the General Partner shall provide all reasonable assistance to the Limited Partner in such effort.

#### **6.5 Limited Partner's Legal Fees**

The Partnership and the General Partner shall be responsible for paying Limited Partner's legal fees and expenses respecting any and all amendments to this Agreement, other than amendments requested by the Limited Partner.

### **ARTICLE VII**

#### **ALLOCATIONS OF PROFITS AND LOSSES**

##### **7.1 Tax Definitions**

The following terms used in Articles VII and VIII of this Agreement shall have the meanings set forth below:

*Adjusted Capital Account:* With respect to any Partner, such Partner's Capital Account as of the end of the relevant Fiscal Year, after crediting to such Capital Account any amounts which such Partner is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the Code and applicable Treasury Regulations. The foregoing definition of Adjusted Capital Account is intended to comply with the provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

*Adjusted Capital Account Deficit:* With respect to any Partner, the deficit balance, if any, in such Partner's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments: (a) crediting to such Capital Account any amount that such Partner is obligated to restore or is deemed to be obligated to restore pursuant to Treasury Regulations Sections 1.704-1(b)(2)(ii)(c), 1.704-2(g)(1) and 1.704-2(i); and (b) debiting to such Capital Account the items described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

*Gain or Loss:* The income and gain, or loss, as the case may be, of the Partnership for federal income tax purposes arising from a sale or other disposition of all or any portion of the Project. If the value at which an asset is carried on the books of the Partnership pursuant to the capital account maintenance rules of Treasury Regulation Section 1.704-1(b) differs from its adjusted tax basis and gain is recognized from a disposition of such asset, the gain shall be computed by reference to the asset's book basis rather than its adjusted tax basis.

*Minimum Gain:* The amount determined by computing for each Nonrecourse Liability and Partner Nonrecourse Debt, the amount of Gain, if any, that would be realized by the Partnership if it disposed of the asset securing such liability for no consideration other than full satisfaction of the liability, and by then aggregating the separately computed Gains. For purposes of determining the amount of such Gain with respect to a particular Nonrecourse Liability or Partner Nonrecourse Debt, the adjusted basis for federal income tax purposes (or its adjusted book value if it is carried on the Partnership's books, maintained in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv), at a value different from its adjusted tax basis) of the asset securing the liability shall be allocated among all the liabilities that the asset secures in the manner set forth in Treasury Regulation Section 1.704-2(d)(2)(ii) (or successor provisions). It is the intent that Minimum Gain shall be computed in accordance with Treasury Regulation Section 1.704-2.

*Net Losses and Net Profits:* The net loss, or net profit, as the case may be, of the Partnership for federal income tax purposes for each Fiscal Year, calculated without regard to Gain or Loss and without regard to those items that are specially allocated in accordance with Regulatory Allocations or otherwise pursuant to Section 7.4; provided, however, that in determining net loss or net profit, as the case may be: (i) any tax-exempt income received by the Partnership shall be included as an item of gross income, (ii) any expenditure of the Partnership described (or treated under Treasury Regulation Section 1.704-1(b)(2)(iv)(b) as described) in Section 705(a)(2)(B) of the Code shall be treated as a deductible expense, (iii) if the fair market value on the date that the asset is contributed to the Partnership (or if the basis of such asset for book purposes is adjusted under the Treasury Regulations, such adjusted book basis) differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, the amount for depreciation, amortization and other cost recovery deductions shall be equal to an amount which bears the same ratio to such beginning fair market value (or adjusted book basis) as the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis, and (iv) if the value at which an asset is carried on the books of the Partnership differs from its adjusted tax basis and gain or loss is recognized from a disposition of such asset, the gain or loss shall be computed by reference to the asset's book basis rather than its adjusted tax basis.

*Nonrecourse Liability:* Any liability to the extent that no Partner or related person bears (or is deemed to bear) the economic risk of loss within the meaning of Treasury Regulation Section 1.752-2.

*Partner Nonrecourse Debt:* Any Partnership liability to the extent the liability is nonrecourse for purposes of Treasury Regulation Section 1.1001-2 and a Partner (or related

person (within the meaning of Treasury Regulation Section 1.752-4(b) bears the economic risk of loss under Treasury Regulation Section 1.752-2.

*Regulatory Allocations:* Those special allocations set forth in Sections 7.4(a), (b), (c) and (e), which are intended to comply with certain requirements of Treasury Regulation Sections 1.704-1(b) and 1.704-2.

## **7.2 Profits and Losses**

After giving effect to the special allocations set forth in Section 7.4, and except as provided in Section 7.3 with respect to Gains or Losses from dispositions of Partnership property, the Net Profits, Net Losses and Credits of the Partnership for each Fiscal Year shall be allocated one five-thousandths of one percent (0.005%) to the General Partner, five-thousandths of one percent (0.005%) to the Special Limited Partner and ninety-nine and ninety-nine/one-hundredths percent (99.99%) to the Limited Partner.

## **7.3 Gains and Losses from Disposition of Partnership Property**

After giving effect to the special allocations set forth in Section 7.4, Gains and Losses recognized by the Partnership upon the sale, exchange or other disposition of all or substantially all of the property owned by the Partnership shall be allocated in the following manner:

(a) Gains shall be allocated (i) first, to the Partners with negative Adjusted Capital Account balances, that portion of Gains (including any Gains treated as ordinary income for federal income tax purposes) which is equal in amount to, and in proportion to, such Partners' respective negative Adjusted Capital Accounts in the Partnership; provided, that no Gain shall be allocated under this Section 7.3(a)(i) to a Partner once such Partner's Adjusted Capital Account is brought to zero; and (ii) second, Gain in excess of the amount allocated under (i) shall be allocated to the Partners in the amount and to the extent necessary to increase the Partners' respective Adjusted Capital Accounts so that the proceeds distributed in accordance with the Partners' respective Adjusted Capital Account balances would equal the amounts distributable under Section 8.2 (other than any fees payable or loans repaid).

(b) Losses shall be allocated (i) first, to the Partners in the amounts and to the extent necessary so that the proceeds distributed in accordance with the Partners' respective Adjusted Capital Account balances would equal the amounts distributable under Section 8.2 (other than any fees payable or loans repaid), and (ii) second, any remaining Loss to the Partners in accordance with the manner in which they bear the economic risk of loss associated with such Loss or, if none, to the Partners in accordance with their Capital Percentages.

(c) Any portion of the Gains treated as ordinary income for federal income tax purposes under Sections 1245 and 1250 of the Code (the "***Depreciation Recapture Amount***") shall be allocated on a dollar for dollar basis to those Partners to whom the items of Partnership deduction or Loss giving rise to the Depreciation Recapture Amount had been previously allocated.

## 7.4 Special Allocations and Limitations

The following provisions shall apply notwithstanding the provisions of Section 7.3. In the event that there is a conflict between any of the following provisions, the earlier listed provision shall govern.

(a) If there is a net decrease in Minimum Gain attributable to Nonrecourse Liabilities or Partner Nonrecourse Debt during any Fiscal Year, each Partner who has a share of the Minimum Gain attributable to such Nonrecourse Liabilities or such Partner Nonrecourse Debt, as applicable, (as such share is determined pursuant to Treasury Regulation Section 1.704-2(g)) shall be specially allocated items of Partnership income and Gain for such year (and, if necessary, for succeeding years) equal to each Partner's share of the net decrease in such Minimum Gain (as such share is determined pursuant to Treasury Regulation Section 1.704-2(g)(2)). Notwithstanding the preceding sentence, a Partner shall not be specially allocated items of Partnership income and Gain to the extent:

i. Such Partner's share of the net decrease in the Minimum Gain attributable to Nonrecourse Liabilities is caused by a guarantee, refinancing, or other change in the debt instrument causing it to become partially or wholly recourse debt or Partner Nonrecourse Debt, and such Partner bears the economic risk of loss (within the meaning of Treasury Regulation Section 1.752-2) for the newly guaranteed, refinanced, or otherwise changed liability;

ii. Such Partner contributes capital to the Partnership that is used to repay the Nonrecourse Liability and such Partner's share of the net decrease in Minimum Gain results from the repayment; or

iii. If the Department of the Treasury waives or excepts such an allocation pursuant to Treasury Regulation Sections 1.704-2(f)(4) or (5).

It is the intent that items to be so allocated shall be determined and the allocations made in accordance with the minimum gain chargeback requirement of Treasury Regulation Section 1.704-2(f), and this Section 7.4(a) shall be interpreted consistently therewith.

(b) If there is a net decrease in Minimum Gain attributable to Partner Nonrecourse Debt during any Fiscal Year, each Partner who has a share of the Minimum Gain attributable to such Partner Nonrecourse Debt (as such share is determined pursuant to Treasury Regulation Section 1.704-2(g)) shall be specially allocated items of Partnership income and Gain for such year (and, if necessary, for succeeding years) equal to such Partner's share of the net decrease in such Minimum Gain (as such share is determined pursuant to Treasury Regulation Section 1.704-2(g)(2)). Notwithstanding the preceding sentence, a Partner shall not be specially allocated items of Partnership income and Gain to the extent:

iv. The net decrease in such Minimum Gain arises because the liability ceases to be Partner Nonrecourse Debt due to a conversion, refinancing, or other

change in the debt instrument that causes it to become partially or wholly a Nonrecourse Liability; or

v. Treasury Regulation Section 1.704-2(i) otherwise so provides.

It is the intent that items to be so allocated shall be determined and the allocations made in accordance with the Minimum Gain chargeback requirement of Treasury Regulation Section 1.704-2(i) and this Section 7.4(b) shall be interpreted consistently therewith.

(c) In the event a Partner unexpectedly receives in any Fiscal Year any adjustments, allocations or distributions described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6) that cause or increase an Adjusted Capital Account Deficit of such Partner, items of Partnership income and Gain shall be specially allocated to such Partner in such Fiscal Year (and, if necessary, in succeeding Fiscal Years) in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of such Partner as quickly as possible. It is the intent that items to be so allocated shall be determined and the allocations made in accordance with the qualified income offset provision of Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and this Section 7.4(c) shall be interpreted consistently therewith.

(d) No Net Losses, Losses or Partnership deductions for any Fiscal Year shall be allocated to a Partner to the extent such allocation would cause or increase an Adjusted Capital Account Deficit with respect to such Partner, and such Net Losses, Losses or Partnership deductions shall instead be allocated, and such Net Losses, Losses or Partnership deductions shall instead be allocated to a Partner for whom such allocation will not cause an Adjusted Capital Account Deficit. In the event some but not all of the Partners would have Adjusted Capital Account Deficits due to an allocation of Losses, the limitation set forth in this Section 7.4(d) shall be applied on a Partner by Partner basis so as to allocate the maximum permissible losses to each Partner who is not a General Partner under Regulation Section 1.704(b)(2)(ii)(d). All Losses in excess of this limitation shall be allocated to the General Partner.

(e) If in any Fiscal Year there is a net increase during such year in the amount of Minimum Gain attributable to a Partner Nonrecourse Debt, any Partner bearing the economic risk of loss with respect to such debt (within the meaning of Treasury Regulation Section 1.752-2) shall be specially allocated items of Partnership Loss or deduction in an amount equal to the excess of (i) such Partner's share of the amount of such net increase, over (ii) the aggregate amount of any distributions during such year to such Partner of the proceeds of such debt that are allocable to such increase in Minimum Gain. It is the intent that items to be so allocated shall be determined and the allocations made in accordance with the required allocation of "partner nonrecourse deductions" pursuant to Treasury Regulation Section 1.704-2(i), and this Section 7.4(e) shall be interpreted consistently therewith.



(f) The special allocations set forth in Section 7.4(a), (b), (c) and (e) (the “**Regulatory Allocations**”) are intended to comply with certain requirements of Treasury Regulation Sections 1.704-1(b) and 1.704-2. The Regulatory Allocations shall be taken into account in allocating other profits, Losses and other items of income, Gain, Loss and deduction to the Partners so that, to the extent possible, the net amount of such allocations of profits and Losses and other items shall be equal to the amount that would have been allocated to each Partner had the Regulatory Allocation not occurred. In the event that in any year the Regulatory Allocations alter the allocations of tax items to the Partners, to the extent possible, depreciation deductions shall nevertheless be allocated to the Limited Partner and the General Partner in accordance with their Percentage Interest. Notwithstanding the other provisions detailed in Article VII, allocations of income (including gross income), Gain, Loss and deductions made in the year that substantially all of the Partnership’s assets are sold and in the year that the Partnership terminates and winds up shall be made subject to Section 12.2(d) below.

(g) The respective interest of the Partners in the Net Profits, Net Losses, Gain, and Loss or items thereof shall remain as set forth above unless changed by amendment to this Agreement or by an assignment of a Partnership Interest authorized by the terms of this Agreement. Except as otherwise provided herein, for tax purposes, all items of income, Gain, Loss, deduction, or credit shall be allocated to the Partners in the same manner as are Net Profits from operations; provided, however, that with respect to property contributed to the Partnership by a Partner, such items shall be shared among the Partners so as to take into account the variation between the basis of such property and its fair market value at the time of contribution in accordance with Section 704(c) of the Code.

(h) In accordance with Section 704(c) of the Code and the Treasury Regulations thereunder, income, Gain, Loss, and deduction with respect to any property contributed to the capital of the Partnership shall, solely for tax purposes, be allocated among the Partners so as to take account of any variation between the adjusted basis of such property to the Partnership for federal income tax purposes and its initial fair market value (as used as book value of the property by the Partnership). In the event the book value of any Partnership property is adjusted upon: (i) acquisition of a Partnership interest by any Person in exchange for a capital contribution; or (ii) any non-pro rata distribution to Partners of Partnership property other than cash, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its book value in the same manner as under Section 704(c) of the Code. Allocations pursuant to this Section 7.4 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Partner’s Capital Account or share of Net Profits or Net Losses, other items, or distributions pursuant to any provision of this Agreement.

(i) For purposes of determining a Partner's proportionate share of the "excess nonrecourse liabilities" of the Partnership within the meaning of Treasury Regulation Section 1.752-3(a)(3), the interest of each of the General Partner, the Special Limited Partner and the Limited Partner in Partnership profits and deductions shall equal its respective Percentage Interest.

(j) If any Partner's Capital Contribution is used to fund any syndication fees or expenses referred to in Section 709 of the Code, such Partner shall be specially allocated such fees or expenses. Subject to Section 7.4 (r), If a deduction for any fee paid in accordance with this Agreement is denied by the IRS after a Final Determination on the basis that such fee was a distribution to a Partner by the Partnership, the Partner who received such fee shall be specially allocated an amount of gross income equal to the amount of the disallowed deduction.

(k) Subject to Section 7.4 (r), if the General Partner funds any Operating Deficit Advance, Development Advance, Development Fee Advance and/or Credit Adjuster Advance as other than a loan or capital contribution, in any year in which the Partnership repays all or a portion of any such Advance, the General Partner shall be specially allocated an item of gross income equal to the amount of such repayment, but not in excess of amounts previously allocated to the General Partner pursuant to Section 7.4(l) hereof

(l) Subject to Section 7.4 (r), if, for any year, the Limited Partner's positive Capital Account balance at the close of such year plus applicable minimum gain allocable to the Limited Partner does not significantly exceed the aggregate deductions for depreciation projected to be allocable to the Limited Partner for all remaining years of the Compliance Period plus applicable minimum gain, then, for the remainder of such period, if so required by the Limited Partner, all items of income and deduction, other than depreciation, shall be specially allocated to the General Partner to the extent reasonably necessary for the Limited Partner to maintain a positive capital account in view of the aggregate deductions for depreciation projected to be allocable to the Limited Partner for all remaining years of the Compliance Period.

(m) Any increase or decrease in the amount of any item of income, Gain, Loss, deduction or credit attributable to an adjustment to the basis of Partnership assets made pursuant to Sections 734 or 743 of the Code, as a result of a valid election under Section 754 of the Code, and pursuant to corresponding provisions of applicable state and local income tax laws, shall be charged or credited, as the case may be, and any increase or decrease in the amount of any item of credit or tax preference attributable to any such adjustment shall be allocated to those Partners entitled thereto under such laws.

(n) Income, Gains, Losses, deductions and Credit (except as set forth below) allocated to a Partnership Interest assigned or reissued during a Fiscal Year of the Partnership shall be allocated to the Person who was the holder of

such Interest during such Fiscal Year, in proportion to the number of days that each such holder was recognized as the owner of such Interest during such Fiscal Year or in any other manner permitted by the Code and selected by the General Partner in accordance with this Agreement, with the Consent of the Limited Partner, without regard to the results of Partnership operations during the period in which each such holder was recognized as the owner of such Interest during such Fiscal Year, and without regard to the date, amount or recipient of any distributions which may have been made with respect to such Interest. With respect to any Federal Low-Income Credit claimed by the Partnership for the Fiscal Year of such assignment, the assignor and assignee may agree to allocate the distributive share of such Federal Low-Income Credit between the assignor and assignee either (a) in accordance with the ratio that the number of days in the Fiscal Year before and after such assignment bears to the total number of days in the Fiscal Year, or (b) in accordance with the ratio that the number of months in the Fiscal Year before and after such assignment bears to the total number of months in the Fiscal Year, provided that the month in which the assignment takes place shall be considered to be after the assignment if the assignment takes place in the first half of the month and before the assignment if the assignment takes place in the second half of the month. In the event the assignor and assignee do not agree on the method for allocating the distributive shares of the Federal Low-Income Credit, such Credit shall be allocated in accordance with the ratio that the number of days in the Fiscal Year before and after such assignment bears to the total number of days in the Fiscal Year. Also, for purposes of this Section, any change in the Percentage Interest of any Partner will also be treated as an assignment from that Partner whose Percentage Interest declined to that Partner whose Percentage Interest increased and to those Persons who became Partners and acquired a Percentage Interest.

(o) Subject to Section 7.4 (r), in the event that there is a determination that there is any original issue discount or imputed interest attributable to the Capital Contribution of any Partner or to any loan between a Partner or Affiliate and the Partnership, any income or deduction of the Partnership attributable to such imputed interest or original issue discount respecting such Capital Contribution or loan (whether stated or unstated) shall be allocated solely to such Partner. The General Partner agrees to indemnify the Partnership and the Limited Partner for any tax liability and all costs, expenses and funds (including Tax Equivalency Payments) in connection therewith in the event that the Partnership and/or the Limited Partner is required to recognize income as a direct or indirect result of any income recognized by the Partnership or the Limited Partner as a result of any receipt of grants, donations, subsidies, taxable Capital Contributions, if any, or discharge or forgiveness of indebtedness by the Partnership. To the extent that any Partnership Management Fees payable to the General Partner are fully or partially disallowed by the IRS, the amount so disallowed shall be deemed to be a distribution of cash to the General Partner, as applicable, and will cause an adjustment to its Capital Account Balances, pursuant to, and in accordance with, Section 7.5. To the extent that any of the above adjustments creates a deficit Capital Account Balance for the General Partner, the General

Partner, as applicable, shall be obligated to restore such deficit to the Partnership in accordance with Section 12.2(c).

(p) Subject to Section 7.4 (r), in the event that the deduction of all or a portion of any fee paid or incurred by the Partnership to a Partner or an Affiliate of a Partner is disallowed for federal income tax purposes by the IRS with respect to a Fiscal Year of the Partnership, the Partnership shall then allocate to such Partner an amount of gross income of the Partnership for such year equal to the amount of such fee as to which the deduction is disallowed.

(q) If at any time during the Credit Period where, in the reasonable opinion of counsel to the Limited Partner, the General Partner has any economic risk of loss (within the meaning of Treasury Regulations Section 1.752-2 or any successor provision) respecting any Partnership obligations and as a result, non-recourse deductions, including depreciation (and corresponding Credits otherwise allocable to the Limited Partner hereunder), would become allocable to the General Partner any such obligations (but not including any then unpaid Development Fee payable to an Affiliate which was included in the Project's qualified basis for Credits) shall thereupon be forgiven, to the extent necessary to avoid any such reallocation of non-recourse deductions or depreciation (and corresponding Credits).

(r) Notwithstanding anything to the contrary contained in this Article 7 or elsewhere in this Agreement, the Housing Authority GP Member's share of allocated items shall be no greater than 22.5%, and no such allocation will be made to the General Partner hereunder to the extent it would result in more than 22.5% of the Project being treated as tax-exempt use property under Section 168(h) of the Code, and further, in no event shall the General Partner permit any allocation to the Housing Authority GP Member which would result in more than 22.5% of the Project being treated as tax-exempt use property under Section 168(h) of the Code. In addition, the Special Limited Partner's share of allocated items shall be no greater than .005%, and no such allocation will be made to the Partnership hereunder to the extent it would result in more than .005% of the Project being treated as tax-exempt use property under Section 168(h) of the Code, and further, in no event shall the Partnership permit any allocation to the Special Limited Partner which would result in more than .005% of the Project being treated as tax-exempt use property under Section 168(h) of the Code.

## **7.5 Maintenance of Capital Accounts**

The Partnership shall maintain a Capital Account for each Partner. Such Capital Account shall be maintained in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv). To each Partner's Capital Account there shall be credited such Partner's Capital Contributions, and its distributive share of Net Profits and Gains and any item in the nature of income or gain allocated to such Partner under Sections 7.2 and 7.3. To each Partner's Capital Account there shall be debited the amount of cash and the fair market value (as of the date of distribution) of any Partnership property (net of liabilities securing the distributed property that such Partner assumes

or subject to which such Partner takes the distributed property) distributed to such Partner pursuant to any provision of this Agreement and such Partner's distributive share of Net Losses and Loss and any items in the nature of expenses or deductions that are allocated to such Partner pursuant to Sections 7.2 and 7.3.

## **ARTICLE VIII**

### **CASH DISTRIBUTIONS**

#### **8.1 Distributions of Cash Flow**

Cash Flow, to the extent available shall be distributed for any year or portion thereof in the order of priority set forth in Exhibit A-5.

#### **8.2 Distributions of Capital Proceeds**

Any Capital Proceeds other than Capital Proceeds upon dissolution and liquidation of the Partnership, which shall be governed by Article XII, shall be distributed to and among the Partners in the following amounts and order of priority:

(a) (i) To the Limited Partner, proceeds equal to the sum of (x) accrued and unpaid Credit Deficiencies (including, without limitation, amounts owed due to a Change in Law), and (y) any and all loans of, and other amounts payable to, the Limited Partner;

(ii) To pay any outstanding and unpaid Asset Management Fees;

(b) To the Developer the amount of any unpaid Development Fee (and all accrued and unpaid interest thereon);

(c) To the General Partner the amount of any unpaid Development Advance, Operating Deficit Advance, Credit Adjuster Advance, Contractor Fee Advance, Development Fee Advance and to the Special Limited Partner and the General Partner, any other loans of the Special Limited Partner (other than the Disposition Loan and the HOME Loan) or the General Partner;

(d) Of the remaining Capital Proceeds, a distribution equal to 36.90% and 4.10% to the General Partner and Investor Limited Partner, respectively. (f)

(g) To pay, pari passu, Additional Interest on the Bond Loan and all applicable interest and principal on the Soft Loans and Housing Authority Loan until paid in full; and

(f) For the balance, 90% to the General Partner and 10% to the Limited Partner.

### **8.3 Allocation of Distributions**

Distributions of Cash Flow and Capital Proceeds shall be made to the Partner of record at the date for the distribution without regard to the length of time the record holder has been such and without regard to the period to which the distribution relates.

## **ARTICLE IX**

### **ADMISSION OF SUCCESSOR AND ADDITIONAL GENERAL PARTNERS AND SPECIAL LIMITED PARTNER; REMOVAL AND WITHDRAWAL OF GENERAL PARTNER AND/OR SPECIAL LIMITED PARTNER**

#### **9.1 Admission of Successor or Additional General Partners or Special Limited Partner**

(a) Neither the General Partner nor the Special Limited Partner shall have any right to retire or withdraw voluntarily from the Partnership except as expressly set forth in Section 5.2(x) of this Agreement, to sell, transfer, pledge, encumber or assign all or any portion of its Interest, except as expressly set forth in Section 5.7(x), without the Consent of the Limited Partner, which consent may be withheld at the sole discretion of the Limited Partner. Notwithstanding the foregoing, the Special Limited Partner shall have the right to retire or withdraw voluntarily in the event that the Property Tax Exemption has been terminated with notice to the Limited Partner and General Partner; provided, however, that the General Partner use commercially reasonable efforts to locate a Special Limited Partner acceptable to the Limited Partner which is eligible for the Property Tax Exemption, if the Property Tax Exemption is still available by state stat

(b) In the event that the Consent of the Limited Partner has been obtained by the General Partner or Special Limited Partner, as applicable, the General Partner or Special Limited Partner shall designate one or more Persons to be its successor. In no event shall the Interests of the other Partners be affected thereby. The designated successor General Partner or Special Limited Partner shall be admitted as such to the Partnership upon approval by the Limited Partner of such successor General Partner or Special Limited Partner and all documentation respecting such transfer and applicable amendments to this Agreement, which approval may be withheld in its sole discretion, and upon satisfying the conditions of this Article IX and Section 15.1. Any voluntary withdrawal by the General Partner or Special Limited Partner from the Partnership or any sale, transfer, or assignment by the General Partner or Special Limited Partner of its Interest shall be effective only upon the admission in accordance with this Section 9.1(a) and Section 15.1 of a successor General Partner or Special Limited Partner. Upon request of the Limited Partner from which consent has been requested, the transferee shall submit financial statements of the transferee to such Limited Partner, evidencing sufficient financial ability to undertake the obligations which would be imposed on the transferee, and any

document of assignment must be in a form reasonably acceptable to the Limited Partner whose consent has been requested, and the transferor shall deliver an opinion of counsel (or such other evidence as a Limited Partner may reasonably require) that such transfer (1) will not result in the Partnership being treated as an association taxable as a corporation for federal income tax purposes or otherwise result in a tax termination of the Partnership, and (2) may be effected without registration or qualification under any applicable federal or state securities laws, or confirming that any such registration or qualification, and any other required actions, have been taken in connection therewith.

(c) The successor General Partner or Special Limited Partner shall pay to the Partnership all costs and expenses incurred in connection with such substitution, including, without limitation, legal and other costs incurred in the review and processing of the assignment, in amending this Agreement, and in filing the amended Certificate (if applicable).

(d) The successor General Partner or Special Limited Partner shall by its execution of this Agreement and as a condition precedent to receiving any Interest in the Partnership or the Project agree to be bound by this Agreement to the same extent and on the same terms as the predecessor General Partner or Special Limited Partner.

(e) Upon the admission of the successor General Partner or Special Limited Partner, an amendment to this Agreement reflecting such admission, and stating the agreement set forth in Section 9.1(c) and in all respects in compliance with the requirements of the Act shall be executed and an amendment to the Certificate shall be executed and filed in accordance with the Act, to the extent required.

## **9.2 Removal of a General Partner or Special Limited Partner**

(a) The Limited Partner shall have the right to remove a General Partner or Special Limited Partner of the Partnership (but in each case, only as a result of the actions or inactions of, or matters specific to, that Partner or its Affiliates and not the actions or inactions of, or matters specific to, the other Partner or its Affiliates) for any of the following reasons (an “*Event of Default*”):

i. The General Partner or Special Limited Partner has committed an act or acts of gross negligence, willful misconduct, substantial mismanagement of the Project or Partnership, malfeasance, fraud, or an act or acts outside the scope of its authority, has breached any representation, warranty, agreement or covenant contained in this Agreement which breach has or is likely to have a material adverse effect on the Partnership or the Limited Partner, or has breached its fiduciary duties as the General Partner or Special Limited Partner (including, without limitation, using Partnership reserves other than as permitted under this Agreement);

ii. A default not cured within the time period of the applicable cure period under any Project Document, unless the Lender or other party to the applicable Project Document acknowledges in writing satisfactory progress, agrees not to take any action without further notice, and refrains from action until cure occurs.

iii. The General Partner, the Special Limited Partner or the Partnership has taken any action or failed to take any action that would (A) cause the termination of the Partnership for federal income tax purposes, (B) cause the Partnership to be treated for federal income tax purposes as an association taxable as a corporation, (C) violate any federal or state securities laws, (D) cause the Partnership to fail to qualify as a limited partnership under the Act, (E) cause a material reduction in the tax benefits or a material increase in the tax liability of the Limited Partner for which the Limited Partner is not fully compensated (as reasonably determined by the Limited Partner), or (F) cause the Limited Partner to have liability in excess of its Capital Contributions;

iv. During the Compliance Period, (a) there are unfunded Operating Deficits, after ten (10) days written notice to the General Partner from the Limited Partner; or (b) the General Partner, the Special Limited Partner or the Management Agent has operated the Project in a manner so as not to qualify as a “qualified low-income housing project” under Section 42(g)(1) of the Code and under the documents pursuant to which the Credits have been allocated;

v. A default by the General Partner, the Special Limited Partner the Guarantor, the General Contractor or the Developer of any of their respective obligations under this Agreement or the other Project Documents, other than those obligations set forth in other provisions of this Section 9.2, in each case not cured (a) with respect to defaults under this Agreement, within the time frame set forth in Section 9.2(d) below, or (b) with respect to any other Project Document, within the period of time required by such other Project Document;

vi. A filing of a foreclosure or other creditor’s action or exercise of control over the Project by a lender or other creditor (or written notice of intent to effect a foreclosure or other lender’s action, or intent by such lender to exercise control over the Project, unless the lender acknowledges in writing satisfactory progress, agrees not to take action without further notice, and refrains from action until cure occurs);

vii. An Event of Bankruptcy respecting the Partnership, the Special Limited Partner, the General Partner, or a Guarantor; provided, however, if an Event of Bankruptcy occurs with respect to a Guarantor, the General Partner shall have thirty (30) days to find a replacement Guarantor that receives the reasonable Consent of the Limited Partner;

viii. The General Partner directly or indirectly causes the construction schedule set forth in the Project Documents to be delayed by more than ninety



(90) days or failure to complete the Project and reach the Completion Date within one-hundred eighty (180) days following the Target Completion Date (provided, however, that if the General Partner is diligently pursuing construction completion and has provided to the Limited Partner such documentation satisfactory to the Limited Partner to evidence that the Project will be completed by a revised completion date reasonably acceptable to the Limited Partner, the Limited Partner shall not remove the General Partner solely for violation of this provision), or if prior to the Completion Date there is any termination of any permanent financing commitment, unless such commitment is replaced under terms and conditions that receive the Consent of the Limited Partner, within sixty (60) days after such event;

ix. After 2019, failure of the Limited Partner to receive 80% of the Projected Credit Amount of each Credit or 80% of any of the annual Credits listed on Exhibit A-3 (after adjustment pursuant to Sections 3.3(a)) for any year) unless the Limited Partner is fully compensated by the General Partner and/or Guarantor for such shortfall;

x. In the event of fraud of the General Partner, the Special Limited Partner any Guarantor or any Affiliate thereof or in the event of a felony conviction of any individual Guarantor, which has a material adverse effect of the Partnership, the Project or the Limited Partner; provided that such occurrence with respect to an individual board member of the Special Limited Partner and/or the sole member of the Housing Authority GP Member shall not be cause for removal of the Special Limited Partner if such board member is removed and replaced within a reasonable time and in accordance with the requirements of Clackamas County.

xi. [Reserved]; or

xii. Without the Consent of the Limited Partner, if (i) Pedcor Investments, A Limited Liability Company or any combination of Pedcor Investments, A Limited Liability Company, Bruce A. Cordingley, Gerald K. Pedigo and/or Phillip J. Stoffregen shall cease to own 49% membership interests of the General Partner, (ii) if Pedcor Investments, A Limited Liability Company, (or an Affiliate thereof) ceases to control and/or manage the General Partner.

xiii. with respect to the Special Limited Partner only, failure of the Partnership or the Special Limited Partner to maintain the Property Tax Exemption; provided, however, that the General Partner shall have the right to remove the Special Limited Partner in accordance with this provision following receipt of notice by the Limited Partner from the General Partner that the Property Tax Exemption has been irrevocably terminated or the Partnership is no longer eligible to receive the Property Tax Exemption; provided that the General Partner and its Affiliates are not currently in material default under any provisions of this Agreement or any Project Document which would adversely impact the Limited Partner and/or the Partnership and provided, further, that the General Partner

either: (i) uses commercially reasonable efforts to locate a Special Limited Partner acceptable to the Limited Partner which is eligible for the Property Tax Exemption, if still available by state statute; or (ii) so long as the Project is able to maintain a debt service coverage ratio of 1.15X or higher, and the General Partner provides additional funds to the Operating Reserve in an amount equal to the value of the Property Tax Exemption, the General Partner may remove the Special Limited Partner without identifying a replacement. In the event the General Partner removes the Special Limited Partner pursuant to this Section 9.2(a)(xii) without securing a replacement, all of the economic interest resulting from the operation of the Project which was otherwise allocated to the Special Limited Partner, shall be directed to the General Partner. Notwithstanding the foregoing, in the event the General Partner removes the Special Limited Partner pursuant to this Section 9.2(a)(xiii), the Special Limited Partner, acting as the sole member of the Housing Authority GP Member, hereby acknowledges and agrees that the General Partner shall also have the right to acquire the Housing Authority GP Member interest as described in Section 14.1.

(b) Upon the removal of the General Partner or Special Limited Partner for any reason pursuant to Section 9.2(a), the remaining or successor General Partner or Special Limited Partner, as applicable, either of which shall have been appointed by and/or approved by the Limited Partner shall cause the Partnership to redeem the removed General Partner's and/or Special Limited Partner's Interest for one hundred dollars (\$100). Such removed or withdrawn General Partner and/or Special Limited Partner shall thereafter cease to have any interest in the capital, profits, losses, distributions, and all other economic incidents of ownership of the Partnership (including any right to payment of accrued but unpaid fees) and all agreements (including loans) between the Partnership and the General Partner, or any Affiliates of such General Partner or, between the Special Limited Partner or any Affiliates of the Special Limited Partner, as applicable, may, at the election of the Partnership, be terminated, including, without limitation, the Construction Documents (other than any accrued and unpaid Development Fee or Contractor Fee which was included in the qualified basis of the Project for allocation of the Credits), provided however, except as set forth in Section 5.11, fees that have accrued prior to such removal shall be subject to set-off for damages incurred by the Partnership or the Limited Partner as a result of, or reasonably relating to, the events that gave rise to removal or the removal itself, without penalty, and, upon any termination the Partnership shall have no further obligation under such agreements including, without limitation, the obligation to pay accrued but unpaid fees and upon any assignment, the Partnership's liability shall be only to any such assignee, further provided however, all Development Fee Advances and Contractor Fee Advances theretofore made by the removed General Partner or Special Limited Partner shall not be terminated but the right to repayment of all such Development Fee or Contractor Fee Advances payable to the removed Partner shall automatically be transferred to the substitute Partner an incentive administrative fee. Further, if the Management Agent is an Affiliate of the General Partner or Special Limited Partner, upon any removal of the General Partner or Special Limited Partner, the

General Partner or Special Limited Partner, as applicable, shall (at the election of the Partnership) simultaneously cause termination of such management agreement without penalty, at its sole cost and expense. The General Partner and Special Limited Partner hereby grant to the Limited Partner a security interest in any and all fees and other amounts payable to the General Partner and its Affiliates and to the Special Limited Partner and its Affiliates respecting this Project to secure its obligations under this Agreement. The General Partner and Special Limited Partner hereby grants the Limited Partner its unconditional, irrevocable power-of-attorney to execute any amendments to this Agreement and such other Project Documents as deemed necessary by the Limited Partner, on its behalf and in its place and stead to evidence the redemption of its Interest of record, and its withdrawal as a partner of the Partnership. This power of attorney is coupled with an interest and is irrevocable.

(c) In the event that the General Partner or Special Limited Partner has been removed, the Limited Partner shall have the right, without the consent of any of the other Partners, to designate a successor General Partner or Special Limited Partner, as the case may be. The Limited Partner may, within ninety (90) days (or such longer period as may be permitted under applicable law) of the sole General Partner's removal, elect to continue the business of the Partnership. In the event only the Special Limited Partner has been removed, the General Partner shall have the right to designate a successor Special Limited Partner, or not, as the case may be and as detailed in Section 9.2(a)(xiii) above. Such successor Special Limited Partner is subject to the Consent of the Limited Partner, not to be unreasonably withheld, delayed or conditioned.

(d) The Limited Partner shall not have the right to exercise any of its remedies pursuant to this Section as a result solely of any failure or violation described in Section 9.2(a) (other than the events described in Sections 9.2(a)(vii) and 9.2(a)(x)) (but subject to the conditions stated in said provisions) if any General Partner or Special Limited Partner, as applicable shall cure its respective failure or violation within thirty (30) days after notice or such longer period of time as necessary, provided the General Partner or Special Limited Partner is diligently pursuing such cure to completion, but in no event more than ninety (90) days; provided that (i) the foregoing thirty (30) day cure period shall not apply in the event of any failure or violation that constitutes an event of default as defined in any Loan Document and acknowledged by Lender as such and as to which no cure period is provided to the Partnership or if the cure period is shorter than thirty (30) days then such shorter cure period shall apply; and (ii) the aforesaid cure period shall commence as provided above, but in any event shall be deemed to commence simultaneously with the cure period provided in any Loan Documents. No cure period shall be available to the General Partner or Special Limited Partner for its respective violation of the events described in Sections 9.2(a)(vii) and 9.2(a)(x), but subject to the conditions set forth in said provisions. Nothing in this Section 9.2 shall reduce or otherwise limit the rights, remedies or other actions available to the Limited Partner against the removed General Partner or Special Limited Partner.

### **9.3 Event of Bankruptcy of a General Partner or Special Limited Partner**

(a) A General Partner shall cease to be a General Partner upon an Event of Bankruptcy with respect to such General Partner. The Special Limited Partner shall cease to be a Special Limited Partner upon an Event of Bankruptcy with respect to such Special Limited Partner. provided, however, that the General Partner shall within thirty (30) days following such event, locate and cause to be admitted to the Partnership, a Special Limited Partner acceptable to the Limited Partner which is eligible for the Property Tax Exemption. Upon such an Event of Bankruptcy, the remaining or successor General Partner or Special Limited Partner shall cause the Partnership to redeem the General Partner's or Special Limited Partner's Interest for one hundred dollars (\$100) and such General Partner or Special Limited Partner shall thereafter cease to have any interest in the capital, profits, losses, distributions, and all other economic incidents of ownership of the Partnership and the Partnership shall have the right to cause all contracts or agreements (including loans, but not the Disposition Loan or HOME Loan) between the Partnership and the General Partner or any Affiliates of the General Partner or between the Partnership and the Special Limited Partner or any Affiliates of the Special Limited Partner to thereupon terminate without penalty or be assigned, and upon any termination the Partnership shall have no further obligation under any such agreements; provided that the Partnership Management Agreement shall remain valid and in effect as to the non-bankrupt partner and the entirety of such fee shall be payable to the non-bankrupt partner, if the non-bankrupt partner remains the sole partner other than the Limited Partner, otherwise, the fee shall be split in the same manner between the new Partner and/or existing non-bankrupt Partner. The General Partner and the Special Limited Partner hereby grant the Limited Partner its power-of-attorney to execute any amendments to this Agreement on its behalf and in its place and stead to evidence the redemption of its Interest of record. This power of attorney is coupled with an interest and is irrevocable.

(b) If, at the time of an Event of Bankruptcy with respect to a General Partner, such General Partner was the sole General Partner, the Limited Partner shall have the right, in its sole discretion, subject to the consent of HCA, as applicable, to designate the successor General Partner and the Limited Partner may, within the maximum number of days permitted by the Act after the General Partner's ceasing to be a General Partner of the Partnership, elect to continue the business of the Partnership.

### **9.4 Liability of a Removed or Withdrawn General Partner**

A General Partner who for any reason voluntarily or involuntarily withdraws or is removed from the Partnership or sells, transfers, or assigns its Interest shall be and remain liable for all obligations, liabilities, and guarantees incurred by it as a General Partner prior to the time when the withdrawal, removal, sale, transfer, or assignment becomes effective, including but not limited to the obligations and liabilities of the General Partner set forth in Sections 3.3, 5.9, 5.10 and 5.11 of this Agreement with regard to Development Advances, Operating Deficit Advances,

Development Fee Advances, Contractor Fee Advances and Credit Adjuster Advances then payable, and for any obligation or liability to the Limited Partner that may arise at any time under Sections 5.6 and 5.7. Such General Partner shall continue to be liable pursuant to the provisions of Section 5.4 with respect to its acts and omissions occurring on or prior to the effective date of such withdrawal or removal. Removal or withdrawal of the General Partner shall not limit or affect the obligations of the Guarantor under the Guaranty or the Developer under the Development Agreement.

### **9.5 Continuation of the Business of the Partnership**

(a) If, at the time of an event described in Section 9.2 or Section 9.3 or any other event described in the Act with respect to a General Partner that requires an election to continue the Partnership, such General Partner was not the sole General Partner, the remaining General Partner or General Partners shall elect to continue the business of the Partnership and shall immediately: (i) give Notice to the Limited Partner of such event; and (ii) make any amendments to this Agreement and execute and file for recording any amendments or other documents or instruments necessary to reflect the termination of the Interest of the General Partner as to which such event has occurred and such General Partner's having ceased to be a General Partner and in order to comply with the requirements of the Act.

(b) A Person shall be admitted as a successor or additional General Partner with the Consent of the Limited Partner and the consent of HCA, as applicable, if an amendment to the Certificate evidencing the admission of such Person as a General Partner shall have been filed for recordation. The General Partner hereby agrees to execute promptly any such amendment to the Certificate, if required in the event of its withdrawal or removal pursuant to the provisions of this Article IX, and, in addition, hereby grants to Limited Partner a power-of-attorney to execute any such amendment on its behalf and in its place and stead in the event of its withdrawal or removal. This power-of-attorney is coupled with an interest and is irrevocable. The election by the Limited Partner to remove any General Partner or Special Limited Partner under Section 9.2 shall not limit or restrict the availability and use of any other remedy that the Limited Partner or any other Partner might have with respect to any General Partner or Special Limited Partner in connection with its undertakings and responsibilities under this Agreement, and they are understood by the parties hereto to be permitted by the Act as the exercise of powers not constituting participation in the control of the business so as to convert the limited partner interest of the Limited Partner into a general partner interest for any purpose or to any extent.

## **ARTICLE X**

### **ASSIGNABILITY OF INTERESTS OF LIMITED PARTNER**

## **10.1 Substitution and Assignment of a Limited Partner's Interest**

The rights of the Limited Partner to assign or transfer any interests in the Partnership are as follows:

(a) The General Partner and Special Limited Partner hereby expressly consent to assignment(s) or transfer(s) by a Limited Partner of its Partnership interest, in whole or in part, from time to time, to an Affiliate or Affiliates USBCDC (and its successors) or to any limited liability company or partnership in which the Limited Partner or any Affiliate of USBCDC (and its successors) is the manager or managing general partner, and to the admission of such transferee(s) as limited partner(s), provided the assignee assumes the Limited Partner's obligations under this Agreement, including but not limited to, the Limited Partner's unpaid Capital Contribution obligations, and further provided that the Limited Partner shall remain liable for payment of unpaid Limited Partner Capital Contributions until fully paid. Any such assignment shall be evidenced by an assignment and assumption agreement in substantially the same form as is attached hereto as Exhibit K. In addition, such transferee(s) shall become a Limited Partner(s) hereunder upon full execution of an amendment to this Agreement (substantially in the form attached hereto as Exhibit L), evidencing such admission, under terms and provisions acceptable to the Limited Partner.

(b) If the approval of any lender or HCA is required pursuant to the terms of any Loan, Project Document or other agreement of the Partnership, such approval must be requested by the General Partner and the Special Limited Partner and the General Partner and Special Limited Partner shall use good faith efforts to obtain such approval.

(c) The General Partner and Special Limited Partner hereby grant the Limited Partner an unconditional, irrevocable power of attorney to execute any and all documents necessary or appropriate to effectuate the admission of limited partner(s) pursuant to Section 10.1(a) above, which power of attorney is coupled with an interest and is irrevocable.

(d) All other transfers of the Partnership Interest of a Limited Partner shall require the prior Consent of the General Partner and Special Limited Partner, not to be unreasonably withheld, delayed or conditioned.

(e) In conjunction with any contemplated sale, transfer, assignment or other disposition by the Limited Partner of all or any part of its interest in accordance with the provisions of this Article X, the Limited Partner is authorized to obtain, at its sole cost and expense updated UCC, judgment and tax lien searches with respect to the General Partner, the Special Limited Partner and the Partnership and to disclose information (including the Limited Partner's internal analysis) to potential transferees of the Limited Partner's interest concerning the Partnership, the Special Limited Partner, the General Partner, the Guarantor, the Developer, any other Persons involved in the development and operation of the

Project and to initiate contact (and take any other actions needed to obtain required consents) with any Lender or other third-party whose consent to such disposition may be required. The General Partner and Special Limited Partner each represents and agrees that it will take all actions reasonably necessary (or reasonably requested by the Limited Partner) to cooperate with the Limited Partner and facilitate the Limited Partner's disposition of its Interest and/or the receipt of such consents, including, but not limited to, delivering an updated legal opinion, providing financial statements, information and reports with respect to the General Partner, the Special Limited Partner, the Guarantor, the Developer and/or the Partnership and reaffirming the accuracy of the representations and covenants set forth in this Agreement and the Limited Partner shall reimburse the General Partner and the Special Limited Partner for all costs reasonably incurred by it pursuant to this Section 10.1(e).

## **10.2 Substitute Limited Partners**

(a) Transfers pursuant to Section 10.1(a) above do not require General Partner or Special Limited Partner approval or consent, and the General Partner and Special Limited Partner shall, upon request by the Limited Partner, execute an amendment to the Agreement (in the form of Exhibit N), evidencing the admission of the applicable assignee as a Substitute Limited Partner, subject to any applicable approvals required pursuant to Section 10.1(b). Transfers pursuant to Section 10.1(d) shall also be evidenced by an amendment to this Agreement, signed by the General Partner, the Special Limited Partner the Limited Partner and its transferee as Substitute Limited Partner. Respecting any transfer hereunder, the General Partner shall file any amended Certificate, if required by the Act.

(b) Following any transfer of its entire Interest in the Partnership by a Limited Partner, if the Assignee(s) shall become a Substitute Limited Partner(s) pursuant to the amendment to this Agreement, the assignor, in respect of the Interest assigned, shall no longer be deemed to be a Limited Partner hereunder (in all other situations, the Limited Partner shall continue to exercise the rights of a Limited Partner hereunder until such time as such Assignee(s) are duly admitted as Substitute Limited Partners), and except respecting unpaid Capital Contributions as specifically set forth in Section 10.1(a) or in the applicable amendment to this Agreement, upon such admission of the Substitute Limited Partner(s), the Limited Partner shall have no further duties or obligations hereunder.

(c) The Partnership, the General Partner and the Special Limited Partner shall be entitled to treat each Person set forth on Exhibit A as the absolute owner of its Interest in all respects, and shall incur no liability for distributions of cash or other property made in good faith to such Person until such time as a written assignment of such Interest has been executed in accordance with Section 10.1 above.

## ARTICLE XI

### MANAGEMENT AGENT

#### 11.1 General Partner to Engage Management Agent

The General Partner shall have responsibility for engaging the Management Agent (which may be an Affiliate of the General Partner) acceptable to the Limited Partner, the Lenders and any other governmental authority having jurisdiction over the Project. The Management Agent (and any and all successor management agents) shall manage and operate the Project in accordance with the requirements of Section 42 of the Code and all other applicable requirements respecting the Credits and the Loans, and the applicable requirements of the Lenders, any other lenders and any other governmental authority having jurisdiction with respect thereto, pursuant to a Management Agreement in form and substance acceptable to the Limited Partner. Such Management Agreement shall contain a provision requiring that tenant security deposits, and all interest thereon, be deposited in a segregated Partnership account and that such amounts cannot be used to pay Partnership Expenses. The General Partner shall not authorize or permit any deviation from such Management Agreement which could impair the Credits or the operation of the Project and shall not remove such Management Agent without the Consent of the Limited Partner (which Consent may not be given until the General Partner has identified a replacement management agent acceptable to the Limited Partner). The management agreement shall require that the management plan and rental criteria to be utilized by the Management Agent shall be reviewed by the Limited Partner and its asset manager (listed on Exhibit A-6, “*Asset Manager*”) prior to commencing to lease any units in the Project. The Management Agreement shall expressly provide that the Management Agent shall not advance its own money for Project expenses, except in an emergency, in which event the Management Agent shall be required to notify the Partnership and the Limited Partner within thirty (30) days thereafter. The General Partner shall notify the Limited Partner in writing whenever it has knowledge that the Management Agent is advancing its own money to pay Project expenses; the failure of the General Partner to so notify the Limited Partner shall constitute substantial mismanagement of the Project for purposes of 9.2(a)(1). Upon the reasonable request of the Limited Partner (which may be based on Project compliance observations of its Compliance Manager (as defined below and failure to adequately perform)), the General Partner shall terminate the applicable Management Agreement, subject to, and in accordance with, its terms; provided, however, prior to requesting the removal of the Management Agent, the Limited Partner shall notify the Management Agent of its failure to perform and provide the Management Agent with a reasonable period of time to cure such failure. Any modification, termination or extension of a Management Agreement or any removal of the Management Agent or hiring of a new Management Agent shall be made only upon obtaining the consents or approvals, if any, required by the Loan Documents or Project Documents, as well as the Consent of the Limited Partner and the Consent of HCA, if required. The Consent of the Special Limited Partner shall also be required for any termination or substitution of the Management Agent, so long as the Special Limited Partner or any of its Affiliates owns an Interest in the Partnership or is providing a guaranty with respect to the Project, except when the Management Agent is terminated or substituted at the written direction of the Limited Partner for cause pursuant to the Management Agreement and the terms hereof or is terminated or substituted upon removal of the Affiliated Management Agent as a Partner hereunder. The Management Agent shall be entitled to receive



such management fees as may be agreed upon by the Partnership and such agent, consistent with the Annual Operating Budget and acceptable to the Lenders and the Limited Partner. Any successor Management Agent shall be entitled to receive such management fees as may be agreed upon between the Partnership and such agent consistent with the applicable Annual Operating Budget, and which shall be acceptable to the Lenders and HCA, if their consent is required, and the Limited Partner.

The Management Agreement shall be for an initial term ending one (1) year and thereafter for renewal terms of one (1) year with automatic one year renewals, shall provide that the Management Agent can be terminated without penalty by the Partnership upon thirty (30) days' prior written notice, with or without cause and, upon any such termination, notwithstanding anything to the contrary in this Agreement or any other agreement, no further amounts shall be owed to the Management Agent. Further, whenever, and so long as the Management Agent is a General Partner, Special Limited Partner or Affiliate of the General Partner or Special Limited Partner the Management Agreement shall contain the following provisions: (a) 60% of the Management Agent's monthly fees shall be accrued and subordinated to payment of Operating Deficits and to those priority distributions of Cash Flow listed as First, Second, and Third on Exhibit A-5, until funds are available to pay such fees, unless the Affiliated Partner is then current in funding any such Operating Deficits; and (b) the Management Agreement shall automatically terminate, upon the removal of the applicable Affiliated Partner as a partner in the Partnership. The General Partner shall require the Management Agent to use a form of lease, containing Credit compliance requirements, which is acceptable to the Limited Partner.

The Limited Partner shall have the right to designate a compliance review manager (the "**Compliance Manager**"), and the General Partner shall require that the Management Agent: (a) cooperate and participate in a review of Credit compliance requirements with the Compliance Manager prior to the marketing or leasing of any Credit Units, (b) cooperate with the Compliance Manager in periodic reviews of the compliance of the Project with Credit requirements, which compliance reviews may include, but shall not be limited to, physical inspection of the Project, review and copying of the files and other records of the management agent, and interviews with the management agent's staff, and (c) submit all tenant lease files required pursuant to Section 13.3(a)(2) to the Limited Partner and the Compliance Manager. The fees and expenses of the Compliance Manager will be paid directly by the Limited Partner. In no event shall any review and/or approval of tenant lease files, income qualification and/or other tenant records by the Limited Partner, the Limited Partner's Asset Manager and/or the Compliance Manager relieve the General Partner, the Special Limited Partner or the management agent of their respective obligations to operate and manage the Project in full compliance with Section 42 of the Code, nor constitute a defense to the General Partner's obligations hereunder and the General Partner shall not be entitled to rely on any such reviews and/or approvals.

## **11.2 Asset Management Fee**

Commencing in the year of Completion, the Partnership shall pay to USBCDC (or to such other entity as USBCDC shall designate), within ninety (90) days following the end of each calendar year, an annual fee (the "**Asset Management Fee**") of \$10,000, for an annual review of

the operations of the Partnership and the Project and to reimburse USBCDC for the costs and expenses of its Credit compliance review, payable from Cash Flow, which Fee shall increase by ten percent (10%) on each fifth anniversary thereafter. To the extent that such Fee is not paid in any year or years, such Fee shall accrue, and shall be payable first from future years Cash Flow and thereafter upon refinancing, sale or liquidation, until fully paid. The Asset Management Fees payable during the Compliance Period are set forth on Exhibit P hereto.

## **ARTICLE XII**

### **DISSOLUTION OF PARTNERSHIP**

#### **12.1 Dissolution**

The Partnership shall be dissolved, and the business of the Partnership shall be terminated in accordance with the Act, upon the occurrence of any of the following events:

(a) The dissolution, liquidation, withdrawal, retirement, removal, death, insanity, disability and/or Event of Bankruptcy of a General Partner, under such circumstances where no other remaining General Partner desires to continue the Partnership; provided, however, that the Partnership shall not be dissolved as aforesaid if the Limited Partner shall, within the maximum number of days permitted by the Act, elect to continue the Partnership and the Partnership business, and shall designate a successor General Partner, which upon its admission to the Partnership shall immediately obtain all of the General Partner's rights to receive Cash Flow, Sale and Refinancing Proceeds, and the unpaid portion of any fees payable pursuant to this Agreement, to the extent not already earned by the General Partner, for a purchase price of one hundred dollars (\$100);

(b) An election to dissolve the Partnership made in writing by all of the Partners in accordance with the Act;

(c) The sale or other disposition of all or substantially all of the Partnership property;

(d) The expiration of the Term; or

(e) The occurrence of any other event causing the dissolution of a limited partnership under the laws of the State of Oregon.

#### **12.2 Distribution of Partnership Assets**

(a) Upon the dissolution of the Partnership, the Partnership business shall be wound up and its assets liquidated; and the net proceeds of such liquidation shall be distributed in the following order of priority (but in all events in accordance with the Act):

i. To the payment of the debts and liabilities of the Partnership (excluding any amounts that may be owed to any Partner and/or its Affiliates, but

including Additional Interest on the Bond Loan and repayment of the Disposition Loan and the HOME Loan) and the expenses of liquidation;

ii. To establishing any reserves that the General Partner or liquidator, in accordance with sound business judgment, deems reasonably necessary for any contingent or unforeseen liabilities or obligations of the Partnership, which reserves may be paid over to an escrow agent to be held by such agent for the purpose of (A) distributing such reserves in payment of the aforementioned contingencies, and (B) upon the expiration of such period as the General Partner or such liquidator may deem advisable, distributing the balance thereof in the manner provided in this Section 12.2;

iii. (i) To the Limited Partner to pay any outstanding Credit Deficiencies (including, without limitation, amounts owed due to a Change in Law), and any loans or other advances made by the Limited Partner;

(ii) To pay any outstanding and unpaid Asset Management Fees;

iv. To the General Partner or its applicable Affiliate, or the Special Limited Partner or its applicable Affiliate, first the amount of any then unpaid Development Fee (and interest thereon) and thereafter in the amount of any outstanding Development Advance, Operating Deficit Advance, Contractor Fee Advance, Credit Adjuster Advance, Development Fee Advance or other loans payable to the General Partner or Affiliates or the Special Limited Partner or Affiliates;

v. In the event the General Partner has arranged the sale of the Project to an unrelated third party, the Sale Administration Fee to the applicable party; and

vi. To the Partners in accordance with positive Capital Account balances. It is the intent of the Partners that, upon liquidation of the Partnership, any liquidation proceeds available for distribution to the Partners be distributed in accordance with the Partners' respective positive Capital Account balances. The Partners believe that distributions under Section 8.2 will effectuate such intent. In the event that, upon liquidation, there would otherwise be any conflict between a distribution pursuant to the Partners' respective positive Capital Account balances and the intent of the Partners with respect to distribution of proceeds as provided in Section 8.2, the Liquidator shall, notwithstanding the provisions of Article VII, allocate the Partnership's gains, profits and losses in a manner that will, as nearly as possible, cause the distribution of liquidation proceeds to the Partners to be in accordance both with the Partners' economic expectations as set forth in Section 8.2 and their respective Capital Account balances (after all allocations required by Article VII have been made). If the Partnership's gains, profits and losses are insufficient to cause the Partners' Capital Accounts to be in such amounts as will permit liquidation proceeds to be distributed both in accordance with the Partners' respective positive Capital Account balances and Section 8.2, then liquidation

proceeds shall be distributed in accordance with the Partners' respective positive Capital Account balances after the allocations described herein have been made.

(b) If any assets of the Partnership are to be distributed in kind, they shall be distributed on the basis of their fair market value, and any Partner entitled to any interest in such assets shall receive it as a tenant-in-common with all other Partners so entitled. If assets are to be distributed in kind, the Partners' Capital Accounts shall be appropriately adjusted before any such distribution to reflect the increases or decreases to the Capital Accounts that would have occurred if the property distributed in kind had been sold for its fair market value by the Partnership prior to distribution.

(c) If, upon the dissolution and liquidation of the Partnership or upon the liquidation of the General Partner's Interest (whether or not in connection with the liquidation of the Partnership), the General Partner has a negative balance in its Capital Account (as determined after taking into account Capital Account adjustments pursuant to Section 7.5 as well as adjustments for the Partnership Fiscal Year during which the liquidation of the General Partner's Interest occurs, other than those for contributions made pursuant to this Section 12.2(c)), then the General Partner shall be required to contribute to the capital of the Partnership, by the end of the Fiscal Year of such liquidation (or, if later, within ninety (90) days of such liquidation), an amount equal to the lesser of: (i) such negative balance, or (ii) all allocations of loss and deduction to the General Partner pursuant to Sections 7.4(d) and 7.4(l) hereof plus the General Partner's Percentage Interest of the Net Losses of the Partnership for all Fiscal Years. Such contributions shall be receipts of the Partnership available for payment of operating expenses of the Partnership or distribution to the Partners, in accordance with the terms of this Agreement. If, upon liquidation of the Limited Partner's Interest (whether or not in connection with the liquidation of the Partnership), the Limited Partner has a negative balance in its Capital Account, the Limited Partner shall have no obligation to make any contribution to the capital of the Partnership and the negative balance of the Limited Partner's Capital Account shall not be considered a debt owed by the Limited Partner to the Partnership or any other Person for any reason whatsoever. The parties hereto agree that the Limited Partner shall have the right (exercisable in its sole discretion) at any time, upon giving written notice to the General Partner, to create a deficit restoration obligation and/or to extend the years in which it may be obligated to restore any deficit balance in its Capital Account.

(d) It is the intent of the Partners, that upon liquidation of the Partnership, any liquidation proceeds available for distribution to the Partners be distributed in accordance with the Partners' respective Capital Account balances. The Partners believe that distributions under Section 8.2 will effectuate such intent. In the event that, upon liquidation, there would otherwise be any conflict between a distribution pursuant to the Partners' respective positive Capital Account balances and the intent of the Partners with respect to distribution proceeds as provided in Section 8.2, the Liquidator shall, notwithstanding the provisions of Section 7.3,

7.4, and 8.1 (but after all of the allocations provided for in Section 7.4 shall have been made) allocate the Partnership's items of income, gain, loss and deduction and distribute Cash Flow in a manner that will, as nearly as possible, cause the distribution of liquidation proceeds to the Partners to be in accordance both with the Partners' economic expectations as set forth in Section 8.2 and their respective Capital Account balances. If the Partnership's items of income, gain, loss and deduction and Cash Flow distributions are insufficient to cause the Partners' Capital Accounts to be in such amounts as will permit liquidation proceeds to be distributed both in accordance with the Partners' respective positive Capital Account balances and Section 8.2, then liquidation proceeds shall be distributed in accordance with the Partners' respective positive Capital Account balances after the allocations described herein have been made.

### **12.3 Termination of the Partnership**

The Partnership shall terminate when all Partnership property shall have been disposed of (except for any liquid assets not so disposed of), and the net proceeds therefrom, as well as any other liquid assets of the Partnership, have been distributed to the Partners as provided in this Article XII and in accordance with the Act.

## **ARTICLE XIII**

### **ACCOUNTING AND REPORTS**

#### **13.1 Bank Accounts**

Except as otherwise specified to the contrary in this Agreement or as required pursuant to the Loan Documents, all funds of the Partnership shall be invested in the name of the Partnership in accounts held at United Fidelity Bank by the General Partner or Special Limited Partner, under such terms and conditions (including signatories) as the General Partner shall approve, provided that the General Partner shall be a signatory whether or not the Management Agent is also a signatory and whether or not it is an Affiliate of the General Partner, and provided further that such investments shall be limited to (a) U.S. Bank National Association or such other financial institutions as are acceptable to the Limited Partner and whose deposits are insured by an agency of the U.S. Government (such as the Federal Deposit Insurance Corporation) and where the instrument's or account's maturity does not exceed the lesser of one year or the time period within which the funds are anticipated to be needed by the Partnership; or (b) direct obligations of the U.S. Government (such as U.S. Treasury Bills) where the instrument's maturity does not exceed the lesser of one year or the time period within which the funds are anticipated to be needed by the Partnership or other investments subject to the Consent of the Limited Partner.

#### **13.2 Books of Account**

There shall be kept at the principal office of the Partnership true, correct, and complete books of account, maintained in accordance with generally accepted accounting principles, consistently applied, in which shall be entered fully and accurately each and every transaction of

the Partnership. For federal income tax and financial reporting purposes, the Partnership, the General Partner and the Special Limited Partner shall use the accrual method of accounting and the tax year of the Partnership shall be the Fiscal Year. Each Partner shall have access thereto to inspect and copy such books of account at all reasonable times upon reasonable advance notice. Any Partner shall further have the right to a private audit of the books and records of the Partnership, provided that such audit is made at the expense of the Partner desiring the same and is made at reasonable times during normal business hours after due Notice. The Partnership shall retain all books and records for the longest of the period required by applicable laws and regulations, Section 42 of the Code, the Project Documents and Loan Documents.

### **13.3 Reports**

The Limited Partner hereby directs that all of the reports set forth below be sent to the Limited Partner at the address set forth on Exhibit A-6 attached hereto or to another address as directed in writing by the Limited Partner. Unless expressly stated otherwise, the obligations of the Special Limited Partner under this Section 13.3 shall also be obligations of the General Partner.

(a) The General Partner shall cause to be prepared and delivered to the Limited Partner, when required, shall cause the Partnership to file with relevant governmental agencies, each of the documents set forth below. Time is of the essence respecting the requirements set forth herein. In addition, and not in limitation of Limited Partner's remedies under this Agreement, if the General Partner or Special Limited Partner shall fail to provide all or any of the requested documents or information to the Limited Partner within the required time, which failure continues for thirty (30) days after receipt of written request from the Limited Partner, the General Partner and the Special Limited Partner (from their own funds and not from the funds of the Partnership) shall pay to the Limited Partner the amount of Two Hundred Dollars (\$200) per day from the thirty-first (31<sup>st</sup>) day until all of the requested documents or information are delivered to the Limited Partner in compliance with the following schedule, provided however that the General Partner and Special Limited Partner shall have the right to obtain one thirty (30) day extension of such time period by written request made to Limited Partner:

i. Construction and Lease-up Progress. Simultaneously with delivery to lenders, the General Partner shall provide copies of all construction draws, with all applicable back up documentation. Upon commencement of lease up of Units, the General Partner shall provide within ten (10) days after the end of each calendar month a rent roll reflecting units leased as of the end of such month, rental rates payable under such leases, (ii) Partnership financial statements (income statement and balance sheet) and (iii) and such other information as the Limited Partner may request; provided, however, upon Stabilization and conversion of the First Mortgage Loan to the permanent phase, the General Partner shall thereafter provide the Limited Partner with financial statements and reports pursuant to the requirements set forth in Section 13.3(a)(4) in lieu of the monthly financial statements described herein.

ii. Full Initial Tenant Files and Subsequent Tenant Files. As requested by the Limited Partner, or its Compliance Manager, but no later than the end of the Lease-up Period, the General Partner shall provide all Credit Unit complete tenant files, including, without limitation, each tenant's income certification/certificate of resident eligibility, all sources used in verifying income and assets (including, but not limited to, third party verification, checking and savings accounts, pay stubs, verification of assets, etc.), a copy of the completed lease signed and dated for each Credit Unit, showing the start date of the lease. In all events, the tenant lease for each Credit Unit shall include a provision pursuant to which the Partnership may terminate such lease, without penalty, on not more than 30 days' prior written notice, in the event that the Limited Partner or its Compliance Manager, as the case may be, shall determine that the tenant(s) occupying such Credit Unit do not satisfy the applicable income limitations under Section 42(g) of the Code with respect to such Credit Unit. Thereafter, the General Partner shall provide Credit Unit tenant files and/or updated income and/or eligibility certificates as may be requested by the Limited Partner, or its Compliance Manager, from time to time. Further, prior to commencement of the Lease-up Period, the management plan, including, without limitation, the rental criteria and criteria respecting lease termination and eviction shall, upon the request of the Limited Partner, be submitted to the Limited Partner for its review, and each change in such management plan and criteria shall also be submitted to the Limited Partner for its review upon request, prior to instituting any such change.

iii. Annual Operating Budget. As requested by the Limited Partner (but in no event prior to the commencement of the Lease up Period), by no later than sixty (60) days prior to the beginning of the Fiscal Year which is the first full year of Project operations and annually thereafter, the General Partner shall prepare a proposed Annual Operating Budget which shall be submitted, in the form attached hereto as Exhibit I or in a format which provides a substantially similar level of detail to the Limited Partner, its asset manager (at the address set forth in Exhibit A-6 of this Agreement or to such other address as directed by the Limited Partner) for its review. The Limited Partner shall have thirty (30) days to notify the General Partner that it does not approve part or all of the proposed Annual Operating Budget and the reasons therefor, and in such event the General Partner, and the Limited Partner shall negotiate in good faith to reach agreement on a new Annual Operating Budget, provided that until such issues are resolved the current year's Annual Operating Budget shall be used for the following year, increased annually by the percentage increase in the Consumer Price Index for All Urban Consumers, U.S. City Average for All Items (1982-84 = 100), as published by the Bureau of Labor Statistics of the U.S. Department of Labor. If during the term of this Agreement said Index shall not be published, such other available index as shall be designated by the Limited Partner which is comparable in effect to that Index presently published by the Bureau of Labor Statistics shall be used in lieu thereof. The Annual Operating Budget shall specify all amounts required to be expended from the Project Operating Reserve and/or Replacement Reserve, if any, and shall list all work to be effected from the amounts removed from said Operating Reserve and/or Replacement Reserve, as appropriate.

iv. Quarterly Financial Statements of the Partnership and Regulatory Reporting, Filings and Notice. Upon commencement of the Stabilization Period, as soon as available and in any event not later than thirty (30) days after the end of each quarter of each year, unaudited financial statements of the Partnership, in the form attached hereto as Exhibit I and Exhibit J or in a substantially similar form, including (i) a balance sheet as of the end of such quarter, income statement for such quarter, and copies of the rent rolls for the Project indicating the Unit number, tenant name, concessions, rent, family size, family income and area median income for each tenant and (ii) an unaudited comparison of the actual results of the operations of the Partnership during the applicable quarter with the budget for such quarter pursuant to the Annual Operating Budget under Section 13.3(a)(3) of this Agreement. Further, at the request of the Limited Partner, whether prior to or after commencement of the Stabilization Period: (i) copies of any filings made by the Partnership during the previous quarter with respect to the Project's compliance with any income and rent regulatory restrictions imposed on the Project; (ii) copies of any reports, notices and/or other communications received by the Partnership from the State HCA or any other governmental authority regarding the Project's compliance with any income and rent restrictions, applicable program or protected class, or any physical inspection of property and any responses to the same; (iii) any other information regarding the Partnership and its operations during the prior fiscal quarter reasonably deemed by the General Partner to be material to the Limited Partner, for example, any lawsuits involving the Partnership or its Property; (iv) if a mixed-income project, evidence of compliance with the next available unit rules under Section 42 of the Code, and such related information respecting the operations of such project as may be deemed by the General Partner to be material to the Limited Partner; and (v) any other information regarding the Partnership and its operations during the prior fiscal quarter reasonably deemed by the Limited Partner to be material to the Limited Partners, including, without limitation, evidence of insurance coverage, all certified by the General Partner as presenting fairly the condition of the Partnership at the date of such statements.

v. Annual Audited Financial Statements of the Partnership. Commencing with the Fiscal Year in which income from Project operations is first generated, as soon as available and in any event not later than ninety (90) days after the end of such Fiscal Year, the audited financial statements of the Partnership, as of the end of such year (including the results for the current and immediately preceding year), including balance sheet, statement of changes in Partners' capital accounts, statement of sources and uses of funds, statements summarizing the amount of Credits, and depreciation, annual cash flow calculation pursuant to Section 8.1, number of tenants served and the cost of such services, detailed statement of any transactions between the Partnership and the General Partner or its Affiliates and/or the Special Limited Partner or its Affiliates, and of fees, commissions, compensation and other benefits paid, or accrued, to the General Partner or its Affiliates and/or the Special Limited Partner or its Affiliates for the prior fiscal year of the Partnership, showing the amount paid or accrued to each recipient and a general indication of the services



performed, with the report of the Accountants thereon stating that an audit of such financial statements has been made in accordance with generally accepted auditing standards, stating the opinion of the Accountants in respect of the financial statements and the accounting principles and practices reflected therein and as to the consistency of the application of the accounting principles, and identifying any matters to which the Accountants take exception, and stating, to the extent practicable, the effect of each such exception of such financial statements.

Further, as of the audit date the General Partner will, at the option of the Limited Partner, send a certificate from an officer of the General Partner in the form attached hereto as Exhibit N, to the effect that, as of the end of the preceding year, (A) all required payments of Project loan indebtedness, real estate taxes and insurance on the Project have been made (together with copies of paid receipts for such taxes and insurance) and (B) if applicable, to the best knowledge of such officer, no material default has occurred and is continuing with respect to any mortgage financing relating to the Project or, to the extent that such officer is unable to certify to any of the foregoing, stating the reason for such inability and the action, if any, taken or proposed to be taken by the General Partner relating thereto, accompanied by proof of payment of property taxes and insurance for such fiscal year, and, upon request of Limited Partner, confirmation from the applicable Project mortgage lenders of no payment default or other default of which such mortgage lender is aware under such mortgage loans.

In the case of audited financial statements, each such statement shall be prepared in accordance with generally accepted accounting principles applied on a consistent basis, and in the case of unaudited financial statements, each such statement shall be prepared on the basis of the accrual method of accounting.

vi. Annual Reviewed Financial Statements of the General Partner, the Special Limited Partner and the Guarantor. As soon as available and in any event not later than one-hundred eighty (180) days after the end of the General Partner, the Special Limited Partner and the Guarantor's fiscal year, the internally prepared financial statements of General Partner, the Special Limited Partner and the Guarantor as of the end of each such year (including the results for the current and immediately preceding year), including the balance sheets, related statements of income and retained earnings, and statement of changes in financial positions for such year, certified by an officer or the individual, as applicable, that the same are true, correct and complete and to the effect that such statements present fairly the financial position at the end of such year and the results of their operations and changes in their financial position for the year then ended, in conformity with generally accepted accounting principles applied on a consistent basis. Further, upon the request of the Limited Partner, the General Partner shall cause the Guarantor to deliver supporting documentation in connection therewith.

vii. Annual Partnership Return. Commencing in the Fiscal Year in which the Limited Partner's First Capital Installment is funded hereunder, as soon as available and in any event in draft form not later than sixty (60) days after the end of such Fiscal Year and in final form not later than seventy-five (75) days after

the end of such Fiscal Year, the General Partner shall provide all information necessary for the preparation of the Limited Partner's federal income tax return for each year in respect of income, gains, losses, deductions, or credits and the allocation thereof to each Partner, including a Form K-1 (or other comparable form subsequently required by the IRS) and a copy of the federal "*Partnership Return*" and any state or local Partnership tax return required to be filed by the Partnership, as well as an annual capital account calculation, 704(b) calculation and analysis (and, at the Limited Partner's request, if losses are in excess of the projected losses in the Projections, proforma 704(b) analysis for the remainder of the Compliance Period), and minimum gain analysis prepared by the Accountants, Accountant-prepared analysis of Partnership debt (and debt worksheet), which would include the extent to which each Partner bears the economic risk of loss under Section 752 of the Code for such debt, and any other Accountant-prepared workpapers in connection with the preparation of the tax return as may be requested by the Limited Partner. The General Partner shall not file such Partnership return without providing the Limited Partner at least thirty (30) days to review and approve such return. To the extent that, for any reason, the General Partner has not provided such information by June 1 of any Fiscal Year, the Limited Partner may, at any time thereafter, by written notice to the General Partner, require the General Partner to replace the Accountants with accountants designated by the Limited Partner (or otherwise acceptable to the Limited Partner, at its option), and to the extent that such late receipt of information results in the Credits for such Fiscal Year not being used by the Limited Partner because it elects not to amend its tax returns for such Year, then such unused Credits shall constitute additional Credit Deficiency payable hereunder.

viii. Annual Guarantor Return. At the request of the Limited Partner, the General Partner shall deliver to the Limited Partner annually a copy of the federal tax returns of each Guarantor within sixty (60) days after each such return has been filed.

ix. Periodic Reports Requiring Limited Partner Approval. Material periodic reports required to be provided to the Limited Partner by any federal, state, or local government agency having jurisdiction over the Project, or the Partnership.

x. Notice of Defaults, IRS Proceedings. Immediately upon receipt of (A) notice of any default under any Loan or financial obligation of the Partnership, (B) notice of any IRS proceeding involving the Partnership, or (C) any payment or draw made under any operating deficit guaranty, construction completion guaranty, performance bond or letter of credit, and any other significant developments affecting the Partnership, its business or assets.

xi. Estimate of Taxable Income, Loss and Credits. At the request of the Limited Partner, an estimate of the Partnership's taxable income or loss and applicable Credits for such year and each Partner's share thereof.

xii. Draws on Bonds; Calls on Guaranties. Notice of any draw, call or demand for payment from any third party respecting any contractor payment or performance bonds or construction completion guarantee and notice of any proposed General Partner recommendation respecting action to be taken by the Partnership respecting draw, call or demand for payment respecting any such bonds or guaranties (which General Partner's recommendation shall require the Consent of the Limited Partner).

xiii. HCA Information. Within ten (10) days of filing or receipt, copies of all annual reports or other filings (including, without limitation, the Extended Use Agreement and the Annual Owner's Certificate of Continuing Compliance) submitted to the HCA and copies of all material correspondence with the HCA with respect to the Partnership or the Project.

xiv. Lender Information. Thirty (30) days prior to submission to any Project mortgage lender of all material correspondence, if any, for purposes of calculating available cash flow in connection with any Project mortgage loan, the General Partner shall submit the same to the Limited Partner for review.

xv. Cash Flow. Prior to or concurrent with any allocation or distribution of Cash Flow, the General Partner shall submit to the Limited Partner for approval which approval shall not be unreasonably withheld, an accounting of available Cash Flow and the proposed allocation or distribution, on at least an annual basis, in a form acceptable to Limited Partner.

xvi. Taxes, Insurance and Loan Payments. At the request of the Limited Partner, annually, and more frequently, the General Partner shall provide evidence that all Loan payments and tax payments with respect to the Project are current, and documentation evidencing same. Annually, and more frequently, if requested by the Limited Partner, the General Partner shall provide evidence that all insurance payments with respect to the Project are current, and documentation evidencing same.

xvii. Reserves. Annually, and more frequently, if requested by the Limited Partner, the General Partner shall provide bank statements documenting the then current balances in the Reserves.

xviii. Nonrecourse Liabilities. As soon as possible, notice of any contemplated repayment or guarantee of any nonrecourse obligation of the Partnership or any other conversion of such nonrecourse obligation to a recourse obligation.

xix. Evidence of Cash Flow Mortgage Payments. At the request of the Limited Partner, not later than sixty (60) days after the end of each year, written evidence acceptable to the Limited Partner of full and timely payment of the amounts then due for prior Fiscal Year, under all Project Mortgage debt payable solely from Project Cash Flow.

xx. Information Requested by the Limited Partner. Such other information regarding the state of the business, financial condition and affairs of the Partnership, as the Limited Partner, from time to time, may reasonably request, including, but not limited to, a certification by the General Partner that (A) there is no default under any provision of the Loan or Project Documents or this Agreement, or if there is any default, a description thereof, and (B) there is no building, health or fire code violation or, to the best of its knowledge, similar violation of a governmental law, ordinance or regulation against the Project or, if there is such violation, a description thereof.

xxi. Limited Partner Waiver Right. The Limited Partner reserves the right, in its sole discretion, to waive the obligation of the General Partner and/or Special Limited Partner to deliver certain reports or other information required herein for one or more reporting periods. No single, one-time or partial waiver of any rights under the Agreement shall constitute a waiver of such right with respect to any other reporting requirements or for any other reporting periods other than for the reporting requirement and/or period which is specified on the waiver.

(b) The General Partner and Special Limited Partner shall promptly respond to all reasonable requests for information made by the Limited Partner.

(c) The General Partner shall deliver to the Limited Partner from time to time, and within ten (10) days after request therefor, all such further statements and information as the Limited Partner may request in order to enable the Limited Partner to determine or verify the amounts of all payments that the General Partner shall be required to make to the Partners and the amounts of Credits, and all such statements and information needed by the Limited Partner in connection with reports and forms required to be filed by the Limited Partner pursuant to federal or state securities law. Further, upon the failure of the Project to perform in accordance with the Projections, the frequency of the required reporting under this Section 13.3 may be increased, from time to time, upon written notice from the Limited Partner.

(d) Each party hereby agrees and acknowledges that the Limited Partner may share with any of its Affiliates any information provided to the Limited Partner relating to the Partnership, the Project, the General Partner, the Special Limited Partner or the Guarantor (or any Affiliates thereof). The Limited Partner is also authorized to disclose the terms and nature of its investment to its Affiliates, advisors, auditors, attorneys, accountants and regulators and as required by statute, regulation, accounting guidelines or the order of any court or administrative agency or as otherwise required by law.

#### **13.4 Tax Matters Partner**

(a) The Tax Matters Partner shall have and perform all of the duties required under the Code, including the following duties:

i. Furnish the name, address, profits interest, and taxpayer identification number of each Partner to the IRS; and

ii. Within five (5) calendar days after the receipt of any correspondence or communication relating to the Partnership or a Partner from the IRS, the Tax Matters Partner shall forward to each Partner a photocopy of all such correspondence or communication(s). The Tax Matters Partner shall, within five (5) calendar days thereafter, advise each Partner in writing of the substance and form of any conversation or communication held with any representative of the IRS.

(b) The Tax Matters Partner shall not without the Consent of the Limited Partner:

i. Extend the statute of limitations for assessing or computing any tax liability against the Partnership (or the amount or character of any Partnership tax items);

ii. Settle any audit with the IRS concerning the adjustment or readjustment of any Partnership tax item(s);

iii. File a request for an administrative adjustment with the IRS at any time or file a petition for judicial review with respect to any such request;

iv. Initiate or settle any judicial review or action concerning the amount or character of any Partnership tax item(s);

v. Intervene in any action brought by any other Partner for judicial review of a final adjustment;

vi. Engage an accounting firm or counsel to represent the Partnership before the IRS; or

vii. Take any other action not expressly permitted by this Section 13.4 on behalf of the Partners or the Partnership in connection with any administrative or judicial tax proceeding.

(c) The Tax Matters Partner shall prepare or cause to be prepared all tax and information returns required of the Partnership or considered necessary by the General Partner (including, but not limited to, federal, state, and local income tax and information returns and any amended returns), which returns shall be reviewed in advance by the Accountants. The Tax Matters Partner shall, after consultation with the Limited Partner, be responsible for making all elections required or allowed under the Code or the Treasury Regulations including, but not limited to, elections pursuant to Sections 42, 47, 168, 709, and 754 of the Code, and all elections required or allowed under State or local law; provided, however, that notwithstanding the foregoing, any elections other than those elections already reflected in the Projections shall require the mutual consent of the General Partner, the Special Limited Partner and the Limited Partner. To the fullest extent permitted under applicable law, no election shall be made which would create a benefit to the General Partner and/or the Special Limited Partner and a detriment to the Limited Partner. The Tax Matters Partner shall not delegate its duties (or any part thereof) without the Consent of the Limited Partner.

(d) In the event of any Partnership-level proceeding instituted by the IRS pursuant to Sections 6221 through 6233 of the Code, the Tax Matters Partner shall consult with the Limited Partner regarding the nature and content of all action and defense to be taken by the Partnership in response to such proceeding and shall, upon request of the Limited Partner, permit the Limited Partner to include its attorney in the power of attorney (Form 2848) for the Partnership for any Fiscal Years under a tax audit or administrative appeals process. The Tax Matters Partner also shall consult with the Limited Partner regarding the nature and content of any proceeding pursuant to Sections 6221 through 6233 of the Code instituted by or on behalf of the Partnership (including the decision to institute proceedings, whether administrative or judicial, and whether in response to a previous IRS proceeding against the Partnership or otherwise).

(e) Notwithstanding anything to the contrary contained herein, the General Partner shall serve as the “partnership representative” under Section 6223 of the Code (as in effect pursuant to the Bipartisan Budget Act of 2015, Pub L. No. 114-74 (the “Bipartisan Budget Act”), and the General Partner shall take any and all action required under the Code or Treasury Regulations, as in effect from time to time, to designate itself the “partnership representative.” To the extent permitted by the Code and Treasury Regulations, the General Partner, in its capacity as “partnership representative” shall be bound by the obligations and restrictions imposed on the Tax Matters Partner pursuant to this Section 13.4(e). The General Partner shall cooperate with the Limited Partner in good faith to amend this Agreement if the Limited Partner determines that an amendment is required to maintain the intent of the parties with respect to the obligations and limitations of the Tax Matters Partner. Upon the Limited Partner’s written request, the Tax Matters Partner shall make the election under Section 6221 of the Code, if available, and the election under Section 6226 of the Code. Neither the Tax Matters Partner nor the “partnership representative” shall have the authority to make elections with respect to the revised partnership audit rules or any Treasury Regulations thereunder, including, without limited to, Section 6221 of the Code, if available, or the election under Section 6226 of the Code, without the prior Consent of the Limited Partner. The rights and obligations of all of the Partners under this Section 13.4(e) shall survive any sale, exchange, liquidation, retirement or other disposition of such Partners’ Interests.

## ARTICLE XIV

### SALE; RIGHT OF FIRST REFUSAL

#### 14.1 Sale of HACC Interest

(a) Provided that the General Partner is not in default hereunder, after the end of the initial fifteen (15) year Compliance Period, the General Partner shall have the option (the "*HACC Buyout Option*"), exercisable upon at least thirty (30) days and not more than ninety (90) days prior written notice to the Special Limited Partner, to purchase the HACC Interest for a purchase price (the "*HACC Buyout Price*") equal to the Fair Market Value of the HACC Interest, subject to continued use of the Project for low-income housing for the Extended Use Period, as of the date of the closing of the HACC Interest Buyout. The General Partner's notice to the Special Limited Partner (the "*HACC Buyout Notice*") shall include (1) an appraisal of all of the assets of the Partnership subject to the low-income use described above (the "*Appraised Value*") by an independent, MAI appraiser selected by the General Partner, having not less than five (5) years experience in appraising similar properties in the city where the Project is situated (an "*MAI Appraiser*"), and (2) a calculation by the Accountants of (a) the value of the HACC Interest based on the Special Limited Partner's and or Housing Authority GP Member's share of Sales Proceeds, assuming a sale of the Partnership Property at the Appraised Value and (b) the HACC Buyout Price, all calculated as of the closing date proposed by the General Partner in its HACC Buyout Notice. The Special Limited Partner shall have thirty (30) days after receipt of the HACC Buyout Notice in which either to accept the HACC Buyout Price set forth in the HACC Buyout Notice or to notify the General Partner of its desire to appoint a second appraiser to evaluate the HACC Buyout Price. In the event that the Special Limited Partner fails to notify the General Partner within the aforesaid thirty (30) day period that it desires to appoint a second appraiser, it shall be deemed to have accepted the HACC Buyout Price, in which event the HACC Buyout Price shall be the price calculated by the Accountants and set forth in the HACC Buyout Notice, and the General Partner shall purchase the HACC Interest on the date specified in the HACC Buyout Notice.

(b) In the event that the Special Limited Partner notifies the General Partner, as applicable, of its election to appoint a second appraiser, the Special Limited Partner shall appoint an MAI Appraiser within thirty (30) days after notification of the General Partner of such election, and the two appraisers shall together appoint a third MAI Appraiser within fifteen (15) days after the appointment of the second appraiser. The three appraisers so appointed shall each determine the Appraised Value of the assets of the Partnership within thirty (30) days after the appointment of the third appraiser, and the Appraised Value of such assets for the purpose of determining the HACC Buyout Price shall be the average of the three appraisers' determinations; provided, that if one or more of the appraisers' determinations is more than ten percent (10%) higher or lower than the average of the three determinations, the determination(s) of such appraiser(s)

shall be disregarded in determining the Appraised Value of the assets, and provided, further, that if none of the appraisers' determinations differs from the average of the three determinations by ten percent (10%) or less, the Appraised Value shall be the middle of the three determinations. The Accountants shall determine the value of the HACC Interest and the HACC Buyout Price in accordance with Section 14.1(a), within fifteen (15) days after the last of the three appraisers complete their determinations, and the closing of the sale of the HACC Interest to the General Partner shall occur within sixty (60) days thereafter. The entire HACC Buyout Price shall be paid to the Special Limited Partner and/or Housing Authority GP Member at the closing in cash or immediately available funds acceptable to the Special Limited Partner and/or Housing Authority GP Member. The Special Limited Partner shall be responsible for the costs of the second appraiser and one-half (1/2) of the costs of the third appraiser, if any. The Partnership shall pay all attorneys' fees incurred in connection with the closing. All other costs of the HACC Buyout, including the costs of the initial appraiser appointed by the General Partner the Accountants' fees and any filing fees, shall be paid by the General Partner as the case may be.

## 14.2 Buyout Option

(a) Provided that the General Partner is not in default hereunder, for a period of twelve (12) months following the end of the initial fifteen (15) year Compliance Period, the General Partner shall have the option, exercisable upon at least thirty (30) days and not more than ninety (90) days prior written notice to the Limited Partner, to purchase either (i) the Project (the "***Project Buyout Option***") or (ii) the Limited Partner's entire Interest in the Partnership (the "***Interest Buyout Option***")

(i) The purchase price of the Project (the "***Project Buyout Price***") shall be the greater of (A) the fair market value of the Project, as of the date of the closing of the Buyout at the Appraised Value (as defined below) or (B) all Credit Deficiencies, fees, loans and other amounts owed to the Limited Partner under this Agreement and all taxes (other than federal, state or local income taxes) imposed on the Limited Partner in connection with the sale. The Project Buyout Price may be payable by the General Partner by taking the Project subject to the existing debt (subject to approval of existing Lenders) and if the Project Buyout Price exceeds such debt, or if one or more Lenders did not approve assumption of such debt, then the remaining amount of the Project Buyout Price shall be payable in cash or other immediately available funds.

(ii) The purchase price of the Limited Partner's Interest (the "***Interest Buyout Price***") shall be the greater of (A) the fair market value of the Limited Partner's Interest as of the date of the closing of the Interest Buyout Option, assuming a sale of the Project at the Appraised Value (as defined below) on such date or (B) all Credit Deficiencies, fees, loans, and other amounts owed to the Limited Partner under this Agreement and all taxes (other than federal, state or local income taxes) imposed on the



Limited Partner in connection with the sale. The Interest Buyout Price shall be payable to the Limited Partner at closing in cash or immediately available funds.

(b) The General Partner's notice of exercise of a specified option to the Limited Partner (the "**Buyout Notice**") shall include (1) an appraisal of the Project, subject to all applicable land use restriction agreements to which the Project is subject, including, without limitation, continued low-income occupancy restrictions thereunder (the "**Appraised Value**") by an independent, MAI appraiser selected by the Special Limited General Partner, having not less than five (5) years experience in appraising similar properties in the city where the Project is situated (an "**MAI Appraiser**"), and (2) a calculation by the Accountants of (i) in the case of the Interest Buyout Option, the fair market value of the Limited Partner's Interest, assuming a sale of the Project at the Appraised Value and (ii) the applicable Buyout Price, all calculated as of the closing date proposed by the General Partner in its Buyout Notice.

(c) The Limited Partner shall have thirty (30) days after receipt of the Buyout Notice in which either to accept the applicable Buyout Price set forth in the Buyout Notice or to notify the General Partner of its desire to appoint a second appraiser to evaluate the applicable Buyout Price. In the event that the Limited Partner fails to notify the General Partner within the aforesaid thirty (30) day period that it desires to appoint a second appraiser, it shall be deemed to have accepted such Buyout Price, in which event such Buyout Price shall be the price calculated by the Accountants or the Appraiser, as applicable, and set forth in the Buyout Notice, and the General Partner shall purchase the Interest of the Limited Partner or the Project, as applicable, on the date specified in the Buyout Notice.

(d) In the event that the Limited Partner notifies the General Partner, as applicable, of its election to appoint a second appraiser, the Limited Partner shall appoint an MAI Appraiser within thirty (30) days after notification of the General Partner of such election, and the two appraisers shall together appoint a third MAI Appraiser within fifteen (15) days after the appointment of the second appraiser. The three appraisers so appointed shall each determine the Appraised Value of the Project within thirty (30) days after the appointment of the third appraiser, and the Appraised Value of the Project for the purpose of determining the applicable Buyout Price shall be the average of the three appraisers' determinations; provided, that if one or more of the appraisers' determinations is more than ten percent (10%) higher or lower than the average of the three determinations, the determination(s) of such appraiser(s) shall be disregarded in determining the Appraised Value of the Project, and provided, further, that if none of the appraisers' determinations differs from the average of the three determinations by ten percent (10%) or less, the Appraised Value shall be the middle of the three determinations. The Accountants shall determine the value of the Limited Partner's Interest or its share of the Project (in either case, the "**Buyout Price**") and the applicable Buyout Price in accordance with Section 14.2(a), within fifteen (15) days after the last of the three appraisers complete their determinations, and the closing of the sale of the Limited Partner's Interest to the General Partner shall occur within sixty (60) days thereafter. The Limited Partner shall be responsible for the costs of the second appraiser

and one-half (½) of the costs of the third appraiser, if any. The Partnership shall pay all attorneys' fees incurred in connection with the closing. All other costs of the Buyout, including the costs of the appraiser appointed by the General Partner, the Accountants' fees and any filing fees, shall be paid by the General Partner, as the case may be.

(e) The Limited Partner shall have the right, in connection with any sale pursuant to Section 14.2, to require such indemnities, releases and guarantees (including continuation and ratification of the Credit Deficiency guarantees of the General Partner, and Guarantors) as it deems necessary.

### **14.3 Reserved**

### **14.4 Limited Partner Put**

At all times after the end of the Credit Period, the Limited Partner shall have the right to put its entire Interest to the General Partner (or its designee) for a price equal to the sum of One Thousand Dollars (\$1,000.00). Such transfer shall be made pursuant to an assignment and assumption agreement reasonably acceptable to the Limited Partner (which will address such matters as release and indemnity of the Limited Partner from and after the effective date of such assignment and assumption and, if during the Compliance Period, continuation and ratification of the Credit Deficiency guarantees of the General Partner and Guarantors, other than respecting Credit Deficiencies arising from such Limited Partner transfer).

## **ARTICLE XV**

### **MISCELLANEOUS PROVISIONS**

#### **15.1 Amendments to Agreement**

This Agreement can only be amended by instrument in writing signed by all Partners hereto, except as otherwise expressly provided in this Agreement.

#### **15.2 Notices**

All Notices to be given under this Agreement shall be sent to the Persons shown on Exhibit A-6 at the addresses for such Persons set forth on Exhibit A-6; provided, that any Person may change its Notice address or attention by providing Notice thereof to all other Partners.

#### **15.3 Meetings of the Partnership**

Meetings of the Partnership may be called by the General Partner, the Special Limited Partner or by the Limited Partner for any matters upon which the Partners may vote, as set forth in this Agreement. The calling of a meeting shall be made:

(a) By the General Partner, which shall give Notice to the Limited Partner and the Special Limited Partner, which Notice shall include (i) a statement of the purposes of the meeting, and (ii) the date of the meeting which shall be a

date no fewer than fifteen (15) days and no more than thirty (30) days after the date of the Notice;

(b) By the Special Limited Partner, which shall give Notice to the General Partner and the Limited Partner, which Notice shall include a statement of the purposes of the meeting. No more than fifteen (15) days after receipt of such Notice, the General Partner shall provide Notice of the meeting to the Limited Partner in accordance with Section 15.3(a).

(c) By the Limited Partner, which shall give Notice to the General Partner and Special Limited Partner, which Notice shall include a statement of the purposes of the meeting. No more than fifteen (15) days after receipt of such Notice, the General Partner and Special Limited Partner shall provide Notice of the meeting to the Limited Partner in accordance with Section 15.3(a).

#### **15.4 Reserved**

#### **15.5 Survival of Representations**

All representations, warranties, and indemnifications contained herein shall survive the dissolution and final liquidation of the Partnership.

#### **15.6 Entire Agreement**

This Agreement, including without limitation, all Exhibits attached hereto and incorporated herein by this reference, contains the entire understanding between and among the parties and supersedes any prior understandings and agreements between and among them respecting the subject matter of this Agreement.

#### **15.7 Applicable Law**

It is the intention of the parties hereto that all questions with respect to the construction, enforcement, and interpretation of this Agreement and the rights and liabilities of the parties hereto shall be determined in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws.

#### **15.8 Severability**

This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable statutes, laws, ordinances, rules, and regulations. If any provision of this Agreement or the application thereof to any Person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law. In the event that any provision of this Agreement or the application thereof shall be invalid or unenforceable, the Partners agree to negotiate (on a reasonable basis) a substitute valid or enforceable provision providing for substantially the same effect as the invalid or unenforceable provision.

### **15.9 Binding Effect**

When entered into by the parties hereto, this Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective spouses, heirs, executors and administrators, personal and legal representatives, successors and assigns.

### **15.10 Counterparts**

This Agreement and any amendments hereto may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

### **15.11 Successor Statutes and Agencies**

Any reference contained in this Agreement to specific statutory or regulatory provisions or to specific governmental agencies or entities shall include any successor statute or regulation, or agency or entity, as the case may be.

### **15.12 No Implied Waiver**

No failure on the part of any Partner to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or excuse shall be in writing and signed by the party claimed to have so waived or excused.

### **15.13 Attorney's Fees**

In the event of litigation and/or upon a Final Determination, the prevailing party shall be entitled to receive its reasonable attorney's fees and expenses.

### **15.14 Waiver of Jury Trial**

(a) Each of the parties hereto hereby knowingly, voluntarily and intentionally, after opportunity for consultation with independent counsel, waives its right to trial by jury in any action or proceeding to enforce or defend any rights or obligations (i) under this Agreement, (ii) arising from the financial relationship between the parties existing in connection with this Agreement or any loan document or (iii) arising from any course of dealing, course of conduct, statement (verbal or written) or action of the parties in connection with such financial relationship; (b) no party hereto will seek to consolidate any such action in which a jury trial has been waived with any other action in which a jury trial has not been or cannot be waived; (c) the provisions of this Section have been fully negotiated by the parties hereto, and these provisions shall be subject to no exceptions; (d) no party hereto has in any way agreed with or represented to any other party that the provisions of this Section will not be fully enforced in all instances; and (e) this Section is a material inducement for the Limited Partner to enter into this Agreement.

### **15.15 Limited Partner Right of First Offer**

If a future phase of the Project that will constitute a family affordable housing development eligible for Credits is contemplated by the General Partner or any Affiliate, the General Partner will cause the Limited Partner to be granted a right of first offer to purchase the Credits on any such future phase development. The General Partner shall provide the Limited Partner with written notice of such future phase and the Limited Partner shall have thirty (30) days to submit its offer to the General Partner or its Affiliates, as applicable, in writing. If the Limited Partner's proposal is not accepted, the Limited Partner shall be granted a right of first refusal to purchase the Credits on such future phase on terms and conditions comparable to a written offer to purchase the Credits received by the General Partner or its Affiliate. A copy of any such written offer shall be provided to the Limited Partner by the General Partner promptly upon receipt, and the Limited Partner shall have ten (10) business days to respond. Notwithstanding the foregoing, the Limited Partner shall not be granted a right of first offer to purchase the Credits if an affiliate of the General Partner purchases the Credits in a future phase of the project.

## **ARTICLE XVI**

### **HUD PROVISIONS**

Notwithstanding any clause of provision in this Agreement or the Certificate to the contrary and so long as HUD or a successor or assign of HUD is the insurer or holder of a loan to the Partnership secured by the First Mortgage Loan on the Project the following provisions shall apply:

#### **16.1 Conflicting Terms with Loan Documents**

If any of the provisions of the organizational documents conflict with the terms of any HUD Loan Documents, the provisions of the HUD Loan Documents shall control.

#### **16.2 Consent of HUD**

No provision required by HUD to be inserted into this the organizational documents may be amended without HUD's prior written approval. Additionally, if there is a conflict between any HUD-required provisions inserted into this Agreement and any other provision of this Agreement, the terms of the HUD-required provisions will govern; and if there is a conflict between any of the provisions in the Certificate and any HUD-required provisions of this Agreement, the HUD-required provisions will govern.

#### **16.3 Amendments that Require HUD Consent**

None of the following will have any force or effect without the prior written consent of HUD:

- (a) Any amendment that modifies the term of the Partnership;

(b) Any amendment that triggers application of the HUD previous participation certification requirements (as set forth in Form HUD-2350, Previous Participation Certification, or 24 C.F.R. § 200.210, et seq.);

(c) Any amendment that in any way affects the HUD Loan Documents;

(d) Any amendment that would authorize any member, Partner, owner, officer or director, other than the one previously authorized by HUD, to bind the Partnership for all matters concerning the Project which require HUD's consent or approval;

(e) A change that is subject to the HUD TPA requirements contained in Chapter 13 of HUD Handbook 4350.1 REV-1; or

(f) Any change in a guarantor of any obligation to HUD (including those obligations arising from violations of the HUD Regulatory Agreement).

#### **16.4 [Reserved]**

#### **16.5 Authorization**

The Partnership is authorized to execute the First Mortgage Loan documents, including but not limited to the HUD Loan Documents, in order to secure a loan to be insured by HUD and other documents required by HUD or the Secretary of HUD (the "Secretary") in connection with the First Mortgage Loan.

#### **16.6 Incoming Partners**

Any incoming partner of the Partnership must, as a condition of receiving an interest in the Partnership, agree to be bound by the First Mortgage Loan documents, including but not limited to the HUD Loan Documents, and all other documents required in connection with the First Mortgage Loan to the same extent and on the same terms as the other Partners.

#### **16.7 HUD Restrictions on Dissolution**

Upon any dissolution of the Partnership, no title or right to possession and control of the Project, and no right to collect the rents from the Project, shall pass to any person or entity that is not bound by the HUD Regulatory Agreement in a manner satisfactory to HUD.

#### **16.8 Binding on Principals**

The key principals of the Partnership identified in the HUD Regulatory Agreement are liable in their individual capacities to HUD to the extent set forth in the HUD Regulatory Agreement.

#### **16.9 Dissolution**

The Partnership shall not be voluntarily dissolved or converted to another form of entity without the prior written consent of HUD.

### **16.10 HUD Representative**

The Partnership has designated Phillip J. Stoffregen, executive vice president of the 49.9% member and manager for the General Partner, as its official representative (“HUD Representative”) for all matters concerning the Project which require HUD consent or approval. The signature of the HUD Representative will bind the Partnership in all such matters. The Partnership may from time to time appoint a new representative to perform this function, but within three (3) business days of doing so, will provide HUD with written notification of the name, address and telephone number of the new representative. When a person, other than the person identified above, has full or partial authority with respect to management of the Project, the Partnership will promptly provide HUD with the name of that person and the nature of that person’s management authority.

### **16.11 Single Asset Entity**

Unless otherwise approved in writing by HUD, the Partnership’s business and purpose shall consist solely of the acquisition, ownership, operating and maintenance of the Project and any activities incidental thereto. The Partnership shall not engage in any other business or activity. The Project shall be the sole asset of the Partnership, which shall not own any real estate other than the Project.

### **16.12 Indemnification and Advancement of Expenses**

Notwithstanding any other provision of this Agreement to the contrary, for so long as the Project is subject to the First Mortgage Loan, any obligation of the Partnership to provide indemnification under this Agreement shall be limited to (i) amounts mandated by state law, if any, (ii) coverage afforded under any liability insurance carried by the Partnership and (iii) available “surplus cash” of the Partnership as defined in the HUD Regulatory Agreement. Until funds from a permitted source for payment of indemnification costs are available for payment, the Partnership shall not (a) pay funds to any members, partners, officers and directors, or (b) pay the deductible on an indemnification policy for any members, partners, officers and directors.

### **16.13 Equity Installments**

So long as the Secretary or the Secretary’s successors or assigns is the insurer or holder of a note secured by a mortgage on the Project, any provisions contained herein regarding the payment and amount of equity installments to the Partnership from the Limited Partner may not be amended without the prior written approval of HUD.

**[SIGNATURES BEGIN ON THE FOLLOWING PAGE]**

**PEDCOR INVESTMENTS-2016-CLV, LIMITED PARTNERSHIP**  
**AMENDED AND RESTATED AGREEMENT**  
**OF LIMITED PARTNERSHIP**

**Signature Page**

General Partner:

**ROSEWOOD STATION HOUSING  
COMPANY, LLC**, an Indiana limited liability  
company

By: Pedcor Investments, A Limited Liability  
Company, a Wyoming limited liability  
company, its manager

By: \_\_\_\_\_  
Name: Thomas G. Crowe  
Title: Executive Vice President

STATE OF INDIANA                    )  
  ) ss.  
COUNTY OF HAMILTON            )

On this \_\_\_\_\_ day of January, 2018, before me appeared Thomas G. Crowe, to me personally known, who, being by me duly sworn, did say that he is the Executive Vice President of Pedcor Investments, a Limited Liability Company, the manager of Rosewood Station Housing Company, LLC, a limited liability company of the State of Indiana and that said instrument was signed in behalf of said company, by authority of its Members; and said person acknowledged said instrument to be the free act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

My term expires:



**PEDCOR INVESTMENTS-2016-CLV, LIMITED PARTNERSHIP**

**AMENDED AND RESTATED AGREEMENT  
OF LIMITED PARTNERSHIP**

**Signature Page**

Special Limited Partner:

**THE HOUSING AUTHORITY OF  
CLACKAMAS COUNTY**, an Oregon public body  
corporate and politic

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF OREGON                    )  
  ) SS  
COUNTY OF CLACKAMAS        )

On January \_\_\_\_\_, 2018, before me, a notary public, personally appeared \_\_\_\_\_, Executive Director of Housing Authority of Clackamas County, the special limited partner of Pedcor Investments-2016-CLV, Limited Partnership, an Oregon limited partnership, to me known to be the person who executed the foregoing instrument on behalf of said partnership and acknowledged to me that she executed the same of her own free will for the purposes stated therein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

My term expires:

**PEDCOR INVESTMENTS-2016-CLV, LIMITED PARTNERSHIP**  
**AMENDED AND RESTATED AGREEMENT**  
**OF LIMITED PARTNERSHIP**

**Signature Page**

Limited Partner

**U.S. BANCORP COMMUNITY  
DEVELOPMENT CORPORATION**, a  
Minnesota corporation

By: \_\_\_\_\_  
Name: Patrick Finerty  
Title: Assistant Vice President

STATE OF ILLINOIS                    )  
  ) ss.  
COUNTY OF COOK                    )

On this \_\_\_\_\_ day of January, 2018, before me appeared Patrick Finerty, to me personally known, who, being by me duly sworn, did say that he is an Assistant Vice President of U.S. Bancorp Community Development Corporation, a Minnesota corporation, and that said instrument was signed on behalf of said corporation, by authority of its Board of Directors; and said person acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the City/County and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

My term expires:

**PEDCOR INVESTMENTS-2016-CLV, LIMITED PARTNERSHIP**

**AMENDED AND RESTATED AGREEMENT  
OF LIMITED PARTNERSHIP**

**Signature Page**

Withdrawing Limited Partner

**PEDCOR INVESTMENTS, A LIMITED  
LIABILITY COMPANY**, a Wyoming limited  
liability company

By: \_\_\_\_\_  
Name: Thomas G. Crowe  
Title: Executive Vice President

STATE OF INDIANA                    )  
  ) ss.  
COUNTY OF HAMILTON            )

On this \_\_\_\_\_ day of January, 2018, before me appeared Thomas G. Crowe, to me personally known, who, being by me duly sworn, did say that he is the Executive Vice President of Pedcor Investments, A Limited Liability Company, a limited liability company of the State of Wyoming, and that said instrument was signed in behalf of said company, by authority of its Members; and said person acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

My term expires:

**Exhibit A**

**Partners; Percentage Interests;  
Capital Contribution**

Partnership:

Employer Identification No. 61-1799176

	<u>Percentage Interests</u>	<u>Capital Contributions*</u>
<u>General Partner:</u>		
Rosewood Station Housing Company, LLC	0.005%	\$50
Employer Identification No. 81-3437162		
<u>Special Limited Partner:</u>		
The Housing Authority of Clackamas County	0.005%	\$50
Employer Identification No. 93-6001542		
<u>Limited Partner:</u>		
U.S. Bancorp Community Development Corporation	99.99%	\$[23,255,000]
Employer Identification No. 41-1917892		
<hr/>		
TOTALS	100%	\$[23,255,100]

\*The Capital Contributions of the General Partner, the Special Limited Partner and the Limited Partner will be payable as described on Exhibit A-1. The Limited Partner's Capital Installments, as described on Exhibit A-1, are due on the later of the applicable Capital Installment Due Date or ten (10) business days after the General Partner gives the Capital Installment Notice (Exhibit A-2), accompanied by all documentation required in connection therewith, acceptable to the Limited Partner. In addition, the Limited Partner's Capital Contributions are subject to deferral and reduction as provided in this Agreement.

**Exhibit A-1**

**Capital Installments**

<u>General Partner Capital Installment</u>	<u>Amount of Capital Installment</u>	<u>Capital Installment</u>	<u>Due Date</u>
<u>First</u>	\$50	Admission Date	

<u>Special Limited Partner Capital Installment</u>	<u>Amount of Capital Installment</u>	<u>Capital Installment</u>	<u>Due Date</u>
<u>First</u>	\$50	Admission Date	

<u>Limited Partner Capital Installment</u>	<u>Amount of Capital Installment</u>	<u>Capital Installment</u>	<u>Due Date</u>
<u>First Capital Installment</u>	<b>[\$4,651,000]</b>	Payable as to a portion, upon the last to occur of:	

- (a) Admission Date;
- (b) full funding of the General Partner's First Capital Installment and Special Limited Partner's First Capital Installment;
- (c) delivery to the Limited Partner of executed originals of this Agreement, the Development Services Agreement, the Guaranty, the Partnership Management Agreement and the Pledge Agreement;
- (d) closing and funding (or satisfaction of all conditions to funding) of the Bridge Loan, the Bond Loan and the First Mortgage Loan with, in the case of the permanent phase of the First Mortgage Loan, a fixed interest rate, on terms and in amounts acceptable to the Limited Partner, which, together with Capital Installments of the Limited Partner due on or before the Completion Date and the General Partner's and Special Limited Partner's Capital Contribution paid upon the Admission Date is projected in the Projections to be sufficient to finance anticipated Project costs during the Stabilization Period, with the satisfaction of this condition to occur simultaneously with the funding of the equity installment described herein;
- (e) receipt of evidence of Property Tax Exemption and Property Tax Exemption Opinion, each acceptable to the Limited Partner; and
- (g) satisfaction of all requirements on the Limited Partner's closing checklist, other than post-closing matters.

This Capital Installment shall be applied to pay Project costs.

To the extent the entire amount of this Capital Installment is not needed at closing, the balance shall be funded in installments, from time to time, as construction progresses, pursuant to requests for disbursement acceptable to Limited Partner and in accordance with all of the Limited Partner's construction disbursing requirements set forth in Section 5.9 of this Agreement. A condition precedent to the funding of each portion of this Capital Installment is the delivery by the General Partner and the Special Limited Partner of an updated Capital Installment Notice (Exhibit A-2) acceptable to the Limited Partner.

Second Capital Installment **[\$16,579.000]**

Payable on the latest of:

(a) achievement of the Completion Date (including, without limitation, issuance of permanent certificates of occupancy for all Units in the Project (or, if not available, a written statement from the City of Happy Valley certifying that construction of the Project is complete) and an AIA G704 certification of completion, duly executed by the Project Architect, to include remaining punch list items and target completion of each building and all units in the Project);

(b) receipt by Limited Partner of copies of all insurance policies (including title insurance) on the Project in the (or certificates therefor) form required by this Agreement;

(c) endorsement to the Title Policy (or if not available in the State, a current title report), with an effective date on or after the Completion Date which does not reflect any mechanic's or materialmen's liens (other than liens which are insured over pursuant to affirmative insurance acceptable to the Limited Partner) or additional encumbrances to the title which are unacceptable to the Limited Partner and a 3.1 zoning endorsement and survey endorsement;

(d) receipt by the Limited Partner of either (i) a certification or other evidence acceptable to the Limited Partner from the surveyor or Project engineer that the foundation has been placed in the location and at the correct elevations as were authorized in the site plan or (ii) an ALTA foundation survey of the Project and, in all cases, an ALTA "as built" survey of the Project and survey coverage pursuant to the Title Policy, all in form and substance acceptable to the Limited Partner;

(e) receipt by Limited Partner of evidence that all Partnership Reserve accounts required in Exhibit A-7 have been established and fully funded by all amounts then required;

(f) at the option of the Limited Partner, receipt of an estoppel certificate from each Lender, confirming that there are no defaults thereunder, the dollar amount of any Reserves held by such Lender and such other matters respecting the Loan as the Limited Partner may reasonably require;

(g) receipt of evidence acceptable to the Limited Partner and confirmed by the Accountants that more than 50% of the aggregate basis of the Project buildings and land has been financed by the proceeds of bonds, the interest on which is exempt from federal income taxation under Section 103 of the Code and which are taken into account under the State volume cap pursuant to Section 146 of the Code;

(h) receipt of the fully executed HAP Contract, acceptable to the Limited Partner;

(i) receipt of an updated Capital Installment Notice (Exhibit A-2), pursuant to Section 3.2(c), acceptable to the Limited Partner.

This Capital Installment shall be applied to pay down the Bridge Loan.

Third Capital Installment\*     **[\$1,925,000]**     Payable upon the latest of:

(a) Conversion of the First Mortgage Loan (including, without limitation, issuance of the Project Loan Certificate, as defined in the Bond Loan documents, and receipt of HUD Final Endorsement for the FHA Loan) under terms and conditions reasonably acceptable to the Limited Partner, and evidence of repayment in full, and release of all collateral security for the Bridge Loan, together with receipt by the Limited Partner of fully executed loan documents in connection therewith;

(b) completion of the Lease-up Period at aggregate Projected Rents;

(c) receipt by the Limited Partner of all initial tenant leases, income certifications and the remainder of the documents constituting the initial file of all Credit Units;

(d) receipt and approval by the Limited Partner (and by the Project's lenders if required by them) of Cost Certification and certification of eligible basis for the Credits prepared by DOZ;

(e) receipt by the Limited Partner of the Partnership's projection of the Credits at Completion prepared pursuant to Section 3.3(a) and Credits for 2019;

(f) achievement of the Required Debt Service Coverage of 115% over a three (3) consecutive month reporting period, or averaged over a twelve (12) month reporting period and with expenses, on an accrual basis, calculated based on the greater of actual expenses or projected expenses as set forth in the Projections, and as approved by the Limited Partner;

(g) receipt by Limited Partner of evidence that all Partnership Reserve accounts required in Exhibit A-7 have been established and fully funded by all amounts then required;

(h) receipt by the Limited Partner of evidence that the Extended Use Agreement for the Project has been recorded in the land records of the city/county in which the Project is located;

(i) delivery of the Partnership's tax returns (including K-1s) and the Partnership's audited financial statements for 2019;

(j) at the Limited Partner's option, receipt of an estoppel certificate from each Lender, confirming that there are no defaults thereunder, the dollar amount of any Reserves held by such Lender and such other matters respecting the Loan as the Limited Partner may reasonably require;

(k) verification of the amount of Property Tax Exemption, unless previously provided;

(l) receipt of an updated Capital Installment Notice (Exhibit A-2), pursuant to Section 3.2(c), acceptable to the Limited Partner.

This Capital Installment shall be applied to pay the following Project costs:

Fund Operating Reserve: Up to **[\$637,565]**, but only to the extent not funded from other Project sources, then;

The balance, as the case may be, to pay other Project costs.

Fourth Capital Installment\* **[\$100,000]** Payable upon the latest of:

(a) receipt and approval by Limited Partner of IRS Form 8609;

(b) at the Limited Partner's option, receipt of an estoppel certificate from each Lender, confirming that there are no defaults thereunder, the dollar amount of any Reserves held by such Lender and such other matters respecting the Loan as the Limited Partner may reasonably require;

(c) achievement of the Required Debt Service Coverage of 115% over a twelve (12) month reporting period;

(d) receipt of an updated Capital Installment Notice (Exhibit A-2), pursuant to Section 3.2(c), acceptable to the Limited Partner.

This Capital Installment shall be applied to pay remaining Project costs.

Further, all of the above Capital Installments of the Limited Partner will not be payable in any event, until the General Partner and Special Limited Partner Capital Contribution has been paid in full. Each Capital Installment hereunder shall not be payable until all conditions to payment of all prior Capital Installments have been satisfied, unless waived in writing by the Limited Partner.

\*Disbursement Pending Stabilization.



Notwithstanding anything to the contrary in the Third and/or Fourth Capital Installment conditions set forth herein, if all conditions to the payment of the Third Installment and/or the Fourth Installment other than item (f) of the Third Capital Installment have been satisfied, including achievement of Qualified Occupancy, and thirty-six (36) months have elapsed since the date upon which the Project was projected to achieve the end of the Stabilization Period, then the Limited Partner shall disburse the proceeds of the Third Installment and/or the Fourth Installment and subject to the following terms and conditions:

(i) The Operating Reserve is then fully funded (which may occur simultaneous with the funding of the Third and/or Fourth Capital Installment hereunder) and neither of the General Partner nor Special Limited Partner are then in default under the Partnership Agreement; and

(ii) Such proceeds shall first be used to pay down the Bridge Loan and the remainder shall be deposited into the Contingent Debt Service Reserve described in Exhibit A-7 of the Agreement up to the Target Amount reasonably determined by the Limited Partner at the time of such request (which may include funds that would otherwise have been used to pay Development Fee, so long as updated Projections reflect that Development Fee is still projected to be paid off by Year 14).

Notwithstanding the foregoing, that the General Partner may request disbursement earlier than thirty-six (36) months for funding pursuant to the above so long as all conditions to the Third and Fourth Installments other than item (g) of the Third Capital Installment have been satisfied.

The General Partner shall use its best efforts to provide to the Limited Partner: (i) estoppel certificates, as applicable, no later than five (5) business days prior to funding of the applicable Installment and (ii) any endorsement to the Owner's Title Policy required with respect to the Second Installment, as applicable, no later than five (5) business days prior to funding of such Installment.

**Exhibit A-2**  
**Capital Installment Notice**

**PEDCOR INVESTMENTS-2016-CLV, LIMITED PARTNERSHIP**

U.S. Bancorp Community Development Corporation  
USB Project No: 24879  
1307 Washington Avenue, Suite 300  
Mail Code: SL MO RMCD  
St. Louis, MO 63103  
Attn.: Asset Manager

The General Partner hereby certifies that the following representations and warranties remain true, correct, and not misleading on and as of the due date for the [\_\_\_\_\_] Capital Installment of the Limited Partner's Capital Contribution pursuant to Section 3.2(c) of the Agreement and Exhibit A-1.

(i) *No Defaults; Documents in Force; No Jeopardizing Events.* No default (or event that, with the giving of notice or the passage of time or both, would constitute a default) has occurred and is continuing under any Project Document, or the Agreement; the Project Documents, and the Agreement are in full force and effect; and no event has occurred and is continuing that materially jeopardizes or is likely to materially jeopardize the ability of the Partnership to continue to operate the Project as housing eligible for the Credit, or that could jeopardize the performance by the General Partner of its obligations under the Agreement or the performance by the Guarantor under the Guaranty.

(ii) *No Liens.* The Partnership owns the Project, and each of the Units free and clear of any liens (including mechanics' liens), charges, or encumbrances other than matters set forth in the Title Policy and the Extended Use Agreement, and any that with the reasonable Consent of the Limited Partner are affirmatively insured over.

(iii) *No Bankruptcies.* No Event of Bankruptcy has occurred and is continuing, and no event has occurred that, with the passage of time, could become an Event of Bankruptcy, with respect to the General Partner, and any Guarantor.

(iv) *No Breach.* The General Partner is not in breach in any material respect of any provision of the Agreement to be observed or performed by it including, but not limited to, all representations, warranties, and covenants given by the General Partner, pursuant to this Agreement and all representations and warranties herein remain true and correct in all material respects.

(v) *REAC Scores and Notices of Non-Compliance.* The Project has not failed, if applicable, any REAC inspections nor has it received any IRS Form 8823 in which the HCA has not certified that the noncompliance has been corrected.

(vi) *Advances Paid.* All Credit Adjuster Advances, Development Advances, Development Fee Advances, Contractor Fee Advances, Operating Reserve deposits, Replacement Reserve deposits, Operating Deficit Advances and any other deposits,

advances, or contributions required to be made by the General Partner or its Affiliates pursuant to the Agreement (and any exhibits attached hereto) have been made.

(vii) *Environmental*. To the best knowledge of the General Partner after due inquiry, the Project contains no, and is not adversely affected by the presence of, any Environmental Hazard, and no violation of any Environmental Law has occurred or is continuing. The General Partner has not received any notice from any source whatsoever of the existence of any Environmental Hazard or of a violation of any Environmental Law. If any Environmental Hazard (including lead-based paint and asbestos) was found to exist or be present, it has been either removed from the Project and disposed of or encapsulated and/or otherwise corrected, contained and made safe and inaccessible, all in strict accordance with federal, state, and local statutes, laws, rules and regulations, any recommendations set forth in the Environmental Reports, and any requirements in the Loan Documents.

(viii) *Document Compliance*. True, correct and complete copies of all documents required by Section 13.3 of the Agreement and by Exhibit A-1 to be provided to the Limited Partner as of such date have been delivered to the Limited Partner.

(ix) *No Audit*. There is no Notice from, or ongoing audit by, the IRS in which the IRS is asserting, by means of a notice, thirty day letter, or otherwise, that the Credit available to the Partnership for any Fiscal Year is less than the amount of Credit claimed by the Partnership for that year or that all or any portion of the Credit claimed with respect to any prior Fiscal Year(s) must be recaptured pursuant to Section 42(j) or other relevant sections of the Code, or is unavailable to the Partnership.

(x) *Conformity with Laws*. The Project conforms in all material respects with applicable law.

(xi) *Prevailing Wage and Other Development Requirements*. The Project has been, or will be, as applicable, constructed or rehabilitated in full compliance with all applicable prevailing wage requirements under applicable law, as well as Davis Bacon and Section 3 requirements, if applicable.

(xii) *Fees Payable*. The General Partner hereby confirms that all outstanding fees payable to third parties and/or Affiliates in connection with the Project have been paid as of the date hereof.

(xiii) *Prior Qualification*. The Partnership qualified for, and subject to adjustment as provided in the Agreement, has received all prior Capital Installments.

(xiv) *All Prerequisites Satisfied*. The preconditions to payment of the applicable Capital Installment, pursuant to Exhibit A-1 to the Agreement, have occurred and all construction draw request documents required pursuant to Section 3.2 of the Partnership Agreement have been provided and are reasonably acceptable to the Limited Partner.

(xv) *Insurance.* The insurance on the Project meets all requirements of the Limited Partner in the Agreement, and is in full force and effect.

(xvi) *Credit Deficiencies and Lease-up.* Respecting all Capital Installments payable after the occurrence of the Completion Date, there are no existing Credit Deficiencies (and no Credit Deficiencies are anticipated), and there has been no change in the Lease-up Period as set forth in the Projections, other than any matters disclosed to the Limited Partner in writing prior to the date hereof.

(xvii) *Occupancy.* Respecting all Capital Installments payable after the occurrence of Completion Date and achievement of the Lease-up Period, each Credit Unit that is included in the computation of the eligible basis of the Project in the Projections and for which a certificate of occupancy has been obtained is either (A) occupied by Qualifying Tenants or (B) held available for occupancy by Qualifying Tenants after having been rented to Qualifying Tenants, at the time of payment of each Capital Installment, and the operation of the Project and each Credit Unit in all respects complies with the provisions of Section 42 of the Code and applicable law, other than any matters which have been disclosed to the Limited Partner in writing prior to the date hereof.

(xviii) *Repurchase Conditions.* The undersigned confirms that through the date below there has been no occurrence described in Section 5.14(a) of the Agreement.

(xix) *Guaranty.* The undersigned confirms that to its knowledge, there are no setoffs or defenses to the Guaranty and that the Guaranty is in full force and effect as of the date hereof without any defaults by the Guarantors thereunder.

(xx) *Representations and Warranties.* All representations and warranties set forth in Section 5.6 of the Agreement remain true and correct as of the date hereof, except as follows: **[insert any updates to representations and warranties, if applicable]**.

(xxi) *Definitions.* All terms not otherwise defined herein shall have the meanings therefore set forth in the Amended and Restated Agreement of Limited Partnership of Pedcor Investments-2016-CLV, Limited Partnership, dated as of January [\_\_\_\_], 2018, as amended (the “**Agreement**”).

IN WITNESS WHEREOF, the undersigned has executed this Capital Installment Notice as of the date first above written.

General Partner:

**ROSEWOOD STATION HOUSING  
COMPANY, LLC**, an Indiana limited liability  
company

By: Pedcor Investments, A Limited Liability  
Company, a Wyoming limited liability  
company, its manager

By: \_\_\_\_\_  
Name: Thomas G. Crowe  
Title: Executive Vice President

The undersigned Corporate Guarantors are executing this Capital Installment Notice to confirm that, to its knowledge all of the representations and warranties of the General Partner above are true, correct and complete, to confirm that the undersigned has no setoffs or defenses to its Guaranty as of the date hereof and to ratify, confirm and agree to all of the terms and provisions of its Guaranty and acknowledges and agrees that the Limited Partner is relying on these representations, confirmations, ratifications and agreements in proceeding to fund its applicable Capital Installment.

IN WITNESS WHEREOF, the undersigned has executed this Capital Installment Notice as of this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**CORPORATE GUARANTORS:**

**ROSEWOOD STATION HOUSING COMPANY, LLC**, an Indiana limited liability company

By: Pedcor Investments, A Limited Liability Company, a Wyoming limited liability company, its manager

By: \_\_\_\_\_  
Name: Thomas G. Crowe  
Title: Executive Vice President

**PEDCOR DEVELOPMENT ASSOCIATES, LLC**, an Indiana limited liability company

By: \_\_\_\_\_  
Name: Bruce A. Cordingley  
Title: Sole Member

**PEDCOR INVESTMENTS, A LIMITED LIABILITY COMPANY**, a Wyoming limited liability company

By: \_\_\_\_\_  
Thomas G. Crowe  
Executive Vice President

**INDIVIDUAL GUARANTORS:**

\_\_\_\_\_  
Bruce A. Cordingley

\_\_\_\_\_  
Gerald K. Pedigo, by Bruce A. Cordingley, his  
attorney in fact

\_\_\_\_\_  
Phillip J. Stoffregen

**Exhibit A-3**

**Fixed Dollar Amounts**

Reference Term	Section Reference	Amount
Annual Credit Allocation to the Partnership	5.6(w)	<b>[\$2,417,355]</b> of Federal Low Income Credits
Projected Credit Amount to the Limited Partner	3.3(a)	<b>[\$24,171,133]</b>
		Annual Federal Low-Income Credit
2019		<b>[\$506,416]</b>
2020		<b>[\$1,794,783]</b>
2021		<b>[\$2,417,113]</b>
2022		<b>[\$2,417,113]</b>
2023		<b>[\$2,417,113]</b>
2024		<b>[\$2,417,113]</b>
2025		<b>[\$2,417,113]</b>
2026		<b>[\$2,417,113]</b>
2027		<b>[\$2,417,113]</b>
2028		<b>[\$2,417,113]</b>
2029		<b>[\$1,910,698]</b>
2030		<b>[\$622,331]</b>
Price per Projected Credit		<b>[\$0.9621]</b> per \$1.00 of Federal Low Income Credits
Title Policy Amount	2.1	<b>[\$65,382,433]</b>
Rehab/NC Basis Amount	5.6(w)	<b>[\$74,840,702]</b>
Applicable Percentage	5.6(y)	The applicable 4% credit rate then in-effect for each building in the Project as of its placed-in-service date.
Operating Reserve Amount	5.10	<b>[\$637,565]</b>
Capital Percentages	8.2(d)	89.995%% to the General Partner,



		0.005% for the Special Limited Partner, and 10% for the Limited Partner.
Percentage Interest	Exhibit A	0.005% for General Partner, 0.005% for the Special Limited Partner, and 99.99% for Limited Partner
Cash Flow Percentages	Exhibit A-5	0.005% for General Partner, 0.005% for the Special Limited Partner, and 99.99% for Limited Partner

**Exhibit A-4**

**Loans to the Project**

Mortgage Priority	Lender	Loan Amount	Loan Term	Interest Rate + Fixed (F) or Variable (V)	Hard (H) or Cash Flow (CF)	Recourse (R) or Non-Recourse (NR)
Bridge Loan	Huntington National Bank	<b>[\$15,250,000]</b>	<b>[32 months]</b>	<b>[LIBOR + ____% (V)]</b>	H	R-construction only
Back to Back Tax- Exempt Bond Loan/ FHA First Mortgage Loan (" <b>First Mortgage Loan</b> ")	Housing Authority— Bond Issuer, United Fidelity Bank fsb—Bond Purchaser  P/R Mortgage & Investment Corp, FHA Lender	<b>[\$29,579,128]</b>	<b>[40 years]</b>	<b>[2.50% during construction and 2.75% thereafter (F)]</b>	H/CF*	NR
Disposition Loan (Second Priority) (" <b>Disposition Loan</b> ")	Housing Authority	<b>[\$1,605,000]</b>	<b>[55 years]</b>	<b>[3.0%] (F)</b>	<b>Deferred</b>	R
HOME Loan (Third Priority) (" <b>HOME Loan</b> ")	Housing Authority	<b>[\$1,050,000]</b>	<b>[55 years]</b>	<b>[0%] (F)</b>	<b>Deferred</b>	R
CDBG Loan (Fourth Priority) (" <b>HOME Loan</b> ")	Housing Authority	<b>[\$345,000]</b>	<b>[55 years]</b>	<b>[0%] (F)</b>	<b>Deferred</b>	R
METRO Loan (Fifth Priority) (" <b>METRO Loan</b> ")	Affordable Housing Partners, Inc. (From proceeds of Oregon Metro Transit Oriented Development Program)	<b>[\$500,000]</b>	<b>[55 years]</b>	<b>[1.0%] (F)</b>	<b>Deferred</b>	NR
<b>TOTAL PERMANENT LOANS</b>		<b>[\$33,079,128]</b>				

\*First Mortgage secures P/R Mortgage  
FHA Loan, Bonds are backed by GNMA  
securities (no mortgage)

## Exhibit A-5

### Cash Flow Payment Priorities

Subject to the provisions of Section 8.1, payment of fees and other expenses contingent on Cash Flow and distributions to Partners from Cash Flow shall be made in the following order of priority:

First, to the extent gross revenues are insufficient following payment of required Project debt service, to the Management Agent, to pay a supplemental 1.5% management fee pursuant to the management agreement;

Second, to pay the Asset Management Fee, including any previously accrued and unpaid amounts.

Third, to fund the Target Amount Shortfall to the Contingent Debt Service Reserve as required pursuant to Exhibit A-7.

Fourth, to pay any outstanding and unpaid Credit Deficiencies and Tax Equivalency Payments then due including, without limitation, amounts owed due to a Change in Law, together with interest thereon, if any.

Fifth, to pay any Default Cash Flow Priority (pursuant to Section 5.16(b)) then due, if any.

Sixth, fund or replenish the amounts payable to the Partnership Replacement and Operating Reserves pursuant to Exhibit A-7, if applicable.

Seventh, to the Limited Partner to repay any loans or other advances made by the Limited Partner.

Eighth, to the Special Limited Partner, to pay the SLP Administrative Management Fee in an amount of up to \$5,000, including any previously accrued and unpaid amounts.

Ninth, to pay Development Fee.

Tenth, to the General Partner to repay any Development Advance, Operating Deficit Advance, Credit Adjuster Advance, Development Fee Advance or Contractor Fee Advance then payable or any other loans made by the General Partner hereunder, or a Guarantor under the Guaranty;

Eleventh, of the remaining Cash Flow,

(1) 36.90% of such amount shall be paid to the General Partner as payment of a portion of the Partnership Management Fee, pursuant to the Partnership Management Agreement, and

(2) 4.10% of such amount shall be distributed to the Limited Partner.

Twelfth, to pay Additional Interest on the Bond Loan until paid in full on a semi-annual basis\*\*, and then, to pay applicable interest and principal on the Housing Authority Loan, until paid in full;

Thirteenth, 90% of the remaining Cash Flow, if any, shall be paid to the General Partner as payment of a portion of the Partnership Management Fee, pursuant to the Partnership Management Agreement; and

Fourteenth, the balance to the General Partner, Special Limited Partner and the Limited Partner in accordance with their Percentage Interests.

To the extent that insufficient Cash Flow is available to pay any of the amounts set forth in Sections First through Tenth and Twelfth when due, such amount shall accrue and be payable in the future when there is available Cash Flow, after prior payment of all higher priority payments from Cash Flow, as set forth above.

Pursuant to Section 5.19 of the Partnership Agreement, each of Partners agree not to amend or modify this Exhibit A-5 or cause this Exhibit to be amended without the prior written consent of the Bond Purchaser.

\*\*Each semi-annual payment shall be based upon a calculation of Surplus Cash (as defined in the HUD Regulatory Agreement) as of the last day of the Fiscal Year for each February 1 semi-annual payment and of the last day of the sixth month of the Fiscal year for each August 1 semi-annual payment. Copies of the calculations of Surplus Cash and financial statements required to be provided to HUD pursuant to Section 13 of the HUD Regulatory Agreement shall be provided concurrently to the Limited Partner. The Limited Partner shall also be provided with copies of the audited annual financial statements of the Partnership within 15 days of receipt by General Partner. Any semi-annual payments of Surplus Cash which are determined to have not been permitted under the terms of this Agreement or the HUD Regulatory Agreement shall be immediately returned to the appropriate Partnership accounts.

**Exhibit A-6**

**Notice Addresses**

General Partner

Limited Partner

---

General Partner:

Rosewood Station Housing Company, LLC  
One Pedcor Square  
770 3<sup>rd</sup> Avenue S.W.  
Carmel, IN 46032  
Attn: Thomas G. Crowe  
PH:(317)587-0341  
PH: (317)587-0340

With copies to:

Jeremey Buchanan/Legal Counsel  
Pedcor Investments, A Limited Liability Company  
770 3<sup>rd</sup> Avenue S.W.  
Carmel, IN 46032  
PH:(317)705-7932

Special Limited Partner:

Housing Authority of Clackamas County  
13930 Gain St.  
Oregon City, OR 97045

With copies to:

Robert J. Sullivan, PC  
121 SW Salmon Street  
Suite 1100  
Portland, OR  
97204

Limited Partner:

U.S. Bancorp Community Development  
Corporation  
1307 Washington Avenue, Suite 300  
Mail Code: SL MO RMCD  
St. Louis, MO 63103  
USB Project No: 24879  
Attn.: Director of LIHTC Project Management  
Phone: (314) 335-2600  
Fax: (314) 335-2601

With copies to:

Investor Member's Asset Manager:

U.S. Bancorp Community Development  
Corporation  
1307 Washington Avenue, Suite 300  
Mail Code: SL MO RMCD  
St. Louis, MO 63103  
USB Project No: 24879  
Attn.: Director of LIHTC Asset Management  
Phone: (314) 335-2600  
Fax: (314) 335-2601

Investor Member's Project Manager

U.S. Bancorp Community Development  
Corporation  
1307 Washington Avenue, Suite 300  
Mail Code: SL MO RMCD  
St. Louis, MO 63103  
USB Project No: 24879  
Attn.: Director of LIHTC Project Management  
Phone: (314) 335-2600  
Fax: (314) 335-2601

and

Jill H. Goldstein, Esq.  
Kutak Rock LLP  
1650 Farnam Street  
Omaha, NE 68102  
Phone: (402) 346-6000

## Exhibit A-7

### Partnership Reserves

The General Partner shall establish the following reserves in the name of the Partnership:

(xxii) *Operating Reserve.* An Operating Reserve of at least **[\$637,565]**, to be funded on the date of payment of the Third Capital Installment into a segregated, interest bearing Partnership Reserve Account at U.S. Bank National Association. In addition, the Partnership shall fund the Operating Reserve from Cash Flow in order to maintain, to the extent possible, a balance at all times in the Operating Reserve of at least **[\$637,565]**, having that payment priority set forth in Exhibit A-5. Funds in the Operating Reserve shall be used to pay Operating Deficits in accordance with the Partnership Agreement. The Operating Reserve account instructions shall provide that no withdrawal may be made from the account without the Consent of the Limited Partner permitting such withdrawal. Interest earned on the Operating Reserve shall be added to the Operating Reserve. The Operating Reserve amount set forth herein shall not be reduced by Operating Reserve requirements of Lender, if any. No withdrawals may be made from such Operating Reserve without the prior Consent of the Limited Partner which Consent shall not be unreasonably withheld or delayed. If the Limited Partner does not deliver notice of its approval of any withdrawal from the Operating Reserve within seven (7) business days of a request from the General Partner, the General Partner shall send a second notice which shall state that failure to respond within three (3) business days shall constitute approval of such withdrawal. If the Limited Partner fails to respond to such second notice, such withdrawal will be deemed approved.

(xxiii) *Replacement Reserve.* A Replacement Reserve to be funded in the amount of \$310 per unit per year, payable monthly, in equal monthly installments, beginning on the commencement date required by the lender of the First Mortgage Loan (the "**Replacement Reserve Commencement Date**"), and shall increase by ten percent (10%) on each fifth (5th) anniversary of the Replacement Reserve Commencement Date, or such greater increase as may be required by any lender. The Partnership shall utilize amounts in the Replacement Reserve to fund repairs, capital expenditures and other costs approved by the Limited Partner in an Annual Operating Budget, or otherwise approved by the Limited Partner in writing. Notwithstanding the foregoing, in the event HUD approved the use of Replacement Reserve funds to be used for certain repairs and/or capital expenditures, such funds shall be utilized with or without the approval of the Limited Partner; provided, however, if the Limited Partner's approval is not obtained, the Limited Partner will receive notice of the amount and use of such expenditure, together with evidence of HUD's request for the use of such Replacement Reserves, within thirty (30) days following the expenditure. The Replacement Reserve shall be deposited in a segregated interest-bearing account with U.S. Bank National Association, subject to the last sentence of this paragraph. The Replacement Reserve account instructions shall provide that no withdrawal may be made from the account without the Consent of the Limited Partner, unless approved by HUD, which Consent shall not be unreasonably withheld or delayed. If the Limited Partner does not deliver notice of its approval of any withdrawal from the Replacement Reserve within seven (7) days of a request from the

General Partner, the General Partner shall send a second notice which shall state that failure to respond within three (3) business days shall constitute approval of such withdrawal. If the Limited Partner fails to respond to such second notice, such withdrawal will be deemed approved. Interest earned on the Replacement Reserve shall be added to the Replacement Reserve. Following the six (6) month anniversary of the Replacement Reserve Commencement Date, whenever and as often as the Replacement Reserve does not contain an amount equal to at least six (6) monthly installments of the annual Replacement Reserve then payable (the “**Minimum Replacement Reserve Balance**”), then and in that event, in addition to the monthly installments payable as set forth above, additional amounts shall be funded into the Replacement Reserve from Cash Flow having that payment priority set forth on Exhibit A-5 until such time as the Replacement Reserve contains an amount equal to the Minimum Replacement Balance. Notwithstanding anything to the contrary set forth above, so long as a Replacement Reserve is required under the terms of, and held by the lender of, the First Mortgage Loan or any replacement mortgage loan made to the Partnership with the Consent of the Limited Partner, the above requirements shall be reduced, dollar for dollar, by payments made into the Replacement Reserve held under the First Mortgage Loan or any replacement mortgage loan made to the Partnership with the Consent of the Limited Partner, and if, at any time, such Reserve is not required under the terms of the First Mortgage Loan or any replacement mortgage loan made to the Partnership with the Consent of the Limited Partner, all amounts then held in such Reserve shall form part of the Partnership Replacement Reserve, and provided that no withdrawals may be made from such Replacement Reserve without the prior Consent of the Limited Partner.

(xxiv) *Contingent Debt Service Reserve.* The General Partner shall cause a Contingent Debt Service Reserve to be funded (a) to the extent required pursuant to Exhibit A-1 of the Agreement, (b) in any year the Project has not achieved a 1.15 Debt Service Coverage Ratio, or (c) at such time as the Target Amount is reset pursuant to the terms of this paragraph, which shall be a segregated, interest bearing Partnership Reserve Account at U.S. Bank National Association. The Contingent Debt Service Reserve shall be funded in an amount equal to the difference between (1) the net operating income sufficient to maintain a projected Debt Service Coverage Ratio of not less than 1.15 for each year in the remainder of the Compliance Period and (2) the Project’s projected net operating income for each year in the remainder of the Compliance Period, as reasonably determined by the Limited Partner and based on the greater of actual or projected operating expenses, using 2%, 3%, and 7% trending for income, operating expense, and vacancy respectively, unless the Limited Partner reasonably determines that the actual performance of the Project necessitates using more restrictive assumptions (the “**Target Amount**”). The Target Amount shall be reset annually following receipt of the Partnership audit for the prior calendar year, with such reset amount to be reasonably determined by the Limited Partner and based on the greater of actual or projected expenses. In the event the Target Amount is less than the amount then on deposit in the Contingent Debt Service Reserve, the difference (the “**Target Amount Excess**”) shall be released from the Contingent Debt Service Reserve and applied as Cash Flow in accordance with Exhibit A-5. In the event the Target Amount is greater than the amount then on deposit in the Contingent Debt Service Reserve, the shortfall (the “**Target**

*Amount Shortfall*’) shall be funded from 100% of Cash Flow in the priority set forth in Exhibit A-5 until the Target Amount Shortfall has been fully funded.

Notwithstanding the foregoing, the Contingent Debt Service Reserve shall be funded as set forth in Exhibit A-1 hereof to the extent required to be funded pursuant to subsection (a) of this paragraph, and not from Cash Flow.

In all events, if the Project achieves at least a 1.15 Debt Service Coverage Ratio for two consecutive calendar years, the amount then on deposit in the Contingent Debt Service Reserve shall be released and applied as Cash Flow in accordance with Exhibit A-5, and any further funding obligations with respect thereto shall terminate.

(xxv) *Investment of Reserve Accounts.* Investment of funds held in Partnership Reserves shall be limited to (a) accounts or instruments of U.S. Bank National Association where the instrument’s or account’s maturity does not exceed the lesser of one year or the time period within which the funds are anticipated to be needed by the Partnership; or (b) direct obligations of the U.S. Government (such as U.S. Treasury Bills) where the instrument’s maturity does not exceed the lesser of one year or the time period within which the funds are anticipated to be needed by the Partnership or other investments approved by the Limited Partner in writing.

(xxvi) *Reserve Account Balances.* Quarterly, and more frequently, if requested by the Limited Partner, from time to time, the General Partner shall provide bank statements documenting the then current balances in the Reserves.

(xxvii) *Unauthorized Withdrawal.* If the General Partner or Special Limited Partner make any unauthorized withdrawal from a Reserve at any time, the General Partner or Special Limited Partner’s right, as applicable, to access the Reserves will immediately terminate, and upon written notice from the Limited Partner, the applicable depository bank will be authorized to honor the Limited Partner’s instructions notices and directions with respect to the transfer or withdrawal of funds from such Reserves, including paying of transferring the funds to the Partnership or any other person or entity.

(xxviii) *Release of Reserves.* During the final 18 months of the Compliance Period, provided that the Required Debt Service Coverage is then met and the General Partner is not then in default under this Agreement and subject to applicable requirements of any Lender or the HCA, the General Partner may use up to fifty percent (50%) of the remaining Reserves (with the exception of the Contingent Debt Service Reserve) as reasonably determined by the General Partner for Project capital repairs or improvements. The General Partner shall provide at least fifteen (15) days written notice to the Limited Partner before withdrawing any such Reserve funds hereunder, specifying the amount and use of such funds, with a supporting capital needs assessment prepared by an entity acceptable to the Limited Partner, and including a proposed budget. Any undisbursed funds in the Reserves shall remain with the Project following the end of the Compliance Period.



**Exhibit B**  
**LEGAL DESCRIPTION**

## Exhibit C

### DEVELOPMENT SERVICES AGREEMENT

THIS DEVELOPMENT SERVICES AGREEMENT (this “*Agreement*”), dated and effective as of the [ ] day of January, 2018, is made by and between Pedcor Investments-2016-CLV, Limited Partnership, a limited partnership formed under the laws of the State of Oregon (the “*Partnership*”) and Pedcor Development Associates, LLC, an Indiana limited liability company formed under the laws of the State of Indiana (the “*Developer*”).

#### Recitals

The Partnership was formed for the purpose of acquiring, owning, developing, constructing and/or rehabilitating, leasing, managing, operating, and, if appropriate or desirable, selling or otherwise disposing of a two hundred and twelve (212) unit residential project in six (6) residential buildings located on one site in Happy Valley, Oregon (the “*Project*”). The Partnership is operating pursuant to an Amended and Restated Agreement of Limited Partnership, dated as of even date herewith (the “*Partnership Agreement*”).

The Developer has provided and the Partnership desires that the Developer continue to provide services with respect to the development of the Project. This Agreement amends, restates and supersedes in their entirety all prior agreements between the parties respecting these services.

Accordingly, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Appointment and Term.** The Partnership hereby ratifies, confirms and appoints the Developer to render services in overseeing the development of the Project for the Partnership as herein contemplated and the Developer hereby accepts such appointment.
2. **Authority and Obligations.** Subject to the provisions of the Partnership Agreement, the Developer shall have the authority and obligation to:
  - (a) Prepare or cause to be prepared such engineering surveys, and Plans and Specifications as may be required in connection with the construction of the Project.
  - (b) Prepare and submit to the Partnership for approval a construction budget and make recommendations to the Partnership regarding any necessary modifications thereto.
  - (c) Make available to the Partnership upon request copies of all development contracts, financing commitments, surveys, budgets, Plans and Specifications and other development items prepared or obtained.
  - (d) Obtain a construction contract and construction management agreement (collectively, the “Construction Contract”), in an amount not to exceed the amount

provided therefor in the Projections from the General Contractor, and submit same for approval by the Partnership.

(e) Perform or cause to be performed, in a diligent and efficient manner, general administration and supervision of construction of the Project, including but not limited to the following:

(i) administration and supervision of the activities of the General Contractor and all other contractors, subcontractors and others employed in connection with the construction of the Project;

(ii) preparation of construction schedules pursuant to which all phases of construction are to be completed on or before the Completion Date and supervision of the scheduling of construction in conformity with such construction schedules;

(iii) periodic inspection of construction in progress, including but not limited to inspection at completion, for defects in construction and to assure compliance with the Plans and Specifications, and supervision of correction of any and all deficiencies noted pursuant to such inspections.

(iv) processing and payment of applications for progress payments made by the General Contractor, including verification of such applications against the progress of construction as indicated by the aforementioned periodic inspections; and

(v) analysis of requests for any and all change orders to or variations from the Projections and the Plans and Specifications and submission of such requests to the Partnership for approval.

(f) Perform, or cause to be performed, in a diligent and efficient manner, preparation of contracts, letter agreements, purchase orders, and similar documents as are necessary to complete timely the construction of the Project in accordance with the Plans and Specifications.

(g) Cause the Project to be completed in a manner consistent with good workmanship, defect free and in compliance with the following:

(i) the Plans and Specifications;

(ii) all obligations of the Partnership under any documents executed by the Partnership under the Loan Documents; and

(iii) all municipal, state, and other governmental laws, ordinances, and regulations governing the construction of the Project and the use thereof for its intended purposes and all other requirements of law applicable to construction of the Project.

(h) Cause to be maintained builders risk, contractor's liability, and workers' compensation insurance required by law or by the Limited Partner with the Partnership and the Limited Partner named as additional insureds, the limits of such coverage to be reasonable under the circumstances, but no less than that required by the Limited Partner, construction lenders, or applicable statutes.

(i) Cause to be kept separate project accounts and cost records and prepare and furnish upon request financial and progress reports and statements with respect to construction of the Project.

(j) Make available to the Partnership upon request copies of all contracts and subcontracts.

(k) Deliver to the Partnership copies of all inspection reports and applications for payment given any lender providing a Loan to the Partnership.

3. **Accrual Schedule.** The Development Fee shall be earned as follows:

(a) 70% of the Development Fee (as defined herein) was earned for services performed prior to and as of the date hereof.

(b) 15% of the Development Fee shall be earned at 50% completion and the remaining 15% of the Development Fee shall be earned upon the Completion Date, as defined below.

(c) Once a portion of the Development Fee has been earned, it shall be payable by the Partnership in all events, pursuant to Section 4 below; provided, however, that notwithstanding anything to the contrary set forth herein, as of the Completion Date, the Development Fee earned and payable hereunder shall be adjusted up (in the case of (ii) below) or down (in the case of (i) below) dollar for dollar by the Adjustment Amount (as defined below).

The term "*Adjustment Amount*" shall be deemed to mean the net amount equal to (i) that portion of the Development Fee, if any (the "*Excess Development Fee*"), which, if paid and when combined with the other Project development costs, would result in more than 50% of the aggregate basis of the Project buildings and land being financed from funds other than tax-exempt bond proceeds taken into account under Section 146 of the Code or (ii) any decrease in the amount of the Development Fee evidenced at cost certification; or (iii) that portion of Development Fee, if any (the "*Additional Development Fee*") which is earned as a result of an increase in the total Project development costs as evidenced by the cost certification provided by the Partnership to the HCA.

(d) Completion Date has the following meaning: The date on which the Partnership has completed the construction and/or rehabilitation of all of the buildings and Units constituting the Project, in accordance with the relevant Project Documents, as evidenced by an AIA G704 certificate of substantial completion prepared and executed by the Architect (and concurrence respecting such completion by the Limited Partner's

independent inspection and disbursement advisor), indicating that construction and/or rehabilitation of the buildings has been completed in accordance with the relevant Project Documents, except for non-material punch list items that do not impede the rental of the space in the buildings on a full rent paying basis and which are reasonably acceptable to the Limited Partner.

4. **Development Fee.** For development services to be performed under this Agreement, the Partnership shall pay the Developer as follows:

(a) A fee of **[\$7,200,000]** (the “*Development Fee*”), as adjusted dollar for dollar by the Adjustment Amount, payable as follows:

(i) **[\$7,200,000]**, (the “Deferred Development Fee”), plus any unpaid amounts from prior installments, if any, from any available development sources, if any, following payment of the Limited Partner’s final Capital Installment (as determined by the Partnership) or from Cash Flow, pursuant to Section 4(c) below or on the 14th anniversary of the Completion Date, if not sooner paid.

All of the Fees anticipated to be payable pursuant to subsection (i) above will be payable on the above dates solely to the extent of Project funds available therefore and not required to pay other unpaid Project costs as established by the approved Project Cost Certification, and after reducing such available Project funds by all Credit Deficiencies and Tax Equivalency Payments then payable (or anticipated to be payable based on anticipated Lease-up Period of the Project), and all amounts then deposited or required to be deposited to fully fund the Project Reserves budgeted in the Projections and required pursuant to the Partnership Agreement, with any excess Fees payable from Cash Flow as set forth below, or on the 14<sup>th</sup> anniversary of the Completion Date, if not sooner paid.

(b) All Development Fee payable from Cash Flow, shall be payable by the Partnership, from time to time, to the extent of available Cash Flow, having that priority set forth in Exhibit A-5 of the Partnership Agreement, and if not sooner paid will be due and payable, in all events on the 14th anniversary of the Completion Date.

(c) Each payment, or deemed payment, of a Development Fee amount pursuant to this Agreement or the Partnership Agreement, shall be reported as income by the Developer for federal income tax purposes, to the extent such amount was not previously accrued as income, whether or not such amount is reinvested or retained in the Partnership.

5. **Partnership Agreement.** The Developer is an Affiliate of the General Partner and hereby confirms that it has received a fully signed copy of the Partnership Agreement and is familiar with the terms and provisions thereof, and agrees to be bound by the terms of the Partnership Agreement respecting Affiliates, including, but not limited to Section 10.1(e) thereof. By its signature hereto, the Developer hereby authorizes the Limited Partner to disclose information concerning the Developer to potential transferees of the Limited Partner’s interest.

6. **Burden and Benefit.** The covenants and agreements contained herein shall be binding upon and inure to the benefit of the successors and permitted assigns of the respective parties hereto. No party may assign this Agreement without the consent of the other party. The Developer shall not assign its obligations hereunder, nor assign, pledge or transfer all or any part of its fees or right to fees payable hereunder, without the Consent of the Partnership and its Limited Partner, except that the Developer may pledge its right to receive the Development Fee under this Agreement to an Affiliate and may enter into a Development Fee Sharing Agreement with the Housing Authority of Clackamas County.

7. **Severability of Provisions.** Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

8. **No Continuing Waiver.** None of the parties hereto shall be deemed to have waived any rights hereunder unless such waiver shall be in writing and signed by such party. The waiver by any party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

9. **Defined Terms.** Except as expressly provided herein, terms used in this Agreement with initial capital letters shall have the meanings set forth in the Partnership Agreement.

10. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws.

11. **Binding Agreement.** This Agreement shall be binding on the parties hereto, and their heirs, executors, personal representatives, successors and assigns.

12. **Headings.** All headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any provision of this Agreement.

13. **Terminology.** All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

14. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

IN WITNESS WHEREOF, the parties have executed this Development Services Agreement as of the date first written above.

PARTNERSHIP:

**PEDCOR INVESTMENTS-2016-CLV,  
LIMITED PARTNERSHIP**, an Oregon limited  
partnership

By: Rosewood Station Housing Company, LLC, an  
Indiana limited liability company

By: Pedcor Investments, A Limited Liability  
Company, a Wyoming limited liability  
company, its manager

By: \_\_\_\_\_  
Name: Thomas G. Crowe  
Title: Executive Vice President

DEVELOPER:

**PEDCOR DEVELOPMENT ASSOCIATES,  
LLC**, an Indiana limited liability company

By: \_\_\_\_\_  
Name: Bruce A. Cordingley  
Title: Sole Member

## Exhibit D

### GUARANTY

THIS GUARANTY (this “*Guaranty*”), dated and effective as of the [ ] day of January, 2018, is made by and between Pedcor Investments-2016-CLV, Limited Partnership, a limited partnership formed under the laws of the State of Oregon (the “*Partnership*”), Pedcor Development Associates, LLC, an Indiana limited liability company, Pedcor Investments, A Limited Liability Company, a Wyoming limited liability company (collectively, with the General Partner, the “*Corporate Guarantor*”), Bruce A. Cordingley, Gerald K. Pedigo and Phillip J. Stoffregen, each, an individual (collectively, the “*Individual Guarantor*”, and together with the Corporate Guarantor, the “*Guarantor*”), and each an Affiliate of the General Partner, for the benefit of U.S. Bancorp Community Development Corporation (the “*Limited Partner*”) and to induce the Limited Partner to become a limited partner in the Partnership by entering into that certain Amended and Restated Agreement of Limited Partnership of the Partnership, as of even date herewith (the “*Partnership Agreement*”), and performing its obligations hereunder, all of which benefit said Affiliate and the Guarantor. All defined terms not expressly defined herein shall have the meaning ascribed to them in the Partnership Agreement.

### Recitals

The Partnership was formed for the purpose of acquiring, owning, developing, constructing and/or rehabilitating, leasing, managing, operating, and, if appropriate or desirable, selling or otherwise disposing of a two hundred twelve (212) unit residential project in six (6) residential buildings located on one site in Happy Valley, Oregon (the “*Project*”).

The Guarantor agrees to make each and every of the advances, and to guarantee payment and performance of all of the obligations of the General Partner and the Special Limited Partner to the extent the General Partner or the Special Limited Partner has failed to make payment or perform in each case, as set forth herein, subject to, and in accordance with, the terms and provisions set forth below.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

The Guarantor hereby absolutely and unconditionally guarantees all of the following; provided, however, notwithstanding anything to the contrary contained herein the guaranty of Gerald K. Pedigo shall terminate as of the Completion Date and shall be limited such that any recovery hereunder against the assets of Gerald K. Pedigo shall exclude the assets set forth on the Rider to Guaranty attached hereto and incorporated herein:

1. **Completion of Development.** The Guarantor hereby guarantees the due and punctual payment and performance of all of the obligations set forth in Section 5.9 of the Partnership Agreement, free and clear of any liens or claims of liens, (other than liens bonded over as described in Section 5.6(r) of the Partnership Agreement) and with all construction related actions, claims, litigation or proceedings resolved in a manner acceptable to the Limited Partner, within the time necessary to comply with all of the terms, covenants and



conditions of Section 5.9 of the Partnership Agreement and of the applicable provisions of the Project mortgage loans and grants, if any. In furtherance, but not in limitation of Guarantor's obligations hereunder, if Development Proceeds are insufficient to achieve the Development Completion Requirements under said Section 5.9 of the Partnership Agreement, if any lien is filed against the Project, which lien is not released or, with the reasonable consent of the Limited Partner, affirmatively insured over and/or if any Operating Deficits arise or accrue during the Stabilization Period, Guarantor guarantees the prompt, absolute, and unconditional payment of such sums as are necessary to fully satisfy such obligations and satisfy all other amounts payable pursuant to Section 5.9 of the Partnership Agreement. All sums due and payable hereunder by Guarantor shall be payable to the Partnership, within five (5) days after notice from the Limited Partner into an account at U.S. Bank National Association designated in writing by a Beneficiary for application to construction of the Project.

2. **Operating Deficit Guaranty.** The Guarantor hereby guarantees due and punctual payment and performance of all of the obligations set forth in Section 5.10 of the Partnership Agreement. In the event that, at any time, or from time to time, there exists an Operating Deficit (as defined in Section 2.1 of the Partnership Agreement) for which the General Partner is liable under said Section 5.10, the Guarantor shall, from time to time, within five (5) business days after Notice thereof by the Limited Partner, advance funds to the Partnership (in the amount of the required Operating Deficit Advance(s)).

**Limitation on Operating Deficit Guaranty.** The obligation of the Guarantor to advance funds to the Partnership in accordance with this paragraph 2 shall be limited to the maximum cumulative amount of **[\$4,000,000]**, which amount shall include any prior Operating Deficit Advances made by the General Partner or any other guarantor from and after the end of the Stabilization Period, but shall not include Operating Deficits payable pursuant to Section 1 above or amounts payable pursuant to other sections of this Guaranty, or from Project or Partnership Reserves, Project revenues or Cash Flow. Notwithstanding the foregoing, there shall be no limitation on the obligations of the Guarantor, in the event of fraud, gross negligence or willful misconduct by the Guarantor, the General Partner, the Special Limited Partner or by the Management Agent, if the Management Agent is an Affiliate of the Guarantor, the Special Limited Partner or the General Partner; and, further, there shall be no limitation on the obligations of the Guarantor with respect to amount owed in connection with a refinancing of the First Mortgage Loan or in connection with Operating Deficits resulting from a loss of the Property Tax Exemption.

3. **Development Fee Guaranty.** The Guarantor hereby guarantees due and punctual payment and performance of all obligations set forth in Section 5.11 of the Partnership Agreement. In the event that, at any time or from time to time during the term of this Guaranty, a Development Fee Advance is required, pursuant to Section 5.11 of the Partnership Agreement, the Guarantor shall, within five (5) business days after Notice thereof by the Limited Partner, advance funds to the

Partnership (to an account designated by the Limited Partner at U.S. Bank National Association) in an amount equal to the required Development Fee Advance.

4. **Contractor Fee Guaranty.** The Guarantor hereby guarantees due and punctual payment and performance of all obligations set forth in Section 5.12 of the Partnership Agreement. In the event that, at any time or from time to time during the term of this Guaranty, a Contractor Fee Advance is required, pursuant to Section 5.12 of the Partnership Agreement, the Guarantor shall, within five (5) business days after Notice thereof by the Limited Partner, advance funds to the Partnership (to an account designated by the Limited Partner at U.S. Bank National Association) in an amount equal to the required Contractor Fee Advance.
5. **Reserved.**
6. **Credit Adjuster Guaranty.** The Guarantor hereby guarantees due and punctual payment and performance of all obligations set forth in Section 3.3 of the Partnership Agreement, other than respecting Credit Deficiencies arising solely from Change in Law. The Credits (and the timing of receipt of such Credits) which are anticipated by the Limited Partner as of the date hereof are set forth on Exhibit A-3 of the Partnership Agreement and are incorporated herein by this reference. In the event that, at any time or from time to time during the term of this Guaranty, a Credit Adjuster Advance is required pursuant to Section 3.3 of the Partnership Agreement, the Guarantor shall, within five (5) business days after Notice thereof by the Limited Partner, advance funds to the Limited Partner (as directed by the Limited Partner in writing), in the amount of the required Credit Adjuster Advance.
7. **Additional Guaranties.** The Guarantor hereby guarantees due and punctual payment and performance of all obligations set forth in Sections 5.6, 5.7, 6.2, 10.1(e) and 13.3 of the Partnership Agreement. In the event that, at any time or from time to time during the term of this Guaranty, the General Partner or Special Limited Partner is required to satisfy its indemnification obligations under Sections 5.6, 5.7, 6.2, 10.1(e) and/or 13.3 of the Partnership Agreement and fails to timely perform and pay such obligations as and when so required, the Guarantor shall, within five (5) business days after Notice thereof by the Limited Partner, commence to perform such obligations and to advance funds to the Partnership (to an account designated by the Limited Partner at U.S. Bank National Association) in an amount sufficient to satisfy such obligations.
8. **Guaranty of Obligation to Purchase Interest of Limited Partner.** The Guarantor hereby guarantees due and punctual payment and performance of all obligations in Section 5.14 of the Partnership Agreement. In the event that, at any time or from time to time during the term of this Guaranty, the General Partner is obligated pursuant to Sections 5.14 of the Partnership Agreement to purchase the Limited Partner's Interest and fails to purchase such Interest as and when required pursuant to Section 5.14 of the Partnership Agreement, the Guarantor shall, within

five (5) business days after Notice thereof by the Limited Partner, advance funds to the Partnership (as directed by the Limited Partner in writing), in the amount required to purchase the Limited Partner's Interest, pursuant to said Section 5.14.

9. **Payments.** Except for amounts paid by Guarantor pursuant to Sections 1, 2, 3, 4 and 6 of this Guaranty, any amounts paid by Guarantor shall not be refundable to Guarantor, but shall be paid in consideration of Limited Partner's investment in the Partnership and in further consideration of the anticipated payments by the Partnership to the General Partner and its Affiliates and the Special Limited Partner and its Affiliates of fees in connection with development of the Project, all of which benefit Guarantor, and the sufficiency of which is hereby acknowledged by Guarantor. Any payments made by Guarantor pursuant to Section 1, 2, 3, 4 and/or 6 shall be treated as an interest fee loan to the Partnership repayable pursuant to Article 8 and Exhibit A-5 of the Partnership Agreement.

10. **Representation.**

(a) The Guarantor represents that it will maintain compliance with Sections 5.7(i), 13.3(a)(6) of the Partnership Agreement.

(b) [Reserved].

(c) Pedcor Development Associates, LLC (A) is a limited liability company validly existing and in good standing under the laws of the State of Indiana and (B) has full power to enter into and consummate this Guaranty and all instruments pertaining hereto and to perform all acts related thereto, execution of this Guaranty has been duly authorized by Pedcor Development Associates, LLC and the person executing this Guaranty on its behalf is duly authorized to do so and to bind Pedcor Development Associates, LLC. The consummation of all transactions contemplated herein and in the Loan Documents and the Project Documents to be performed by Pedcor Development Associates, LLC does not and will not result in any breach or violation of, or default under, the organizational documents and authorizing resolutions of Pedcor Development Associates, LLC or any agreements by which Pedcor Development Associates, LLC or any of its property is bound, or under any applicable law, administrative regulation, or court decree. The organizational documents and authorizing resolutions of Pedcor Development Associates, LLC submitted to the Limited Partner on or prior to the date hereof are true, correct and complete and have not been amended. Pedcor Development Associates, LLC will not change its organizational structure and will not make any changes or amendments to its organizational documents and authorizing resolutions which would impair its ability to act as Guarantor in accordance with this Guaranty without the Consent of the Limited Partner. This Guaranty is enforceable against Pedcor Development Associates, LLC in accordance with its terms.

(d) Pedcor Investments, A Limited Liability Company (“Pedcor Investments”) (A) is a limited liability company validly existing and in good standing under the laws of the State of Wyoming and qualified to do business in Indiana and (B) has full power to enter into and consummate this Guaranty and all instruments pertaining hereto and to perform all acts related thereto, execution of this Guaranty has been duly authorized by Pedcor Investments, and the person executing this Guaranty on its behalf is duly authorized to do so and to bind Pedcor Investments. The consummation of all transactions contemplated herein and in the Loan Documents and the Project Documents to be performed by Pedcor Investments does not and will not result in any breach or violation of, or default under, the organizational documents and authorizing resolutions of Pedcor Investments or any agreements by which Pedcor Investments or any of its property is bound, or under any applicable law, administrative regulation, or court decree. The organizational documents and authorizing resolutions of Pedcor Investments submitted to the Limited Partner on or prior to the date hereof are true, correct and complete and have not been amended. Pedcor Investments will not change its organizational structure and will not make any changes or amendments to its organizational documents and authorizing resolutions which would impair its ability to act as Guarantor in accordance with this Guaranty without the Consent of the Limited Partner. This Guaranty is enforceable against Pedcor Investments in accordance with its terms.

11. **Intended Beneficiary.** The parties intend that the Limited Partner, and its successors and assigns, is a direct beneficiary of this Guaranty and that the Limited Partner and its successors and assigns shall have the right to directly enforce the Guarantor’s obligations hereunder. No person other than the Limited Partner (and its successors and assigns) and the parties to this Guaranty may directly or indirectly rely upon or enforce the provisions of this Guaranty, whether as a third party beneficiary or otherwise. In amplification of the provisions of this Section 9, if the Limited Partner’s Interest is transferred to a Substitute Limited Partner in accordance with Section 10.1 of the Partnership Agreement, the rights of the Limited Partner under this Guaranty with respect to the portion of its Interest so transferred shall automatically vest in such transferee, in whole or in part, as applicable, without the need of any additional agreement from the Guarantor, and when so transferred, the Guarantor’s liability hereunder shall automatically include applicable guaranties in favor of such transferee, and the Guarantor shall be bound to each such transferee(s) as Substitute Limited Partner(s) without in any manner affecting the Guarantor’s liability hereunder to the Limited Partner respecting any interest retained by such Limited Partner.
12. **Burden and Benefit.** This Guaranty and each covenant and agreement contained herein shall be binding upon Guarantor and his/her/its heirs, personal representatives, successors and assigns and shall inure to the benefit of the Limited Partner, and its respective successors and assigns. The Guarantor shall not have the right to assign its obligations hereunder without the Consent of the

Limited Partner. With respect to those Guarantors that are individuals, each Guarantor agrees that in the event of his/her death, his personal representative shall not be permitted to disburse any assets from his/her estate, other than for payment of fees and expenses having a higher priority under the laws of the jurisdiction in which the estate of the Guarantor is being administered, until said personal representative has reached a binding agreement with the Partnership regarding the payment of all claims or obligations (whether such claims or obligations are absolute or contingent) which the Partnership has or may in the future have against the estate of the Guarantor.

13. **Severability of Provisions.** Each provision of this Guaranty shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of this Guaranty is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Guaranty that are valid.
14. **No Continuing Waiver.** None of the parties hereto shall be deemed to have waived any rights hereunder unless such waiver shall be in writing and signed by such party. The waiver by any party of any breach of this Guaranty shall not operate or be construed to be a waiver of any subsequent breach.
15. **Defined Terms.** Terms used in this Guaranty with initial capital letters and not otherwise defined in the Partnership Agreement shall have the meanings set forth herein. The Guarantor hereby confirms that it has received a fully executed copy of the Partnership Agreement and is familiar with the terms and provisions thereof. Further, the Guarantor agrees to be bound by all of the requirements respecting Affiliates of the General Partner and the Special Limited Partner set forth in the Partnership Agreement, and to timely provide to the Limited Partner copies of their financial statements and tax returns required pursuant to Section 13.3(a)(6) of the Partnership Agreement.
16. **Governing Law.** This Guaranty shall be construed and enforced in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws, and cannot be modified, amended or terminated orally.
17. **Headings.** All headings in this Guaranty are for convenience of reference only and are not intended to qualify the meaning of any provision of this Guaranty.
18. **Terminology.** All personal pronouns used in this Guaranty, whether used in the masculine, feminine, or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.
19. **Counterparts.** This Guaranty may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

20. **Payment and Performance Guaranty.** Guarantor hereby agrees that this is a Guaranty of payment and performance, not collection, and that this Guaranty is an unconditional, irrevocable primary guaranty and may be enforced by the Limited Partner directly against Guarantor without first resorting to or exhausting any other right or remedy; provided, however, that nothing herein contained shall prevent the Limited Partner from suing to enforce the provisions of the Partnership Agreement or from exercising any rights thereunder. Guarantor further covenants that this Guaranty shall remain and continue in full force and effect, notwithstanding any assignment, modification, extension, compromise or renewal of the Loan Documents, the Project Documents or the release or exchange of any real or personal property or other collateral security for any of the Loans, and notwithstanding any amendment or modification of the Partnership Agreement or transfer of the Interest of any Partner thereunder, and that indulgences or forbearance may be granted under any or all of such documents, all of which may be made, done, or suffered without notice to or further consent of the Guarantor. Guarantor agrees and confirms that its liability hereunder shall not be affected, impaired, or reduced in any way by any action taken under the foregoing provisions, or any other provisions hereof, or by any delay, failure or refusal of the Limited Partner to exercise any right or remedy it may have against the General Partner or any other person, firm or corporation, including other guarantors, if any, liable for all or any part of the obligations guaranteed hereby.
21. **Security.** As collateral security for the Guarantor's obligations under Sections 1 and 4 hereunder, the Guarantor agrees that it shall deliver the Escrow Amount (defined in Section 5.7(ff) of the Partnership Agreement) to be held by the Limited Partner pursuant to the Escrow Agreements, which amount may be applied by the Limited Partner, at its sole option, at any time, or from time to time, to satisfy any of Guarantor's obligations pursuant to Sections 1 and 4 to fund Contractor Fee which are not timely satisfied in accordance with the terms hereunder and Section 5.7(ff). The Escrow Agreements may be terminated upon the Completion Date at the discretion of the Limited Partner as described in Section 5.7(ff) of the Partnership Agreement.
22. **Joint and Several.** The obligations under the term of this Guaranty are joint and several obligations of the Guarantor.
23. **No Discharge.** The Guarantor acknowledges that all of its obligations under this Guaranty are primary, absolute, irrevocable and unconditional and that its liability shall not be limited or affected by any release or discharge of the General Partner or Special Limited Partner or any other guarantor, whether by operation of law or otherwise, by withdrawal or removal of the General Partner or Special Limited Partner as a partner in the Partnership or by any other legal or factual matter, unless and until all guaranteed obligations have been paid and performed in full, regardless of whether or not Notice has then been given to the Guarantor. In amplification, and not in limitation, of the provisions set forth above, the Guarantor hereby waives and agrees not to assert or take advantage of:

- (a) any right to require the General Partner to proceed against any other person or to proceed against or exhaust any security held by the General Partner at any time or to pursue any other remedy in the General Partner's or Special Limited Partner's power before proceeding against the Guarantor;
  - (b) any right to require the Limited Partner to proceed against the General Partner or Special Limited Partner or any other person or to proceed against or exhaust any security held by the Limited Partner at any time or to pursue any other remedy in the power of the Limited Partner before proceeding against any one or more Guarantors hereunder;
  - (c) the defense of the statute of limitations in any action hereunder or in any action for the collection or the performance of any obligations guaranteed hereby;
  - (d) any defense relating to the terms and provisions of the Construction Documents;
  - (e) any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other person or persons or the failure of the Limited Partner to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons;
  - (f) any defense based upon an election of remedies by the Limited Partner or the right of Guarantors to proceed against the Partnership or any Partner; and
  - (g) any duty or obligation on the part of the Limited Partner to perfect, protect, not impair, retain or enforce any security for the payment of the obligations guaranteed hereby.
24. **Notice.** Notice to the parties hereto shall be given in the manner and (where applicable) to the addresses specified in Exhibit A-6 of the Partnership Agreement, as the same may be amended from time to time by Notice to the parties hereto. Notices to the Partnership shall be sent in care of the General Partner of the Partnership, with a copy sent simultaneously to the Limited Partner at the addresses previously provided in writing. Notices to Guarantor shall be sent to:

Pedcor Investments, A Limited Liability Company  
One Pedcor Square  
770 3<sup>rd</sup> Avenue S.W.  
Carmel, IN 46032  
Attn: Thomas G. Crowe  
Phone: (317) 587-0341

Fax: (317) 587-0340

Pedcor Development Associates, LLC

One Pedcor Square  
770 3<sup>rd</sup> Avenue S.W.  
Carmel, IN 46032

Attn: Bruce A. Cordingley

Phone: (317) 587-0341

Fax: (317) 587-0340

Gerald K. Pedigo

One Pedcor Square  
770 3<sup>rd</sup> Avenue S.W.  
Carmel, IN 46032

Phone: (317) 587-0357

Fax: (317) 587-0340

Bruce A. Cordingley

One Pedcor Square  
770 3<sup>rd</sup> Avenue S.W.  
Carmel, IN 46032

Phone: (317) 587-0335

Fax: (317) 587-0340

Phillip J. Stoffregen

One Pedcor Square  
770 3<sup>rd</sup> Avenue S.W.  
Carmel, IN 46032

Phone: (317) 587-0343

Fax: (317) 587-0340

25. **Collection.** Guarantor agrees that, in the event this Guaranty is placed in the hands of an attorney for enforcement following notice of demand for payment as required herein, Guarantor will reimburse the Limited Partner seeking such enforcement for all expenses incurred in enforcing this Guaranty, and in enforcing the rights under the Partnership Agreement, including, without limitation, reasonable attorneys' fees and expenses (whether or not suit is brought hereon) and all such other actual out of pocket expenses incurred in connection with any trial, appeal, arbitration or bankruptcy proceedings. All amounts which are not timely paid by Guarantor shall bear interest from and after the date due until paid at two percent (2%) in excess of the from time to time prime rate of interest of U.S. Bank National Association.
26. **Defenses Not Valid.** Guarantor further agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in no way be terminated, affected, or impaired (a) by reason of the assertion by the Limited Partner of any rights or remedies under or with respect to the Partnership Agreement, or any



other instruments executed in connection therewith, against any Person obligated thereunder, (b) by reason of any failure to exercise, or delay in exercising, any such right or remedy or any right or remedy hereunder or in respect to this Guaranty, or (c) by reason of the adjudication in bankruptcy of this Guaranty or any guarantor hereunder, any Person obligated under the Partnership Agreement, or the filing of a petition for any relief under any federal, state, or local bankruptcy law by any such Person.

27. **Continuing Guaranty.** It is expressly understood and agreed that this is a primary, continuing guaranty and that the obligations of Guarantor hereunder are and shall be absolute under any and all circumstances, without regard to the validity, regularity or enforceability of the Partnership Agreement, any other instruments executed in connection therewith or otherwise in connection with the Project.
28. **Certain Waivers.** To the extent permitted by law, Guarantor hereby waives notice of the acceptance hereof, presentment, demand for payment, protest, notice of protest and any and all notices of nonpayment, non-performance, non-observance, and all other notices of any kind, and other proof, and notice of demand, and Guarantor hereby waives all suretyship defenses and defenses in the nature thereof.
29. **Default.** If Guarantor shall fail or refuse to perform or continue performance of any or all of Guarantor's obligations under this Guaranty, then the Limited Partner may, at its sole, respective option, have the right to take all necessary action to cause payment or performance of any obligation(s) guaranteed hereunder to be performed and/or paid and to take any other actions necessary or advisable to cure the Guarantor's default hereunder, either before or after the exercise of any other remedy. The amounts of any and all expenditures and advances so made by the Limited Partner shall be due and payable by Guarantor immediately upon the incurrence or advancement thereof and, if not then paid, shall bear interest at two percent (2%) above the from time to time prime rate of U.S. Bank National Association and shall be an additional amount guaranteed hereunder. In addition, in the event of fraud, gross negligence or willful misconduct by the Guarantor, the Special Limited Partner, the General Partner or by the Management Agent, if the Management Agent is an Affiliate of the Guarantor, the Special Limited Partner or the General Partner, the limitations on the guaranties set forth in Section 2 above shall not apply.
30. **Subrogation.** Guarantor agrees that Guarantor shall have no right of subrogation against the General Partner or any right of contribution against any other guarantor unless and until all amounts due under the Partnership Agreement have been paid in full and all other obligations under the Partnership Agreement have been satisfied. Guarantor further agrees that, to the extent the waiver of Guarantor's rights of subrogation and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation Guarantor may have against the General Partner shall be junior and

subordinate to any rights the Limited Partner may have against the General Partner, and any rights of contribution Guarantor may have against any other guarantor shall be junior and subordinate to any rights the Limited Partner may have against such other guarantor.

IN WITNESS WHEREOF, the parties have executed this Guaranty as of the date first above written.

**PARTNERSHIP:**

**PEDCOR INVESTMENTS-2016-CLV,  
LIMITED PARTNERSHIP**, an Oregon limited  
partnership

By: Rosewood Station Housing Company, LLC, an  
Indiana limited liability company

By: Pedcor Investments, A Limited Liability  
Company, a Wyoming limited liability  
company, its manager

By: \_\_\_\_\_  
Name: Thomas G. Crowe  
Title: Executive Vice President

**GUARANTORS:**

**ROSEWOOD STATION HOUSING  
COMPANY, LLC**, an Indiana limited liability  
company

By: Pedcor Investments, A Limited Liability Company, a Wyoming limited liability company, its manager

By: \_\_\_\_\_  
Name: Thomas G. Crowe  
Title: Executive Vice President

**PEDCOR DEVELOPMENT ASSOCIATES, LLC**, an Indiana limited liability company

By: \_\_\_\_\_  
Name: Bruce A. Cordingley  
Title: Sole Member

**PEDCOR INVESTMENTS, A LIMITED LIABILITY COMPANY**, a Wyoming limited liability company

By: \_\_\_\_\_  
Thomas G. Crowe  
Executive Vice President

---

Bruce A. Cordingley

---

Gerald K. Pedigo, by Bruce A. Cordingley, his  
attorney in fact

---

Phillip J. Stoffregen

STATE OF INDIANA                    )  
  ) SS  
COUNTY OF HAMILTON            )

On January \_\_\_\_, 2018, before me, a notary public, personally appeared Thomas G. Crowe, Executive Vice President of Pedcor Investments, A Limited Liability Company, a Wyoming limited liability company, manager of Rosewood Station Housing Company, LLC, an Indiana limited liability company, to me known to be the person who executed the foregoing instrument on behalf of said company and acknowledged to me that he executed the same of his own free will for the purposes stated therein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the location aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

My commission expires:

STATE OF INDIANA                    )  
  ) SS  
COUNTY OF HAMILTON            )

On January \_\_\_\_, 2018, before me, a notary public, personally appeared Bruce A. Cordingley, the sole member of Pedcor Development Associates, LLC, an Indiana limited liability company, to me known to be the person who executed the foregoing instrument on behalf of said companies and acknowledged to me that he executed the same of his own free will for the purposes stated therein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the location aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

My commission expires:

STATE OF INDIANA                    )  
  ) SS  
COUNTY OF HAMILTON            )

On January \_\_\_\_, 2018, before me, a notary public, personally appeared Thomas G. Crowe, Executive Vice President of Pedcor Investments, A Limited Liability Company, a Wyoming limited liability company, to me known to be the person who executed the foregoing instrument on behalf of said company and acknowledged to me that he executed the same of his own free will for the purposes stated therein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the location aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

My commission expires:

STATE OF INDIANA                    )  
  ) SS  
COUNTY OF HAMILTON            )

On January\_\_\_\_, 2018, before me, a notary public, personally appeared Bruce A. Cordingley, to me known to be the person described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the location aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

**My commission expires:**

STATE OF INDIANA                    )  
  ) SS  
COUNTY OF HAMILTON            )

On January \_\_\_\_, 2018, before me, a notary public, personally appeared Bruce A. Cordingley as attorney in fact for Gerald K. Pedigo, to me known to be the person described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the location aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

**My commission expires:**

STATE OF INDIANA                    )  
  ) SS  
COUNTY OF HAMILTON            )

On January \_\_\_\_, 2018, before me, a notary public, personally appeared Phillip J. Stoffregen, to me known to be the person described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the location aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

**My commission expires:**



**RIDER TO GUARANTY IN FAVOR OF  
U.S. BANCORP COMMUNITY DEVELOPMENT CORPORATION  
DATED JANUARY \_\_\_\_\_, 2018, RELATING TO THE EXEMPTION  
OF CERTAIN ASSETS OF GERALD K. PEDIGO**

Notwithstanding anything in this Guaranty to the contrary, U.S. Bancorp Community Development Corporation, and its successors and assigns (collectively, the “Lender”) shall look solely to property that is not exempted from the provisions of this Guaranty (such property that is exempt from the provisions of this Guaranty is herein referred to as the “Exempt Property”), for the satisfaction of the obligations of Gerald K. Pedigo pursuant to this Guaranty. In no event shall Lender attempt to claim or assert or be entitled to any levy or attachment upon the Exempt Property to satisfy the obligations of the undersigned pursuant to this Guaranty. Notwithstanding anything contained herein, in any agreement for establishment of depository accounts or any other agreement between Gerald K. Pedigo and Lender, Lender shall not be entitled to any right of set-off or counterclaim or any claim whatsoever with respect to the Exempt Property.

For purposes hereof, the “Exempt Property” shall consist of:

- (a) The real property and personal property described in EXHIBIT A attached hereto and made a part hereof;
- (b) Amounts held in four special exempt personal trust accounts (the “Exempt Funds Account”) maintained for the benefit of The Gerald K. Pedigo Trust, under Trust Agreement dated August 26, 1987 (the “Trust”), as Stifel Nicolaus & Company Account Numbers IA71-7417-9226 and IA41-2229-2881; as SAA Knall/Cohn Managed Account Number 8808-4178; and, as United Fidelity Bank Investment Flexplus Account Number 900022214, including all interest thereon and earnings thereof, the balance of which the Exempt Funds Account had a combined market value of \$6,388,815 as of December 31, 2016.

In addition, so long as Gerald K. Pedigo and the Trust maintain a combined cash and marketable securities position of at least \$1,000,000 separate and apart from the Exempt Funds Account and other Exempt Property, additional deposits may be made to the Exempt Funds Account in any amount up to 50% of all income and cash flow of Gerald K. Pedigo and/or the Trust commencing January 1, 2017 on a cumulative basis with such additional deposits and all earnings thereon constituting Exempt Property for purposes hereof.

Notwithstanding anything in this Guaranty to the contrary, this Guaranty shall terminate upon lien-free construction completion of Rosewood Station (the “Project”) as evidenced by a certificate of the Project architect and engineer stating the Project has been completed in substantial accordance with the plans and specifications approved for the Project.

To the extent the terms and provisions of this Guaranty concerning the Exempt Property and the Exempt Funds Account are inconsistent in any respect with any of the terms and provisions of any documents or agreements in effect between Gerald K. Pedigo and the Lender, whether entered into on or after the date hereof, the terms and provisions hereof shall be

controlling insofar as the Exempt Property is concerned. Gerald K. Pedigo and Lender may, from time to time, by mutual written agreement, amend the provisions of this Guaranty governing the Exempt Property. Gerald K. Pedigo may access and deal with the Exempt Property including withdrawal, expenditure, investment and re-deposit as he may determine in his sole discretion and nothing contained herein shall be construed as a limitation of such rights in any manner. This Rider shall be binding upon and shall inure to the benefit of the respective successors and assigns to the parties hereto.

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Gerald K. Pedigo

ACKNOWLEDGED AND AGREED TO BY:

U.S. BANCORP COMMUNITY DEVELOPMENT  
CORPORATION, a Minnesota corporation

By: \_\_\_\_\_  
Name: Patrick Finerty  
Title: Assistant Vice President

**EXHIBIT A**

**RIDER TO GUARANTY OF  
GERALD K. PEDIGO  
DATED December 31, 2016**

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- A. Household Furnishings, Personal Effects and Vehicles with an estimated value of \$352,000.
- B. Personal Residence at 6351 Calle Ponte Bella, Rancho Santa Fe, California with an estimated value of \$4,990,000.
- C. Personal Residence at 18331 Calle Stellina, Rancho Santa Fe, California with an estimated value of \$3,500,000.\*\*
- D. Personal Property consisting of Lot #85 at Black Rock in Couer d'Alene, Idaho with an estimated value of \$400,000.
- E. Investment (partial interest) in Beeville Properties, LLC, a retail shopping center in Beeville, Texas with an estimated value of \$167,510.
- F. Investment (partial interest) in Wichita Falls Partners, LLC, a retail shopping center in Wichita Falls, Texas with an estimated value of \$268,658.
- G. Purchased 3,333 shares of Pedcor Bancorp non-cumulative perpetual preferred stock valued at \$200,000 with previously exempt funds.
- H. Purchased 1,333 shares of Fidelity Federal Bancorp non-cumulative perpetual preferred stock valued at \$1,333,333 with previously exempt funds.

\*\*NOTE: The Personal Residence at 18331 Calle Stellina, Rancho Santa Fe, California was subsequently sold in January 2017. Excess proceeds from the sale were deposited to Stifel Nicholas & Company Exempt Account # IA71-7417-9226.

## Exhibit E

### PARTNERSHIP MANAGEMENT AGREEMENT

THIS PARTNERSHIP MANAGEMENT AGREEMENT (this “*Agreement*”), dated and effective as of the \_\_\_\_ day of January, 2018, is made by and between Pedcor Investments-2016-CLV Limited Partnership, a limited partnership formed under the laws of the State of Oregon (the “*Partnership*”), and Rosewood Station Housing Company, LLC, an Indiana limited liability company (the “*General Partner*”).

#### Recitals

The Partnership was formed for the purpose of acquiring, owning, developing, constructing and/or rehabilitating, leasing, managing, operating, and, if appropriate or desirable, selling or otherwise disposing of a two hundred and twelve (212) unit residential project in six (6) residential buildings plus a community building located on one site in Happy Valley, Oregon (the “*Project*”). The Partnership is operating by an Amended and Restated Agreement of Limited Partnership in the form to which this Agreement is attached as an exhibit (the “*Partnership Agreement*”).

The Partnership has agreed to make certain payments to the General Partner as an inducement for the efficient administration of the Project.

Accordingly, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Services.** Subject to the applicable provisions of the Partnership Agreement, the General Partner shall:
  - (a) Provide any and all supervisory services designed to cause the Project to operate efficiently, including reviewing and evaluating programs, policies and procedures instituted by the Management Agent for advertising and tenant recruitment, screening and selection;
  - (b) Investigate and make recommendations with respect to the selection and conduct of relations with consultants and technical advisors (including, without limitation, accountants, depositories, custodians, agents for collection, insurers, insurance agents and banks) if necessary at any given time; and
  - (c) Formulate programs for owner, tenant, public and government relations.
2. **Partnership Management Fee.** Subject to the applicable terms and conditions of the Partnership Agreement and the Loans and Project Documents, the Partnership shall pay to the General Partner, over the term of this Agreement, an annual

Partnership Management Fee, solely to the extent that there are funds available to pay the same in any year, payable pursuant to, and in the amounts and payment priority level as set forth in Items Twelfth and Fourteenth of Exhibit A-5 of the Partnership Agreement. This Partnership Management Fee shall not accrue.

3. **Partnership Agreement.** Except as expressly provided herein, this Agreement shall be subject to the applicable terms and conditions of the Partnership Agreement. All terms not otherwise defined herein shall have the meanings therefor set forth in the Partnership Agreement.
4. **Burden and Benefit.** The covenants and agreements contained herein shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, personal representatives, successors and assigns. The General Partner may not assign this Agreement without the Consent of the Limited Partner. In the event the General Partner is removed pursuant to the terms and conditions of the Partnership Agreement, the portion of the Partnership Management Fee payable to the General Partner shall be then payable to the successor general partner approved by the Limited Partner.
5. **Severability of Provisions.** Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.
6. **No Continuing Waiver.** None of the parties hereto shall be deemed to have waived any rights hereunder unless such waiver shall be in writing and signed by such party. The waiver by any party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.
7. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws.
8. **Headings.** All headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any provision of this Agreement.
9. **Terminology.** All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.
10. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

**Term.** In the event the General Partner withdraws, is removed or otherwise transfers its Interest in the Partnership, this Partnership Management Fee Agreement shall terminate.

IN WITNESS WHEREOF, the parties have executed this Partnership Management Agreement as of the date first written above.

PARTNERSHIP:

**PEDCOR INVESTMENTS-2016-CLV,  
LIMITED PARTNERSHIP**, an Oregon limited  
partnership

By: Rosewood Station Housing Company, LLC,  
an Indiana limited liability company, its General  
Partner

By: Pedcor Investments, A Limited Liability  
Company, a Wyoming limited liability company, its  
Manager

By: \_\_\_\_\_  
Name: Thomas G. Crowe  
Title: Executive Vice President

GENERAL PARTNER:

**ROSEWOOD STATION HOUSING  
COMPANY, LLC**, a Indiana limited liability  
company

By: Pedcor Investments, A Limited Liability  
Company, a Wyoming limited liability  
company, its Manager

By: \_\_\_\_\_

Name: Thomas G. Crowe

Title: Executive Vice President

**Exhibit F**  
**PROJECTIONS**  
**[INSERT PROJECTIONS]**



## Exhibit G

### INSURANCE REQUIREMENTS CHECKLIST

#### Partnership Agreement Insurance Requirements

The insurance coverage set forth below constitutes Limited Partner's initial coverage requirements, and are subject to increase, from time to time, at the written reasonable request of the Limited Partner.

Immediately upon purchase of the land on which the Project is located, and throughout the term of this Agreement, General Partner shall obtain, and maintain in full force and effect, the following policies of insurance on behalf of the Partnership; provided that the coverage amounts set forth below are subject to increase, from time to time, at the written reasonable request of the Limited Partner:

1. Commercial General Liability insurance, providing coverage on an occurrence rather than a "claims made" basis insuring for third party claims of legal liability, and caused by bodily injury, property damage, personal injury or advertising injury, arising out of the ownership or management of the Land and including the costs to defend such actions brought against the Partnership, as well as hired and non-owned automobile liability insurance. The policy shall designate the Partnership as a Named Insured, and include an endorsement adding the Limited Partner as additional insured, and shall be primary coverage for the additional insured, without contribution from other valid insurance policies which may be available to the additional insured. Limits of the policy shall be at least \$1 million per occurrence and \$2 million in the general aggregate. If coverage is provided under blanket policies insuring other locations or entities, then the general aggregate must apply to each insured location separately.
2. Umbrella/Excess Liability insurance, with the Commercial General Liability, Automobile Liability policies scheduled as underlying policies. Limits of the policy shall be at least \$3 million per occurrence and in the annual aggregate. The policy shall include the Partnership as a Named Insured and the Limited Partner as additional insured and shall be primary coverage for the additional insured without contribution from other valid insurance policies which may be available to the additional insured.

*Prior to the commencement of any construction of the Project, General Partner shall obtain (or cause to be obtained by the General Contractor) and keep in force during the term of any construction:*

3. Builder's Risk insurance, insuring for all risks of physical loss of or damage (excluding the perils of earthquake and flood, unless specifically required by the Limited Partner) to:

the buildings and structures being constructed;

- fixtures, materials, supplies, machinery and equipment to be used in construction;
- scaffolding, falsework, fences, forms, etc;
- trailers and temporary structures incidental to the construction;
- foundations and underground work;
- sidewalks and paving;
- personal property of the Partnership used to maintain or service the Project construction whether located at the site or elsewhere, including while in-transit;

The construction site shall be specifically scheduled on the policy as a Covered Location. Limits of policy will be at least the estimated replacement value of the completed Project, plus the value of other property insured. Coverage and limits shall be extended to include soft cost for additional costs made necessary by a delay in completion of construction; such soft costs should include payment for:

- Debt service payments and bond interest payment (where appropriate)
- Construction loan fees and refinancing charges;
- Legal fees;
- Design professional fees;
- Real estate taxes;
- Insurance premiums

Amounts of coverage for soft costs should be sufficient to meet the likely costs of each category for a delay period of twelve months. Policy shall provide for claims to be paid based upon replacement cost of the lost or damaged property without deduction for depreciation. The policy shall have a deductible of no greater than \$25,000 per occurrence. The policy shall carry no coinsurance provisions. The policy shall designate the Partnership as a Named Insured. The policy shall include an endorsement naming the Limited Partner as Loss Payee, as its interests may appear, and as an insured.

4. Evidence from the General Contractor of:

- Worker's Compensation insurance, insuring for occupational disease or injury and employer's liability, and covering the General Contractor's full liability for statutory compensation to any person or persons who perform work in, on, or about the Project

construction, including the employees of sub-contractors of any tier, and liability to the dependents of such persons. The policy will be in a form which complies with the worker's compensation acts and safety laws of the state in which the Project is located. Worker's Compensation limits shall be statutory; Employer's Liability limits shall be at least \$1 million per occurrence.

- Commercial General Liability insurance, insuring for third party claims of legal liability against the General Contractor, and caused by bodily injury, property damage, and personal injury or advertising injury, arising out of the activities of the contractor, and including the costs to defend such actions brought against the Partnership. Completed Operations coverage shall also be included in the policy. The policy shall include an endorsement adding the Partnership and Limited Partner as additional insured, and shall be primary coverage for the additional insured, without contribution from other valid insurance policies which may be available to the additional insured. Limits of the policy shall be at least \$1 million per occurrence and \$2 million in the general aggregate.
- Umbrella/Excess Liability insurance, with the Commercial General Liability, and Employers Liability policies scheduled as underlying policies. Limits of the policy shall be at least \$2 million per occurrence and in the annual aggregate. The policy shall include the Partnership and Limited Partner as additional insured and shall be primary coverage for the additional insured without contribution from other valid insurance policies which may be available to the additional insured.

5. Evidence from each Architect or other design professional of:

- Professional Liability insurance, insuring for third party claims of negligence against the design professional, and caused by the wrongful act of the design professional; limits shall be the greater of \$1 million per occurrence and in the aggregate, or 10% of the value of hard costs under the construction contract.

Prior to any occupancy of the Project, General Partner shall obtain, and shall maintain in full force and effect throughout the term of this Agreement, the following policies of insurance:

7. Property Damage insurance, insuring for all risks of physical loss of or damage (excluding the perils of earthquake and flood, unless specifically required by the Limited Partner) to the real property comprising the Project, personal property of the Partnership used to maintain or service the Project, and new construction, additions, alterations and repairs to structures. Policy shall provide for claims to

be paid based upon replacement cost of the lost or damaged property without deduction for depreciation. Limits of policy will be at least the replacement value of the Project (excluding the value of the Land, site utilities, foundations, slabs and underslab plumbing and architectural and engineering expenses). The policy shall have a deductible of no greater than \$25,000 per occurrence. The policy shall carry no coinsurance provisions. Coverage and limits shall be extended to include the actual loss of rents sustained due to an insured loss, for a period of at least twelve months from the date of such loss. Coverage shall be further extended to include debris removal, outdoor trees, shrubs, plants and lawns, and Ordinance or Law coverage for the increased costs of construction and the loss in value of undamaged portions of the building(s), caused by the enforcement of building, zoning or land use law. The policy shall designate the partnership as a Named Insured, and include an endorsement naming the Limited Partner as Loss Payee, as its interests may appear, and as an insured.

8. Upon entering into the Property Management Agreement with the Management Company, the General Partner shall obtain, and maintain in full force and effect, through the term of such Property Management Agreement, the following coverage:

- Fidelity Bond from the Management Company, in an amount and issued by a surety acceptable to the Limited Partner, or alternate crime insurance in amounts, and with coverage, acceptable to the Limited Partner.
- Worker's Compensation insurance for any person or persons considered employees of the Management Agent under applicable state law, covering the Management Agent's full liability for statutory compensation to any person or persons who perform work in, on, or about the Project, and Employer's Liability; Employer's Liability limits shall be at least \$1 million per occurrence.
- Commercial General Liability insurance, insuring for third party claims of legal liability against the management company, and caused by bodily injury, property damage, personal injury or advertising injury, arising out of the activities of the management company, and including the costs to defend such actions brought against the Partnership. Products and Completed Operations coverage shall also be included in the policy. The policy shall include an endorsement adding the Limited Partner as additional insured, and shall be primary coverage for the additional insured, without contribution from other valid insurance policies which may be available to the additional insured. Limits of the policy shall be at least \$1 million per occurrence and \$2 million in the general aggregate. If coverage is provided under blanket policies insuring other locations or activities of the management company,

then the general aggregate must apply to each insured location separately.

- Umbrella/Excess Liability insurance, from the Management Company with, the Commercial General Liability, and Employers Liability policies scheduled as underlying policies. Limits of the policy shall be at least \$3 million per occurrence and in the annual aggregate. The policy shall include the Partnership as additional insured and shall be primary coverage for the additional insured without contribution from other valid insurance policies which may be available to the additional insured.

Other forms or types of insurance may be required by the Limited Partner, lender or other party of interest throughout the term of this agreement (which policies shall include an endorsement naming the Limited Partner as additional insured and/or as loss payee, as its interest may appear).

All insurance policies shall be underwritten by companies licensed to write such insurance in the state in which the Project is located, and shall be rated in the latest A.M. Best's Insurance Rating Guide with a rating of at least A- , and be in a financial category of at least IX. The General Partner shall furnish to the Limited Partner a complete copy of each such policy of insurance required under #1-4 and #7 above and the fidelity bond required under #8 above. If an insurance policy is not available when required, as set forth above, then Certificates of Insurance detailing the policy terms and conditions as noted above shall be provided, but the policies must then be provided within sixty days. All such policies shall provide at least 30 days prior written notice to the Limited Partner of any cancellation of the policy. Notice of the renewal of any policy shall be made at least 10 days prior to the scheduled date of such renewal, and shall be in the form of endorsement to the policy. Notice to the Limited Partner of any replacement of any policy shall be made at least 10 days prior to such replacement, and shall be in the form of a copy of the replacement policy, or by certificate, as noted above. Evidence of insurance under #5-6 above may be provided on a Certificate of Insurance issued to the Partnership and the Limited Partner.

By requiring insurance limits, the Limited Partner does not represent that coverage and limits will necessarily be adequate to protect the Partnership, General Partner, or General Contractor, and such coverage and limits shall not be deemed as a limitation or release of the General Partner's or General Contractor's liability under any indemnification granted to the Limited Partner in this Agreement.

The requirements specified herein shall not be waived by delivery of a certificate or policy to the Limited Partner (or its counsel) not in conformance with these requirements unless these requirements are specifically modified in writing by the Limited Partner.



		Permanent	Construction	Approved	Revised Construction	Draw	Draw	Draw	Draw	Draw	Draw	Draw	Draw	Draw	Draw	Draw	Completed	%	Balance To Fund
Sources		Budget	Budget	Changes	Budget	#1	#2	#3	#4	#5	#6	#7	#8	#9	#10	to Date		Per Revised Construction Budget	
Construction Loan																			
Soft Financing																			
USBCDC Equity																			
GP/MM Equity																			
Perm Loan																			
Cash from Operations																			
Deferred Development Fee																			
<b>Grand Total Sources</b>																			
<b>Comments:</b>																			

**Exhibit I**  
**Form of Annual Operating Budget and Form of Quarterly Income Statement**

<b>Project Name:</b>			<b>USB Project ID:</b>					
For Period			For Period					
Beginning:			Ending:					
		<b>USB Income Statement Format *</b>						
		<b>Description of Account</b>	<b>Acct No.</b>					
		Apartments or Member Carrying Charges	5120	\$				
		Tenants Assistance Payments	5121	\$				
<b>Rental</b>		Furniture and Equipment	5130	\$				
<b>Income</b>		Stores and Commercial	5140	\$				
<b>5100</b>		Garage and Parking Spaces	5170	\$				
		Flexible Subsidy Income	5180	\$				
		Miscellaneous <b>(Specify Below)</b>	5190					
		Excess Rent	5190-1	\$				
		Rent Revenue/ Insurance	5190-2	\$				
		Special Claims	5190-3	\$				
		Retained Excess Income	5190-4	\$				
			5190-	\$				
			5190-	\$				
		Master Lease Income	5190-9	\$				
		Total Rent Potential at 100% Occupancy				\$	0	
		Apartments	5220	\$				
		Furniture and Equipment	5230	\$				
<b>Vacancies</b>		Stores and Commercial	5240	\$				
<b>5200</b>		Rental Concessions	5250	\$				
		Garage and Parking Spaces	5270	\$				
		Miscellaneous <b>(Specify Below)</b>	5290					
		Gain / (Loss) to Lease <b>(See definition)</b>	5290-1	\$				
			5290-	\$				
			5290-	\$				



		Total Vacancies			\$	0
		Net Rental Revenue Less Vacancies			\$	0
<b>Income</b>		Elderly and Congregate Services Revenue	5300		\$	
<b>5300</b>		Total Service Income (Schedule Attached)			\$	0
		Interest Income - Project Operations	5410		\$	
		Interest Reduction Payments (IRP)	5420		\$	
<b>Financial</b>		Income from Investments - Residual Receipts	5430		\$	
<b>Revenue</b>		Income from Investments - Reserve Replacements	5440		\$	
<b>5400</b>		Income from Investments - Misc. (Specify Below)	5490			
		TIF Income	5490-1		\$	
		Interest Income - Bond Account or Sinking Fund	5490-2		\$	
			5490-		\$	
			5490-		\$	
		Total Financial Revenue			\$	0
		Laundry and Vending	5910		\$	
		NSF and Late Charges	5430		\$	
<b>Other</b>		Damages and Cleaning Fees	5930		\$	
<b>Revenue</b>		Forfeited Tenant Security Deposits	5940		\$	
<b>5900</b>		Other Revenue (Specify Below)	5990			
		Grant Income	5990-1		\$	
		Tenant Utility Reimbursement	5990-2		\$	
		Recovery of Bad Debt	5990-3		\$	
			5990-		\$	
			5990-		\$	
		Total Other Revenue			\$	0
		Advertising	6210		\$	
		Other Renting Expenses	6250		\$	
		Office Salaries	6310		\$	
		Office Supplies	6311		\$	
<b>Administrative</b>		Office or Model Apartment Rent	6312		\$	
<b>Expenses</b>		Management Fee	6320		\$	
<b>6200/6300</b>		Manager or Superintendent Salaries	6330		\$	
		Manager or Superintendent Rent Free Unit	6331		\$	
		Legal Expense (Project)	6340		\$	
		Auditing Expenses (Project)	6350		\$	
		Bookkeeping/Accounting	6351		\$	

		Telephone and Answering Services	6360	\$			
<b>Administrative</b>		Bad Debt Expense	6370	\$			
<b>Expenses</b>		Misc. Administrative Expenses (Specify Below)	6390				
<b>6200/6300</b>		Cable TV / Internet Expenses	6390-1	\$			
			6390-	\$			
			6390-	\$			
		Master Lease Expense	6390-9	\$			
		Total Administrative Expenses				\$	0
		Fuel Oil/Coal	6420	\$			
		Electricity (Light and Misc Power)	6450	\$			
<b>Utilities</b>		Water	6451	\$			
<b>6400</b>		Gas	6452	\$			
		Sewer	6453	\$			
		Waste Water Treatment	6490-1	\$			
		Total Utilities Expense				\$	0
		Janitor and Cleaning Payroll	6510	\$			
		Janitor and Cleaning Supplies	6515	\$			
		Janitor and Cleaning Contract	6517	\$			
		Exterminating Payroll	6519-1	\$			
		Exterminating Contract	6519-2	\$			
		Exterminating Supplies	6520	\$			
		Garbage and Trash Removal	6525	\$			
		Security Payroll	6530-1	\$			
		Security Contract	6530-2	\$			
<b>Operating and</b>		Grounds Payroll	6535	\$			
<b>Maintenance</b>		Grounds Supplies	6536	\$			
<b>6500</b>		Grounds Contract	6537	\$			
		Repairs Payroll	6540	\$			
		Repairs Material	6541	\$			
		Repairs Contract	6542	\$			
		Elevator Maintenance/Contract	6545	\$			
		Heating/Cooling Repairs and Maintenance	6546	\$			
		Swimming Pool Maintenance/ Contract	6547	\$			
		Snow Removal	6548	\$			
		Decorating Payroll	6560-1	\$			
		Decorating Contract	6560-2	\$			
		Decorating Supplies	6561	\$			

	Vehicle Maint., Equip Operations, Repairs	6570	\$			
	Misc. Operating and Maintenance Expenses	6590	\$			
	Total Operating and Maintenance Expenses				\$	0
	Real Estate Taxes	6710	\$			
	Payroll Taxes (FICA)	6711	\$			
<b>Taxes and</b>	Misc. Taxes, Licenses and Permits	6719	\$			
<b>Insurance</b>	Property and Liability Insurance	6720	\$			
<b>6700</b>	Fidelity Bond Insurance	6721	\$			
	Workmens Compensation	6722	\$			
	Health Insurance & Other Benefits	6723	\$			
	Other Insurance	6729	\$			
	Total Taxes and Insurance				\$	0
	Interest on Bonds Payable	6810	\$			
	Interest on Mortgage Payable	6820	\$			
	Interest on Bridge Loans	6821	\$			
<b>Financial</b>	Interest on Accrued Expenses	6822	\$			
<b>Expenses</b>	Interest On Developer Fees	6823	\$			
<b>6800</b>	Interest on Notes Payable (Short Term)	6830-1	\$			
	Interest on Notes Payable (Surplus Cash)	6835-1	\$			
	Interest on Notes Payable (Long Term)	6840-1	\$			
	Interest on Notes Payable # 1 (Surplus Cash)	6845-1	\$			
	Interest on Notes Payable # 2 (Surplus Cash)	6845-2	\$			
	Interest on Notes Payable # 3 (Surplus Cash)	6845-3	\$			
	Interest on Notes Payable # 4 (Surplus Cash)	6845-4	\$			
	Interest on Notes Payable # 5 (Surplus Cash)	6845-5	\$			
	Mortgage Ins. Premium Service Charge	6850	\$			
	Miscellaneous Financial Expenses	6890	\$			
	Total Financial Expenses				\$	0
	Dietary Salaries	6930	\$			
	Food	6932	\$			
	Dietary Supplies	6933	\$			
	Registered Nurses Payroll	6940	\$			
	Licensed Practical Nurses Payroll	6941	\$			
<b>Elderly and</b>	Other Nurses Salaries	6942	\$			
<b>Congregate Service</b>	Housekeeping Salaries	6950	\$			
<b>Expenses</b>	Housekeeping Supplies	6951	\$			
<b>6900</b>	Other Housekeeping	6952	\$			

		Drugs and Pharmaceuticals	6960	\$			
		Medical Salaries	6961	\$			
		Other Medical	6962	\$			
		Laundry and Linen	6970	\$			
		Recreation and Rehabilitation	6980	\$			
		Other Services Expense	6990	\$			
		Total Elderly & Congregate Service Expenses				\$	0
		Total Cost of Operations Before Depreciation and Amortization				\$	0
		<b>Profit (Loss) Before Depreciation &amp; Amortization</b>				\$	0
		Depreciation	6600			\$	
		Amortization	6690			\$	
		<b>Operating Profit or (Loss) after Depreciation and Amortization</b>				\$	0
		Officer Salaries (Entity)	7110	\$			
		Legal Expenses (Entity)	7120	\$			
<b>Corporate or</b>		Taxes Federal-State-Other (Entity)	7130-7132	\$			
<b>Mortgagor Entity</b>		Other Expenses (Entity) (Specify Below)	7190				
<b>Expenses</b>		Compliance Fees	7190-1	\$			
<b>7100</b>		Asset Management Fee	7190-2	\$			
			7190-	\$			
			7190-	\$			
		Other Expenses (Surplus Cash) (Specify Below)	7200				
		Partnership Management Fee	7200-1	\$			
		Incentive Management Fee	7200-2	\$			
			7200-	\$			
			7200-	\$			
		Total Corporate Expenses				\$	0
		<b>Net Profit or (Loss)</b>				\$	0
*	Format based upon HUD Guidelines with modifications						
		Annual Principal Payments Requirement				\$	
		Annual Interest Payments Requirement				\$	
		Annual <b>Replacement Reserve Requirement</b> per Partnership Agreement				\$	
<b>Supplemental</b>		Actual Replacement Reserve Funded				\$	
<b>Information</b>		Replacement Reserve <b>Releases</b> included as expenses on this Profit and					
		Loss Statement (i.e. Capital Expenditures)				\$	
		Non-Operating Income / (Expense) (Specify Below)				\$	
						\$	

			\$	
			\$	
		New, Restated, or Refinanced Loan and/or Bond Documents		
<b>Required</b>		Notification of Real Estate Tax Abatement or most recent Paid Tax Receipt		
<b>Documents</b>		<b>Attach corresponding Balance Sheet for Period Ending</b>		
		<b>Attach corresponding Rent Roll for Period Ending</b>		

**Exhibit J**  
**Form of Quarterly Balance Sheet**

<b>Project Name:</b>			<b>USB Project ID:</b>			
For Period			For Period			
Beginning:			Ending:			
<b>HUD Balance Sheet Format *</b>						
	<b>Acct No.</b>	<b>Description of Account</b>				
	1110	Petty Cash	\$			
	1120	Cash in Bank	\$			
	1130	Tenant/ Member Accounts Receivable	\$			
	1130-1	<b>Less:</b> Allowance for Doubtful Accounts	\$			
<b>Current Assets</b>	1135	Accounts Receivable – HUD	\$			
	1140	Accounts Receivable – Other	\$			
<b>1000</b>	1141	Accounts Receivable – TIF	\$			
	1142	Accounts Receivable - Related Party	\$			
	1150	Notes Receivable	\$			
	1151	Notes Receivable - Related Party	\$			
	1160	Accrued Receivables	\$			
	1170	Investments (Short-term)	\$			
	1190	Miscellaneous Current Assets	\$			
	1191	Tenant Security Deposits - Held in Trust	\$			
	1192	Other Deposits	\$			
Total Current Assets					\$	0
	1210	Fuel Inventory	\$			
	1220	Gasoline and Oil Inventory	\$			
<b>Prepaid Expenses</b>	1230	Supplies Inventory	\$			
	1240	Prepaid Property & Liability Insurance	\$			
<b>1200</b>	1250	Prepaid Mortgage Insurance	\$			
	1260	Prepaid Advertising	\$			
	1270	Prepaid Taxes	\$			
	1290	Miscellaneous Prepaid Expenses	\$			
Total Prepaid Expenses					\$	0
	1300-1	Tax & Insurance Escrow	\$			
	1320	Replacement Reserve – Cash	\$			
	1321	Replacement Reserve – Securities	\$			
	1330	Painting Reserve – Cash	\$			
	1331	Painting Reserve – Securities	\$			
<b>Funded Reserves</b>	1340	Residual Receipts Reserve – Cash	\$			
	1341	Residual Receipts Reserve – Securities	\$			
<b>1300</b>	1350	General Reserve – Cash	\$			
	1360	General Reserve – Securities	\$			
	1365	Operating Reserve	\$			
	1370	Apartment Rehabilitation Deposits	\$			
	1380	Project Improvement Account	\$			

	1390	Other Reserves	\$			
		Total Escrows and Reserves			\$	0
	1410	Land & Land Improvements	\$			
	1420	Buildings & Building Improvements	\$			
<b>Fixed</b>	1430	Building Equipment – Fixed	\$			
<b>Assets</b>	1440	Building Equipment – Portable	\$			
<b>1400</b>	1450	Furniture	\$			
	1460	Furnishings	\$			
	1470	Maintenance Equipment	\$			
	1480	Motor Vehicles	\$			
	1495	<b>Less:</b> Accumulated Depreciation	\$			
		Total Fixed Assets			\$	0
<b>Other</b>	1500	Investments (Long-term)	\$			
	1800	Organization Expenses (net of amortization)	\$			
<b>Assets</b>	1800-1	Syndication Costs	\$			
	1800-2	Financing Fees (net of amortization)	\$			
<b>1500-1900</b>	1900	Other Assets	\$			
		Total Other Assets			\$	0
		<b>Total Assets</b>			\$	0
	2110	Accounts Payable	\$			
	2113	Accounts Payable - Related Party	\$			
	2115	Accounts Payable – HUD	\$			
	2120	Accrued Wages & Payroll Taxes Payable	\$			
	2123	Accrued Property Management Fee	\$			
	2130-1	Accrued Interest Payable- 1st Mortgage / Bond	\$			
	2130-2	Accrued Interest Payable- 2nd Mortgage / Bond	\$			
	2130-3	Accrued Interest Payable- 3rd Mortgage / Bond	\$			
	2135-1	Accrued Interest Payable- Note #1 (Surplus Cash)	\$			
<b>Current</b>	2135-2	Accrued Interest Payable- Note #2 (Surplus Cash)	\$			
<b>Liabilities</b>	2135-3	Accrued Interest Payable- Note #3 (Surplus Cash)	\$			
<b>2100 - 2200</b>	2135-4	Accrued Interest Payable- Note #4 (Surplus Cash)	\$			
	2135-5	Accrued Interest Payable- Note #5 (Surplus Cash)	\$			
	2135-6	Accrued Interest Payable - Developer Fee	\$			
	2135-7	Accrued Interest Payable - Related Party	\$			
	2150	Accrued Property Taxes	\$			
	2160	Notes Payable (Short Term)	\$			
	2160-1	Notes Payable - Related Party (Short-term)	\$			
	2170-1	Mortgage Payable - First Mortgage (Short term)	\$			
	2170-2	Mortgage Payable - Second Mortgage (Short term)	\$			
	2170-3	Mortgage Payable - Third Mortgage (Short term)	\$			
	2170-4	Mortgage Payable - Others (Short term)	\$			
	2180-1	Bond Payable - First Bond (Short term)	\$			
	2180-2	Bond Payable - Second Bond (Short term)	\$			
	2180-3	Bond Payable - Third Bond (Short term)	\$			
	2180-4	Bond Payable - Others (Short term)	\$			
	2190	Miscellaneous Current Liabilities	\$			
	2191	Tenant Security Deposits - Held in Trust (contra)	\$			
	2192	Other Deposits	\$			

	2210	Prepaid Rents	\$				
	2290	Miscellaneous Prepaid Revenues	\$				
	Total Current Liabilities					\$	0
	2300-1	Accrued Developer Fee	\$				
	2300-2	Accrued Asset Management Fee	\$				
	2300-3	Accrued GP Management & Incentive Fee	\$				
	2310	Notes Payable (Long-term)	\$				
	2311	Notes Payable - Surplus Cash (Long term)	\$				
<b>Long-term</b>	2320-1	Mortgage Payable - First Mortgage (Long term)	\$				
<b>Liabilities</b>	2320-2	Mortgage Payable - Second Mortgage (Long term)	\$				
	2320-3	Mortgage Payable - Third Mortgage (Long term)	\$				
	2320-4	Mortgage Payable - Others (Long term)	\$				
<b>2300</b>	2330-1	Bond Payable - First Bond (Long term)	\$				
	2330-2	Bond Payable - Second Bond (Long term)	\$				
	2330-3	Bond Payable - Third Bond (Long term)	\$				
	2330-4	Bond Payable - Others (Short term)	\$				
	2390	Other Long-term Liabilities	\$				
	Total Long-term Liabilities					\$	0
<b>Owners' Equity</b>							
<b>3100</b>	3130	Owners' Equity				\$	0
		<b>Total Liabilities and Owners' Equity</b>				\$	0



**Exhibit K**  
**Form of Assignment and Assumption Agreement**

**Assignment and Assumption Agreement**

For good and valuable consideration U.S. Bancorp Community Development Corporation, a Minnesota corporation (“Assignor”), the holder of the Limited Partner interest (the “Interest”) in Pedcor Investments-2016-CLV, Limited Partnership, an Oregon limited partnership (the “Partnership”), under that certain Amended and Restated Agreement of Limited Partnership dated as of January \_\_\_\_, 2018 (the “Partnership Agreement”), between Rosewood Station Housing Company, LLC, an Indiana limited liability company, as the General Partner, The Housing Authority of Clackamas County, an Oregon public body corporate and politic, as the Special Limited Partner, and Assignor as Limited Partner, effective as of the Effective Date, as defined below, hereby assigns, transfers, and conveys to [FUND NAME], a [STATE] [ENTITY] (“Assignee”), all of Assignor’s right, title, and interest in and to its Interest, free and clear of all liens, claims, encumbrances, or restrictions of any kind except those arising under the Partnership Agreement.

Assignor and Assignee each state their intent that, as of [DATE] (the “Effective Date”), Assignee shall become a Substitute Investor Limited Partner in the Partnership in Assignor’s place. In the event that, for any reason whatsoever, Assignee is not recognized as a Substitute Limited Partner, Assignor agrees to exercise its voting rights and other rights under the Partnership Agreement as directed by Assignee.

As of the Effective Date, Assignee hereby assumes all of the obligations of Assignor as limited partner under the Partnership Agreement, Assignee hereby accepts all of the terms and provisions of the Partnership Agreement, and Assignee agrees to become a Substitute Limited Partner in the Partnership in Assignor’s place; provided, however, (i) any distributions or payments from the Partnership, the General Partner, the Special Limited Partner, the Guarantor or their respective Affiliates in connection with a shortfall, loss or recapture of Credits with respect to the period on or before the date of the Effective Date shall be the sole and exclusive property of Assignor, (ii) any distributions or payments from the Partnership, the General Partner, the Special Limited Partner, the Guarantor or their Affiliates in connection with a shortfall, loss or recapture of Credits with respect to the period after the Effective Date shall be the sole and exclusive property of Assignee, (iii) distributions of Cash Flow and Capital Proceeds from the Partnership for the [20\_\_] Fiscal Year shall be pro rated between Assignor and Assignee based upon the number of days each held the Interest during [20\_\_] regardless of when such distributions are actually made by the Partnership, (iv) Assignee shall be liable for the payment to the Partnership of any scheduled Capital Contributions due under the Partnership Agreement after the Effective Date and shall have the right in its sole discretion to accelerate the payment of all or any portion of such Capital Contributions, and (v) the transferred Interest shall not include the right of Assignor and/or its Affiliates to be paid fees by the Partnership as provided in the Partnership Agreement and related investment documents (regardless of whether such fees are payable after the Effective Date or accrued as of the Effective Date) and to be repaid loans and other advances made by Assignor and/or its Affiliates, including interest and penalties (if any) thereon. Notwithstanding anything contained herein to the contrary, Assignor acknowledges and agrees that in the event Assignee fails to pay any Capital Contribution when

due under the Partnership Agreement, Assignor shall pay any such Capital Contribution within ten (10) business days after Notice thereof by the General Partner and Special Limited Partner.

This agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

This Assignment may be executed by the parties in one or more counterparts, each such counterpart shall be deemed an original, and all such counterparts taken together shall constitute one and the same instrument.

Capitalized terms not defined in this Assignment will have the same meanings in this Assignment as in the Partnership Agreement.

This Assignment and Assumption Agreement is dated and effective as of the Effective Date.

ASSIGNOR: U.S. Bancorp Community Development Corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ASSIGNEE: **[FUND NAME]**

By: U.S. Bancorp Community Development Corporation, a Minnesota corporation

Its: [ \_\_\_\_\_ ]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit L**  
**Form of Amendment**

**[FIRST] AMENDMENT TO AMENDED AND RESTATED  
AGREEMENT OF LIMITED PARTNERSHIP  
OF PEDCOR INVESTMENTS-2016-CLV, LIMITED PARTNERSHIP**

**RECITALS**

**THIS [FIRST] AMENDMENT TO THE AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF PEDCOR INVESTMENTS-2016-CLV, LIMITED PARTNERSHIP** (this “First Amendment”) is made and entered into as of [DATE] by and among the undersigned parties.

WHEREAS, Pedcor Investments-2016-CLV, Limited Partnership (the “Partnership”) was formed as a limited partnership under the Act pursuant to a Certificate that was filed with the Secretary of State of Oregon on August 4, 2016. The Partnership had been operating pursuant to a written amended and restated partnership agreement dated August 2, 2016 having Rosewood Station Housing Company, LLC an Indiana limited liability company, as General Partner, and Pedcor Investments, A Limited Liability Company, a Wyoming limited liability company, as the limited partner (the “*Initial Partnership Agreement*”). The Initial Partnership Agreement was as amended by that certain Amended and Restated Agreement of Limited Partnership dated as of January \_\_\_\_, 2018 (the “Restated Agreement”), having Rosewood Station Housing Company, LLC, an Indiana limited liability company, as General Partner; The Housing Authority of Clackamas County, an Oregon public body corporate and politic, as Special Limited Partner; and U.S. Bancorp Community Development Corporation, a Minnesota corporation (“*Withdrawing Limited Partner*”), as the Limited Partner;

WHEREAS, the Partners of the Partnership desire to amend the Restated Agreement to reflect Withdrawing Limited Partner’s assignment of its entire Limited Partner Interest in the Partnership to [FUND NAME], a [STATE] [ENTITY] (the “Fund”), the withdrawal of Withdrawing Limited Partner as the Limited Partner of the Partnership, and the admission of the Fund as a Substitute Limited Partner of the Partnership;

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending legally to be bound, hereby agree as follows:

1. Effective as of [DATE], Withdrawing Limited Partner hereby assigns, grants, transfers and sets over to the Fund all of Withdrawing Limited Partner’s rights, title and interest as the Limited Partner of the Partnership and withdraws from the Partnership as its Limited Partner and the Fund hereby assumes all of such right, title and interest, and all duties and obligations of the Limited Partner arising from and after the date hereof, including, without limitation, the obligation to pay all unpaid Capital Contributions, as and when payable under the Restated Agreement, as amended hereby; provided, however, that Withdrawing Limited Partner shall remain liable for the amount of its unpaid Capital Contribution obligations to the extent the Fund does not make said Capital Contributions and all indemnifications in its favor set forth in

the Restated Agreement, as amended hereby, shall survive the withdrawal of the Withdrawing Limited Partner pursuant to this first Amendment and may be enforced directly by the Withdrawing Limited Partner following such withdrawal. The Fund is hereby admitted to the Partnership as the Substitute Limited Partner pursuant to Sections 10.1 and 10.2 of the Restated Agreement and shall have the Interest specified on Exhibit A, and further provided that Withdrawing Limited Partner hereby retains its right, title and interest to: (i) all asset management fees payable to the Withdrawing Limited Partner under the Restated Agreement, whether payable following the date hereof or accrued and unpaid as of the date hereof, and (ii) to repayment of all amounts payable to the Withdrawing Limited Partner from loans and other advances (but not Capital Contributions) made to the Partnership prior to the date hereof. The Fund hereby agrees to be bound by all the terms and provisions of the Restated Agreement, as amended by this First Amendment, to the same extent and on the same terms as Withdrawing Limited Partner. The General Partner and Special Limited Partner hereby consent to such assignment and admission of the Fund as the Substitute Limited Partner.

2. The definition of the term “Limited Partner” in Section 2.1 of the Restated Agreement is hereby amended to read as follows:

*Limited Partner:* **[FUND NAME]**, a **[STATE]** **[ENTITY]**, its successors and permitted assigns, and any Person who becomes a Substitute Limited Partner as provided herein, in each such person’s capacity as a limited partner. If there is more than one limited partner of the Partnership, the term “Limited Partner” shall refer collectively to all such limited partners.

3. The name and address of the Limited Partner in Exhibit A-6 of the Restated Agreement is hereby deleted in its entirety and the following is substituted therefore:

**[FUND NAME]**  
% U.S. Bancorp Community Development  
Corporation  
USB Project No : 24879  
1307 Washington Avenue, Suite 300  
Mail Code: SL MO RMCD  
St. Louis, MO 63103  
Attn.: Director of Syndication  
Phone: (314) 335-2600  
Fax: (314) 335-2601

with a copy to:

U.S. Bancorp Community Development Corporation  
USB Project No : 24879  
1307 Washington Avenue, Suite 300  
Mail Code: SL MO RMCD  
St. Louis, MO 63103  
Attn.: Director of Asset Management  
Phone: (314) 335-2600  
Fax: (314) 335-2601

and

Jill H. Goldstein, Esq.  
Kutak Rock LLP  
1650 Farnam Street  
Omaha, NE 68102  
Phone: (402) 346-6000

4. Exhibit A of the Restated Agreement is hereby deleted in its entirety and Exhibit A attached to this First Amendment is substituted therefore.

5. Unless specifically requested by the Fund, the General Partner and Special Limited Partner agree that they will not make any voluntary elections under Sections 743 and 754 of the Code to adjust the basis of the Partnership's property with respect to the Partnership's taxable year ending as of the date hereof.

6. Withdrawing Limited Partner hereby agrees to pay the General Partner's and Special Limited Partner's reasonable incurred legal fees and costs (including reasonable allocated costs of in-house counsel) incurred as a direct result of the transfer of the Interest to the Fund, upon Withdrawing Limited Partner's receipt of evidence of such fees and costs, which evidence may include but it not limited to invoices for such fees and costs.

7. This First Amendment contains the entire understanding between and among the parties and supersedes any prior understandings and agreements between and among them respecting the subject matter of this First Amendment.

8. It is the intention of the parties that all questions with respect to the construction, enforcement and interpretations of this First Amendment and the rights and liabilities of the parties hereto shall be determined in accordance with the laws of the State in which the Partnership is formed, without regard to principles of conflicts of laws.

9. This First Amendment is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this First Amendment or the application thereof to any Person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this First Amendment and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law. In the event that any provision of this First Amendment or the application thereof shall be invalid or unenforceable, the Partners agree to negotiate (on a reasonable basis) a substitute valid or enforceable provision providing for substantially the same effect as the invalid or unenforceable provision.

10. When entered into by the parties hereto, this First Amendment is binding upon, and inures to the benefit of, the parties hereto and their respective successors and assigns.

11. This First Amendment may be executed in several counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart. This First Amendment may be executed as facsimile or .pdf originals and each copy

of this First Amendment bearing the facsimile or .pdf transmitted signature of any party's authorized representative shall be deemed to be an original.

12. Capitalized terms used herein and not otherwise defined in this First Amendment shall have the meanings ascribed to such terms in the Restated Agreement. The Recitals provisions of this First Amendment are incorporated by reference.

13. The terms and conditions of the Restated Agreement are incorporated by reference and made a part hereof, as if fully set forth herein.

14. Other than the foregoing, all other terms and conditions of the Restated Agreement shall remain in full force and effect and are ratified and confirmed in all respects by the parties hereto.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned parties have hereunto affixed their signatures as of the date first above written.

GENERAL PARTNER:

**ROSEWOOD STATION HOUSING COMPANY, LLC**, an Indiana limited liability company

By: Pedcor Investments, A Limited Liability Company, a Wyoming limited liability company, its Manager

By: \_\_\_\_\_  
Name: Thomas G. Crowe  
Title: Executive Vice President

SPECIAL LIMITED PARTNER

**THE HOUSING AUTHORITY OF CLACKAMAS COUNTY**, an Oregon public body corporate and politic

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

FUND:

**[FUND NAME], a [STATE] [ENTITY]**

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

WITHDRAWING LIMITED PARTNER:

U.S. Bancorp Community Development Corporation, a Minnesota corporation

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_



By their signatures below, jointly and severally, individually and collectively, Pedcor Development Associates, LLC, Pedcor Investments, A Limited Liability Company, Bruce A. Cordingley, Gerald K. Pedigo, Phillip J. Stoffregen, as guarantors (the "Guarantors"), hereby consent to the execution of this First Amendment and to the admission of the Fund as a Substitute Limited Partner of the Partnership and acknowledge and agree that their joint and several obligations as Guarantor are hereby ratified and confirmed, and remain valid and in full force and effect in accordance with the terms of the Guaranty dated January \_\_\_\_, 2018 and that for purposes of such Guaranty, the term "Partnership Agreement" shall include the Restated Agreement, as amended by all of the terms and provisions of this First Amendment.

**GUARANTOR:**

**PEDCOR DEVELOPMENT ASSOCIATES,  
LLC**

By:

\_\_\_\_\_  
Name: Bruce A. Cordingley  
Title: Sole Member

**PEDCOR INVESTMENTS, A LIMITED  
LIABILITY COMPANY**, a Wyoming limited  
liability company

By:

\_\_\_\_\_  
Name: Thomas G. Crowe  
Title: Executive Vice President

\_\_\_\_\_  
Bruce A. Cordingley

\_\_\_\_\_  
Gerald K. Pedigo, by Bruce A. Cordingley, his  
attorney in fact

\_\_\_\_\_  
Phillip J. Stoffregen

STATE OF INDIANA                    )  
  ) SS  
COUNTY OF HAMILTON            )

On \_\_\_\_\_, 2018, before me, a notary public, personally appeared Bruce A. Cordingley, the sole member of Pedcor Development Associates, LLC, an Indiana limited liability company, to me known to be the person who executed the foregoing instrument on behalf of said companies and acknowledged to me that he executed the same of his own free will for the purposes stated therein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the location aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

My commission expires:

STATE OF INDIANA                    )  
  ) SS  
COUNTY OF HAMILTON            )

On \_\_\_\_\_, 2018, before me, a notary public, personally appeared Thomas G. Crowe, Executive Vice President of Pedcor Investments, A Limited Liability Company, a Wyoming limited liability company, to me known to be the person who executed the foregoing instrument on behalf of said company and acknowledged to me that he executed the same of his own free will for the purposes stated therein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the location aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

My commission expires:

STATE OF INDIANA                    )  
  ) SS  
COUNTY OF HAMILTON            )

On \_\_\_\_\_, 2018, before me, a notary public, personally appeared Bruce A. Cordingley, to me known to be the person described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the location aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

**My commission expires:**

STATE OF INDIANA                    )  
  ) SS  
COUNTY OF HAMILTON            )

On \_\_\_\_\_, 2018, before me, a notary public, personally appeared Bruce A. Cordingley as attorney in fact for Gerald K. Pedigo, to me known to be the person described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the location aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

**My commission expires:**

STATE OF INDIANA                    )  
  ) SS  
COUNTY OF HAMILTON            )

On \_\_\_\_\_, 2018, before me, a notary public, personally appeared Phillip J. Stoffregen, to me known to be the person described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the location aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

**My commission expires:**

**Exhibit A**

**Partners; Percentage Interests;  
Capital Contribution**

Partnership:

Employer Identification No. 61-1799176

	<u>Percentage Interests</u>	<u>Capital Contributions*</u>
<u>General Partner:</u>		
Rosewood Station Housing Company, LLC	0.005%	\$50
Employer Identification No. 81-3437162		
<u>Special Limited Partner:</u>		
The Housing Authority of Clackamas County	0.005%	\$50
Employer Identification No. 93-6001542		
<u>Limited Partner:</u>		
U.S. Bancorp Community Development Corporation	99.99%	\$[23,255,000]
Employer Identification No. 41-1917892		
TOTALS	100%	\$[23,255,100]

\*The Capital Contributions of the General Partner, the Special Limited Partner and the Limited Partner will be payable as described on Exhibit A-1 of the Restated Agreement. The Limited Partner's Capital Installments, as described on Exhibit A-1, are due on the later of the applicable Capital Installment Due Date or ten (10) business days after the General Partner gives the Capital Installment Notice (Exhibit A-2), accompanied by all documentation required in connection therewith, acceptable to the Limited Partner. In addition, the Limited Partner's Capital Contributions are subject to deferral and reduction as provided in the Restated Agreement.

## Exhibit M-1

### PLEDGE AND SECURITY AGREEMENT [General Partner]

**THIS PLEDGE AND SECURITY AGREEMENT** (this "Agreement"), made as of January \_\_\_\_, 2018 by Rosewood Station Housing Company, LLC, an Indiana limited liability company, having an office at c/o Pedcor Investments, One Pedcor Square, 770 3<sup>rd</sup> Avenue S.W., Carmel, IN 46032 (the "Pledgor") for the benefit of U.S. Bancorp Community Development Corporation, a Minnesota corporation its successors and/or assigns, ("Pledgee"), having an office at 1307 Washington Avenue, Suite 300, St. Louis, Missouri 63103.

#### Recitals

WHEREAS, Pledgor is the General Partner in Pedcor Investments-2016-CLV, Limited Partnership., an Oregon limited partnership (the "Partnership"), and the Partnership is governed by its Amended and Restated Agreement of Limited Partnership dated as of even date herewith (the "Partnership Agreement") (capitalized terms not otherwise defined herein shall have the definitions given them in the Partnership Agreement).

WHEREAS, Pledgee is a limited partner of the Partnership; and

WHEREAS, in order to secure the full payment and performance by Pledgor of all of Pledgor's obligations, duties, guaranties, indemnities, expenses and liabilities under or in connection with the Partnership Agreement, as such Partnership Agreement may be now or hereafter amended, modified or restated, are collectively referred to herein as the "Obligations"), Pledgor is entering into this Agreement for the benefit of Pledgee.

**NOW, THEREFORE**, in consideration of the recitals, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereby agree as follows:

1. Definitions.

(a) "Collateral" shall mean:

(i) All of Pledgor's right, title and interest in the Partnership, whether now owned or hereafter acquired, including, without limitation, its general partner interest in the Partnership and its right to receive distributions, and payments under the Partnership Agreement, as such Partnership Agreement may be modified from time to time;

(ii) All fees and other amounts to be paid by the Partnership to the Pledgor, whether now owned or hereafter acquired, whether arising under the Partnership Agreement or otherwise, including, without limitation, pursuant to the Partnership Management Agreement;

(iii) All indebtedness of the Partnership to Pledgor of any kind or description, including without limitation, Pledgor's right to receive payment of Operating Deficit Advances or other loans or advances to the Partnership;

(iv) All products and proceeds, whether cash proceeds or noncash proceeds, and products of any and all of the foregoing.

(b) "Event of Default" shall mean an event of default described in Paragraph 8 herein.

2. Pledge of Collateral and Grant of Security Interest Pledgor does hereby unconditionally and irrevocably assign, pledge, convey, transfer, deliver, set over and grant unto Pledgee, its successors and assigns, as security for Pledgor's complete and timely payment and performance of the Obligations, a continuing security interest under the Uniform Commercial Code of the State of Oregon in the Collateral. Pledgor hereby further grants to the Pledgee all rights in the Collateral as are available to a secured party of such collateral under the Uniform Commercial Code of the State of Oregon (being the principal place of business of Pledgor and the location of Pledgor's chief executive office) and, concurrently herewith, shall deliver to Pledgee UCC- 1 Financing Statements suitable for filing in the State of Oregon with respect to the Collateral and agrees, upon request, to deliver any other documents which Pledgee may reasonably request with respect thereto.

3. Delivery to Pledgee.

(a) Upon the occurrence and continuation of an Event of Default and the exercise in writing by the Pledgee of its rights hereunder as to any or all of the Collateral, Pledgor agrees to execute and to cause all other necessary parties, and any successors and assigns thereof, to execute and deliver to Pledgee such other agreements, instruments and documentation as Pledgee may reasonably request, from time to time, to effect the conveyance, transfer, and grant to Pledgee of Pledgor's right, title and interest in and to the Collateral.

(b) If required by Pledgee in writing following the occurrence of an Event of Default, Pledgor agrees and covenants to execute an amendment to the Partnership Agreement in such form as Pledgee may require to reflect the substitution of the party designated by the Pledgee in place of Pledgor as a general partner in the Partnership and Pledgor's withdrawal. Pledgor further agrees to execute and to cause the other Partners of the Partnership (other than the Pledgee) to execute and deliver to Pledgee such other agreements, instruments and documentation as Pledgee may reasonably request from time to time to effectuate such conveyance, transfer, assignment and grant to the party designated by Pledgee of all of Pledgor's right, title and interest in and to the Collateral and to evidence the substitution of the party designated by the Pledgee in place of Pledgor as a general partner in the Partnership (and simultaneous withdrawal of Pledgor as general partner).

4. Proceeds and Products of the Collateral.

(a) Unless and until an Event of Default has occurred and is continuing, Pledgee agrees to forbear in exercising its right to receive all benefits pertaining to the Collateral, and the Pledgor shall be permitted to exercise all rights and to receive all benefits of the Collateral, including, without limitation, the right to exercise all voting, approval, consent and similar rights of Pledgor pertaining to the Collateral, the right to receive all payments due thereunder, proceeds, whether cash proceeds or noncash proceeds, and products of the Collateral and retain and enjoy the same.

(b) Pledgor acknowledges and agrees with the Pledgee, that, unless Pledgee otherwise consents, in Pledgee's sole discretion, Pledgor shall not exercise any voting, approval, consent or other rights with respect to the Collateral at any time (i) after an Event of Default has occurred and is continuing, and (ii) delivery of notice from the Pledgee instructing Pledgor not to exercise any such voting, approval, consent or other rights with respect to the Collateral; provided, however, that Pledgor shall exercise any such right or duties it may have under the Partnership Agreement as general partner with respect to the business affairs of the Partnership as is reasonably necessary to protect and preserve the Collateral, and to fully and timely perform its duties as general partner of the Partnership under the Partnership Agreement and applicable law (the "General Partner Duties") so long as the Pledgor is general partner of the Partnership.

(c) Upon or at any time after an Event of Default has occurred and is continuing, Pledgee, at its option to be exercised in its sole discretion, may exercise all rights and remedies granted under this Agreement, including, without limitation, the right to require the obligors under the Collateral to make all payments due under and to pay all proceeds, whether cash proceeds or noncash proceeds, and products of the Collateral to Pledgee. Upon the giving of any such notice, the security constituted by this Agreement as to the designated Collateral shall become immediately enforceable by the Pledgee, without any presentment, further demand, protest or other notice of any kind, all of which are hereby expressly and irrevocably waived by Pledgor. Pledgor hereby authorizes and directs each respective obligor under the agreements constituting the Collateral, that upon receipt of written notice from Pledgee of an Event of Default by Pledgor hereunder, and Pledgee's determination to exercise its rights as to the Collateral to assign, set over, transfer, distribute, pay and deliver any and all amounts payable under the designated Collateral to Pledgee, at such address as Pledgee may direct, at such time and in such manner as Collateral and such payments, proceeds and products of the Collateral would otherwise be distributed, transferred, paid or delivered to Pledgor. The respective obligors under the agreements constituting the Collateral shall be entitled to conclusively rely on such notice and make all such transfers of payments under the Collateral and pay all such proceeds and products of the Collateral to Pledgee and shall have no liability to Pledgor for any loss or damage Pledgor may incur by reason of said reliance.

5. No Assumption. Notwithstanding any of the foregoing, whether or not an Event of Default shall have occurred, and whether or not Pledgee elects to foreclose on its security interest in any or all of the Collateral as set forth herein, neither the execution of this Agreement,



receipt by Pledgee of any of Pledgor's right, title and interest in and to the Collateral and the payments, proceeds and products of the Collateral, now or hereafter due to Pledgor from any obligor of the Collateral, nor Pledgee's foreclosure of its security interest in any or all of the Collateral, shall in any way be deemed to obligate Pledgee to assume any of Pledgor's obligations, duties, expenses or liabilities under the Collateral, under any agreements constituting the Collateral, as presently existing or as hereafter amended, under any and all other agreements now existing or hereafter drafted or executed or under applicable law (collectively, the "Pledgor's Liabilities"), unless Pledgee or its designee otherwise agrees to assume any or all of Pledgor's Liabilities in writing, with any such assumption being solely of any duties, obligations, expenses and/or liabilities arising after the date of such assumption. In the event of foreclosure by Pledgee of its security interest in any of the Collateral, Pledgor shall remain bound and obligated to perform its Pledgor's Liabilities and Pledgee shall not be deemed to have assumed any of Pledgor's Liabilities, except as provided in the preceding sentence. In the event the entity or person acquiring the Collateral at a foreclosure sale elects to assume Pledgor's Liabilities, such assignee shall agree to be bound by the terms and provisions of the applicable agreement.

6. Indemnification. Pledgor hereby agrees to indemnify, defend and hold Pledgee, its successors and assigns harmless from and against any and all damages, losses, claims, costs or expenses (including reasonable attorneys' fees) and any other liabilities whatsoever that Pledgee or its successors or assigns may incur by reason of this Agreement or by reason of any assignment of Pledgor's right, title and interest in and to any or all of the Collateral.

7. Representations, Warranties and Covenants. In addition to the representations made by Pledgor in the Partnership Agreement, Pledgor makes the following representations and warranties, which shall be deemed to be continuing representations and warranties in favor of Pledgee, and covenants and agrees to perform all acts necessary to maintain the truth and correctness, in all material respects, of the following:

(a) Pledgor owns the Collateral free and clear of any claim, lien or encumbrance, except with respect to the pledge of the Construction Lender in connection with the Bridge Loan (as defined in the Partnership Agreement).

(b) Pledgor has delivered to Pledgee true and complete copies of the Partnership Agreement, the Partnership Management Agreement and any other agreements pertinent to the Collateral, and such agreements are currently in full force and effect and have not been amended or modified except as disclosed to Pledgee in writing.

(c) Pledgor has the full right and title to its interest in the Collateral and has the full power, legal right and authority to pledge, convey, transfer and assign such interest except with respect to the pledge of the Construction Lender in connection with the Bridge Loan. None of the Collateral is subject to any existing or subsequent assignment, claim, lien, pledge, transfer or other security interest of any character except with respect to the pledge of the Construction Lender in connection with the Bridge Loan. or to any attachment, levy, garnishment or other judicial process or to any claim for set-off, counterclaim, deduction or discount. Pledgor shall not, without the prior written consent of Pledgee, which consent may be granted or denied in Pledgee's sole reasonable

discretion, further convey, transfer, set over or pledge to any party any of its interests in the Collateral. Pledgor agrees to (i) warrant and defend its title to the Collateral and the security interest created by this Agreement against all claims of all persons (other than Pledgee and persons claiming through Pledgee and Construction Lender), and (ii) maintain and preserve the Collateral and such security interests.

(d) Pledgor's Employer Identification Number is 46-5754312 and its principal place of business is located at 502 E. Highland Mall Boulevard, Suite 106-B, Austin, TX 78752.

(e) Pledgor agrees that it shall not, without at least thirty (30) days' prior written notification to Pledgee, move or otherwise change its principal place of business.

8. Event of Default. Each of the following shall constitute an Event of Default hereunder:

(a) An Event of Default shall have occurred under the Partnership Agreement or the Partnership Management Agreement, and such default shall not have been cured within any applicable grace period provided therein; or

(b) Any warranty, representation or statement of the Pledgor in this Agreement proves to have been false in any material respect when made or furnished; or

(c) There occurs the issuance of a writ, order of attachment or garnishment with respect to any of the Collateral and such writ, order of attachment or garnishment is not dismissed and removed within fifteen (15) days thereafter; or

(d) A material breach or violation of any covenant or agreement contained herein shall have occurred, which is not cured within ten (10) days after notice has been given to Pledgor by Pledgee.

Any Event of Default under this Agreement shall be an Event of Default by Pledgor under the Partnership Agreement.

9. Remedies.

(a) Upon the occurrence and continuation of an Event of Default, in addition to any and all rights and remedies available to the Pledgee under the Partnership Agreement, Pledgee may by giving notice of such Event of Default, at its option, do any one or more of the following under this Agreement:

(i) Declare any of the Obligations secured hereby which are monetary obligations then payable to be immediately due and payable, whereupon all unpaid amounts on said Obligations shall become immediately due and payable without presentment, demand, protest or notice of any kind; and

(ii) Take possession of all or any of the Collateral, collect, and apply against the Obligations, all payments due, proceeds, whether cash proceeds or noncash proceeds, and products from any obligor under the agreements constituting the Collateral, that would otherwise be paid to the Pledgor; and

(iii) Either personally, or by means of a court-appointed receiver, take possession of all or any of the Collateral and exclude therefrom Pledgor and all others claiming under Pledgor, and thereafter exercise all rights and powers of Pledgor with respect to the Collateral or any part thereof. In the event Pledgee demands, or attempts to take possession of any of the Collateral in the exercise of any rights under this Agreement, Pledgor promises and agrees to promptly turn over and deliver complete possession thereof to Pledgee; and

(iv) Without notice to or demand upon Pledgor, make such payments and do such acts as Pledgee may deem necessary to protect its security interest in the Collateral, including, without limitation, paying, purchasing, contesting or compromising any encumbrance, charge or lien which is prior to or superior to the security interest granted hereunder, and in exercising any such powers or authority to pay all expenses incurred in connection therewith; and

(v) Require Pledgor to take all reasonable actions necessary to deliver such Collateral to Pledgee, or an agent or representative designated by it. Pledgee, and its agents and representatives, shall have the right to enter upon any or all of Pledgor's premises and property to exercise Pledgee's rights hereunder; and

(vi) Foreclose upon any or all of the Collateral under this Agreement as herein provided or in any manner permitted by law, either concurrently or in such order as Pledgee may determine; and sell or cause to be sold in such order as Pledgee may determine, as a whole or in such portions as Pledgee may determine, the Collateral, without affecting in any way the rights or remedies to which Pledgee may be entitled under the other such instruments; and

(vii) Sell or otherwise dispose of any or all of the Collateral at public sale, without having such Collateral at the place of sale, and upon terms and in such manner as Pledgee may determine. Pledgee may be a purchaser at any sale; and

(viii) Exercise any remedies of a secured party under the Uniform Commercial Code of the State of Oregon or any other applicable law; and

(ix) Notwithstanding anything to the contrary contained in this Agreement at any time after an Event of Default has occurred and is continuing, the Pledgee may, by delivering written notice to the Partnership and to the Pledgor, designate its nominee or designee to succeed to all right, title and interest of Pledgor (including, without limitation, the right, if any, to vote on or take any

action with respect to Partnership matters) as a general partner of the Partnership in respect of the Collateral. The Pledgor hereby irrevocably authorizes and directs the Partnership on receipt of any such notice (a) to deem and treat such nominee or designee in all respects as a general partner (and not merely an assignee of a general partner) of the Partnership, entitled to exercise all the rights, powers and privileges (including the right to vote on or take any action with respect to Partnership matters pursuant to the Partnership Agreement, to receive all distributions, to be credited with the capital account and to have all other rights, powers and privileges appertaining to the Collateral to which Pledgor would have been entitled had the Collateral not been transferred to the Pledgee or such nominee or designee), and (b) to file an amended certificate of partnership, if required, admitting such nominee or designee, as general partner of the Partnership in place of Pledgor; and

(x) The rights granted to the Pledgee under this Agreement are of a special, unique, unusual and extraordinary character. The loss of any of such rights cannot reasonably or adequately be compensated by way of damages in any action at law, and any material breach not otherwise cured by Pledgor of any of Pledgor's covenants, agreements or obligations under this Agreement will cause the Pledgee irreparable injury and damage. In the event of any such breach, the Pledgee shall be entitled, as a matter of right, to injunctive relief or other equitable relief in any court of competent jurisdiction to prevent the violation or contravention of any of the provisions of this Agreement or to compel compliance with the terms of this Agreement by Pledgor. The Pledgee is absolutely and irrevocably authorized and empowered by Pledgor to demand specific performance of each of the covenants and agreements of Pledgor in this Agreement. Pledgor hereby irrevocably waives any defense based on the adequacy of any remedy at law which might otherwise be asserted by Pledgor as a bar to the remedy of specific performance in any action brought by the Pledgee against Pledgor to enforce any of the covenants or agreements of Pledgor in this Agreement.

(b) Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Pledgee shall give Pledgor at least ten (10) days' prior written notice of the time and place of any public sale of the Collateral subject to this Agreement or other intended disposition thereof to be made. Such notice shall be conclusively deemed to have been delivered to Pledgor at the address set forth in paragraph 7(c) of this Agreement, unless Pledgor shall notify Pledgee in writing of its change of its principal place of business and provide Pledgee with the address of its new principal place of business.

(c) The proceeds of any sale under Subparagraphs 9(a)(vi) and (vii) above shall be applied as follows:

(i) To the repayment of the costs and expenses of retaking, holding and preparing for the sale and the selling of the Collateral (including actual

reasonable legal expenses and attorneys' fees) and the discharge of all assessments, encumbrances, charges or liens, if any, on the Collateral prior to the lien hereof (except any taxes, assessments, encumbrances, charges or liens subject to which such sale shall have been made);

(ii) To the payment of the whole amount then due and unpaid of the Obligations;

(iii) To the payment of all other amounts then secured hereby; and

(iv) The aggregate surplus, if any, shall be paid to Pledgor in a lump sum, without recourse to Pledgee, or as a court of competent jurisdiction may direct.

(d) Pledgee shall have the right to enforce one or more remedies under this Agreement, successively or concurrently, and such action shall not operate to estop or prevent Pledgee from pursuing any further remedy which it may have, and any repossession or retaking or sale of the Collateral pursuant to the terms hereof shall not operate to release Pledgor until full payment of any deficiency has been made in cash. Further, none of the terms and provisions of this Agreement shall limit, condition or modify in any respect the rights of Pledgee as limited partner and/or the obligations of the Pledgor as general partner under the Partnership Agreement and applicable law, all of which remain in full force and effect and are unaffected hereby. In the event of conflict or inconsistency between this Agreement and the Partnership Agreement, the Partnership Agreement shall prevail.

(e) PLEDGOR ACKNOWLEDGES THAT PLEDGEE MAY BE UNABLE TO EFFECT A PUBLIC SALE OF ALL OR ANY PART OF THE COLLATERAL AND MAY BE COMPELLED TO RESORT TO ONE OR MORE PRIVATE SALES TO A RESTRICTED GROUP OF PURCHASERS WHO WILL BE OBLIGATED TO AGREE, AMONG OTHER THINGS, TO ACQUIRE THE COLLATERAL FOR THEIR OWN ACCOUNT, FOR INVESTMENT AND NOT WITH A VIEW TO THE DISTRIBUTION OR RESALE THEREOF. PLEDGOR FURTHER ACKNOWLEDGES THAT ANY SUCH PRIVATE SALES MAY BE AT PRICES AND ON TERMS LESS FAVORABLE THAN THOSE OF PUBLIC SALES, AND AGREES THAT SUCH PRIVATE SALES SHALL BE DEEMED TO HAVE BEEN MADE IN A COMMERCIALY REASONABLE MANNER AND THAT PLEDGEE HAS NO OBLIGATION TO DELAY SALE OF ANY COLLATERAL TO PERMIT THE ISSUER THEREOF TO REGISTER IT FOR PUBLIC SALE UNDER THE SECURITIES ACT OF 1933. PLEDGOR AGREES THAT PLEDGEE SHALL BE PERMITTED TO TAKE SUCH ACTIONS AS PLEDGEE DEEMS REASONABLY NECESSARY IN DISPOSING OF THE COLLATERAL TO AVOID CONDUCTING A PUBLIC DISTRIBUTION OF SECURITIES IN VIOLATION OF THE SECURITIES ACT OF 1933 OR THE SECURITIES LAWS OF ANY STATE, AS NOW ENACTED OR AS THE SAME MAY IN THE FUTURE BE AMENDED, AND ACKNOWLEDGES THAT ANY SUCH ACTIONS SHALL BE COMMERCIALY

REASONABLE. IN ADDITION, PLEDGOR AGREES TO EXECUTE, FROM TIME TO TIME, ANY AMENDMENT TO THIS AGREEMENT OR OTHER DOCUMENT AS PLEDGEE MAY REASONABLY REQUIRE TO EVIDENCE THE ACKNOWLEDGMENTS AND CONSENTS OF PLEDGOR SET FORTH IN THIS PARAGRAPH.

10. Attorneys Fees. Pledgor agrees to pay to Pledgee, without demand, reasonable and actual attorneys' fees and all costs and other expenses which Pledgee expends or incurs in collecting any amounts payable by Pledgor hereunder or in enforcing this Agreement against Pledgor whether or not suit is filed.

11. Further Documentation. Pledgor hereby agrees to execute, from time to time, one or more financing statements and such other instruments as may be required to perfect the security interest created hereby, including any continuation or amendments of such financing statements, and pay the cost of filing or recording the same in the public records specified by Pledgee.

12. Waiver and Estoppel. Pledgor represents and acknowledges that it knowingly waives each and every one of the following rights, and agrees that it will be estopped from asserting any argument to the contrary: (a) any promptness in making any claim or demand hereunder; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of Pledgor or the failure to file or enforce a claim against Pledgor's estate (in administration, bankruptcy or any other proceeding); (c) any defense based upon an election of remedies by Pledgee which destroys or otherwise impairs any or all of the Collateral; (d) the right of Pledgor to proceed against Pledgee or any other person, for reimbursement; and (e) all duty or obligation of the Pledgee to perfect, protect, retain or enforce any security for the payment of amounts payable by Pledgor hereunder.

**TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY TO THIS AGREEMENT SEVERALLY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM BROUGHT BY ANY PARTY TO THIS AGREEMENT ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO THIS AGREEMENT.**

No delay or failure on the part of Pledgee in the exercise of any right or remedy against Pledgor or any other party against whom Pledgee may have any rights, shall operate as a waiver of any agreement or obligation contained herein, and no single or partial exercise by Pledgee of any rights or remedies hereunder shall preclude other or further exercise thereof or other exercise of any other right or remedy whether contained in this Agreement or in any of the other documents regarding the Obligations, including without limitation the Partnership Agreement. No waiver of the rights of Pledgee hereunder or in connection herewith and no release of Pledgor shall be effective unless in writing executed by Pledgee. No actions of Pledgee permitted under this Agreement shall in any way impair or affect the enforceability of any agreement or obligation contained herein.

13. Independent Obligations. The obligations of Pledgor are independent of the obligations of any other party which may be initially or otherwise responsible for performance or payment of the Obligations, and a separate action or actions for payment, damages or performance may be brought and prosecuted by Pledgee against Pledgor, individually, for the full amount of the Obligations then due and payable, whether or not an action is brought against any other party, whether or not the Pledgee is involved in any proceedings and whether or not the Pledgee or the Pledgor or other person is joined in any action or proceedings.

14. No Offset Rights of Pledgor. No lawful act of commission or omission of any kind or at any time upon the part of Pledgor shall in any way affect or impair the rights of the Pledgee to enforce any right, power or benefit under this Agreement, and no set-off, recoupment, counterclaim, claim, reduction or diminution of any obligation or any defense of any kind or nature which Pledgor has or may have against Pledgee or against any other party shall be available against Pledgee in any suit or action brought by Pledgee to enforce any right, power or benefit under this Agreement.

15. Subordination. For so long as the Bridge Loan is in place, the terms and conditions of this Agreement shall be subordinate to any pledge of the Collateral as detailed within the Bridge Loan documents.

16. Power of Attorney. Pledgor hereby appoints Pledgee as its attorney-in-fact to execute and file on its behalf any financing statements, continuation statements or other documentation required to perfect or continue the security interest created hereby. This power, being coupled with an interest, shall be irrevocable until all amounts secured hereby have been paid, satisfied and discharged in full. Pledgor acknowledges and agrees that the exercise by Pledgee of its rights under this Paragraph 15 will not be deemed a satisfaction of any amounts owed Pledgee unless Pledgee so elects.

17. **GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OREGON WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. SUCH PARTIES FURTHER AGREE THAT IN THE EVENT OF DEFAULT, THIS AGREEMENT MAY BE ENFORCED IN ANY COURT OF COMPETENT JURISDICTION IN THE STATE OF OREGON AND THEY DO HEREBY SUBMIT TO THE JURISDICTION OF ANY AND ALL SUCH COURT REGARDLESS OF THEIR PRINCIPAL PLACE OF BUSINESS OR WHERE THIS AGREEMENT MAY BE EXECUTED.**

18. Successors and Assigns. All agreements, covenants, conditions and provisions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

19. Notices. Whenever any party hereto shall desire to, or be required to, give or serve any notice, demand, request or other communication with respect to this Agreement, each such notice, demand, request or communication shall be in writing and shall be effective only if the same is delivered by personal service (including, without limitation, courier or express

service) deposited with a nationally-recognized overnight delivery service such as Federal Express for business day delivery (“Overnight Delivery”) or mailed certified or registered mail, postage prepaid, return receipt requested, or sent by telegram to the parties at the addresses shown throughout this Agreement or such other addresses which the parties may provide to one another in accordance herewith. If notice is sent to Pledgee, a copy of such notice shall also be given to Pledgee's counsel, Kutak Rock LLP, 1650 Farnam Street, Omaha, NE 68102 Attention: Jill Goldstein. If notice is sent to Pledgor, a copy of such notice shall also be given to Pledgor's counsel, Jeremy Buchanan, One Pedcor Square, 770 3rd Avenue, Carmel Indiana, 46032.

Notices delivered personally will be effective upon delivery to an authorized representative of the party at the designated address; notices sent by Overnight Delivery will be effective the next business day after being deposited in Overnight Delivery; notices sent by mail in accordance with the above paragraph will be effective upon execution by the addressee of the Return Receipt Requested.

20. Consent of Pledgor. Pledgor consents to the exercise by Pledgee of any rights of Pledgor in accordance with the provisions of this Agreement.

21. Severability. Every provision of this Agreement is intended to be severable. In the event any term or provision hereof is declared by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

22. Amendment. This Agreement may be modified or rescinded only by a writing expressly relating to this Agreement and signed by all of the parties.

23. Termination. This Agreement shall terminate, and shall be of no further force or effect, and the Collateral shall be released from any lien hereunder, upon the earlier to occur of the performance in full of the Obligations of the Pledgor or upon the mutual written consent of Pledgor and the Pledgee. Pledgor and Pledgee shall cooperate in the preparation and filing of all required documents to terminate all UCC-1s that have been filed with respect to the security interest under this Agreement.

24. Expenses. Pledgor shall pay all reasonable out-of-pocket fees and charges incurred by Pledgee in connection with this Agreement and the transaction contemplated by this Agreement and the documents entered into in connection therewith, including, without limitation, reasonable attorneys' fees incurred by Pledgee.

25. Right to Make Distributions. Except upon the occurrence and during the continuation of an Event of Default, the Pledgor shall have the right without the consent of the Pledgee to make distributions to its members (“Permitted Distributions”) of proceeds of any distributions and payments received by the Pledgor from the Partnership or from any equity contributions of its members. Any such Permitted Distributions shall be free and clear of the lien created by this Agreement.



IN WITNESS WHEREOF, the parties hereto have executed this Pledge and Security Agreement as of the date first above written.

**PLEDGOR:**

**ROSEWOOD STATION HOUSING  
COMPANY, LLC**, an Indiana limited liability  
company

By: Pedcor Investments, A Limited Liability  
Company, a Wyoming limited liability  
company, its Manager

By: \_\_\_\_\_  
Name: Thomas G. Crowe  
Title: Executive Vice President

STATE OF INDIANA )  
 ) ss.

COUNTY OF HAMILTON )

On this \_\_\_\_\_ day of January \_\_\_\_\_, 2018, before me appeared Thomas G. Crowe, to me personally known, who, being by me duly sworn, did say that he is the Executive Vice President of Pedcor Investments, A Limited Liability Company, a limited liability company of the State of Wyoming, and that said instrument was signed in behalf of said company, by authority of its Members; and said person acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

**Exhibit N**

**CERTIFICATE OF OFFICER OF GENERAL PARTNER**

The undersigned, being the Manager of Rosewood Station Housing Company, LLC, an Indiana limited liability company and the General Partner of Pedcor Investments-2016-CLV, Limited Partnership, an Oregon limited partnership (the Partnership), does hereby certify to U.S. Bancorp Community Development Corporation, a Minnesota corporation (the Investor Limited Partner), pursuant to the Amended and Restated Agreement of Limited Partnership of the Partnership, dated as of January \_\_\_\_, 2018 (the Partnership Agreement), that as of the end of the preceding fiscal year:

1. All required payments of Project loan indebtedness, real estate taxes and insurance on the Project have been made
2. Copies of paid receipts for taxes and insurance are attached hereto
3. If applicable, to the best knowledge of such officer, no material default has occurred and is continuing with respect to any mortgage financing relating to the Project
4. If such Officer is unable to certify to any of the foregoing, state the reason for such inability and the action, if any, taken or proposed to be taken by the General Partner relating thereto, accompanied by proof of payment of property taxes and insurance for such fiscal year, and, upon request of Limited Partner, confirmation from applicable Project mortgage lenders of no payment default or other default of which such mortgage lender is aware under such mortgage loans;

Capitalized terms not defined herein shall have the meanings given to them in the Partnership Agreement.

IN WITNESS WHEREOF, the undersigned has executed this certificate this \_\_\_\_ day of \_\_\_\_\_, 2018.

**ROSEWOOD STATION HOUSING  
COMPANY, LLC**, an Indiana limited liability  
company

By: Pedcor Investments, A Limited Liability  
Company, a Wyoming limited liability  
company, its Manager

By: \_\_\_\_\_  
Name: Thomas G. Crowe  
Title: Executive Vice President

## **Exhibit O**

### **Plans and Specifications**

**EXHIBIT P**

**SCHEDULE OF ASSET MANAGEMENT FEES\***

<b>2020</b>	\$10,000
<b>2021</b>	\$10,000
<b>2022</b>	\$10,000
<b>2023</b>	\$10,000
<b>2024</b>	\$10,000
<b>2025</b>	\$11,000
<b>2026</b>	\$11,000
<b>2027</b>	\$11,000
<b>2028</b>	\$11,000
<b>2029</b>	\$11,000
<b>2030</b>	\$12,100
<b>2031</b>	\$12,100
<b>2032</b>	\$12,100
<b>2033</b>	\$12,100
<b>2034</b>	\$12,100

\*Note: all figures above subject to accrual pursuant to terms of Section 11.2 hereof and payable as set forth in Exhibit A-5.

## EXHIBIT Q

### DEBT SERVICE COVERAGE RATIO CALCULATION WORKSHEET

	Property Name		
	Revenue & Expense (By Month)		
	Month 1	Month 2	Month 3
<b>REVENUES</b>			
<b>RENTS RESIDENTIAL</b>			
SCHEDULED RENT REVENUE			
SUBSIDY REVENUE			
GAIN/LOSS OLD LEASE			
CONCESSIONS (Negative)			
<b>TOTAL ACTUAL RENTS</b>	0.00	0.00	0.00
<b>ACTUAL VACANCY LOSS (Negative)</b>			
<b>Net Rent after Vacancy</b>	0.00	0.00	0.00
<b>COMMERCIAL RENTS</b>			
<b>MASTER LEASE INCOME</b>			
<b>CONDO/HOMEOWNER ASSN INCOME</b>			
<b>COMMON AREA MAINTENANCE INCOME</b>			
<b>RESIDENT SERVICES INCOME</b>			
<b>OTHER INCOME</b>			
<b>INTEREST INCOME</b>			
<b>TOTAL OTHER INCOME</b>	0.00	0.00	0.00
<b>EFFECTIVE GROSS INCOME</b>	0.00	0.00	0.00
<b>EXPENSES BEFORE DEBT SERVICE/DEPRECIATION</b>			
Administrative			
Audit And Accounting			
Insurance			
Management Fee			
Real Estate Taxes			
Repairs and Maintenance			
Utilities			
Taxes And Insurance			
Reserves (Required)			
Condo Fee / Homeowner Assn Dues			
Common Area Maintenance Expense			

Master Lease Expense			
Resident Services Expense			
<b>TOTAL EXPENSES</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>ADJUSTMENTS FOR EXTRAORDINARY ITEMS</b>			
EXTRAORDINARY INCOME (+/-)			
EXTRAORDINARY EXP (+/-)			
<b>ADJUSTED EXPENSES</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
PROJECTED EXPENSES W/REP RES**			
GREATER OF ACTUAL OR PROJECTED**	\$ -	\$ -	\$ -
<b>ADJUSTED NET OPERATING INCOME</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>DEBT SERVICE</b>			
FIRST MORTGAGE	\$ -	\$ -	\$ -
SECOND MORTGAGE	\$ -	\$ -	\$ -
THIRD MORTGAGE	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -
<b>DSCR</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>	<b>#DIV/0!</b>

**AMENDED & RESTATED  
OPERATING AGREEMENT OF  
ROSEWOOD TERRACE HOUSING COMPANY, LLC**

**THIS AMENDED & RESTATED OPERATING AGREEMENT** (together with any schedules and/or exhibits attached hereto, this "Agreement") of ROSEWOOD TERRACE HOUSING COMPANY, LLC, an Indiana limited liability company (the "Company"), is entered into as of the \_\_\_ day of \_\_\_\_\_, 2018 (the "Effective Date"), by the HACC Rosewood Station, LLC, an Oregon limited liability company ("HACC Rosewood"), Pedcor Investments, A Limited Liability Company, a Wyoming limited liability company ("Pedcor"), 2018 Housing Participants, LLC, an Indiana limited liability company ("2018 Participants"), Thomas G. Crowe ("Crowe"), Jared M. Houser ("JMH") and the Craig H. Lintner Revocable Trust Dated December 21, 2016, and as subsequently amended ("Lintner Trust");

**WHEREAS**, the Company was originally formed as an Indiana limited liability company pursuant to Articles of Organization filed with the Secretary of State of Indiana on August 2, 2016. The Company has been operating pursuant to a written Operating Agreement dated August 2, 2016 (the "Initial Operating Agreement"), having Pedcor, Crowe, JMH and Craig H. Lintner, as members of the Company. The parties hereto desire to further amend and restate the Initial Operating Agreement in order to cause the withdrawal of Craig H. Lintner, the admission of 2018 Participants, the admission of Lintner Trust and the admission of HACC Rosewood, and to set forth more fully the rights, obligations, and duties of the Members;

**WHEREAS**, in consideration of the foregoing, of the mutual promises of the parties hereto, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending legally to be bound, hereby agree as follows:

**ARTICLE 1**

**DEFINED TERMS**

The following capitalized terms shall have the meaning specified in this Article I. Other terms are defined in the text of this Agreement and, throughout this Agreement those terms shall have the meanings respectively so ascribed to them.

**"2018 Participants"** means 2018 Housing Participants, LLC, an Indiana limited liability company, and its successors, permitted transferees and assigns.

**"Act"** means the Indiana Business Flexibility Act, as amended from time to time.

**"Adjusted Capital Account Deficit"** means, with respect to any Interest Holder, the deficit balance, if any, in the Interest Holder's Capital Account as of the end of the relevant taxable year, after giving effect to the following adjustments:

(i) the deficit shall be decreased by the amounts which the Interest Holder is obligated to restore pursuant to *Section 4.4(b)* or is deemed obligated to restore pursuant to Regulation Sections 1.704-2(g)(1) and (i)(5) (i.e., the Interest Holder's share of Minimum Gain and Member Minimum Gain); and

(ii) the deficit shall be increased by the items described in Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

**"Affiliate"** means, with respect to any Member, any Person: (i) which owns more than 50% of the voting



interests in the Member; or (ii) in which the Member owns more than 50% of the voting interests; or (iii) in which more than 50% of the voting interests are owned by a Person who has a relationship with the Member described in clause (i) or (ii) above.

**"Agreement"** means this Operating Agreement, as amended from time to time.

**"Capital Account"** means the account to be maintained by the Company for each Interest Holder in accordance with the following provisions:

(i) an Interest Holder's Capital Account shall be credited with the Interest Holder's Capital Contributions, the amount of any Company liabilities assumed by the Interest Holder (or which are secured by Company property distributed to the Interest Holder), the Interest Holder's allocable share of Profit and any item in the nature of income or gain specially allocated to the Interest Holder pursuant to the provisions of Article IV (other than *Section 4.3(c)*); and

(ii) an Interest Holder's Capital Account shall be debited with the amount of money and the fair market value of any Company property distributed to the Interest Holder, the Interest Holder's allocable share of Loss, and any item in the nature of expenses or losses specially allocated to the Interest Holder pursuant to the provisions of Article IV (other than *Section 4.3(c)*).

If any Interest is transferred pursuant to the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent the Capital Account is attributable to the transferred Interest. If the book value of Company property is adjusted pursuant to *Section 4.3(c)*, the Capital Account of each Interest Holder shall be adjusted to reflect the aggregate adjustment in the same manner as if the Company had recognized gain or loss equal to the amount of such aggregate adjustment. It is intended that the Capital Accounts of all Interest Holders shall be maintained in compliance with the provisions of Regulation Section 1.704-1(b), and all provisions of this Agreement relating to the maintenance of Capital Accounts shall be interpreted and applied in a manner consistent with that Regulation.

**"Capital Contribution"** means the total amount of cash and the fair market value of any other assets contributed (or deemed contributed under Regulation Section 1.704-1(b)(2)(iv)(d)) to the Company by a Member, net of liabilities assumed or to which the assets are subject.

**"Capital Proceeds"** means the proceeds from (i) any sale or exchange of any of the assets of the Company, (ii) any casualty, condemnation, or other loss affecting Company assets or any portion thereof resulting in the receipt of insurance proceeds (other than rent loss or business interruption insurance) or condemnation payments, except to the extent of proceeds applied to the restoration, reconstruction, or replacement of such assets, (iii) any financing or refinancing of Company assets (including the disbursement of any proceeds of any such loan, whenever made, that are available to be distributed to the Members), or (iv) any other transaction the proceeds of which are deemed attributable to capital under generally accepted accounting principles less (a) all costs and expenses incurred by the Company in connection with the transaction giving rise to such proceeds, including, if applicable, a market (at the time of sale) broker fee payable to a third party broker; (b) all principal and interest payments and other sums paid on or with respect to any indebtedness of the Company then due and payable; (c) amounts required by this Agreement or amounts receiving the Consent of the Manager to be set aside in reserves; and (d) any Company expenses then due and payable and for which there are insufficient Company gross revenues to

pay; provided, that in no event shall the making of any Capital Contribution or Member Loan give rise to any Capital Proceeds.

**"Capital Transaction"** means any refinancing of Pedcor CLV debt or the sale, exchange, condemnation, destruction (including insurance proceeds in excess of amounts required to be applied to restore the insured property) or other disposition of all or any substantial part of the Pedcor CLV's property, other than minor sales of assets obsolete in the ordinary course of the Pedcor CLV's business.

**"Cash Flow"** means all cash funds derived from operations of the Company, without reduction for any noncash charges, but less cash funds used to pay current operating expenses and to pay or establish reasonable reserves for future expenses, debt payments, capital improvements, and replacements as determined by the Members. Cash Flow shall be increased by the reduction of any reserve previously established.

**"Code"** means the Internal Revenue Code of 1986, as amended, or any corresponding provision of any succeeding law.

**"Company"** means the limited liability company formed in accordance with this Agreement.

**"Crowe"** means Thomas G. Crowe, a resident of the State of Indiana, and his successors, permitted transferees and assigns.

**"Development Fee Advance Loan"** means a loan made by Pedcor, or one of its affiliates, to the Company so the Company as the General Partner of Pedcor CLV can make the required capital contribution, pursuant to Section 5.11 of the Partnership Agreement (defined below), to Pedcor CLV for the payment of the Development Fee as that term is defined in the Partnership Agreement.

**"HACC"** means the Housing Authority of Clackamas County, an Oregon public body corporate and politic.

**"Houser"** means Jared M. Houser, a resident of the State of Indiana, and his successors, permitted transferees and assigns.

**"Interest"** means a Person's share of the Profits and Losses of, and the right to receive distributions from, the Company.

**"Interest Holder"** means any Person who holds an Interest, whether as a Member or an unadmitted assignee of a Member.

**"Involuntary Withdrawal"** means, with respect to any Member, the occurrence of insolvency, bankruptcy or adjudicated incompetency or any of the events set forth in IND. CODE § 23-18-6-5(3) through (8).

**"Lintner Trust"** means The Craig H. Lintner Revocable Trust Dated December 21, 2016 and as

subsequently amended, and its successors, permitted transferees and assigns.

**"Majority in Interest of the Members"** means, with respect to any action requiring approval by such measure, the affirmative consent of Members then holding at least 51% of the Percentages then held by Members.

**"Manager"** means each of the Persons designated as such pursuant to Article V.

**"Member"** means each Person signing this Agreement and any Person who subsequently is admitted as a member of the Company.

**"Member Minimum Gain"** has the meaning set forth in Regulation Section 1.704-2(i) for "partner nonrecourse debt minimum gain."

**"Membership Rights"** means all of the rights of a Member in the Company, including a Member's: (i) Interest; (ii) right to inspect the Company's information and books; (iii) right to participate in the management of and vote on matters coming before the Company; and (iv) unless this Agreement or the Articles of Organization provide to the contrary, right to act as an agent of the Company.

**"Minimum Gain"** has the meaning set forth in Regulation Section 1.704-2(d). Minimum Gain shall be computed separately for each Interest Holder in a manner consistent with the Regulations under Code Section 704(b).

**"Negative Capital Account"** means a Capital Account with a balance of less than zero.

**"OSSI"** means the Office of the Secretary of State of Indiana.

**"Partnership Agreement"** means that certain Amended and Restated Agreement of Limited Partnership of Pedcor Investments-2016-CLV, Limited Partnership, dated as of \_\_\_\_\_, 2018, as amended from time to time.

**"PDA"** means Pedcor Development Associates, LLC, an Indiana limited liability company.

**"PDA Loan"** means a loan made by PDA to the Company, in an amount to be determined by PDA, from which the Company shall repay a portion of the Development Fee Advance Loan. Such PDA Loan shall be subsequently assigned by PDA to Thomas G. Crowe, Jared M. Houser and Housing Authority of Clackamas County, Oregon, in such proportion as PDA shall determine.

**"Pedcor"** means Pedcor Investments, A Limited Liability Company, a Wyoming limited liability company, and its successors, permitted transferees and assigns.

**"Pedcor CLV"** means Pedcor Investments-2016-CLV, Limited Partnership, an Oregon limited partnership.

**"Percentage"** means, as to a Member, the percentage Interest set forth after the Member's name on Exhibit A, as amended from time to time, and as to an Interest Holder who is not a Member, the Percentage of the Member whose Interest has been acquired by such Interest Holder, to the extent the Interest Holder has succeeded to that Member's Interest.

**"Person"** means and includes an individual, corporation, partnership, association, limited liability company, a foreign limited liability company, a business trust or another legal or commercial entity.

**"Positive Capital Account"** means a Capital Account with a balance greater than zero.

**"Profit"** and **"Loss"** means, for each taxable year of the Company (or other period for which Profit or Loss must be computed), the Company's taxable income or loss determined in accordance with Code Section 703(a), with the following adjustments:

(i) all items of income, gain, loss, deduction, or credit required to be stated separately pursuant to Code Section 703(a)(1) shall be included in computing taxable income or loss; and

(ii) any tax-exempt income of the Company, not otherwise taken into account in computing Profit or Loss, shall be included in computing taxable income or loss; and

(iii) any expenditures of the Company described in Code Section 705(a)(2)(B) (or treated as such pursuant to Regulation Section 1.704-1(b)(2)(iv)(i)) and not otherwise taken into account in computing Profit or Loss, shall be subtracted from taxable income or loss; and

(iv) gain or loss resulting from any taxable disposition of Company property shall be computed by reference to the adjusted book value of the property disposed of, notwithstanding the fact that the adjusted book value differs from the adjusted basis of the property for federal income tax purposes; and

(v) in lieu of the depreciation, amortization, or cost recovery deductions allowable in computing taxable income or loss, there shall be taken into account the depreciation computed based upon the adjusted book value of the asset; and

(vi) notwithstanding any other provision of this definition, any items which are specially allocated pursuant to *Section 4.3* hereof shall not be taken into account in computing Profit or Loss.

**"Regulation"** means the income tax regulations, including any temporary regulations, from time to time promulgated under the Code.

**"Transfer"** means, when used as a noun, any voluntary sale, hypothecation, pledge, assignment, attachment, or other transfer, and, when used as a verb, means voluntarily to sell hypothecate, pledge, assign, or otherwise transfer.

**"Voluntary Withdrawal"** means a Member's disassociation with the Company by means other than

a Transfer or an Involuntary Withdrawal.

## Article II

### FORMATION AND NAME; OFFICE; PURPOSE; TERM

2.1. **Organization.** The parties hereby organize a limited liability company pursuant to the Act and the provisions of this Agreement and, for that purpose, have caused Articles of Organization to be prepared, executed, and filed with OSSI on August 2, 2016.

2.2. **Name of the Company.** The name of the Company shall be “Rosewood Terrace Housing Company, LLC”. The Company may do business under that name and under any other name or names upon which the Managers agree. If the Company does business under a name other than that set forth in its Articles of Organization, then the Company shall file an assumed business name certificate as required by law.

2.3. **Purpose.** The Company shall have unlimited power to engage in any and all lawful businesses for which limited liability companies may be organized under the Act.

2.4. **Term.** The term of the Company began upon the acceptance of Articles of Organization by OSSI for filing and shall continue perpetually, unless its existence is sooner terminated pursuant to Article VII of this Agreement.

2.5. **Principal Office.** The principal office of the Company shall be located at One Pedcor Square, 770 3<sup>rd</sup> Avenue, S.W., Carmel, Indiana 46032 or at any other place within or outside the State of Indiana which the Managers may designate.

2.6. **Registered Agent.** The name and address of the Company's initial registered agent in the State of Indiana shall be Pedcor Legal Agent, LLC, One Pedcor Square, 770 3<sup>rd</sup> Avenue, S.W., Carmel, Indiana 46032.

2.7. **Members.** The name, present mailing address, taxpayer identification number, and Percentage of each Member are set forth on *Exhibit A*.

## ARTICLE III

### MEMBERS; CAPITAL; CAPITAL ACCOUNTS

3.1. **Initial Capital Contributions.** Upon the execution of this Agreement, the Members shall contribute to the Company cash in the amounts respectively set forth on *Exhibit A*.

3.2. **No Additional Capital Contributions Required.** No Member shall be required to contribute any additional capital to the Company, and no Member shall have any personal liability for any obligation of the Company.

3.3. **No Interest on Capital Contributions.** Interest Holders shall not be paid interest on their Capital Contributions.

3.4. **Return of Capital Contributions.** Except as otherwise provided in this Agreement, no Interest Holder shall have the right to receive any return of any Capital Contribution.

3.5. **Form of Return of Capital.** If an Interest Holder is entitled to receive a return of a Capital Contribution, the Company may distribute cash, notes, property, or a combination thereof to the Interest Holder in return of the Capital Contribution.

3.6. **Capital Accounts.** A separate Capital Account shall be maintained for each Interest Holder.

3.7. **Loans.** Any Member may, at any time, make or cause a loan to be made to the Company in any amount and on those terms upon which the Company and the Member agree.

#### ARTICLE IV

#### PROFIT, LOSS, AND DISTRIBUTIONS

4.1. **Distributions of Cash Flow and Allocations of Profit or Loss Other Than Capital Transactions.**

(a) **Cash Flow.** For each taxable year of the Company, Cash Flow shall be distributed as follows:

**First**, to repay the PDA Loan and Development Fee Advance Loan pro-rata to the then outstanding balance, if any;

**Second**, to the repayment of any Development Fee Advance and/or Operating Deficit Advance, if any (as such term is defined in the Partnership Agreement) shall be paid to Pedcor;

**Third**, any proceeds received from Pedcor CLV pursuant to Clause Eleventh of Exhibit A-5 of the Partnership Agreement, as amended from time to time, shall be distributed 7.315% to Crowe, 7.315% to Houser, 24.39% to Lintner Trust and 60.98% to HACC Rosewood.

**Fourth**, the remainder (specifically including any proceeds received from Pedcor CLV pursuant to Clause Thirteenth of Exhibit A-5) shall be distributed 25% to HACC Rosewood, 49.9% to Pedcor, 9.1% to 2018 Participants, 10% to Lintner Trust, 3% to Crowe and 3% to Houser; provided, however, the Members hereby acknowledge and agree that the aggregate amounts distributed to Lintner Trust, Crowe and Houser pursuant to

Clause Third above and this Clause Fourth shall be adjusted such that Lintner Trust, Crowe and Houser shall not receive more than 10%, 3%, and 3% respectively of the amounts distributed pursuant to Clause Third and Fourth of this Section 4.1(a), and provided, further, in no event shall Pedcor receive more than 49.9% of Cash Flow pursuant to Clause Third and Fourth of this Section 4.1(a). In order to achieve the distribution allocations detailed within this Clause Fourth of Section 4.1(a), the Members acknowledge and agree that no adjustments shall be made to previous distributions made pursuant to Clause Third above, and once Pedcor, Lintner, Crowe and Houser have received the cap amount as detailed herein, all future distributions under this Clause Fifth of Section 4.1(a) shall be directed to 2018 Participants.

Notwithstanding the foregoing, to the extent the Company receives a PDA Loan, such funds shall go directly to Pedcor for the repayment of the Development Fee Advance Loan.

(b) ***Profit or Loss Other Than From a Capital Transaction.*** For each taxable year of the company, after giving effect to the special allocations set forth in *Section 4.3*, Profit or Loss (other than Profit or Loss resulting from a Capital Transaction, which Profit or Loss shall be allocated in accordance with the provisions of *Sections 4.2(a)* and *4.2(b)*) shall be allocated to the Interest Holders as follows:

i. To the extent that Profit is equal to or less than Cash Flow actually distributed pursuant to *Section 4.1(a)*, Profit shall be allocated to the Interest Holders in proportion to and in the same priority that Cash Flow is distributed pursuant to *Section 4.1(a)*.

ii. To the extent that Profit exceeds Cash Flow distributed pursuant to *Section 4.1(a)*, that excess Profit shall be allocated to the Interest Holders in proportion to their respective Percentages.

iii. All loss shall be allocated to the Interest Holders in proportion to their respective Percentages.

#### ***4.2. Distributions of Capital Proceeds and Allocation of Profit or Loss from Capital Transactions.***

(a) ***Profit.*** After giving effect to the special allocations set forth in *Section 4.3*, Profit from a Capital Transaction shall be allocated as follows:

i. If one or more Interest Holders has a Negative Capital Account, to those Interest Holders, in proportion to their Negative Capital Accounts, until all of those Negative Capital Accounts have been restored to zero.

ii. Any Profit not allocated pursuant to *Section 4.2(a)(i)*, shall be allocated to the Interest Holders in proportion to, and to the extent of, the amounts distributable to them

pursuant to Clause Third of *Section 4.2(c)(iv)*.

iii. Any Profit in excess of the foregoing allocations shall be allocated to the Interest Holders in an amount so that each Member's Capital Account after taking into account all distributions to be made pursuant to *Section 4.2(c)*, equals as nearly as possible, zero.

(b) **Loss.** After giving effect to the special allocations set forth in *Section 4.3.*, Loss from a Capital Transaction shall be allocated as follows:

i. If one or more Interest Holders has a Positive Capital Account, to those Interest Holders, in proportion to their Positive Capital Accounts, until all Positive Capital Accounts have been reduced to zero.

ii. Any Loss not allocated to reduce Positive Capital Accounts to zero pursuant to *Section 4.2(b)(i)* shall be allocated to the Interest Holders in proportion to their Percentages.

(c) **Capital Proceeds.** Capital Proceeds shall be distributed and applied by the Company in the following order and priority:

i. to the payment of all expenses of the Company incident to the Capital Transaction; then

ii. to the payment of debts and liabilities of the Company then due and outstanding (including all debts due to any Interest Holder); then

iii. to the establishment of any reserves which the Managers deem necessary for liabilities or obligations of the Company; then

iv. the balance shall be distributed as follows:

**First**, any amounts received by the Company pursuant to Section 8.2(d) of the Partnership Agreement shall be distributed 7.315% to Crowe, 7.315% to Houser, 24.39% to Lintner Trust and 60.98% to HACC Rosewood.; then

**Second**, all other amounts shall be distributed to the Interest Holders in proportion to their Adjusted Capital Balances until their remaining Adjusted Capital Balances have been paid in full; then

**Third**, if any Interest Holder has a Positive Capital Account after the distributions made pursuant to Clause Second of Section 4.2(c)(iv) and before any further allocation of Profit pursuant to Section 4.2(a)(iii), those Interest Holders in proportion to their Positive Capital Accounts; then

**Fourth**, the balance, 49.9% to Pedcor, 9.1% to 2018 Participants, 10% to Lintner



Trust, 3% to Crowe, 3% to Houser and 25% to HACC Rosewood; provided however, that the aggregate amounts distributed to Lintner Trust, Crowe, Houser, HACC Rosewood and Pedcor pursuant to all distributions detailed within Clause First, Clause Second, Clause Third and this Clause Fourth of Section 4.2(c) shall not, in the aggregate, exceed 10%, 3%, 3%, 25% and 49.9%, respectively, with any reallocation specifically directed to 2018 Participants.

#### 4.3. *Regulatory Allocations.*

(a) ***Qualified Income Offset.*** No Interest Holder shall be allocated Losses or deductions if the allocation causes such Interest Holder to have an Adjusted Capital Account Deficit except to the extent that such Interest Holder has a valid deficit restoration obligation pursuant to Section 4.4(b) hereof. If any Interest Holder receives (1) an allocation of Loss or deduction (or item thereof) or (2) any distribution, which causes such Interest Holder to have an Adjusted Capital Account Deficit at the end of any taxable year, then all items of income and gain of the Company (consisting of a pro rata portion of each item of Company income, including gross income and gain) for that taxable year shall be allocated to such Interest Holder, before any other allocation is made of Company items for that taxable year, in the amount and in proportions required to eliminate the excess as quickly as possible. This *Section 4.3(a)* is intended to comply with, and shall be interpreted consistently with, the “qualified income offset” provisions of the Regulations promulgated under Code Section 704(b).

(b) ***Minimum Gain Chargeback.*** Except as set forth in Regulation Section 1.704-2(f)(2), (3), and (4), if, during any taxable year, there is a net decrease in Minimum Gain, each Interest Holder, prior to any other allocation pursuant to this Article IV, shall be specially allocated items of gross income and gain for such taxable year (and, if necessary, subsequent taxable years) in an amount equal to that Interest Holder's share of the net decrease of Minimum Gain, computed in accordance with Regulation Section 1.704-2(g)(2). Allocations of gross income and gain pursuant to this *Section 4.3(b)* shall be made first from gain recognized from the disposition of Company assets subject to nonrecourse liabilities (within the meaning of the Regulations promulgated under Code Section 752), to the extent of the Minimum Gain attributable to those assets, and thereafter, from a pro rata portion of the Company's other items of income and gain for the taxable year. It is the intent of the parties hereto that any allocation pursuant to this *Section 4.3(b)* shall constitute a "minimum gain chargeback" under Regulation Section 1.704-2(f).

(c) ***Contributed Property and Book-Ups.*** In accordance with Code Section 704(c) and the Regulations thereunder, as well as Regulation Section 1.704-1(b)(2)(iv)(d)(3), income, gain, loss, and deduction with respect to any property contributed (or deemed contributed) to the Company shall, solely for tax purposes, be allocated among the Interest Holders so as to take account of any variation between the adjusted basis of the property to the Company for federal income tax purposes and its fair market value at the date of contribution (or deemed contribution). If the adjusted book value of any Company asset is adjusted as provided herein, subsequent allocations of income, gain, loss, and deduction with respect to the asset shall take account of any variation between the adjusted basis of the asset for federal income tax purposes and its adjusted

book value in the manner required under Code Section 704(c) and the Regulations thereunder.

(d) **Code Section 754 Adjustment.** To the extent an adjustment to the tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Treas. Reg. § 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of the adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases basis), and the gain or loss shall be specially allocated to the Interest Holders in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to that Section of the Regulations.

(e) **Nonrecourse Deductions.** Nonrecourse Deductions for a taxable year or other period shall be specially allocated among the Interest Holders in proportion to their Percentages.

(f) **Member Loan Nonrecourse Deductions.** Any Member Loan Nonrecourse Deduction for any taxable year or other period shall be specially allocated to the Interest Holder who bears the risk of loss with respect to the loan to which the Member Loan Nonrecourse Deduction is attributable in accordance with Treas. Reg. § 1.704-2(b).

(g) **Guaranteed Payments.** To the extent any compensation paid to any Member by the Company, including any fees payable to any Member pursuant to *Section 5.3* hereof, is determined by the Internal Revenue Service not to be a guaranteed payment under Code Section 707(c) or is not paid to the Member other than in the Person's capacity as a Member within the meaning of Code Section 707(a), the Member shall be specially allocated gross income of the Company in an amount equal to the amount of that compensation, and the Member's Capital Account shall be adjusted to reflect the payment of that compensation.

(h) **Unrealized Receivables.** If an Interest Holder's Interest is reduced (provided the reduction does not result in a complete termination of the Interest Holder's Interest), the Interest Holder's share of the Company's "unrealized receivables" and "substantially appreciated inventory" (within the meaning of Code Section 751) shall not be reduced, so that, notwithstanding any other provision of this Agreement to the contrary, that portion of the Profit otherwise allocable upon a liquidation or dissolution of the Company pursuant to *Section 4.4* hereof which is taxable as ordinary income (recaptured) for federal income tax purposes shall, to the extent possible without increasing the total gain to the Company or to any Interest Holder, be specially allocated among the Interest Holders in proportion to the deductions (or basis reductions treated as deductions) giving rise to such recapture. Any questions as to the aforesaid allocation of ordinary income (recapture), to the extent such questions cannot be resolved in the manner specified above, shall be resolved by the Managing Member.

(i) **Withholding.** All amounts required to be withheld pursuant to Code Section 1446 or any other provision of federal, state, or local tax law shall be treated as amounts actually distributed to the affected Interest Holders for all purposes under this Agreement.

#### **4.4. Liquidation and Dissolution.**

(a) If the Company is liquidated, the assets of the Company shall be distributed to the Interest Holders in accordance with the positive balances, if any, in their respective Capital Accounts, after taking into account the allocations of Profit or Loss pursuant to *Sections 4.1.* or *4.2.*, if any, and distributions, if any, of cash or property, if any, pursuant to *Section 4.1* and *4.2(b)*.

(b) If a Member shall have a Negative Capital Account following the distribution of liquidation proceeds, it shall restore and contribute to the Company an amount equal to such Member's then Negative Capital Account (but not to exceed \$1,000, or such or greater amount as such Member may elect by written amendment to this Agreement from time to time) before the later to occur of (i) the end of the taxable year in which the Company (or such Member's Interest) is liquidated, or (ii) 90 days after the date of the liquidation of the Company (or of such Member's interest), which amount shall be paid to creditors of the Company or, if the amount contributed exceeds the amount due to creditors, shall be distributed to the Interest Holders having Positive Capital Account balances. Notwithstanding *Section 9.4* hereof, any Member may amend this Agreement without the consent of any other Member for the sole purpose of modifying this *Section 4.4(b)* to change such Member's obligation to restore its Negative Capital Account.

#### **4.5. General.**

(a) Except as otherwise provided in this Agreement, the timing and amount of all distributions shall be determined by the Managers; provided, however, that Cash Flow shall be distributed not less frequently than annually.

(b) If any assets of the Company are distributed in kind to the Interest Holders, those assets shall be valued on the basis of their fair market value, and any Interest Holder entitled to any interest in those assets shall receive that interest as a tenant-in-common with all other Interest Holders so entitled. Unless the Members otherwise agree, the fair market value of the assets shall be determined by an independent appraiser who shall be selected by the Managers. The Profit or Loss for each unsold asset shall be determined as if the asset had been sold at its fair market value, and the Profit or Loss shall be allocated as provided in *Section 4.2.* and shall be properly credited or charged to the Capital Accounts of the Interest Holders prior to the distribution of the assets in liquidation pursuant to *Section 4.4.*

(c) All Profit and Loss shall be allocated, and all distributions shall be made, to the Persons shown on the records of the Company to have been Interest Holders as of the last day of the taxable year for which the allocation or distribution is to be made. Notwithstanding the foregoing, unless the Company's taxable year is separated into segments, if there is a Transfer or an Involuntary Withdrawal during the taxable year, the Profit or Loss shall be allocated between the original Interest Holder and the successor on the basis of the number of days each was an Interest Holder during the taxable year; provided, however, the Company's taxable year shall be segregated into two or more segments in order to account for Profit, Loss, or proceeds attributable to a Capital Transaction or to any other extraordinary nonrecurring items of the Company.

(d) The Managers are hereby authorized, upon the advice of the Company's tax counsel, to amend this Article IV to comply with the Code and the Regulations promulgated under Code Section 704(b); provided, however, that no amendment shall materially affect distributions to an Interest Holder without the Interest Holder's prior written consent.

## ARTICLE V

### MANAGEMENT: RIGHTS, POWERS AND DUTIES

#### 5.1. *Managers.*

(a) Except to the extent that all the Members may determine otherwise, day-to-day management of the Company's business shall be exclusively vested in one (1) Manager. The Members hereby designate Pedcor as the initial Manager of the day-to-day business of the Company. Except to the extent that a Majority in Interest of the Members may determine otherwise, the Manager shall have the authority to sign agreements and other instruments on behalf of the Company.

(b) The Manager shall be elected by a Majority in Interest of the Members. A Manager shall hold office until the Manager's successor has been duly elected and qualified.

(c) The Manager shall not be personally liable for the debts, obligations or liabilities of the Company, whether arising in contract, tort or otherwise, or for the acts or omissions of any Member, other Manager, agent or employee of the Company. The Manager shall perform its duties as a Manager in good faith, in a manner the Manager reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. The Manager is not liable for any action taken as a Manager, or any failure to take any action, unless the Manager has breached or failed to perform the Manager's duties and the breach or failure to perform constitutes willful misconduct or recklessness.

(d) In performing the Manager's duties, the Manager shall be entitled to rely on information, opinions, reports, or statements of the following persons or groups unless the Manager has knowledge concerning the matter in question that would cause such reliance to be unwarranted:

- i. one or more employees or other agents of the Company whom the Manager reasonably believes to be reliable and competent in the matters presented;
- ii. any attorney, public accountant or other person as to matters which the Manager reasonably believes to be within such person's professional or expert competence; or
- iii. a committee upon which the Manager does not serve, duly designated in accordance with a provision of the Articles or this Agreement, as to matters within its designated

authority, which committee the Manager reasonably believes to merit reliance.

(e) The Manager is an agent of the Company for the purpose of apparently carrying on in the usual way the business of the Company, and the act of the Manager, including the execution in the Company name of any instrument for apparently carrying on in the usual way the business of the Company, binds the Company, unless such act is in contravention of the Articles of Organization of the Company or this Agreement or unless the Manager so acting otherwise lacks the authority to act for the Company, and the person with whom the Manager is dealing has knowledge of the fact that such Manager has no such authority.

(f) The Manager shall have the right and authority to take all actions which the Manager deems necessary, useful or appropriate for the day-to-day management and conduct of the Company's business. Subject to the restrictions set forth in this *Section 5.1.*, the Manager may exercise all powers of the Company and do all such lawful acts and things as are not by the Articles of Organization of the Company, this Agreement or the Act, directed or required to be exercised or done by the Members. The Manager may elect or appoint officers and define their function and authority. Officers may but need not be Managers or Members. Any action taken under the preceding two sentences shall be recorded in the records of the Company. All instruments, contracts, agreements and documents providing for the acquisition, mortgage or disposition of property of the Company shall be valid and binding on the Company if executed by the Manager or officers (if such officer is provided for, and granted such authority, in accordance with this *Section 5.1(f)*). All instruments, contracts, agreements and documents of whatsoever type executed on behalf of the Company shall be executed in the name of the Company by the Manager or officers (if such officer is provided for, and granted such authority, in accordance with this *Section 5.1(f)*).

(g) **Salaries.** The Company may pay to any Manager, Member or other Person, a salary and/or bonus as compensation for services rendered to the Company. Such salaries and/or bonuses shall be treated as expenses of the Company and shall not be deemed to constitute distributions to the recipient of any profit, loss or capital of the Company.

(h) **Removal of Manager.**

i. Subject to the provisions of the Act and subject to the satisfaction of the conditions contained in this *Section 5.1(h)*, a Majority in Interest of the Members may remove the Manager with or without cause. A Majority in Interest of the Members may also remove any officer with or without cause.

ii. Any removal the Manager shall become effective when written notice thereof is given by a Majority of Interest of the Members unless a later effective date is specified in such notice. Such notice must be delivered to the Manager being removed, any remaining Managers and any Manager elected to replace the removed Manager. Should a Manager be removed who is also a Member, such removal shall not affect the Person's rights as a Member except as may otherwise be provided in the Act, the Articles of Organization of the Company or this Agreement.

(i) **Resignation of Manager.** A Manager may resign from his position as a Manager at any time by notice to a Majority in Interest of the Members. Such resignation shall become effective when such notice is received, unless a delayed effective is specified in such notice.

(j) **Vacancies.** Any vacancies in the office of the Managers may be filled upon the written consent of a majority of the remaining Managers. A Manager chosen to fill a vacancy shall serve the unexpired term of his predecessor in office. Any Manager's position to be filled by reason of an increase in the number of Managers shall be filled in the same manner or by election at an annual meeting or at a special meeting of Members called for that purpose. A Manager chosen to fill a position resulting from an increase in the number of Managers shall hold office until the next annual meeting of Members and until his successor has been duly elected and qualified.

(k) Any Member who takes any action or binds the Company in violation of this Section 5.1 shall be solely responsible for any loss and expense incurred as a result of the unauthorized action and shall indemnify and hold the Company and the other Members harmless with respect to the loss or expense.

#### 5.2. **Meetings of and Voting by Members.**

(a) A meeting of the Members may be called at any time by those Members holding at least fifty-one percent (51%) of the Percentages then held by Members. Meetings of Members shall be held at the Company's principal place of business or at any other place designated by the Persons calling the meeting. Not less than ten (10) nor more than ninety (90) days before each meeting, the Persons calling the meeting shall give written notice of the meeting to each Member entitled to vote at the meeting. The notice shall state the time, place, and purpose of the meeting. Notwithstanding the foregoing provisions, each Member who is entitled to notice waives notice if before or after the meeting the Member signs a waiver of the notice which is filed with the records of Members' meetings, or is present at the meeting in person or by proxy. Unless this Agreement provides otherwise, at a meeting of Members, the presence in person or by proxy of Members holding not less than fifty-one percent (51%) of the Percentages then held by Members constitutes a quorum. A Member may vote either in person or by written proxy signed by the Member or by the Member's duly authorized attorney-in-fact.

(b) Except as otherwise provided in the Act or this Agreement, the affirmative vote of Members holding fifty-one percent (51%) or more of the Percentages then held by Members shall be required to approve any matter coming before the Members.

(c) In lieu of holding a meeting, the members may vote or otherwise take action by a written instrument indicating the consent of members holding a majority of the interests then held by members.

5.3. **Personal Service.** No Member shall be required to perform services for the Company solely by virtue of being a Member. Unless approved by the Managers, no Member shall perform services for the

Company or be entitled to compensation for services performed for the Company.

#### **5.4. *Duties of Parties.***

(a) Except as otherwise expressly provided in *Section 5.4(b)*, nothing in this Agreement shall be deemed to restrict in any way the rights of any Member, or of any Affiliate of any Member, to conduct any other business or activity whatsoever, and no Member shall be accountable to the Company or to any other Member with respect to that business or activity even if the business or activity competes with the Company's business. The organization of the Company shall be without prejudice to the Members' respective rights (or the rights of their respective Affiliates) to maintain, expand, or diversify such other interests and activities and to receive and enjoy profits or compensation therefrom. Each Member waives any rights the Member might otherwise have to share or participate in such other interests or activities of any other Member or the Member's Affiliates.

(b) Each Member understands and acknowledges that the conduct of the Company's business may involve business dealings and undertakings with Members and their Affiliates. In any of those cases, those dealings and undertakings shall be at arm's length and on commercially reasonable terms.

#### **5.5. *Liability and Indemnification of Managers.***

(a) To the maximum extent that would be permitted by Indiana law in effect from time to time if the Company were an Indiana business corporation, the Company, without requiring a preliminary determination of the ultimate entitlement to indemnification, shall indemnify and shall pay or reimburse reasonable expenses in advance of the final disposition of a proceeding to (i) any individual or entity who is a present or former Managers, or (ii) any individual or entity who, at the request of the Company, serves or has served another entity or enterprise as a manager, director, officer, partner, or trustee. Neither the amendment nor repeal of this Section, nor the adoption or amendment of any other provision of this Agreement or the Articles of Organization of the Company inconsistent with this Section, shall reduce in any respect the Company's obligations under this Section with respect to any act or failure to act which occurred before the amendment, repeal, or adoption. As used in this Section, the terms "expenses" and "proceeding" have the meanings ascribed to them in IND. CODE §§ 23-1-37-3 and 7 of the Indiana Business Corporation Law.

(b) No person serving as a Manager shall be liable to the Company or the Members for money damages except to the extent that (i) it is proved that the Person actually received an improper benefit or profit in money, property or services for the amount of the benefit or profit in money, property, or services actually received, or (ii) a judgment or other final adjudication adverse to the Person is entered in a proceeding based on a finding in the proceeding that the Person's action, or failure to act, was the result of active and deliberate dishonesty and was material to the course of action adjudicated in the proceeding.

5.6. **Power of Attorney.**

(a) **Grant of Power.** Each Member constitutes and appoints the Managers, and each of them individually, as the Member's true and lawful attorneys-in-fact ("Attorney-in-Fact"), and in the Member's name, place, and stead, to make, execute, sign, acknowledge, and file:

- i. one or more articles of organization;
- ii. all documents (including amendments to articles of organization) which the Attorney-in-Fact deems appropriate to reflect any amendment, change, or modification of this Agreement;
- iii. any and all other certificates or other instruments required to be filed by the Company under the laws of the State of Indiana or of any other state or jurisdiction, including, without limitation, any certificate or other instruments necessary in order for the Company to continue to qualify as a limited liability company under the laws of the State of Indiana;
- iv. one or more fictitious or trade name certificates; and
- v. all documents which may be required to dissolve and terminate the Company and to cancel its articles of organization.

(b) **Irrevocability.** The foregoing power of attorney is irrevocable and is coupled with an interest, and, to the extent permitted by applicable law, shall survive the death or disability of a Member. It also shall survive the Transfer of an Interest, except that if the transferee is admitted as a Member, this power of attorney shall survive the delivery of the assignment for the sole purpose of enabling the Attorney-in-Fact to execute, acknowledge, and file any documents needed to effectuate the substitution. Each Member shall be bound by any representations made by the Attorney-in-Fact acting in good faith pursuant to this power of attorney, and each Member hereby waives any and all defenses which may be available to contest, negate, or disaffirm the action of the Attorney-in-Fact taken in good faith under this power of attorney.

**ARTICLE VI**

**TRANSFER PERMITTED ON SATISFACTION OF CERTAIN CONDITIONS**

6.1. **Transfers.**

(a) No Person may Transfer all or any portion of or any interest or rights in the Person's Membership Rights or Interest unless the following conditions ("Conditions of Transfer") are satisfied:

- i. The Transfer will not require registration of Interests or Membership Rights under



any federal or state securities laws;

ii. The transferee delivers to the Company a written agreement to be bound by the terms of Article VI of this Agreement;

iii. The Transfer will not result in the termination of the Company pursuant to Code Section 708;

iv. The Transfer will not result in the Company being subject to the Investment Company Act of 1940, as amended;

v. The transferor or the transferee delivers the following information to the Company: (i) the transferee's taxpayer identification number, and (ii) the transferee's initial tax basis in the Transferred Interest; and

vi. The transferor complies with the provisions set forth in *Section 6.1(d)*.

(b) If the Conditions of Transfer are satisfied, then a Member or Interest Holder may Transfer all or any portion of that Person's Interest. The Transfer of an Interest pursuant to this Section 6.1 shall not result, however, in the Transfer of any of the transferor's other Membership Rights, if any, and the transferee of the Interest shall have no right to: (i) become a Member, (ii) exercise any Membership Rights other than those specifically pertaining to the ownership of an Interest, or (iii) act as an agent of the Company.

(c) Each Member hereby acknowledges the reasonableness of the prohibition contained in this Section 6.1 in view of the purposes of the Company and the relationship of the Members. The Transfer of any Membership Rights or Interests in violation of the prohibition contained in this Section 6.1 shall be deemed invalid, null and void, and of no force or effect. Any Person to whom Membership Rights are attempted to be transferred in violation of this Section shall not be entitled to vote on matters coming before the Members, participate in the management of the Company, act as an agent of the Company, receive distributions from the Company, or have any other rights in or with respect to the Membership Rights.

(d) *Admission of Transferee as Member.* Notwithstanding anything contained herein to the contrary, the transferee of all or any portion of or any interest or rights in any Membership Rights or Interest shall not be entitled to become a Member or exercise any rights of a Member. The transferee shall be entitled to receive, to the extent transferred, only the distributions to which the transferor would be entitled; and the transferee shall not be admitted as a Member unless a Majority in Interest of the Members consent.

6.2. ***Voluntary Withdrawal.*** No Member shall have the right to Voluntarily Withdraw from the Company.

6.3. ***Involuntary Withdrawal.*** Immediately upon the occurrence of an Involuntary Withdrawal, the

successor of the withdrawn Member shall thereupon become an Interest Holder but shall not become a Member. If the Company is continued as provided in Section 7.13, the successor Interest Holder shall have all the rights of an Interest Holder, but shall not be entitled to receive any distribution in liquidation of the value of the Member's Interest as of the date the Member involuntarily withdrew from the Company.

**6.4 *Withdrawal of HACC Rosewood.*** Notwithstanding any other provisions herein, HACC Rosewood shall have the right to withdraw as a Member in the event that: (i) the Company, any Member, Pedcor CLV, or any partner of Pedcor CLV is in material default under this Agreement or the Partnership Agreement or any other documents affecting the Company, Pedcor CLV or Apartment Housing which default materially affects HACC Rosewood's rights, duties or obligations under this Agreement, or the Partnership Agreement; (ii) the Company, any Member, Pedcor CLV, or any partner of Pedcor CLV acts or fails to act which results in a material threat to HACC's status as an Oregon public body corporate and politic; or (iii) there is a material change in the Apartment Housing, the Company, Pedcor CLV or any matter for which notice is required to be provided the State Tax Credit Agency and such notice is not provided, provided however, that HACC Rosewood shall provide thirty (30) days prior written notice to the other members during which time such default may be corrected. If the default is not cured, the HACC Rosewood shall have the right to withdraw and be indemnified for all acts of the Company and Pedcor CLV.

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## ARTICLE VII

### DISSOLUTION, LIQUIDATION, AND TERMINATION OF THE COMPANY

**7.1. *Events of Dissolution.*** The Company shall be dissolved upon the happening of any of the following events:

- (a) when the period fixed for its duration in *Section 2.4* has expired;
- (b) upon the unanimous written agreement of the Members; or
- (c) upon the death, retirement, resignation, expulsion, or bankruptcy of a Member or the occurrence of any other event which terminates the continued membership of a Member in the Company, unless a Majority in Interest of the remaining Members, within ninety (90) days after receiving written notice from the Company of the termination of such membership, elect to continue the business of the Company pursuant to the terms of this Agreement.

**7.2. *Procedure for Winding Up and Distribution.*** If the Company is dissolved, the Managers shall wind up its affairs. On winding up of the Company, the assets of the Company shall be distributed, first, to creditors of the Company, including Interest Holders who are creditors, in satisfaction of the liabilities of the Company, and then to the Interest Holders in accordance with *Section 4.4* of this Agreement.

## ARTICLE VIII

## BOOKS, RECORDS, ACCOUNTING, AND TAX ELECTIONS

8.1. **Bank Accounts.** All funds of the Company shall be deposited in a bank account or accounts opened in the Company's name. The Managers shall determine the institution or institutions at which the accounts will be opened and maintained, the types of accounts, and the Persons who will have authority with respect to the accounts and the funds therein.

8.2. **Books and Records.** The Managers shall keep or cause to be kept complete and accurate books and records of the Company and supporting documentation of transactions with respect to the conduct of the Company's business. The books and records shall be maintained in accordance with sound accounting practices and shall be available at the Company's principal office for examination by any Member or the Member's duly authorized representative at any and all reasonable times during normal business hours.

8.3. **Annual Accounting Period.** The annual accounting period of the Company shall be the calendar year.

8.4. **Reports.** Within seventy-five (75) days after the end of each taxable year of the Company, the Managers shall cause to be sent to each Person who was a Member at any time during the taxable year then ended a complete accounting of the affairs of the Company for the taxable year then ended. In addition, within seventy-five (75) days after the end of each taxable year of the Company, the Managers shall cause to be sent to each Person who was an Interest Holder at any time during the taxable year then ended, that tax information concerning the Company which is necessary for preparing the Interest Holder's income tax returns for that year. At the request of any Member, and at the Member's expense, the Members shall cause an audit of the Company's books and records to be prepared by independent accountants for the period requested by the Member.

8.5. **Tax Matters Member.** Pedcor shall be the Company's tax matters partner ("Tax Matters Partner"). The Tax Matters Partner shall have all powers and responsibilities provided in Code Section 6231, et seq. The Tax Matters Partner shall keep all Members informed of all notices from government taxing authorities which may come to the attention of the Tax Matters Partner. The Company shall pay and be responsible for all reasonable third-party costs and expenses incurred by the Tax Matters Partner in performing those duties. A Member shall be responsible for any costs incurred by the Member with respect to any tax audit or tax-related administrative or judicial proceeding against any Member, even though it relates to the Company. The Tax Matters Partner shall not compromise any dispute with the Internal Revenue Service without the approval of the Members.

8.6. **Tax Elections.** The Managers shall have the authority to make all Company elections permitted under the Code, including, without limitation, elections of methods of depreciation and elections under Code Section 754. The decision to make or not make an election shall be at the Managers' sole and absolute discretion.

## ARTICLE IX

### GENERAL PROVISIONS

9.1. **Assurances.** Each Member shall execute all certificates and other documents and shall do all such filing, recording, publishing, and other acts as the Members deem appropriate to comply with the requirements of law for the formation and operation of the Company and to comply with any laws, rules, and regulations relating to the acquisition, operation, or holding of the property of the Company.

9.2. **Notifications.** Any notice, demand, consent, election, offer, approval, request, or other communication (collectively a "notice") required or permitted under this Agreement must be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, return receipt requested. A notice must be addressed to an Interest Holder at the Interest Holder's last known address on the records of the Company. A notice to the Company must be addressed to the Company's principal office. A notice delivered personally will be deemed given only when acknowledged in writing by the person to whom it is delivered. A notice that is sent by mail will be deemed given three (3) business days after it is mailed. Any party may designate, by notice to all of the others, substitute addresses or addressees for notices; and, thereafter, notices are to be directed to those substitute addresses or addressees.

9.3. **Specific Performance.** The parties recognize that irreparable injury will result from a breach of any provision of this Agreement and that money damages will be inadequate to remedy fully the injury. Accordingly, in the event of a breach or threatened breach of one or more of the provisions of this Agreement, any party who may be injured (in addition to any other remedies which may be available to that party) shall be entitled to one or more preliminary or permanent orders (i) restraining and enjoining any act which would constitute a breach or (ii) compelling the performance of any obligation which, if not performed, would constitute a breach.

9.4. **Complete Agreement.** This Agreement constitutes the complete and exclusive statement of the agreement among the Members. It supersedes all prior written and oral statements, including any prior representation, statement, condition, or warranty. Except as expressly provided otherwise herein, this Agreement may not be amended without the written consent of all of the Members.

9.5. **Applicable Law.** All questions concerning the construction, validity, and interpretation of this Agreement and the performance of the obligations imposed by this Agreement shall be governed by the internal law, not the law of conflicts, of the State of Indiana.

9.6. **Section Titles.** The headings herein are inserted as a matter of convenience only and do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof.

9.7. **Binding Provisions.** This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal and legal representatives, successors, and permitted assigns.

9.8. **Jurisdiction and Venue.** Any suit involving any dispute or matter arising under this Agreement may only be brought in the United States District Court for the Southern District of Indiana or any Indiana State Court having jurisdiction over the subject matter of the dispute or matter. All Members hereby consent to the exercise of personal jurisdiction by any such court with respect to any such proceeding.

9.9. **Terms.** Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular, and plural, as the identity of the Person may in the context require.

9.10. **Separability of Provisions.** Each provision of this Agreement shall be considered separable; and if, for any reason, any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.

9.11. **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

9.12. **Estoppel Certificate.** Each Member shall, within ten (10) days after written request by any Member, deliver to the requesting Person a certificate stating, to the Member's knowledge, that: (a) this Agreement is in full force and effect; (b) this Agreement has not been modified except by any instrument or instruments identified in the certificate; and (c) there is no default hereunder by the requesting Person, or if there is a default, the nature and extent thereof.

9.13. **Limitation on Liability.** The Company and the Members acknowledge and agree that HACC and HACC Rosewood:

(a) will not be required to contribute any funds to the capital of the Company or Pedcor CLV.

(b) will not be liable for repayment of any loan that the Company or Pedcor CLV may obtain to finance the acquisition, renovation, ownership or operation of the Project.

(c) will not be obligated to guaranty any loan or the operating performance of the Project.

(d) will not be required to fund any development company overrun or repurchase obligation of the Project, any of the partners in Pedcor CLV or any of the members of the Company.

(e) will not have liability for any failure to perform any duty or obligation under this Agreement or the Company Agreement, the Partnership Agreement or any financing or security agreement entered into by the Company or Pedcor CLV, except in the case of HACC Rosewood's willful misconduct, gross negligence and/or criminal activities.

9.14. **Indemnity.** To the fullest extent permitted by applicable law, HACC Rosewood, HACC and its commissioners, managers, officers, directors, agents and employees (collectively the "**Indemnitees**") shall be indemnified, defended and held harmless by the Company from and against any and all damages whatsoever arising out of or incidental to any act performed or omitted to be performed by any one or more of such Indemnitees in connection with the business of the Company taken or omitted to be taken by such

Indemnitee in good faith and with the belief that such action or omission is in, or not opposed to, the best interest of the Company, and, with respect to any criminal proceeding, had no reasonable cause to believe his/her/its conduct was unlawful, and (y) such conduct did not constitute fraud, gross negligence or willful misconduct, in either case as determined by a final, nonappealable order of a court of competent jurisdiction. In connection with the foregoing, the termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, or its equivalent, shall not, in and of itself, create a presumption or otherwise constitute evidence that the Indemnitee acted in a manner specified in clause (x) or (y) of this Section 9.14.

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Reasonable costs and expenses incurred by an Indemnitee in defending any claim, demand, action, suit, or proceeding that may be subject to a right of indemnification hereunder may be reimbursed (and/or advanced to the extent reasonably required) by the Company prior to the final disposition thereof; provided, that if it is finally judicially determined that such Indemnitee is not entitled to the indemnification provided by this Section 9.14, then such Indemnitee shall repay or reimburse the Company for any reimbursed or advanced expenses.

*(The remainder of this page intentionally left blank.)*

IN WITNESS WHEREOF, the parties have executed, or caused this Agreement to be executed, under seal, as of the date set forth hereinabove.

HACC ROSEWOOD STATION, LLC  
an Oregon limited liability company,

By: HOUSING AUTHORITY OF CLACKAMAS  
COUNTY  
an Oregon public body corporate and politic.  
Its Sole Member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

PEDCOR INVESTMENTS,  
A LIMITED LIABILITY COMPANY

By: \_\_\_\_\_  
Thomas G. Crowe,  
Executive Vice President

2018 HOUSING PARTICIPANTS, LLC

By: \_\_\_\_\_  
Jared M. Houser  
Manager

\_\_\_\_\_  
Thomas G. Crowe

\_\_\_\_\_  
The Craig H. Lintner Revocable Trust Dated  
December 21, 2016 and as subsequently amended

\_\_\_\_\_  
Jared M. Houser

**Rosewood Terrace Housing Company, LLC  
Operating Agreement**

**Exhibit A  
List of Members, Capital and Percentages**

<u>Name, Address and Taxpayer I.D. Number</u>	<u>Initial Cash Capital Contribution</u>	<u>Percentages</u>
HACC Rosewood Station, LLC 13900 South Gain Street Oregon City, OR 97045	\$0.00	25%
Pedcor Investments, A Limited Liability Company One Pedcor Square 770 3 <sup>rd</sup> Avenue, S.W. Carmel, IN 46032	\$0.00	49.9%
2018 Housing Participants, LLC One Pedcor Square 770 3 <sup>rd</sup> Avenue, S.W. Carmel, IN 46032	\$0.00	9.1%
Thomas G. Crowe 8674 Moon Bay Circle Indianapolis, IN 46236	\$0.00	3%
Craig H. Lintner Revocable Trust Dated December 21, 2016 and as Subsequently Amended 5719 Country View Drive Pittsboro, IN 46167	\$0.00	10%
Jared M. Houser 11012 Latonia Lane Indianapolis, IN 46280	\$0.00	3%
TOTAL	\$0.00	100%





November 22, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Video Presentation: Clackamas Community College  
Helps Veterans with Small Businesses

<b>Purpose/Outcome</b>	To illustrate the impact of a recent \$10,000 grant from the Board to the Clackamas Community College Small Business Development Center benefitting a program offering small business entrepreneurial opportunities for local veterans.
<b>Dollar Amount and Fiscal Impact</b>	N/A
<b>Funding Source</b>	N/A
<b>Duration</b>	The grant is for one year.
<b>Previous Board Action/Review</b>	The Board previously approved the grant as part of the Economic Opportunity Fund budget, within Business & Economic Development.
<b>Strategic Plan Alignment</b>	Growing a vibrant economy.
<b>Contact Person</b>	Gary Schmidt, Public and Government Affairs, 503-742-5908

**BACKGROUND:**

Through the Economic Opportunity Fund budget, the Board approved a \$10,000 grant to the Clackamas Community College Small Business Development Center (SBDC) to provide veterans with scholarships to receive SBDC services. The SBDC offers resources designed to help entrepreneurs and small businesses start, grow and thrive.

This presentation allows the Board to both hear directly from SBDC staff about how the grant will benefit local veterans and watch a promotional video about the grant. The grant illustrates how the county is dedicated to supporting local veterans, growing the local economy and creating jobs.

**RECOMMENDATION:**

N/A

Respectfully submitted,  
Gary Schmidt, Director  
Public and Government Affairs



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING  
2051 KAEN ROAD OREGON CITY, OR 97045

November 22, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

**Stephen L. Madkour**  
County Counsel

**Kathleen Rastetter**  
**Chris Storey**  
**Scott C. Ciecko**  
**Alexander Gordon**  
**Amanda Keller**  
**Nathan K. Boderman**  
**Christina Thacker**  
**Shawn Lillegren**  
**Jeffrey D. Munns**  
Assistants

Approval of Annexation to Clackamas County Service District No. 1

<b>Purpose/Outcomes</b>	Conduct Public Hearing/Approve Order
<b>Dollar Amount and Fiscal Impact</b>	None
<b>Funding Source</b>	Not Applicable
<b>Duration</b>	Permanent
<b>Previous Board Action</b>	None
<b>Strategic Plan Alignment</b>	Build Public Trust Through Good Government, hold transparent and clear public processes regarding jurisdictional boundaries
<b>Contact Person</b>	Ken Martin, Boundary Change Consultant - 503 222-0955 Chris Storey, Assistant County Counsel
<b>Contract No.</b>	Not Applicable

**BACKGROUND:**

The County Board is charged with making boundary change decisions (annexations, withdrawals, etc.) for many types of special districts (water, sanitary sewer, rural fire protection, etc.) within the County. One type of special district over which the Board has jurisdiction is a county service district and Clackamas County Service District No. 1 is such a district.

Proposal No. CL 17-016 is a proposed annexation to Clackamas County Service District No. 1 ("District").

State statute and the Metro Code require the Board to hold a public hearing on the proposed annexation. Notice of this hearing invited testimony from any interested party. Notice consisted of: 1) Posting three notices near the territory and one notice near the County hearing room 20 days prior to the hearing; 2) Published notice twice in the Clackamas County Review; 3) Mailed notice sent to affected local governments and all property owners within 100 feet of the area to be annexed.

As required by statute the Board of the District has endorsed the proposed annexation. Also as required by statute (ORS 198.720(1)) the City of Happy Valley has approved this petition.

This proposal was initiated by a consent petition of property owners. The petition meets the requirement for initiation set forth in ORS 198.857, ORS 198.750 (section of statute which specifies contents of petition) and Metro Code 3.09.040(a) (lists Metro's minimum requirements for petition). If the Board approves the proposal the boundary change will become effective immediately.

The territory to be annexed is located generally in the eastern part of the District. The territory contains 1.64 acres, 1 single family dwelling, a population of 2 and is valued at \$551,821.

## **REASON FOR ANNEXATION**

The property owners desire sewer service for the existing residence.

## **CRITERIA**

Oregon Revised Statute 198 directs the Board to "consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district."

Clackamas County Service District # 1 and the City of Happy Valley do have an agreement calling for the District to be the provider of sewers inside the City.

Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party<sup>1</sup>; and
3. The proposed effective date of the boundary change.

Service availability is covered in the proposed findings. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date (immediately upon adoption) was noted above.

To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

To approve a boundary change the County must:

- (1) Find that the change is consistent with expressly applicable provisions in:

---

<sup>1</sup> A "necessary party" is another governmental entity which includes the same area or provides an urban service to the area.

- (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
  - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
  - (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
  - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
  - (E) Any applicable comprehensive plan;
  - (F) Any applicable concept plan; and
- (2) Consider whether the boundary change would:
- (A) Promote the timely, orderly and economic provision of public facilities and services;
  - (B) Affect the quality and quantity of urban services; and
  - (C) Eliminate or avoid unnecessary duplication of facilities and services.

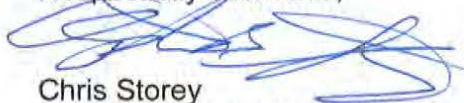
There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The proposal is consistent with the Comprehensive Plan as stated in the findings attached in the proposed order. No concept plans cover this area.

Staff has reviewed both the ORS 198 criteria and the Metro Code requirements, and found that the subject property is eligible for annexation to the District. A draft order with proposed findings is attached hereto for the Board's consideration. The territory, if annexed into the District, will be served by Water Environment Services pursuant to that certain ORS 190 Partnership entered into by the District with the Tri-City Service District and the Surface Water Management Agency of Clackamas County, as amended from time to time.

**RECOMMENDATION:**

Based on the attached Order and Findings, Staff recommends approval of Proposal No. CL-17-016, annexation to Clackamas County Service District No. 1.

Respectfully submitted,



Chris Storey  
Assistant County Counsel

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Approving  
Boundary Change Proposal  
No. CL 17-0016



ORDER NO. \_\_\_\_\_

**WHEREAS**, this matter coming before the Board at this time, and it appearing that the owner of all the land in the territory to be annexed has petitioned to annex the territory to Clackamas County Service District No. 1; and

**WHEREAS**, it further appearing that this Board is charged with deciding this proposal for a boundary change pursuant to ORS Chapters 198 and Metro Code 3.09; and

**WHEREAS**, it further appearing that staff retained by the County have reviewed the proposed boundary change and issued a report which complies with the requirements of Metro Code 3.09.050(b); and

**WHEREAS**, it further appearing that this matter came before the Board for public hearing on November 22, 2017 and that a decision of approval was made on November 22, 2017;

**NOW THEREFORE, IT IS HEREBY ORDERED** that Boundary Change Proposal No. CL 17-016 is approved for the reasons stated in attached Exhibit A and the territory described in Exhibit B and depicted on Exhibit C is annexed to Clackamas County Service District No. 1 as of November 22, 2017.

**ADOPTED** this 22<sup>nd</sup> day of November, 2017

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

### FINDINGS

Based on the study and the public hearing the Board found:

1. The territory to be annexed contains 1.64 acres, 1 single family dwelling, a population of 2 and is valued at \$551,821.
2. The property owners desire sewer service for the existing residence.
3. Oregon Revised Statute 198 directs the Board to "consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district."

Clackamas County Service District No. 1 and the City of Happy Valley do have an agreement calling for the District to be the provider of sewer service inside the City. The District has entered into an agreement with the Surface Water Management Agency of Clackamas County and the Tri-City Service District to create Water Environment Services, an ORS 190 partnership ("WES") as a collective service provider for all three districts. If annexed into the District, the property would be served by WES under such agreement.

Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party<sup>1</sup>; and
3. The proposed effective date of the boundary change.

Service availability is covered in the findings below. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date is immediately upon adoption.

To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

To approve a boundary change the County must:

- (1) Find that the change is consistent with expressly applicable provisions in:

---

<sup>1</sup> A "necessary party" is another governmental entity which includes the same area or provides an urban service to the area.

- (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
  - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
  - (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
  - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
  - (E) Any applicable comprehensive plan;
  - (F) Any applicable concept plan; and
- (2) Consider whether the boundary change would:
- (A) Promote the timely, orderly and economic provision of public facilities and services;
  - (B) Affect the quality and quantity of urban services; and
  - (C) Eliminate or avoid unnecessary duplication of facilities and services.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The proposal is consistent with the Comprehensive Plan as stated in Finding No. 6 below. No concept plans cover this area.

Staff has reviewed both the ORS 198 criteria and the Metro Code requirements, and found that the subject property is eligible for annexation to the District.

4. This territory is inside of Metro's jurisdictional boundary and inside the regional Urban Growth Boundary (UGB).

The law that requires Metro to adopt criteria for boundary changes specifically states that Metro shall ". . . ensure that a boundary change is in compliance with the Metro regional framework plan as defined in ORS 197.015 and cooperative agreements and urban service agreements adopted pursuant to ORS chapter 195." ORS 197.015 says "Metro regional framework plan means the regional framework plan required by the 1992 Metro Charter or its separate components." The Regional Framework Plan was reviewed and found not to contain specific criteria applicable to boundary changes.

There are two adopted regional functional plans, the Urban Growth Management Functional Plan and the Regional Transportation Plan, which were examined and found not to contain any directly applicable standards and criteria for boundary changes.

5. The PUBLIC FACILITIES AND SERVICES Element of the Comprehensive Plan contains the following Goal:

POLICIES

Sanitary Sewage Disposal

\* \* \*

- 6.0 Require sanitary sewerage service agencies to coordinate extension of sanitary services with other key facilities, i.e., water, transportation, and storm drainage systems, which are necessary to serve additional lands.

6. The territory is planned and zoned (R-10) for single family dwellings and is developed with a single family dwelling.
7. ORS 195 requires agreements between providers of urban services. Urban services are defined as: sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit. These agreements are to specify which governmental entity will provide which service to which area in the long term. The counties are responsible for facilitating the creation of these agreements. There are no urban service agreements under ORS 195 relative to sewer service in this area of Clackamas County.
8. WES, as the service provider for the District, has an 8 inch sewer line in 162<sup>nd</sup> Avenue which can serve the property.
9. The territory to be annexed is within the Sunrise Water Authority and is already served by that unit of government.
10. The area receives police service from the City of Happy Valley which contracts with the Clackamas County Sheriff's Department for service.
11. The territory is within the Clackamas County R.F.P.D. #1. This service will not be affected by annexation to the County Service District for sanitary sewers.
12. The area to be annexed currently receives service from the North Clackamas County Parks and Recreation District. That arrangement is set to change on December 31, 2017 when the City's withdrawal from that district will take effect.



## CONCLUSIONS AND REASONS FOR DECISION

Based on the Findings, the Board determined:

1. The Metro Code requires the boundary change decision to be consistent with expressly applicable provisions in any urban service provider agreements, cooperative agreements and annexation plans adopted pursuant to ORS 195. As noted in Findings 3 & 7 there are no such agreements or plans in place in this area. The Board concludes that its decision is not inconsistent with any such agreements and plans.
2. The Metro Code calls for consistency between the Board decision and any "applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services." The Board notes the original public facility plan for this area does call for sewer service by the District.
3. ORS 198 requires consideration of the comprehensive plan and any service agreements affecting the area. The Board has reviewed the applicable comprehensive plan (Happy Valley's Comprehensive Plan) and concludes this proposal complies with it. All other necessary urban services can be made available.
4. The Board considered the timing & phasing of public facilities to this area, the quantity and quality of services available and the potential for duplication of services. The District, through Water Environment Services, has service available to the area to be annexed as noted in Finding No. 8. The Board concludes this annexation is timely, the District has an adequate quantity and quality of services available and that the services are not duplicative.
5. The Metro Code at 3.09.050 (B) (2) requires a determination of whether the boundary change will cause withdrawal of the territory from the boundary of any necessary party. An examination of this issue found that no such withdrawals would be caused by approval of this annexation.

EXHIBIT B  
ANNEXATION CL-17-016

A part of Section 6, Township 2 South, Range 3 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at the Northwest corner of said Section 6; thence easterly along the section line 30 feet more or less to a point of intersection with the east right-of-way line of SE 162<sup>nd</sup> Ave., County Road 335; thence southerly along said east right-of-way line a distance of 623 feet more or less, to a point of intersection with the south line of a tract conveyed to Luther B. Lea, et ux, by deed recorded in Clackamas County on August 23, 1956 as Fee No. 13501, (commonly known as map and tax lot 23E06BB00300) and said point being the true point of beginning for the description of the parcel to be annexed:

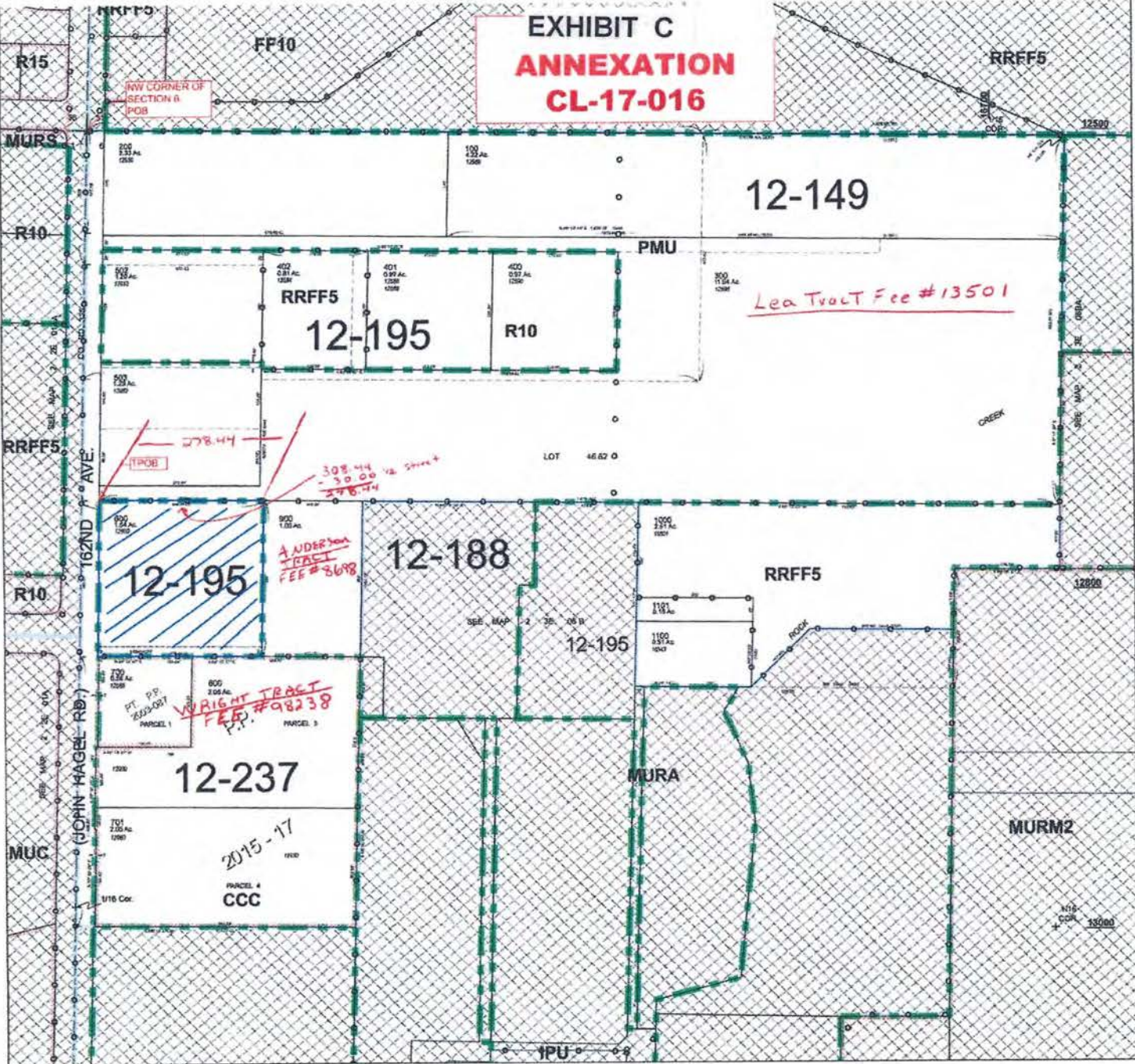
1. Thence; southerly along said east right-of-way line of SE 162<sup>nd</sup> Ave., 262.31 feet to the north line of a tract conveyed to I. H. Wright, et ux, by deed recorded in Clackamas County on September 30, 1931 as Fee No. 98238;
2. Thence; easterly along the north line of said Wright Tract, 308.44 feet to a point of intersection with the west line of a tract conveyed to Lloyd N. Anderson, et ux, by Deed recorded in Clackamas County on July 11, 1950 as Fee No. 8698, (commonly known as map and tax lot 23E06BB00900);
3. Thence; northerly along the west line of said Anderson Tract, 262 feet to the south line of said Lea Tract;
4. Thence; westerly along said south line of the Lea tract, 278.44 feet to a point of intersection with the east right-of-way line of SE 162<sup>nd</sup> Ave., and said point being the true point of beginning.

N.W. 1/4 N.W. 1/4 SEC. 6 T.2S. R.3E. W.M.  
CLACKAMAS COUNTY  
1" = 100'

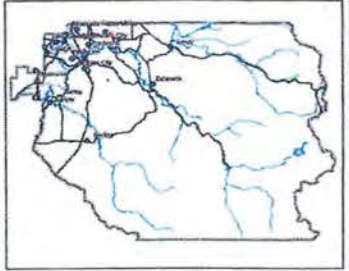
# EXHIBIT C ANNEXATION CL-17-016

Cancelled Taxlots

901
902
1200
990
991
490



- Parcel Boundary
- Private Road ROW
- Historical Boundary
- Railroad Centerline
- TaxCodeLines
- Map Index
- WaterLines
- Land Use Zoning
- Plans
- Water
- Corner
- Section Corner
- 1/16th Line
- Govt Lot Line
- DLC Line
- Meadow Line
- PLSS Section Line
- Historic Corridor 40'
- Historic Corridor 20'



THIS MAP IS FOR ASSESSMENT PURPOSES ONLY





OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING  
2051 KAEN ROAD OREGON CITY, OR 97045

November 22, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

**Stephen L. Madkour**  
County Counsel

**Kathleen Rastetter**  
**Chris Storey**  
**Scott C. Ciecko**  
**Alexander Gordon**  
**Amanda Keller**  
**Nathan K. Boderman**  
**Christina Thacker**  
**Shawn Lillegren**  
**Jeffrey D. Munns**  
Assistants

Approval of Withdrawal from Clackamas County Service District No. 1

<b>Purpose/Outcomes</b>	Conduct Public Hearing/Approve Order
<b>Dollar Amount and Fiscal Impact</b>	None
<b>Funding Source</b>	Not Applicable
<b>Duration</b>	Permanent
<b>Previous Board Action</b>	None
<b>Strategic Plan Alignment</b>	Build Public Trust Through Good Government, hold transparent and clear public processes regarding jurisdictional boundaries
<b>Contact Person</b>	Ken Martin, Boundary Change Consultant - 503 222-0955 Chris Storey, Assistant County Counsel
<b>Contract No.</b>	Not Applicable

**BACKGROUND:**

The County Board is charged with making boundary change decisions (annexations, withdrawals, etc.) for many types of special districts (water, sanitary sewer, rural fire protection, etc.) within the County. One type of special district over which the Board has jurisdiction is a county service district and Clackamas County Service District No. 1 is such a district.

Proposal No. CL 17-017 is a proposed withdrawal from Clackamas County Service District No. 1 (the "District").

State statute and the Metro Code require the Board to hold a public hearing on the proposed withdrawal. Notice of this hearing invited testimony from any interested party. Notice consisted of: 1) Posting three notices near the territory and one notice near the County hearing room 20 days prior to the hearing; 2) Published notice twice in the Clackamas County Review; 3) Mailed notice sent to affected local governments and all property owners within 100 feet of the area to be annexed.

As required by statute the Board of the District has endorsed the proposed withdrawal.

This proposal was initiated by a consent petition of property owners. The petition meets the requirement for initiation set forth in ORS 198.870, ORS 198.750 (section of statute which specifies contents of petition) and Metro Code 3.09.040(a) (lists Metro's minimum requirements for petition). If the Board approves the proposal it must adopt an order setting a date for a final hearing not less than 20 or more than 50 days after the date of their order. The purpose of that hearing is to allow for the possible filing of a remonstrance petition by electors within the withdrawal area. Assuming no remonstrance petition is filed the Board would enter an order approving the withdrawal. Staff proposes the required second hearing take place on December 14, 2017.

The territory to be withdrawn is located generally in the western part of the District. The territory contains 1.52 acres, is vacant and is valued at \$86,839.

### **REASON FOR ANNEXATION**

The property owners desire sewer service for a proposed 8-lot subdivision. Due to topography the District through its provider, Water Environment Services (WES), cannot efficiently serve the site but an adjacent unit of government, Oak Lodge Water Services District ("OLWSD") can provide service. Withdrawing the property from CCSD # 1 will allow for its subsequent annexation to OLWSD and acquisition of sewer service from that entity.

### **CRITERIA**

Oregon Revised Statute 198 directs the Board to "consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district."

Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party<sup>1</sup>; and
3. The proposed effective date of the boundary change.

Service availability is covered in the proposed findings. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date would be the date of the order adopted at the conclusion of the second hearing.

To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

To approve a boundary change the County must:

---

<sup>1</sup> A "necessary party" is another governmental entity which includes the same area or provides an urban service to the area.

- (1) Find that the change is consistent with expressly applicable provisions in:
  - (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
  - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
  - (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
  - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
  - (E) Any applicable comprehensive plan;
  - (F) Any applicable concept plan; and
- (2) Consider whether the boundary change would:
  - (A) Promote the timely, orderly and economic provision of public facilities and services;
  - (B) Affect the quality and quantity of urban services; and
  - (C) Eliminate or avoid unnecessary duplication of facilities and services.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The proposal is consistent with the Comprehensive Plan as stated in the findings attached in the proposed order. No concept plans cover this area.

Staff has reviewed both the ORS 198 criteria and the Metro Code requirements, and found that the subject property is eligible for withdrawal from the District. A draft order with proposed findings is attached hereto for the Board's consideration.

**RECOMMENDATION:**

Based on the attached Order and Findings, Staff recommends approval of Proposal No. CL-17-017, withdrawal from Clackamas County Service District No. 1. Staff further recommends the Board set a final hearing on the proposal for December 14, 2017.

Respectfully submitted,



Chris Storey  
Assistant County Counsel

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Approving  
Boundary Change Proposal  
No. CL 17-0017



ORDER NO. \_\_\_\_\_

**WHEREAS**, this matter coming before the Board at this time, and it appearing that the owner of all the land in the territory to be withdrawn has petitioned to withdraw the territory from Clackamas County Service District No. 1; and

**WHEREAS**, it further appearing that this Board is charged with deciding this proposal for a boundary change pursuant to ORS Chapters 198 and Metro Code 3.09; and

**WHEREAS**, it further appearing that staff retained by the County have reviewed the proposed boundary change and issued a report which complies with the requirements of Metro Code 3.09.050(b); and

**WHEREAS**, it further appearing that this matter came before the Board for public hearing on November 22, 2017 and that a decision of approval was made on November 22, 2017; and

**WHEREAS**, it further appearing that the Board is required to hold a second hearing on this proposal and that at that hearing if sufficient signatures to cause an election on the matter are not filed, the Board may approve the proposed withdrawal;

**NOW THEREFORE, IT IS HEREBY ORDERED** that Boundary Change Proposal No. CL 17-017 as described in Exhibit B and depicted on Exhibit C is preliminarily approved for the reasons stated in attached Exhibit A; and

**ORDERED, FURTHER**, that a second hearing on this proposed withdrawal is hereby scheduled for December 14, 2017 to receive remonstrances. If sufficient signatures to cause an election on the matter are not filed at or before that date, the Board will enter an order approving the withdrawal on December 14, 2017.

**ADOPTED** this 22<sup>nd</sup> day of November, 2017

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

## FINDINGS

Based on the study and the public hearing the Board found:

1. Proposal No. CL 17-017 is a proposed withdrawal from Clackamas County Service District No. 1.

If the Board approves the proposal it must adopt an order setting a date for a final hearing not less than 20 or more than 50 days after the date of their order. The purpose of that hearing is to allow for the possible filing of a remonstrance petition by electors within the withdrawal area. Assuming no remonstrance petition is filed the Board would enter an order approving the withdrawal. Staff proposes the required second hearing take place on December 14, 2017.

2. The territory to be withdrawn contains 1.52 acres, is vacant and is valued at \$86,839.
3. The property owners desire sewer service for a proposed 8-lot subdivision. Due to topography Clackamas County Service District # 1 (CCSD # 1) through its sewer provider, Water Environment Services (WES), cannot efficiently serve the site but an adjacent unit of government, Oak Lodge Water Services District (OLWSD) can provide service. Withdrawing the property from CCSD#1 will allow for its subsequent annexation to OLWSD and acquisition of sewer service from that entity.
4. Oregon Revised Statute 198 directs the Board to "consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district."

Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party<sup>1</sup>; and
3. The proposed effective date of the boundary change.

Service availability is covered in the findings below. Staff has examined the statutes and determined that approval of this withdrawal will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date would be the date of the order adopted at the conclusion of the second hearing.

---

<sup>1</sup> A "necessary party" is another governmental entity which includes the same area or provides an urban service to the area.



To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

To approve a boundary change the County must:

- (1) Find that the change is consistent with expressly applicable provisions in:
  - (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
  - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
  - (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
  - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services;
  - (E) Any applicable comprehensive plan; and
  - (F) Any applicable concept plan.
- (2) Consider whether the boundary change would:
  - (A) Promote the timely, orderly and economic provision of public facilities and services;
  - (B) Affect the quality and quantity of urban services; and
  - (C) Eliminate or avoid unnecessary duplication of facilities and services.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The proposal is consistent with the Comprehensive Plan as stated in Finding No. 6 below. No concept plans cover this area.

Staff has reviewed both the ORS 198 criteria and the Metro Code requirements, and found that the subject property is eligible for withdrawal from the District.

5. This territory is inside of Metro's jurisdictional boundary and inside the regional Urban Growth Boundary (UGB).

The law that requires Metro to adopt criteria for boundary changes specifically states that Metro shall ". . . ensure that a boundary change is in compliance with the Metro regional framework plan as defined in ORS 197.015 and cooperative agreements and urban service agreements adopted pursuant to ORS chapter 195." ORS 197.015 says "Metro regional framework plan means the regional framework plan required by the 1992 Metro Charter or its separate components." The Regional Framework Plan was reviewed and found not to contain specific criteria applicable to boundary changes.

There are two adopted regional functional plans, the Urban Growth Management Functional Plan and the Regional Transportation Plan, which were examined and found not to contain any directly applicable standards and criteria for boundary changes.

6. The PUBLIC FACILITIES AND SERVICES Element of the Comprehensive Plan contains the following Goal:

POLICIES

Sanitary Sewage Disposal

\* \* \*

- 6.0 Require sanitary sewerage service agencies to coordinate extension of sanitary services with other key facilities, i.e., water, transportation, and storm drainage systems, which are necessary to serve additional lands.

The territory is planned for Low Density Residential use and is zoned R-7. The County has approved a replat of this property which will allow for development of an 8-lot subdivision.

7. ORS 195 requires agreements between providers of urban services. Urban services are defined as: sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit. These agreements are to specify which governmental entity will provide which service to which area in the long term. The counties are responsible for facilitating the creation of these agreements. There are no urban service agreements under ORS 195 relative to sewer service in this area of Clackamas County.
8. This territory, if withdrawn from the District, will be need to be subsequently annexed to the Oak Lodge Water Services District. OLWSD has an 8-inch sewer line SE Garland Lane which can serve the site if annexed into such district.
9. The territory to be annexed is within the boundary of the former Oak Lodge Water District (now a part of Oak Lodge Water Services District for water purposes) but was outside the boundaries of the former Oak Lodge Sanitary District, and therefore was not included in the boundaries of the new district upon formation of the combined Oak Lodge

district.

10. The area receives police service from the Clackamas County Sheriff's Department.
11. The territory is within the Clackamas County R.F.P.D. #1. This service will not be affected by annexation to the County Service District for sanitary sewers.
12. The area to be annexed is within the North Clackamas Parks and Recreation District.

### **CONCLUSIONS AND REASONS FOR DECISION**

Based on the Findings, the Board determined:

1. The Metro Code requires the boundary change decision to be consistent with expressly applicable provisions in any urban service provider agreements, cooperative agreements and annexation plans adopted pursuant to ORS 195. As noted in Findings 3 & 7 there are no such agreements or plans in place in this area. The Board concludes that its decision is not inconsistent with any such agreements and plans.
2. The Metro Code calls for consistency between the Board decision and any "applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services." The Board notes the original public facility plan for this area does call for sewer service by the District.
3. ORS 198 requires consideration of the comprehensive plan and any service agreements affecting the area. The Board has reviewed the applicable comprehensive plan (Clackamas Comprehensive Plan) and concludes this proposal complies with it. All other necessary urban services can be made available.
4. The Board considered the timing & phasing of public facilities to this area, the quantity and quality of services available and the potential for duplication of services. The Board notes that this withdrawal will allow for the extension of sewer service to the site from the unit of government which can best serve the site.
5. The Metro Code at 3.09.050 (B) (2) requires a determination of whether the boundary change will cause withdrawal of the territory from the boundary of any necessary party. An examination of this issue found that no such withdrawals would be caused by approval of this withdrawal.

EXHIBIT B

LEGAL DESCRIPTION

A tract of land situated in the SE ¼ SE ¼ Section 1, Township 2 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, being more particularly described as follows:

PARCEL 3, PARTITION PLAT NO. 2017-038 IN THE COUNTY OF CLACKAMAS, STATE OF OREGON.

# EXHIBIT C

## PARTITION PLAT NO. 2017-038

A REPLAT OF PARCEL 2, PARTITION PLAT NO. 1991-075 AND PART OF LOT 2, "PLEASANT HILL PARK" PLAT NO. 100, LOCATED IN THE S.E. 1/4 SECTION 1, AND THE N.E. 1/4 SECTION 12, T.2S., R.1E., W.M., CLACKAMAS COUNTY, OREGON  
 MARCH 16, 2017 SCALE 1"=30'  
 PLANNING FILE NO. Z0442-16-PLA  
 SHEET 1 OF 2

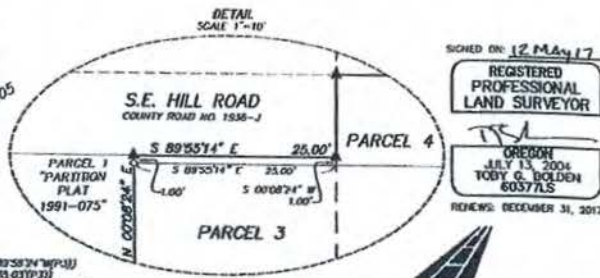
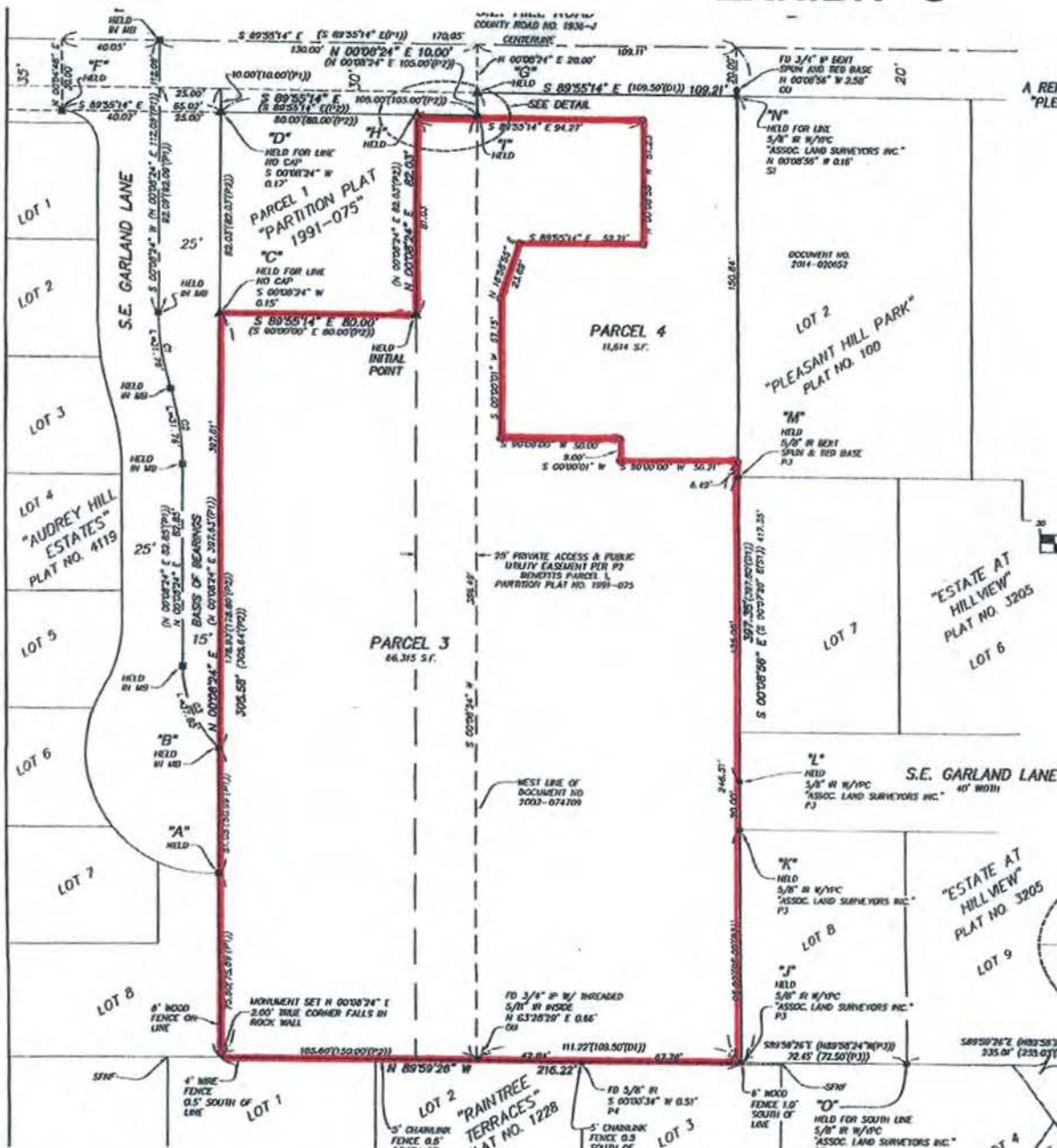
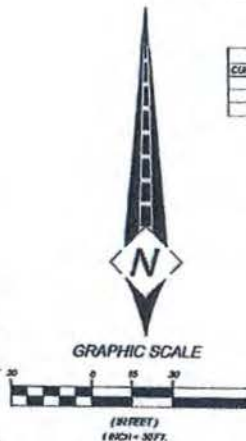
CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD
C1	31.26	100.00	1831.62'	S 68°57'22" E	31.62'
C2	31.26	100.00	1831.62'	N 68°57'22" W	31.62'
C3	37.85	45.00	4811.22'	S 33°31'17" E	36.74'

### LEGEND:

- SET 5/8" x 30" IRON ROD W/ RED PLASTIC CAP MARKED "CENTERLINE CONCEPTS" ON MARCH 13, 2017
- FOUND MONUMENT AS NOTED
- FOUND 5/8" IRON ROD W/ YELLOW PLASTIC CAP MARKED "ANS ENGR." FROM "AUDREY HILL ESTATES" PLAT NO. 4119
- ▲ FOUND 5/8" IRON ROD W/ YELLOW PLASTIC CAP MARKED "GAYLORD PLS 230" FROM PARTITION PLAT NO. 1991-075

- ( ) = RECORD DISTANCES & BEARINGS
- IR = IRON ROD IP = IRON PIPE
- FD = FOUND
- W/P = W/PC
- WPC = YELLOW PLASTIC CAP
- R/R = RIGHT OF WAY
- SH = SURVEY NUMBER

- SFH = RECORD ADJUSTMENT SEARCHED FILED, NOT FOUND
- MB = MONUMENT BOX
- OU = GROUND UNDEGROUND
- S.F. = SQUARE FEET
- P1 = "AUDREY HILL ESTATES" PLAT NO. 4119
- P2 = PARTITION PLAT NO. 1991-075
- P3 = "ESTATE AT HILLVIEW" PLAT NO. 3203
- P4 = "RAINTREE TERRACES" PLAT NO. 1228
- S1 = SH 28423
- D1 = DEED DOCUMENT NO. 2002-074700



SIGNED AND SEALED: 12 MAY 17  
 REGISTERED PROFESSIONAL LAND SURVEYOR  
 OREGON  
 JULY 13, 2006  
 TROY G. GOLDEN  
 603715  
 REVIEWED: DECEMBER 31, 2017

**CENTERLINE CONCEPTS**  
 LAND SURVEYING, INC.  
 19376 MOLALLA AVE., SUITE 120  
 OREGON CITY, OREGON 97045  
 PHONE 503.650.0188 FAX 503.650.0189



M. BARBARA CARTMILL  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

November 22, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Board Order and Public Hearing Forming a One Lot Assessment Area  
Within Clackamas County Service District No. 5, Assessment  
03-16 10-Unit Apartment Building

<b>Purpose/Outcomes</b>	Approval of this Board Order will create a new assessment area in Clackamas County Service District No. 5. This process is necessary and customary with new development to allow for the installation of adequate street lights.
<b>Dollar Amount and Fiscal Impact</b>	Operational costs for street lighting is paid by direct assessment against benefited property. As a result of the signing of this Board Order, Clackamas County Service District No. 5 will add the attached area to the assessment rolls for the District. This area falls under rate schedule D; the current rate for this schedule is \$1.25 per frontage foot per tax lot each year.
<b>Funding Source</b>	Assessments for street lighting will be levied against the properties within this area effective on the installation date furnished to the district by Portland General Electric Company as the official date that the properties within this area began receiving service.
<b>Duration</b>	N/A
<b>Previous Board Contact</b>	None
<b>Strategic Plan Alignment</b>	Promotes a safe, healthy and secure community through the enhanced nighttime visibility created with new street lighting.
<b>Contact Person</b>	Wendi Coryell, Service District Specialist - DTD Engineering 503-742-4657 (Phone)   wendicor@clackamas.us

**BACKGROUND:**

Street lighting is a condition of approval for new developments within Service District No. 5. As such, it has been included as a condition of approval for this development. Even though commercial/multi-family assessment areas may be comprised of only one to several tax lots, they frequently encompass significant stretches of road frontage in areas that will benefit significantly from street lighting. Notice of the time and place of the hearing was mailed by first class mail to the current addresses as listed by the Clackamas County Assessment office. The notice specifically noted that a public hearing was scheduled for November 22, 2017, to hear objections or file a remonstrance to approval of the new assessment area. Pursuant to statute, a minimum of 50% of the affected property owners must remonstrate to deny the formation of the new assessment area.

These documents have been reviewed and approved by Counsel.

**RECOMMENDATION:**

If remonstrances from more than 50% of the property owners in the proposed assessment area for street lighting *are not* received by the end of the public hearing, it is recommended that the Board of County Commissioners, acting in the capacity of governing board for Clackamas County Service District No. 5, approve this Order which will allow Clackamas County Service District No. 5 to proceed with the formation of a new assessment area for street lighting.

Respectfully submitted,

Wendi Coryell, Service District Specialist, CCSD#5

In the Matter of the Formation  
of an Assessment Area 03-16  
(10-Unit Apartment Building) Within  
Clackamas County Service District  
No. 5, Clackamas County, Oregon

ORDER NO.  
Page 1 of 2

This matter coming before the Board of County Commissioners, acting as the governing body of Clackamas County Service District No. 5 "District" and it appearing to the "Board", that the properties within Assessment Area 03-16, 10-Unit Apartment Building, 14001 SE Rupert Dr. have requested street light service, and that the formation of new assessment areas within the District is necessary for the installation of street lights; and

It further appearing to the Board that the method of financing construction, operation, and maintenance of service facilities is to be assessments against property benefited by street light facilities; and

It further appearing to the Board that rates for street lighting as established by Order No. 2017-75 and subsequent rate change Orders shall be applied to Assessment Area 03-16, 10-Unit Apartment Building, with fractional year assessments pro-rated from the date of installation and in accordance with Ordinance Number 94-1368 pursuant to ORS 451.495 as follows:

Rate Schedule D: \$1.25 per frontage foot per tax lot each year, applied to commercial, industrial and multi-family properties; and

It further appearing to the Board that the lots in the rate schedules receive an equal benefit for street lighting services; and

It further appearing to the Board that the Department of Transportation and Development has given notice of public hearing as required by Order Number 94-1368 and ORS 451.495, and that said public hearing was duly held on the 22<sup>nd</sup> day of November, 2017, and that the District did not receive written objections prior to the conclusion of the hearing from more than 50% of the property owners representing more than 50% of the affected property, now therefore:



In the Matter of the Formation  
of an Assessment Area 03-16  
(10-Unit Apartment Building) Within  
Clackamas County Service District  
No. 5, Clackamas County, Oregon

ORDER NO.  
Page 2 of 2

IT IS HEREBY ORDERED that properties in the Assessment Area as described below be subject to an assessment for street lighting:

Assessment Area 03-16 All lots in the 10-Unit Apartment Building, development, 21E01CC03404; and

IT IS FURTHER ORDERED that an assessment roll be prepared by the Department of Transportation and Development for Clackamas County showing the amount of each yearly assessment, the property against which it has been assessed, the owner thereof, and such additional information as is required to keep a complete and permanent record of the assessment; and

IT IS FURTHER ORDERED that the Department of Transportation and Development proceed to construct the street lighting facilities in accordance with District rules and guidelines.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2017

**CLACKAMAS COUNTY BOARD OF COMMISSIONERS**  
**as the governing body of Clackamas County Service District No. 5**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary



M. BARBARA CARTMILL  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

November 22, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Board Order and Public Hearing Forming a 5-Lot Assessment Area  
Within Clackamas County Service District No. 5, Assessment  
33-17 Retail Bank Building and Two Tenant Spaces

<b>Purpose/Outcomes</b>	Approval of this Board Order will create a new assessment area in Clackamas County Service District No. 5. This process is necessary and customary with new development to allow for the installation of adequate street lights.
<b>Dollar Amount and Fiscal Impact</b>	Operational costs for street lighting is paid by direct assessment against benefited property. As a result of the signing of this Board Order, Clackamas County Service District No. 5 will add the attached area to the assessment rolls for the District. This area falls under rate schedule D; the current rate for this schedule is \$1.25 per frontage foot per tax lot each year.
<b>Funding Source</b>	Assessments for street lighting will be levied against the properties within this area effective on the installation date furnished to the district by Portland General Electric Company as the official date that the properties within this area began receiving service.
<b>Duration</b>	N/A
<b>Previous Board Contact</b>	None
<b>Strategic Plan Alignment</b>	Promotes a safe, healthy and secure community through the enhanced nighttime visibility created with new street lighting.
<b>Contact Person</b>	Wendi Coryell, Service District Specialist - DTD Engineering 503-742-4657 (Phone)   wendicor@clackamas.us

**BACKGROUND:**

Street lighting is a condition of approval for new developments within Service District No. 5. As such, it has been included as a condition of approval for this development. Even though commercial/multi-family assessment areas may be comprised of only one to several tax lots, they frequently encompass significant stretches of road frontage in areas that will benefit significantly from street lighting. Notice of the time and place of the hearing was mailed by first class mail to the current addresses as listed by the Clackamas County Assessment office. The notice specifically noted that a public hearing was scheduled for November 22, 2017, to hear objections or file a remonstrance to approval of the new assessment area. Pursuant to statute, a minimum of 50% of the affected property owners must remonstrate to deny the formation of the new assessment area.

These documents have been reviewed and approved by Counsel.

**RECOMMENDATION:**

If remonstrances from more than 50% of the property owners in the proposed assessment area for street lighting *are not* received by the end of the public hearing, it is recommended that the Board of County Commissioners, acting in the capacity of governing board for Clackamas County Service District No. 5, approve this Order which will allow Clackamas County Service District No. 5 to proceed with the formation of a new assessment area for street lighting.

Respectfully submitted,

Wendi Coryell, Service District Specialist, CCSD#5

In the Matter of the Formation  
of an Assessment Area 33-17  
(Retail Bank and Two Tenant Spaces) Within  
Clackamas County Service District  
No. 5, Clackamas County, Oregon

ORDER NO.  
Page 1 of 2

This matter coming before the Board of County Commissioners, acting as the governing body of Clackamas County Service District No. 5 "District" and it appearing to the "Board", that the properties within Assessment Area 33-17, Retail Bank and Two Tenant Spaces, 11521 SE Sunnyside Rd. have requested street light service, and that the formation of new assessment areas within the District is necessary for the installation of street lights; and

It further appearing to the Board that the method of financing construction, operation, and maintenance of service facilities is to be assessments against property benefited by street light facilities; and

It further appearing to the Board that rates for street lighting as established by Order No. 2017-75 and subsequent rate change Orders shall be applied to Assessment Area 33-17, Retail Bank and Two Tenant Spaces, with fractional year assessments prorated from the date of installation and in accordance with Ordinance Number 94-1368 pursuant to ORS 451.495 as follows:

Rate Schedule D: \$1.25 per frontage foot per tax lot each year, applied to commercial, industrial and multi-family properties; and

It further appearing to the Board that the lots in the rate schedules receive an equal benefit for street lighting services; and

It further appearing to the Board that the Department of Transportation and Development has given notice of public hearing as required by Order Number 94-1368 and ORS 451.495, and that said public hearing was duly held on the 22<sup>nd</sup> day of November, 2017, and that the District did not receive written objections prior to the conclusion of the hearing from more than 50% of the property owners representing more than 50% of the affected property, now therefore:

In the Matter of the Formation  
of an Assessment Area 33-17  
(Retail Bank and Two Tenant Spaces) Within  
Clackamas County Service District  
No. 5, Clackamas County, Oregon

ORDER NO.  
Page 2 of 2

IT IS HEREBY ORDERED that properties in the Assessment Area as described below be subject to an assessment for street lighting:

Assessment Area 33-17 All lots in the Retail Bank and Two Tenant Spaces, development, 22E03AB00100, 200, 201, 202 and 12E34D 01700; and

IT IS FURTHER ORDERED that an assessment roll be prepared by the Department of Transportation and Development for Clackamas County showing the amount of each yearly assessment, the property against which it has been assessed, the owner thereof, and such additional information as is required to keep a complete and permanent record of the assessment; and

IT IS FURTHER ORDERED that the Department of Transportation and Development proceed to construct the street lighting facilities in accordance with District rules and guidelines.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2017

**CLACKAMAS COUNTY BOARD OF COMMISSIONERS**  
**as the governing body of Clackamas County Service District No. 5**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary



M. BARBARA CARTMILL  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

November 22, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Board Order and Public Hearing Forming a One Lot Assessment Area  
Within Clackamas County Service District No. 5, Assessment  
41-17 Congregate Housing

<b>Purpose/Outcomes</b>	Approval of this Board Order will create a new assessment area in Clackamas County Service District No. 5. This process is necessary and customary with new development to allow for the installation of adequate street lights.
<b>Dollar Amount and Fiscal Impact</b>	Operational costs for street lighting is paid by direct assessment against benefited property. As a result of the signing of this Board Order, Clackamas County Service District No. 5 will add the attached area to the assessment rolls for the District. This area falls under rate schedule D; the current rate for this schedule is \$1.25 per frontage foot per tax lot each year.
<b>Funding Source</b>	Assessments for street lighting will be levied against the properties within this area effective on the installation date furnished to the district by Portland General Electric Company as the official date that the properties within this area began receiving service.
<b>Duration</b>	N/A
<b>Previous Board Contact</b>	None
<b>Strategic Plan Alignment</b>	Promotes a safe, healthy and secure community through the enhanced nighttime visibility created with new street lighting.
<b>Contact Person</b>	Wendi Coryell, Service District Specialist - DTD Engineering 503-742-4657 (Phone)   wendicor@clackamas.us

**BACKGROUND:**

Street lighting is a condition of approval for new developments within Service District No. 5. As such, it has been included as a condition of approval for this development. Even though commercial/multi-family assessment areas may be comprised of only one to several tax lots, they frequently encompass significant stretches of road frontage in areas that will benefit significantly from street lighting. Notice of the time and place of the hearing was mailed by first class mail to the current addresses as listed by the Clackamas County Assessment office. The notice specifically noted that a public hearing was scheduled for November 22, 2017, to hear objections or file a remonstrance to approval of the new assessment area. Pursuant to statute, a minimum of 50% of the affected property owners must remonstrate to deny the formation of the new assessment area.

These documents have been reviewed and approved by Counsel.

**RECOMMENDATION:**

If remonstrances from more than 50% of the property owners in the proposed assessment area for street lighting *are not* received by the end of the public hearing, it is recommended that the Board of County Commissioners, acting in the capacity of governing board for Clackamas County Service District No. 5, approve this Order which will allow Clackamas County Service District No. 5 to proceed with the formation of a new assessment area for street lighting.

Respectfully submitted,

Wendi Coryell, Service District Specialist, CCSD#5

In the Matter of the Formation  
of an Assessment Area 41-17  
(Congregate Housing) Within  
Clackamas County Service District  
No. 5, Clackamas County, Oregon

ORDER NO.  
Page 1 of 2

This matter coming before the Board of County Commissioners, acting as the governing body of Clackamas County Service District No. 5 "District" and it appearing to the "Board", that the properties within Assessment Area 41-17, Congregate Housing, 8909 SE Tolbert St. have requested street light service, and that the formation of new assessment areas within the District is necessary for the installation of street lights; and

It further appearing to the Board that the method of financing construction, operation, and maintenance of service facilities is to be assessments against property benefited by street light facilities; and

It further appearing to the Board that rates for street lighting as established by Order No. 2017-75 and subsequent rate change Orders shall be applied to Assessment Area 41-17, Congregate Housing, with fractional year assessments pro-rated from the date of installation and in accordance with Ordinance Number 94-1368 pursuant to ORS 451.495 as follows:

Rate Schedule D: \$1.25 per frontage foot per tax lot each year, applied to commercial, industrial and multi-family properties; and

It further appearing to the Board that the lots in the rate schedules receive an equal benefit for street lighting services; and

It further appearing to the Board that the Department of Transportation and Development has given notice of public hearing as required by Order Number 94-1368 and ORS 451.495, and that said public hearing was duly held on the 22<sup>nd</sup> day of November, 2017, and that the District did not receive written objections prior to the conclusion of the hearing from more than 50% of the property owners representing more than 50% of the affected property, now therefore:



In the Matter of the Formation  
of an Assessment Area 41-17  
(Congregate Housing) Within  
Clackamas County Service District  
No. 5, Clackamas County, Oregon

ORDER NO.  
Page 2 of 2

IT IS HEREBY ORDERED that properties in the Assessment Area as described below be subject to an assessment for street lighting:

Assessment Area 41-17 All lots in the Congregate Housing, development, 22E09BD03600;  
and

IT IS FURTHER ORDERED that an assessment roll be prepared by the Department of Transportation and Development for Clackamas County showing the amount of each yearly assessment, the property against which it has been assessed, the owner thereof, and such additional information as is required to keep a complete and permanent record of the assessment; and

IT IS FURTHER ORDERED that the Department of Transportation and Development proceed to construct the street lighting facilities in accordance with District rules and guidelines.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2017

**CLACKAMAS COUNTY BOARD OF COMMISSIONERS**  
**as the governing body of Clackamas County Service District No. 5**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary



M. BARBARA CARTMILL  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

November 22, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Board Order and Public Hearing Forming a Three Lot Assessment Area  
Within Clackamas County Service District No. 5, Assessment  
39-16 Three Lot Partition

<b>Purpose/Outcomes</b>	Approval of this Board Order will create a new assessment area in Clackamas County Service District No. 5. This process is necessary and customary with new development to allow for the installation of adequate street lights.
<b>Dollar Amount and Fiscal Impact</b>	Operational costs for street lighting is paid by direct assessment against benefited property. As a result of the signing of this Board Order, Clackamas County Service District No. 5 will add the attached area to the assessment rolls for the District. This area falls under rate schedule B; the current rate for this schedule is \$50.01 per tax lot each year.
<b>Funding Source</b>	Assessments for street lighting will be levied against the properties within this area effective on the installation date furnished to the district by Portland General Electric Company as the official date that the properties within this area began receiving service.
<b>Duration</b>	N/A
<b>Previous Board Contact</b>	None
<b>Strategic Plan Alignment</b>	Promotes a safe, healthy and secure community through the enhanced nighttime visibility created with new street lighting.
<b>Contact Person</b>	Wendi Coryell, Service District Specialist - DTD Engineering 503-742-4657 (Phone)   wendicor@clackamas.us

**BACKGROUND:**

Street lighting is a condition of approval for new developments within Service District No. 5. As such, it has been included as a condition of approval for this development. Even though commercial/multi-family assessment areas may be comprised of only one to several tax lots, they frequently encompass significant stretches of road frontage in areas that will benefit significantly from street lighting. Notice of the time and place of the hearing was mailed by first class mail to the current addresses as listed by the Clackamas County Assessment office. The notice specifically noted that a public hearing was scheduled for November 22, 2017, to hear objections or file a remonstrance to approval of the new assessment area. Pursuant to statute, a minimum of 50% of the affected property owners must remonstrate to deny the formation of the new assessment area.

These documents have been reviewed and approved by Counsel.

**RECOMMENDATION:**

If remonstrances from more than 50% of the property owners in the proposed assessment area for street lighting *are not* received by the end of the public hearing, it is recommended that the Board of County Commissioners, acting in the capacity of governing board for Clackamas County Service District No. 5, approve this Order which will allow Clackamas County Service District No. 5 to proceed with the formation of a new assessment area for street lighting.

Respectfully submitted,

Wendi Coryell, Service District Specialist, CCSD#5

In the Matter of the Formation  
of an Assessment Area 39-16  
(Three Lot Partition) Within  
Clackamas County Service District  
No. 5, Clackamas County, Oregon

ORDER NO.  
Page 1 of 2

This matter coming before the Board of County Commissioners, acting as the governing body of Clackamas County Service District No. 5 "District" and it appearing to the "Board", that the properties within Assessment Area 39-16, Three Lot Partition, 7207 SE Lamphier St. have requested street light service, and that the formation of new assessment areas within the District is necessary for the installation of street lights; and

It further appearing to the Board that the method of financing construction, operation, and maintenance of service facilities is to be assessments against property benefited by street light facilities; and

It further appearing to the Board that rates for street lighting as established by Order No. 2017-75 and subsequent rate change Orders shall be applied to Assessment Area 39-16, Three Lot Partition, with fractional year assessments pro-rated from the date of installation and in accordance with Ordinance Number 94-1368 pursuant to ORS 451.495 as follows:

Rate Schedule B: \$50.01 per tax lot each year, applied to residential properties; and

It further appearing to the Board that the lots in the rate schedules receive an equal benefit for street lighting services; and

It further appearing to the Board that the Department of Transportation and Development has given notice of public hearing as required by Order Number 94-1368 and ORS 451.495, and that said public hearing was duly held on the 22<sup>nd</sup> day of November, 2017, and that the District did not receive written objections prior to the conclusion of the hearing from more than 50% of the property owners representing more than 50% of the affected property, now therefore:

In the Matter of the Formation  
of an Assessment Area 39-16  
(Three Lot Partition) Within  
Clackamas County Service District  
No. 5, Clackamas County, Oregon

ORDER NO.  
Page 2 of 2

IT IS HEREBY ORDERED that properties in the Assessment Area as described below be subject to an assessment for street lighting:

Assessment Area 39-16 All lots in the Three Lot Partition, development, 12E29CA00200; and

IT IS FURTHER ORDERED that an assessment roll be prepared by the Department of Transportation and Development for Clackamas County showing the amount of each yearly assessment, the property against which it has been assessed, the owner thereof, and such additional information as is required to keep a complete and permanent record of the assessment; and

IT IS FURTHER ORDERED that the Department of Transportation and Development proceed to construct the street lighting facilities in accordance with District rules and guidelines.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2017

**CLACKAMAS COUNTY BOARD OF COMMISSIONERS**  
**as the governing body of Clackamas County Service District No. 5**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary



M. BARBARA CARTMILL  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

November 22, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Board Order and Public Hearing Forming a 102-Lot Assessment Area  
Within Clackamas County Service District No. 5, Assessment  
27-16 Hidden Falls III 102-Lot Subdivision

<b>Purpose/Outcomes</b>	Approval of this Board Order will create a new assessment area in Clackamas County Service District No. 5. This process is necessary and customary with new development to allow for the installation of adequate street lights.
<b>Dollar Amount and Fiscal Impact</b>	Operational costs for street lighting is paid by direct assessment against benefited property. As a result of the signing of this Board Order, Clackamas County Service District No. 5 will add the attached area to the assessment rolls for the District. This area falls under rate schedule W; the current rate for this schedule is \$245.00 per tax lot each year.
<b>Funding Source</b>	Assessments for street lighting will be levied against the properties within this area effective on the installation date furnished to the district by Portland General Electric Company as the official date that the properties within this area began receiving service.
<b>Duration</b>	N/A
<b>Previous Board Contact</b>	None
<b>Strategic Plan Alignment</b>	Promotes a safe, healthy and secure community through the enhanced nighttime visibility created with new street lighting.
<b>Contact Person</b>	Wendi Coryell, Service District Specialist - DTD Engineering 503-742-4657 (Phone)   wendicor@clackamas.us

**BACKGROUND:**

Street lighting is a condition of approval for new developments within Service District No. 5. As such, it has been included as a condition of approval for this development. Even though commercial/multi-family assessment areas may be comprised of only one to several tax lots, they frequently encompass significant stretches of road frontage in areas that will benefit significantly from street lighting. Notice of the time and place of the hearing was mailed by first class mail to the current addresses as listed by the Clackamas County Assessment office. The notice specifically noted that a public hearing was scheduled for November 22, 2017, to hear objections or file a remonstrance to approval of the new assessment area. Pursuant to statute, a minimum of 50% of the affected property owners must remonstrate to deny the formation of the new assessment area.

These documents have been reviewed and approved by Counsel.

**RECOMMENDATION:**

If remonstrances from more than 50% of the property owners in the proposed assessment area for street lighting *are not* received by the end of the public hearing, it is recommended that the Board of County Commissioners, acting in the capacity of governing board for Clackamas County Service District No. 5, approve this Order which will allow Clackamas County Service District No. 5 to proceed with the formation of a new assessment area for street lighting.

Respectfully submitted,

Wendi Coryell, Service District Specialist, CCSD#5

In the Matter of the Formation  
of an Assessment Area 27-16  
(Hidden Falls III 102-Lot Subdivision) Within  
Clackamas County Service District  
No. 5, Clackamas County, Oregon

ORDER NO.  
Page 1 of 2

This matter coming before the Board of County Commissioners, acting as the governing body of Clackamas County Service District No. 5 "District" and it appearing to the "Board", that the properties within Assessment Area 27-16, Hidden Falls III 102-Lot Subdivision, SE 162<sup>nd</sup> Ave. have requested street light service, and that the formation of new assessment areas within the District is necessary for the installation of street lights; and

It further appearing to the Board that the method of financing construction, operation, and maintenance of service facilities is to be assessments against property benefited by street light facilities; and

It further appearing to the Board that rates for street lighting as established by Order No. 2017-75 and subsequent rate change Orders shall be applied to Assessment Area 27-16, Hidden Falls III 102-Lot Subdivision, with fractional year assessments prorated from the date of installation and in accordance with Ordinance Number 94-1368 pursuant to ORS 451.495 as follows:

Rate Schedule W: \$245.00 per tax lot each year, applied to residential properties; and

It further appearing to the Board that the lots in the rate schedules receive an equal benefit for street lighting services; and

It further appearing to the Board that the Department of Transportation and Development has given notice of public hearing as required by Order Number 94-1368 and ORS 451.495, and that said public hearing was duly held on the 22<sup>nd</sup> day of November, 2017, and that the District did not receive written objections prior to the conclusion of the hearing from more than 50% of the property owners representing more than 50% of the affected property, now therefore:



In the Matter of the Formation  
of an Assessment Area 27-16  
(Hidden Falls III 102-Lot Subdivision) Within  
Clackamas County Service District  
No. 5, Clackamas County, Oregon

ORDER NO.  
Page 2 of 2

IT IS HEREBY ORDERED that properties in the Assessment Area as described below be subject to an assessment for street lighting:

Assessment Area 27-16 All lots in the Hidden Falls III 102-Lot Subdivision, development, 22E01 02101; and

IT IS FURTHER ORDERED that an assessment roll be prepared by the Department of Transportation and Development for Clackamas County showing the amount of each yearly assessment, the property against which it has been assessed, the owner thereof, and such additional information as is required to keep a complete and permanent record of the assessment; and

IT IS FURTHER ORDERED that the Department of Transportation and Development proceed to construct the street lighting facilities in accordance with District rules and guidelines.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2017

**CLACKAMAS COUNTY BOARD OF COMMISSIONERS**  
**as the governing body of Clackamas County Service District No. 5**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary



M. BARBARA CARTMILL  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

November 22, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Board Order and Public Hearing Forming a 21-Lot Assessment Area  
Within Clackamas County Service District No. 5, Assessment  
05-17 Kings Landing 21-Lot Subdivision

<b>Purpose/Outcomes</b>	Approval of this Board Order will create a new assessment area in Clackamas County Service District No. 5. This process is necessary and customary with new development to allow for the installation of adequate street lights.
<b>Dollar Amount and Fiscal Impact</b>	Operational costs for street lighting is paid by direct assessment against benefited property. As a result of the signing of this Board Order, Clackamas County Service District No. 5 will add the attached area to the assessment rolls for the District. This area falls under rate schedule W; the current rate for this schedule is \$245.00 per tax lot each year.
<b>Funding Source</b>	Assessments for street lighting will be levied against the properties within this area effective on the installation date furnished to the district by Portland General Electric Company as the official date that the properties within this area began receiving service.
<b>Duration</b>	N/A
<b>Previous Board Contact</b>	None
<b>Strategic Plan Alignment</b>	Promotes a safe, healthy and secure community through the enhanced nighttime visibility created with new street lighting.
<b>Contact Person</b>	Wendi Coryell, Service District Specialist - DTD Engineering 503-742-4657 (Phone)   wendicor@clackamas.us

**BACKGROUND:**

Street lighting is a condition of approval for new developments within Service District No. 5. As such, it has been included as a condition of approval for this development. Even though commercial/multi-family assessment areas may be comprised of only one to several tax lots, they frequently encompass significant stretches of road frontage in areas that will benefit significantly from street lighting. Notice of the time and place of the hearing was mailed by first class mail to the current addresses as listed by the Clackamas County Assessment office. The notice specifically noted that a public hearing was scheduled for November 22, 2017, to hear objections or file a remonstrance to approval of the new assessment area. Pursuant to statute, a minimum of 50% of the affected property owners must remonstrate to deny the formation of the new assessment area.

These documents have been reviewed and approved by Counsel.

**RECOMMENDATION:**

If remonstrances from more than 50% of the property owners in the proposed assessment area for street lighting *are not* received by the end of the public hearing, it is recommended that the Board of County Commissioners, acting in the capacity of governing board for Clackamas County Service District No. 5, approve this Order which will allow Clackamas County Service District No. 5 to proceed with the formation of a new assessment area for street lighting.

Respectfully submitted,

Wendi Coryell, Service District Specialist, CCSD#5

In the Matter of the Formation  
of an Assessment Area 05-17  
(Kings Landing 21-Lot Subdivision) Within  
Clackamas County Service District  
No. 5, Clackamas County, Oregon

ORDER NO.  
Page 1 of 2

This matter coming before the Board of County Commissioners, acting as the governing body of Clackamas County Service District No. 5 "District" and it appearing to the "Board", that the properties within Assessment Area 05-17, Kings Landing 21-Lot Subdivision, 132<sup>nd</sup> Ave. have requested street light service, and that the formation of new assessment areas within the District is necessary for the installation of street lights; and

It further appearing to the Board that the method of financing construction, operation, and maintenance of service facilities is to be assessments against property benefited by street light facilities; and

It further appearing to the Board that rates for street lighting as established by Order No. 2017-75 and subsequent rate change Orders shall be applied to Assessment Area 05-17, Kings Landing 21-Lot Subdivision, with fractional year assessments prorated from the date of installation and in accordance with Ordinance Number 94-1368 pursuant to ORS 451.495 as follows:

Rate Schedule W: \$245.00 per tax lot each year, applied to residential properties; and

It further appearing to the Board that the lots in the rate schedules receive an equal benefit for street lighting services; and

It further appearing to the Board that the Department of Transportation and Development has given notice of public hearing as required by Order Number 94-1368 and ORS 451.495, and that said public hearing was duly held on the 22<sup>nd</sup> day of November, 2017, and that the District did not receive written objections prior to the conclusion of the hearing from more than 50% of the property owners representing more than 50% of the affected property, now therefore:

In the Matter of the Formation  
of an Assessment Area 05-17  
(Kings Landing 21-Lot Subdivision) Within  
Clackamas County Service District  
No. 5, Clackamas County, Oregon

ORDER NO.  
Page 2 of 2

IT IS HEREBY ORDERED that properties in the Assessment Area as described below be subject to an assessment for street lighting:

Assessment Area 05-17 All lots in the Kings Landing 21-Lot Subdivision, development, 12E26CD03200; and

IT IS FURTHER ORDERED that an assessment roll be prepared by the Department of Transportation and Development for Clackamas County showing the amount of each yearly assessment, the property against which it has been assessed, the owner thereof, and such additional information as is required to keep a complete and permanent record of the assessment; and

IT IS FURTHER ORDERED that the Department of Transportation and Development proceed to construct the street lighting facilities in accordance with District rules and guidelines.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2017

**CLACKAMAS COUNTY BOARD OF COMMISSIONERS**  
**as the governing body of Clackamas County Service District No. 5**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary



M. BARBARA CARTMILL  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

November 22, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Board Order and Public Hearing Forming a Two Lot Assessment Area  
Within Clackamas County Service District No. 5, Assessment  
14-17 Two Lot Partition

<b>Purpose/Outcomes</b>	Approval of this Board Order will create a new assessment area in Clackamas County Service District No. 5. This process is necessary and customary with new development to allow for the installation of adequate street lights.
<b>Dollar Amount and Fiscal Impact</b>	Operational costs for street lighting is paid by direct assessment against benefited property. As a result of the signing of this Board Order, Clackamas County Service District No. 5 will add the attached area to the assessment rolls for the District. This area falls under rate schedule W; the current rate for this schedule is \$245.00 per tax lot each year.
<b>Funding Source</b>	Assessments for street lighting will be levied against the properties within this area effective on the installation date furnished to the district by Portland General Electric Company as the official date that the properties within this area began receiving service.
<b>Duration</b>	N/A
<b>Previous Board Contact</b>	None
<b>Strategic Plan Alignment</b>	Promotes a safe, healthy and secure community through the enhanced nighttime visibility created with new street lighting.
<b>Contact Person</b>	Wendi Coryell, Service District Specialist - DTD Engineering 503-742-4657 (Phone)   wendicor@clackamas.us

**BACKGROUND:**

Street lighting is a condition of approval for new developments within Service District No. 5. As such, it has been included as a condition of approval for this development. Even though commercial/multi-family assessment areas may be comprised of only one to several tax lots, they frequently encompass significant stretches of road frontage in areas that will benefit significantly from street lighting. Notice of the time and place of the hearing was mailed by first class mail to the current addresses as listed by the Clackamas County Assessment office. The notice specifically noted that a public hearing was scheduled for November 22, 2017, to hear objections or file a remonstrance to approval of the new assessment area. Pursuant to statute, a minimum of 50% of the affected property owners must remonstrate to deny the formation of the new assessment area.

These documents have been reviewed and approved by Counsel.

**RECOMMENDATION:**

If remonstrances from more than 50% of the property owners in the proposed assessment area for street lighting *are not* received by the end of the public hearing, it is recommended that the Board of County Commissioners, acting in the capacity of governing board for Clackamas County Service District No. 5, approve this Order which will allow Clackamas County Service District No. 5 to proceed with the formation of a new assessment area for street lighting.

Respectfully submitted,

Wendi Coryell, Service District Specialist, CCSD#5

In the Matter of the Formation  
of an Assessment Area 14-17  
(Two Lot Partition) Within  
Clackamas County Service District  
No. 5, Clackamas County, Oregon

ORDER NO.  
Page 1 of 2

This matter coming before the Board of County Commissioners, acting as the governing body of Clackamas County Service District No. 5 "District" and it appearing to the "Board", that the properties within Assessment Area 14-17, Two Lot Partition, 12030 SE Eastbourne Ln. have requested street light service, and that the formation of new assessment areas within the District is necessary for the installation of street lights; and

It further appearing to the Board that the method of financing construction, operation, and maintenance of service facilities is to be assessments against property benefited by street light facilities; and

It further appearing to the Board that rates for street lighting as established by Order No. 2017-75 and subsequent rate change Orders shall be applied to Assessment Area 14-17, Two Lot Partition, with fractional year assessments pro-rated from the date of installation and in accordance with Ordinance Number 94-1368 pursuant to ORS 451.495 as follows:

Rate Schedule W: \$245.00 per tax lot each year, applied to residential properties; and

It further appearing to the Board that the lots in the rate schedules receive an equal benefit for street lighting services; and

It further appearing to the Board that the Department of Transportation and Development has given notice of public hearing as required by Order Number 94-1368 and ORS 451.495, and that said public hearing was duly held on the 22<sup>nd</sup> day of November, 2017, and that the District did not receive written objections prior to the conclusion of the hearing from more than 50% of the property owners representing more than 50% of the affected property, now therefore:



In the Matter of the Formation  
of an Assessment Area 14-17  
(Two Lot Partition) Within  
Clackamas County Service District  
No. 5, Clackamas County, Oregon

ORDER NO.  
Page 2 of 2

IT IS HEREBY ORDERED that properties in the Assessment Area as described below be subject to an assessment for street lighting:

Assessment Area 14-17 All lots in the Two Lot Partition, development, 12E35D 01601; and

IT IS FURTHER ORDERED that an assessment roll be prepared by the Department of Transportation and Development for Clackamas County showing the amount of each yearly assessment, the property against which it has been assessed, the owner thereof, and such additional information as is required to keep a complete and permanent record of the assessment; and

IT IS FURTHER ORDERED that the Department of Transportation and Development proceed to construct the street lighting facilities in accordance with District rules and guidelines.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2017

**CLACKAMAS COUNTY BOARD OF COMMISSIONERS**  
**as the governing body of Clackamas County Service District No. 5**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary



M. BARBARA CARTMILL  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

November 22, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Board Order and Public Hearing Forming a 9-Lot Assessment Area  
Within Clackamas County Service District No. 5, Assessment  
42-17 Deer Ridge Estates 9-Lot Subdivision

<b>Purpose/Outcomes</b>	Approval of this Board Order will create a new assessment area in Clackamas County Service District No. 5. This process is necessary and customary with new development to allow for the installation of adequate street lights.
<b>Dollar Amount and Fiscal Impact</b>	Operational costs for street lighting is paid by direct assessment against benefited property. As a result of the signing of this Board Order, Clackamas County Service District No. 5 will add the attached area to the assessment rolls for the District. This area falls under rate schedule C; the current rate for this schedule is \$70.12 per tax lot each year.
<b>Funding Source</b>	Assessments for street lighting will be levied against the properties within this area effective on the installation date furnished to the district by Portland General Electric Company as the official date that the properties within this area began receiving service.
<b>Duration</b>	N/A
<b>Previous Board Contact</b>	None
<b>Strategic Plan Alignment</b>	Promotes a safe, healthy and secure community through the enhanced nighttime visibility created with new street lighting.
<b>Contact Person</b>	Wendi Coryell, Service District Specialist - DTD Engineering 503-742-4657 (Phone)   wendicor@clackamas.us

**BACKGROUND:**

Street lighting is a condition of approval for new developments within Service District No. 5. As such, it has been included as a condition of approval for this development. Even though commercial/multi-family assessment areas may be comprised of only one to several tax lots, they frequently encompass significant stretches of road frontage in areas that will benefit significantly from street lighting. Notice of the time and place of the hearing was mailed by first class mail to the current addresses as listed by the Clackamas County Assessment office. The notice specifically noted that a public hearing was scheduled for November 22, 2017, to hear objections or file a remonstrance to approval of the new assessment area. Pursuant to statute, a minimum of 50% of the affected property owners must remonstrate to deny the formation of the new assessment area.

These documents have been reviewed and approved by Counsel.

**RECOMMENDATION:**

If remonstrances from more than 50% of the property owners in the proposed assessment area for street lighting *are not* received by the end of the public hearing, it is recommended that the Board of County Commissioners, acting in the capacity of governing board for Clackamas County Service District No. 5, approve this Order which will allow Clackamas County Service District No. 5 to proceed with the formation of a new assessment area for street lighting.

Respectfully submitted,

Wendi Coryell, Service District Specialist, CCSD#5

In the Matter of the Formation  
of an Assessment Area 42-17  
(Deer Ridge Estates 9-Lot Subdivision) Within  
Clackamas County Service District  
No. 5, Clackamas County, Oregon

ORDER NO.  
Page 1 of 2

This matter coming before the Board of County Commissioners, acting as the governing body of Clackamas County Service District No. 5 "District" and it appearing to the "Board", that the properties within Assessment Area 42-17, Deer Ridge Estates 9-Lot Subdivision, SE Madena Way, have requested street light service, and that the formation of new assessment areas within the District is necessary for the installation of street lights; and

It further appearing to the Board that the method of financing construction, operation, and maintenance of service facilities is to be assessments against property benefited by street light facilities; and

It further appearing to the Board that rates for street lighting as established by Order No. 2017-75 and subsequent rate change Orders shall be applied to Assessment Area 42-17, Deer Ridge Estates 9-Lot Subdivision, with fractional year assessments prorated from the date of installation and in accordance with Ordinance Number 94-1368 pursuant to ORS 451.495 as follows:

Rate Schedule C: \$70.12 per tax lot each year, applied to residential properties; and

It further appearing to the Board that the lots in the rate schedules receive an equal benefit for street lighting services; and

It further appearing to the Board that the Department of Transportation and Development has given notice of public hearing as required by Order Number 94-1368 and ORS 451.495, and that said public hearing was duly held on the 22<sup>nd</sup> day of November, 2017, and that the District did not receive written objections prior to the conclusion of the hearing from more than 50% of the property owners representing more than 50% of the affected property, now therefore:

In the Matter of the Formation  
of an Assessment Area 42-17  
(Deer Ridge Estates 9-Lot Subdivision) Within  
Clackamas County Service District  
No. 5, Clackamas County, Oregon

ORDER NO.  
Page 2 of 2

IT IS HEREBY ORDERED that properties in the Assessment Area as described below be subject to an assessment for street lighting:

Assessment Area 42-17 All lots in the Deer Ridge Estates 9-Lot Subdivision, development, 22E11A 00300; and

IT IS FURTHER ORDERED that an assessment roll be prepared by the Department of Transportation and Development for Clackamas County showing the amount of each yearly assessment, the property against which it has been assessed, the owner thereof, and such additional information as is required to keep a complete and permanent record of the assessment; and

IT IS FURTHER ORDERED that the Department of Transportation and Development proceed to construct the street lighting facilities in accordance with District rules and guidelines.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2017

**CLACKAMAS COUNTY BOARD OF COMMISSIONERS**  
**as the governing body of Clackamas County Service District No. 5**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary



M. BARBARA CARTMILL  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

November 22, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Board Order and Public Hearing Forming a Three Lot Assessment Area  
Within Clackamas County Service District No. 5, Assessment  
39-17 Three Lot Partition

<b>Purpose/Outcomes</b>	Approval of this Board Order will create a new assessment area in Clackamas County Service District No. 5. This process is necessary and customary with new development to allow for the installation of adequate street lights.
<b>Dollar Amount and Fiscal Impact</b>	Operational costs for street lighting is paid by direct assessment against benefited property. As a result of the signing of this Board Order, Clackamas County Service District No. 5 will add the attached area to the assessment rolls for the District. This area falls under rate schedule C; the current rate for this schedule is \$70.12 per tax lot each year.
<b>Funding Source</b>	Assessments for street lighting will be levied against the properties within this area effective on the installation date furnished to the district by Portland General Electric Company as the official date that the properties within this area began receiving service.
<b>Duration</b>	N/A
<b>Previous Board Contact</b>	None
<b>Strategic Plan Alignment</b>	Promotes a safe, healthy and secure community through the enhanced nighttime visibility created with new street lighting.
<b>Contact Person</b>	Wendi Coryell, Service District Specialist - DTD Engineering 503-742-4657 (Phone)   wendicor@clackamas.us

**BACKGROUND:**

Street lighting is a condition of approval for new developments within Service District No. 5. As such, it has been included as a condition of approval for this development. Even though commercial/multi-family assessment areas may be comprised of only one to several tax lots, they frequently encompass significant stretches of road frontage in areas that will benefit significantly from street lighting. Notice of the time and place of the hearing was mailed by first class mail to the current addresses as listed by the Clackamas County Assessment office. The notice specifically noted that a public hearing was scheduled for November 22<sup>nd</sup>, 2017, to hear objections or file a remonstrance to approval of the new assessment area. Pursuant to statute, a minimum of 50% of the affected property owners must remonstrate to deny the formation of the new assessment area.

These documents have been reviewed and approved by Counsel.

**RECOMMENDATION:**

If remonstrances from more than 50% of the property owners in the proposed assessment area for street lighting *are not* received by the end of the public hearing, it is recommended that the Board of County Commissioners, acting in the capacity of governing board for Clackamas County Service District No. 5, approve this Order which will allow Clackamas County Service District No. 5 to proceed with the formation of a new assessment area for street lighting.

Respectfully submitted,

Wendi Coryell, Service District Specialist, CCSD#5

In the Matter of the Formation  
of an Assessment Area 39-17  
(Three Lot Partition) Within  
Clackamas County Service District  
No. 5, Clackamas County, Oregon

ORDER NO.  
Page 1 of 2

This matter coming before the Board of County Commissioners, acting as the governing body of Clackamas County Service District No. 5 "District" and it appearing to the "Board", that the properties within Assessment Area 39-17, Three Lot Partition, 4500 SE Manewal Ln. have requested street light service, and that the formation of new assessment areas within the District is necessary for the installation of street lights; and

It further appearing to the Board that the method of financing construction, operation, and maintenance of service facilities is to be assessments against property benefited by street light facilities; and

It further appearing to the Board that rates for street lighting as established by Order No. 2017-75 and subsequent rate change Orders shall be applied to Assessment Area 39-17, Three Lot Partition, with fractional year assessments pro-rated from the date of installation and in accordance with Ordinance Number 94-1368 pursuant to ORS 451.495 as follows:

Rate Schedule C: \$70.12 per tax lot each year, applied to residential properties; and

It further appearing to the Board that the lots in the rate schedules receive an equal benefit for street lighting services; and

It further appearing to the Board that the Department of Transportation and Development has given notice of public hearing as required by Order Number 94-1368 and ORS 451.495, and that said public hearing was duly held on the 22<sup>nd</sup> day of November, 2017, and that the District did not receive written objections prior to the conclusion of the hearing from more than 50% of the property owners representing more than 50% of the affected property, now therefore:



In the Matter of the Formation  
of an Assessment Area 39-17  
(Three Lot Partition) Within  
Clackamas County Service District  
No. 5, Clackamas County, Oregon

ORDER NO.  
Page 2 of 2

IT IS HEREBY ORDERED that properties in the Assessment Area as described below be subject to an assessment for street lighting:

Assessment Area 39-17 All lots in the Three Lot Partition, development, 22E19CB02300; and

IT IS FURTHER ORDERED that an assessment roll be prepared by the Department of Transportation and Development for Clackamas County showing the amount of each yearly assessment, the property against which it has been assessed, the owner thereof, and such additional information as is required to keep a complete and permanent record of the assessment; and

IT IS FURTHER ORDERED that the Department of Transportation and Development proceed to construct the street lighting facilities in accordance with District rules and guidelines.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2017

**CLACKAMAS COUNTY BOARD OF COMMISSIONERS**  
**as the governing body of Clackamas County Service District No. 5**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

November 22, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of an Agency Service Contract with Lifeworks NW for Supported Employment Services for Uninsured and Indigent Clackamas County Residents

<b>Purpose/Outcomes</b>	To assist uninsured or indigent Clackamas County residents with rehabilitation and a return to productive employment
<b>Dollar Amount and Fiscal Impact</b>	Contract maximum payment is \$35,000.
<b>Funding Source</b>	State of Oregon. No County General Funds are involved
<b>Duration</b>	Effective July 1, 2017 through June 30, 2018
<b>Previous Board Action</b>	NA
<b>Strategic Plan Alignment</b>	1. Provide coordination, assessment, outreach, and recovery services to Clackamas County residents experiencing mental health and addiction distress so they can achieve their own recovery goals 2. Ensure safe, healthy and secure communities
<b>Contact Person</b>	Mary Rumbaugh, Director – Behavioral Health Division (503) 742-5305
<b>Contract No.</b>	# 8215

**BACKGROUND:**

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of an Agency Service Contract with Lifeworks NW for Supported Employment Services for uninsured and indigent residents in Clackamas County. Supported Employment is an evidence-based practice with services intended to promote rehabilitation and return to productive employment. Programs use a team approach to engage and retain clients in treatment and provide the supports necessary to ensure success at the workplace. Choices and decisions about work and support are individualized based on the person's preferences, strengths, and experiences. Lifeworks NW uses clinical judgment to determine which services are appropriate, and what frequency of care is medically necessary.

The contract is effective July 1, 2017 and terminates June 30, 2018 with a maximum payment of \$35,000. County Counsel reviewed and approved this contract on May 12, 2017. This contract is retroactive due to a delayed receipt of funding from our grantor, combined with delayed contractor approval.

**RECOMMENDATION:**

Staff recommends the Board approval of this contract and authorizes Richard Swift, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,



Richard Swift, Director  
Health, Housing & Human Services Department

# AGENCY SERVICE CONTRACT

## Contract # 8215

This Agency Service Contract is between Clackamas County acting by and through its Health, Housing and Human Services Department, Behavioral Health Division, hereinafter called "COUNTY," and **LIFEWORKS NW** Hereinafter called "AGENCY" or "Contractor". Throughout this contract and all exhibits, the term "DEPARTMENT" shall refer to and mean the State of Oregon, Oregon Health Authority.

## CONTRACT

### 1.0 Engagement

COUNTY hereby engages AGENCY to **Supported Employment Services to the uninsured and indigent residents of Clackamas County** as more fully described in Exhibit B, Scope of Work, attached hereto and incorporated herein.

### 2.0 Term

Services provided under the terms of this contract shall commence on **July 1, 2017** and shall terminate **June 30, 2019** unless terminated by one or both parties as provided for in paragraph 6.0 below.

### 3.0 Compensation and Fiscal Records

3.1 Compensation. COUNTY shall compensate AGENCY as specified in **Exhibit C**, Compensation. The payment shall be full compensation for work performed, for services rendered, and for all labor, materials, supplies, equipment, mileage, and incidentals necessary to perform the work and services.

Maximum contract payment to AGENCY shall not exceed **\$155,518.00**

3.2 Withholding of Contract Payments. Notwithstanding any other payment provision of this contract, should AGENCY fail to submit required reports when due, or submit reports which appear patently inaccurate or inadequate on their face, or fail to perform or document the performance of contracted services, COUNTY shall immediately withhold payments hereunder. Such withholding of payment for cause may continue until AGENCY submits required reports, performs required services, or establishes to COUNTY's satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of AGENCY.

3.3 Financial Records. AGENCY and its subcontractors shall maintain complete and legible financial records pertaining in whole or in part to this contract. Such records shall be maintained in accordance with Generally Accepted Accounting Principles and/or other applicable accounting guidelines. Financial records and supporting documents shall be retained for at least six (6) years or such period as may be required by applicable law, following final payment is made under this contract or until all pending matters are resolved, whichever period is longer. If an audit of financial records discloses that payments to AGENCY were in excess of the amount to which AGENCY was entitled, AGENCY shall repay the amount of the excess to COUNTY.

3.4 Access to Records and Facilities. COUNTY, DEPARTMENT, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers and records of AGENCY that are directly related to this contract, the funds paid to AGENCY hereunder, or any services delivered hereunder for the purpose of making audits, examinations, excerpts, and transcripts. In addition, AGENCY shall permit authorized representatives of COUNTY and DEPARTMENT to perform site reviews of all services delivered by AGENCY hereunder.

3.4.1 AGENCY shall maintain up-to-date accounting records that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities and equities consistent with Generally Accepted Accounting Principles and Oregon Administrative Rules. AGENCY shall make reports and fiscal data generated under and for this contract available to COUNTY upon request.

3.4.2 COUNTY may conduct a fiscal compliance review of AGENCY as part of compliance monitoring of this contract. AGENCY agrees to provide, upon reasonable notice, access to all financial books, documents, papers and records of AGENCY which are pertinent to this contract to ensure appropriate expenditure of

funds under this contract. COUNTY shall monitor compliance with COUNTY's financial reporting and accounting requirements.

3.4.3 AGENCY may be subject to audit requirements. AGENCY agrees that audits must be conducted by Certified Public Accountants who satisfy the independence requirement outlined in the rules of the American Institute of Certified Public Accountants (Rule 101 of the AICPA Code of Professional Conduct), the Oregon State Board of Accountancy, the independence rules contained within Governmental Auditing Standards (1994 Revision), and rules promulgated by other federal, state and local government agencies with jurisdiction over AGENCY.

3.4.4 AGENCY shall establish and maintain systematic written procedures to assure timely and appropriate resolution of review or audit findings and recommendations. AGENCY shall make such procedures and documentation of resolution of audit findings available to COUNTY upon request.

#### **4.0 Manner of Performance**

4.1 Compliance with Applicable Laws and Regulations and Special Federal Requirements. AGENCY shall comply with all Federal, State, local laws, rules, and regulations applicable to the work to be performed under this contract, including, but not limited to, all applicable Federal and State civil rights and rehabilitation statutes, rules and regulations, and as listed in Exhibit D, paragraph 9. Compliance with Applicable Law, attached hereto and incorporated herein by this reference. AGENCY shall comply with Oregon Administrative Rule (OAR) 410-120-1380, which establishes the requirements for compliance with Section 4751 of Omnibus Budget Reconciliation Act (OBRA) 1991 and ORS 127-649, Patient Self-Determination Act.

4.1.1 AGENCY must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of AGENCY'S warranty, in this Contract that AGENCY has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle COUNTY to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

- i. Termination of this Contract, in whole or in part;
- ii. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to AGENCY, in an amount equal to COUNTY'S setoff right, without penalty; and
- iii. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. COUNTY shall be entitled to recover any and all damages suffered as the result of AGENCY'S breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance.
- iv. These remedies are cumulative to the extent the remedies are not inconsistent, and COUNTY may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

4.2 Precedence. A requirement listed both in the main boilerplate of this contract and in an exhibit, the exhibit shall take precedence.

4.3 Subcontracts. AGENCY shall not enter into any subcontracts for any of the work scheduled under this contract without obtaining prior written approval from COUNTY.

4.4 Independent AGENCY. AGENCY certifies that it is an independent AGENCY and not an employee or agent of COUNTY, State, or Federal Government as those terms are used in ORS 30.265. Responsibility for all taxes, assessments, and any other charges imposed upon employers shall be the sole responsibility of AGENCY.

4.5. Tax Laws. The AGENCY represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with:

- i. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- ii. Any tax provisions imposed by a political subdivision of this state that applied to AGENCY, to AGENCY'S property, operations, receipts, or income, or to AGENCY'S performance of or compensation for any work performed by AGENCY;
- iii. Any tax provisions imposed by a political subdivision of this state that applied to AGENCY, or to goods, services, or property, whether tangible or intangible, provided by AGENCY; and
- iv. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

## 5.0 General Conditions

5.1 Indemnification. AGENCY agrees to indemnify, save, hold harmless, and defend COUNTY, its officers, commissioners and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of actions, suits, claims or demand attributable in whole or in part to the acts or omissions of AGENCY, and AGENCY's officers, agents, and employees, in performance of this contract.

AGENCY shall defend, save, hold harmless and indemnify the State of Oregon, AMH and their officers, agents and employees from and against all claims, suits, actions, damages, liabilities, costs and expenses of whatsoever nature resulting from, arising out of, or relating to the activities or omissions of AGENCY, or its agents or employees under this contract.

If AGENCY is a public body, AGENCY's liability under this contract is subject to the limitations of the Oregon Tort Claims Act.

5.2 Insurance. During the term of this contract, AGENCY shall maintain in force, at its own expense, each insurance noted below:

### 5.2.1 Commercial General Liability

Required by COUNTY       Not required by COUNTY

AGENCY shall obtain, at AGENCY's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than \$1,000,000 per occurrence/\$3,000,000 general aggregate for the protection of COUNTY, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute it.

### 5.2.2 Commercial Automobile Liability

Required by COUNTY       Not required by COUNTY

AGENCY shall also obtain at AGENCY's expense, and keep in effect during the term of the Contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$2,000,000.

### 5.2.3 Professional Liability

Required by COUNTY       Not required by COUNTY

AGENCY agrees to furnish COUNTY evidence of professional liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/\$3,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including

loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this Contract. COUNTY, at its option, may require a complete copy of the above policy.

5.2.4 Tail Coverage. If liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this contract for a duration of thirty-six (36) months or the maximum time period the AGENCY's insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the effective date of this contract.

5.2.5 Additional Insured Provisions. The insurance, other than the professional liability insurance, Workers' Compensation, and Personal Automobile Liability insurance, shall include "Clackamas County, its commissioners, agents, officers, and employees" as an additional insured.

5.2.6 Notice of Cancellation. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice to COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 60 days' notice of cancellation provision shall be physically endorsed on to the policy.

5.2.7 Insurance Carrier Rating. Coverages provided by AGENCY must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

5.2.8 Certificates of Insurance. As evidence of the insurance coverage required by this contract, AGENCY shall furnish a Certificate of Insurance to COUNTY. No contract shall be in effect until the required certificates have been received, approved and accepted by COUNTY. The certificate will specify that all insurance-related provisions within this contract have been complied with. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.

5.2.9 Primary Coverage Clarification. AGENCY's coverage will be primary in the event of a loss.

5.2.10 Cross Liability Clause. A cross-liability or separation of insureds condition will be included in all general liability, professional liability, and errors and omissions policies required by this contract.

5.3 Governing Law; Consent to Jurisdiction. This contract shall be governed by and construed in accordance with the laws of the State of Oregon. Any claim, action, or suit between COUNTY and AGENCY that arises out of or relates to performance under this contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, State of Oregon. Provided, however, that if any such claim, action or suit may be brought only in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. AGENCY by execution of this contract consents to the in personal jurisdiction of said courts.

5.4 Amendments. The terms of this contract shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by AGENCY and COUNTY.

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

5.6 Waiver. The failure of either party to enforce any provision of this contract shall not constitute a waiver of that or any other provision.

5.7 Future Support. COUNTY makes no commitment of future support and assumes no obligation for future support of the activity contracted herein except as set forth in this contract.

5.8 Oregon Constitutional Limitations. This contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provision herein, which would conflict with such law, is deemed inoperative to that extent.

5.9 Oregon Public Contracting Requirements. Pursuant to the requirements of ORS 279B.020 and ORS 279B.220 through 279B.235 the following terms and conditions are made a part of this contract:

5.9.1 AGENCY shall:

- i. Make payments promptly, as due, to all persons supplying to AGENCY labor or materials for the prosecution of the work provided for in this contract.
- ii. Pay all contributions or amounts due the Industrial Accident Fund from such agency or sub-contractor incurred in performance of this contract.
- iii. Not permit any lien or claim to be filed or prosecuted against COUNTY on account of any labor or material furnished.
- iv. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

5.9.2 If AGENCY fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to AGENCY or a subcontractor by any person in connection with this contract as such claim becomes due, the proper officer representing COUNTY may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due AGENCY by reason of this contract.

5.9.3 No person shall be employed for more than ten (10) hours in any one day, or more than forty (40) hours in any one week, except in cases of necessity, emergency or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279A.055, the employee shall be paid at least time and one-half pay:

- i. for all overtime in excess of eight (8) hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday;
- ii. for all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
- iii. for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

5.9.4 AGENCY shall pay employees at least time and a half for all overtime work performed under this contract in excess of 40 hours in any one week, except for individuals under person services contracts who are excluded under ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 U.S.C. 201 to 209) from receiving overtime.

5.9.5 As required by ORS 279B.230, AGENCY shall promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of AGENCY, of all sums that AGENCY agrees to pay for the services and all moneys and sums that AGENCY collected or deducted from the wages of its employees under any law, contract or contract for the purpose of providing or paying for the services.

5.9.6 Workers' Compensation. All subject employers working under this contract must either maintain workers' compensation insurance as required by ORS 656.017, or qualify for an exemption under ORS 656.126. AGENCY shall maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.

5.10 Ownership of Work Product. All work products of the AGENCY which result from this contract are the exclusive property of COUNTY.

5.11 Integration. This contract contains the entire contract between COUNTY and AGENCY and supersedes all prior written or oral discussions or agreements.

5.12 Successors in Interest. The provisions of this contract shall not be binding upon or inure to the benefit of AGENCY's successors in interest without COUNTY's explicit written consent.

## 6.0 Termination

6.1 Termination without Cause. This contract may be terminated by mutual consent of both parties, or by either party, upon ninety (90) days' notice, in writing or delivered by certified mail or in person.

6.2 Termination with Cause. COUNTY may terminate this contract effective upon delivery of written notice to AGENCY, or at such later date as may be established by COUNTY, under any of the following conditions:

6.2.1 COUNTY funding from Federal, State, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The contract may be modified to accommodate a reduction in funds.

6.2.2 COUNTY has evidence that AGENCY has endangered or is endangering the health or safety of clients, staff or the public. AGENCY shall ensure the orderly and reasonable transfer of care in progress with consumers and shall work with COUNTY staff to accomplish the same.

6.2.3 The lapse, relinquishment, suspension, expiration, cancellation or termination of any required license, certification or qualification of AGENCY, or the lapse relinquishment, suspension, expiration, cancellation or termination of AGENCY's insurance as required in this contract.

6.2.4 AGENCY's filing for protection under United States Bankruptcy Code, the appointment of a receiver to manage AGENCY's affairs, or the judicial declaration that AGENCY is insolvent.

6.2.5 AGENCY fails to perform any of the other provisions of this contract, or fails to pursue the work of this contract in accordance with its terms, and after written notice from the COUNTY, fails to correct such failures within ten (10) business days or such longer period as COUNTY may authorize.

6.2.6 Debarment and Suspension. COUNTY shall not permit any person or entity to be an AGENCY if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and AGENCYs declared ineligible under statutory authority other than Executive Order No. 12549. COUNTY shall require all AGENCYs with awards that exceed the simplified acquisition threshold to provide the required certification regarding their exclusion status and that of their principals prior to award.

6.3 Notice of Default. COUNTY may also issue a written notice of default (including breach of contract) to AGENCY and terminate the whole or any part of this contract if AGENCY substantially fails to perform the specific provisions of this contract. The rights and remedies of COUNTY related to default (including breach of contract) by AGENCY shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

6.4 Transition. Any such termination of this contract shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.



**7.0 Notices**

If to AGENCY:

Lifeworks NW  
14600 NW Cornell Road  
Portland, OR 97229

If to COUNTY:

Clackamas County Behavioral Health Division  
Attention: Contracts & Credentialing Analyst  
2051 Kaen Road, # 367  
Oregon City, OR 97045

This contract consists of seven (7) sections plus the following exhibits which by this reference are incorporated herein:

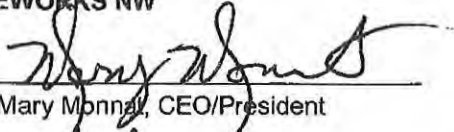
Exhibit A	Definitions
Exhibit B	Scope of Work
Exhibit C	Compensation
Exhibit D	Statement of General Conditions
Exhibit E	Invoice Sample

(signature page follows)

**SIGNATURE PAGE**

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed by their duly authorized officers.

**LIFEWORKS NW**

By:   
Mary Monnal, CEO/President

10/31/17

Date

14600 NW Cornell Rd  
Street Address

Portland, OR 97229  
City / State / Zip

(503) 645-3581  
Phone

(503) 690-9603  
Fax

**CLACKAMAS COUNTY**

Commissioner Jim Bernard, Chair  
Commissioner Sonya Fischer  
Commissioner Ken Humberston  
Commissioner Paul Savas  
Commissioner Martha Schrader

**Signing on Behalf of the Board:**

Richard Swift, Director  
Health, Housing & Human Service Department

Date

November 22, 2017

Board of Commissioners  
Clackamas County

Members of the Board:

Approval of Construction Contract Change Order #2 with Jim Smith Excavating for the Addie Street Improvements project in Gladstone

<b>Purpose/Outcomes</b>	Approval of a final Change Order #2 with Jim Smith Excavating for construction of street, sidewalk, waterline and storm drain improvements along Addie Street from Barclay Avenue to Glen Echo Avenue in Gladstone.
<b>Dollar Amount and Fiscal Impact</b>	Change Order #2 adds \$41,241.20 for a new contract total of \$388,284.20  \$190,000 of Community Development Block Grant funds and <u>\$198,284.20 of City of Gladstone funds.</u> \$388,284.20 = Total project cost
<b>Funding Source</b>	U.S. Department of Housing and Urban Development grant funds. City of Gladstone funds. No County General Funds are involved.
<b>Safety Impact</b>	Improved pedestrian safety in NW Gladstone.
<b>Duration</b>	Effective when signed and terminates after 90 days unless extended.
<b>Previous Board Action</b>	The Intergovernmental Agreement for this project was approved on May 16, 2016. The Construction Contract was approved by the BCC on May 25, 2017
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. Provide low and moderate income persons with healthy, safe and stable housing in neighborhoods where they have improved access to services.</li> <li>2. Ensure safe, healthy and secure communities.</li> </ol>
<b>Contact Person</b>	Chuck Robbins, Community Development Director - (503) 655-8591
<b>Contract No.</b>	H3S 8321

**BACKGROUND:**

The Housing and Community Development Division of the Health, Housing and Human Services Department requests the approval of this Final Change Order #2 with Jim Smith Excavating, Inc. for the Addie Street Improvements project. Change Order #2 will add waterline, sanitary sewer and driveway work as well as final material quantities to the original project. The BCC approved the intergovernmental agreement for this project on May 16, 2016. The Construction Agreement was reviewed and approved by County Counsel on March 20, 2017 and approved by the BCC on May 25, 2017.

Change Order #1 added \$22,590 (7%) to the contract amount.

Change Order #2 adds \$41,241.20 (12.7%) to the contract amount.

Change Order #1 and #2 added a total of 19.68% to the original \$324,423 contract amount.  
The new contract total amount including Change Order #1 and #2 is \$388,284.20  
The change orders will be paid by City of Gladstone funds. The project is substantially complete.

**RECOMMENDATION:** We recommend the approval of this change order #2 and that Richard Swift H3S Director be authorized to sign on behalf of the Board of County Commissioners.

Respectfully submitted,

Richard Swift, Director  
Health, Housing Human Services

**CHANGE ORDER FORM**

Jim Smith Excavating, LLC  
PO Box 429  
Oregon City, Oregon 97045

( ) Contractor  
( ) Sisul Engineering  
( ) H3S Director

Project Name: Addie Street Improvements  
Project Address: NW Gladstone, OR 97027

Change Order No: **2**  
Contract Date: 6/8/2017  
NTP Date: 6/8/2017  
Change Order Date: 11/2/2017

Project Number: 53443  
To: Clackamas County HCD  
2051 Kaen Road, Suite #245  
Oregon City, Oregon 97045

The following changes have been authorized by the City of Gladstone, Pat Sisul Engineering and Clackamas County Housing and Community Development:

Item 1: Additional waterline fittings, materials and labor	\$ 3,034.40
Item 2: Additional driveway work, materials and labor	\$ 3,933.83
Item 3: Additional sanitary sewer items, materials and labor	\$ 2,895.07
Item 4: Additional quantities changes to original contract amounts	\$ 31,407.90


**TOTAL CONTRACTOR'S PRICE FOR CHANGE ORDER # 2 = + \$ 41,271.20**

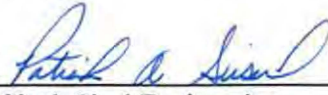
Original Contract Price .....	\$ 324,423.00
Net Change by Previous Change Orders .....	\$ 22,590.00
Contract Price prior to this Change Order .....	\$ 347,013.00
Contract Price will be (increased) ( <del>unchanged</del> ) by this Change Order .....	\$ 41,271.20
The new Contract Price including this Change Order will be .....	<b>\$ 388,284.20</b>

The Contract Time will be increased by this Change Order (0) calendar days. The project is currently at Substantial Completion.

Approved:

Approved:

by:  (Se) 11-2-17  
Ron Bonner, Secretary (date)  
Jim Smith Excavating LLC.

by:  11-6-17  
Pat Sisul, Sisul Engineering (date)  
City of Gladstone

Approved:

by: \_\_\_\_\_  
Richard Swift, Director of Health, (date)  
Housing & Human Services

November 22, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of an Amendment to an Intergovernmental Agreement with  
the State of Oregon, Department of Consumer and Business Services,  
Senior Health Insurance Benefits Assistance (SHIBA)

<b>Purpose/Outcomes</b>	To support the activities of the Social Services' Volunteer Connection SHIBA Program to provide information, counseling and assistance to seniors and other Medicare recipients regarding health insurance matters.
<b>Dollar Amount and Fiscal Impact</b>	This amendment adds \$16,000 for a new revenue total of \$32,000.
<b>Funding Source</b>	Federal State Health Insurance Assistance Program (SHIP) grant provided through the State of Oregon, Department of Consumer and Business Services, Senior Health Insurance Benefits Assistance (SHIBA). There is no match requirement. County General Funds are not involved.
<b>Duration</b>	April 1, 2016 through March 31, 2018
<b>Previous Board Action</b>	The original agreement was approved by the Board of County Commissioners on December 15, 2016 agenda item 121916-A12.
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. This funding aligns with H3S's strategic priority to increase self-sufficiency for our clients.</li> <li>2. This funding aligns with the County's strategic priority to ensure safe, healthy and secure communities.</li> </ol>
<b>Contact Person</b>	Brenda Durbin, Director – Social Services Division – (503)655-8641
<b>Contract No.</b>	8046

**BACKGROUND:**

Social Services Division of the Health, Housing and Human Services Department requests the approval of an Amendment to an Intergovernmental Agreement with the State of Oregon, Department of Consumer and Business Services, Senior Health Insurance Benefits Assistance (SHIBA) supporting Social Services' Volunteer Connection SHIBA Program. The SHIBA program provides information, counseling and assistance to seniors and other Medicare recipients regarding health insurance matters.

The Volunteer Connection program within Social Services Division has operated the SHIBA program for several years. This program is designed to educate seniors and other Medicare recipients about their rights, resources and needs relating to Medicare and other health insurance. The program provides education through the fraud hotline, SHIBA helpline, and at public group presentations. In addition, information is made available during public outreach events, such as the Clackamas County Fair and Medicare enrollment events at locations such as low cost housing units. Information presented has included financial assistance for citizens with limited resources, preventing Medicare fraud, identity theft, and do-not-call registration. These services are invaluable to our senior and disabled citizens.

*Healthy Families. Strong Communities.*

The amendment was received from the State on October 24, 2017, and it extends the end date of the original agreement from March 31, 2017 to March 31, 2018. County Counsel reviewed and approved the amendment on October 26, 2017.

This amendment adds \$16,000 for a new agreement total of \$32,000. There is no match requirement and no County General Funds are involved.

**RECOMMENDATION:**

Staff recommends the approval of this amendment, and that Richard Swift, H3S Director, be authorized to sign all documents necessary on behalf of Clackamas County.

Respectfully submitted,

Richard Swift, Director  
Health, Housing and Human Services Department

**AMENDMENT #1 to  
INTERGOVERNMENTAL AGREEMENT # 45G000212**

1. This agreement is between the State of Oregon acting by and through its Department of Consumer and Business Services, Oregon Health Insurance Marketplace, Senior Health Insurance Benefit Assistance Program (“Agency”), and Clackamas County acting by and through its Health, Housing and Human Services Department, Social Services Division (“Local Government”).
2. The Contract is hereby amended as follows (new language is indicated by bold underlining font, and deleted language is indicated by strikethrough font).

SECTION 3: EFFECTIVE DATE AND DURATION

This Agreement shall be effective retroactively to April 1, 2016, and terminates on **March 31, 2018** ~~March 31, 2017~~, unless terminated earlier in accordance with Section 16. This Agreement may be extended if the grant period is extended or for additional grant years and/or funds.

SECTION 6: COMPENSATION AND PAYMENT TERMS

6.1 ~~A)~~ Agency agrees to pay Local Government a not-to-exceed amount of \$16,000.00 for performance of the work set forth in Exhibit A for the period of April 1, 2016 through March 31, 2017. Funding for future years is dependent on Agency receiving grant awards from the ACL.

**B) Agency agrees to pay Local Government a not-to-exceed amount of \$16,000.00 for performance of the work set forth in Exhibit A for the period of April 1, 2017 through March 31, 2018. Funding for future years is dependent on Agency receiving grant awards from the ACL.**

6.2 Agency shall pay Local Government following Agency’s acceptance, review and approval of the invoice(s) submitted. Invoice(s) shall be submitted ~~quarterly~~ **Semi-Annually** to the Agency Authorized Representative by email.

6.7 Agency must use funds as described in the State Health Insurance Assistance Program annual grant funding opportunity announcement ~~#HHS-2016-CMS-ACL-CIP-SA-0123~~ **#HHS-2017-ACL-CIP-SAPG-0184**. If Agency uses these funds for any purpose other than those awarded, the Agency may be required to return the funds to the United States Treasury. Therefore, the Local Government shall not use any amount of funds Agency pays to Local Government under this Agreement in a manner that could trigger the Agency’s obligation to return the funds.

3. Except as expressly amended above, all other terms and conditions of original contract are still in full force and effect. Contractor certifies that the representations, warranties and certifications contained in the original Contract are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.







M. BARBARA CARTMILL  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT  
DEVELOPMENT SERVICES BUILDING  
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

November 22, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of a Board Order Adopting Local Delivery Only on Morgan Rd (44011)

<b>Purpose/Outcomes</b>	Designate Morgan Rd (44011) as a No Thru Truck/Local Delivery Only route between Hwy 211 and S Hillockburn Rd
<b>Dollar Amount and Fiscal Impact</b>	The cost of installing additional Local Delivery Only signs is minimal
<b>Funding Source</b>	Road Fund
<b>Duration</b>	N/A
<b>Previous Board Contact</b>	Adopted Board Order No. 2017-21 on March 30, 2017
<b>Strategic Plan Alignment</b>	Build a strong infrastructure. Build public trust through good government.
<b>Contact Person</b>	Joseph Marek, Transportation Safety Supervisor – 503-742-4705

**BACKGROUND:**

A portion of the work of the Clackamas County Motor Carrier Safety staff is to identify limitations on certain roads based on design, such as width and curvature, and uses in and around the area. These limitations are memorialized on the Clackamas County Road Restriction map.

Staff has assessed S. Morgan Road, a County Road south of Hwy 211, and believes additional restrictions related to deliveries are appropriate. Attached is an order establishing Local Delivery Only status for Morgan Road. Upon adoption, staff will work to update the aforementioned road restriction map.

County Counsel has reviewed and approved this board order.

**RECOMMENDATION:**

Staff respectfully requests that the Board approve this Board Order.

Respectfully submitted,

Mike Bezner  
Assistant Director of Transportation

In the matter of establishing Local  
Delivery Only for trucks on S Morgan Rd  
(Road No. 44011)

Order No.  
Page 1 of 1

This matter coming regularly before the Board of County Commissioners and it appearing that the Board, pursuant to ORS 810.040, as the road authority may designate any of its highways or any section of its highways as a truck route and may prohibit the operation of trucks, machinery, or any other large or heavy vehicles upon any other of its highways that serves the same route or area served by the truck route designated. This will include any residential streets with no outlet to an arterial or any reasonable need for commercial through traffic in the estimation of the Director of Transportation and Development; and

It further appearing to the Board that the adoption of the following Local Delivery Only is vital to protect the Clackamas County road infrastructure from excessive damage and preserve the safety of the general public; and

It further appearing to the Board, pursuant to ORS 818.130, Clackamas County forces will erect and maintain signs giving notice of the use limits.

IT IS HEREBY ORDERED that Clackamas County adopt the Local Delivery Only restrictions listed above for trucks using Morgan Rd (44011).

ADOPTED this \_\_\_\_ day of \_\_\_\_, 2017.

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary



MARC GONZALES  
DIRECTOR

DEPARTMENT OF FINANCE

PUBLIC SERVICES BUILDING

2051 KAEN ROAD | OREGON CITY, OR 97045

November 22, 2017

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of a Resolution Authorizing Refunding of the County's  
Full Faith and Credit Obligations, Series 2007 and Series 2009

<b>Purpose/Outcomes</b>	Refunding of Full Faith and Credit Obligations, Series 2007 and Series 2009 to potentially reduce debt service costs.
<b>Dollar Amount and Fiscal Impact</b>	Current Par Amount of Bonds to be Refunded: \$51.34 Million Par Amount of Refunding Bonds: \$45.755 Million Estimated Present Value Savings: Approximately \$4.59 Million
<b>Funding Source</b>	General Fund, other County Funds supporting debt service through rent payments
<b>Duration</b>	11 Years
<b>Previous Board Action</b>	Approval of original Full Faith and Credit Bonds to finance capital improvements for Clackamas County
<b>Strategic Plan Alignment</b>	1. Build Public Trust Through Good Government
<b>Contact Person</b>	Marc Gonzales, Finance Director – 503-742-5405
<b>Contract No.</b>	

**BACKGROUND:**

The County issued Full Faith and Credit Obligations, Series 2007 in the principal amount of \$49,990,000 to finance the Development Services Building, road projects associated with the Red Soils campus, a Central Utility Plant for all buildings constructed under the Master Plan at the Red Soils Campus, the acquisition of property for various County needs, a Red Soils Campus plaza, and an underground corridor for HVAC and telecommunications/data cabling to connect buildings at the Red Soils Campus.

The County issued Full Faith and Credit Obligations, Series 2009 in the principal amount of \$34,795,000 to finance the remodeling and improving of Sunnybrook Service Center to accommodate the Clackamas County Sheriff's Office headquarters, remodeling and improving the Clackamas County Jail, provide an evidence processing facility, and complete the DSB.

The County is requesting authorization to refinance the outstanding principal balance of the Refundable Obligations and may be able to reduce its debt service costs significantly by refunding the Refundable Obligations. Current actions pending in Congress may have an effect on our ability to issue tax exempt

Advance Refunding Bonds, which if passed will defer plans for refunding the Series 2009 obligations until they become a Current Refunding.

**RECOMMENDATION:**

Staff recommends the Board approve this board order authorizing the refunding of the County's Full Faith and Credit Obligations, Series 2007 and Series 2009.

Respectfully submitted,

Marc Gonzales  
Clackamas County Finance Director and  
Hospital Facility Authority Liaison

In the Matter of the Board of County Commissioners, Clackamas County, Oregon, Authorizing Refunding of the County's Full Faith and Credit Obligations, Series 2007 and Series 2009.

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WHEREAS, the County is authorized by Oregon Revised Statutes Section 271.390 to enter into Financing Agreements to finance or refinance real or personal property which the Board of County Commissioners determines is needed, and to authorize certificates of participation in the right to receive the payments due from the County under those Financing Agreements; and

WHEREAS, the County is authorized by ORS 287A.105 to incur bonded indebtedness within the meaning of section 10, Article XI of the Oregon Constitution; and

WHEREAS, the County issued Full Faith and Credit Obligations, Series 2007 in the principal amount of \$49,990,000 (the "Series 2007 Obligations"), to finance the following projects:

- a development services building,
- road projects near the Red Soils campus and road projects under the City of Oregon City's Transportation Capital Improvement Plan,
- a central utility plant to house heating, venting and air conditioning equipment for all buildings constructed under the Master Plan at the Red Soils campus,
- the acquisition of property to provide additional space for various County operations and park development,
- a plaza for the Red Soils campus, and
- an underground corridor for HVAC and telecommunications/data cabling to connect existing and proposed Red Soils campus buildings with the Central Utility Plant and Data Center; and;

WHEREAS, the County issued Full Faith and Credit Obligations, Series 2009 in the principal amount of \$34,795,000 (the "Series 2009 Obligations" and together with the Series 2007 Obligations, the "Refundable Obligations"), to finance the following projects:

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- remodeling and improving the Sunnybrook Service Center, including creating a Clackamas County Sheriff's Office headquarters, updating systems in the building and remodeling the building,
- remodeling and improving the Clackamas County Jail, including replacing the central control complex, modernizing lighting, redesigning interior space, creating courtroom space and offices, relocating visitation space, creating a video visitation unit, adding beds, and creating a secure medical unit,
- providing an evidence processing facility, including compact mobile shelving, modern air handling equipment, offices and space for analysis of evidence, and
- completing the Development Services Building; and

WHEREAS, the County is authorized to refinance the outstanding Refundable Obligations and may be able to reduce its debt service costs by refunding the Refundable Obligations; and

WHEREAS, the Board hereby determines that the facilities financed with the Refundable Obligations are needed, and that it is desirable to refinance the Refundable Obligations pursuant to ORS 271.390, ORS 287A.105, ORS 287A.360-375 and the other applicable provisions or ORS Chapter 287A; now therefore IT IS HEREBY ORDERED that the County may refinance all or a portion of the outstanding Refundable Obligations under the authority of ORS 271.390, ORS 287A.105, ORS 287A.360-375 and the other applicable provisions or ORS Chapter 287A. The refunding obligations may be issued in an amount sufficient to pay and redeem the Refundable Obligations to be refunded, plus an amount sufficient to pay estimated costs related to accomplishing the refunding and the issuing the refunding obligations.

IT IS FURTHER ORDERED that the County Finance Director, or the County Administrator or his designee (each a "County Official") are hereby authorized, on behalf of the County and without further action by the Board, to:

1. Negotiate, execute and deliver one or more Financing Agreements (the "Financing Agreements") for the refunding which obligate the County to repay the financed amounts, with interest. The Financing Agreements shall constitute bonded indebtedness and be subject to the limits of ORS 287A.105. The obligation of the County to make financing payments under the Financing Agreements shall be unconditional.

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Pursuant to ORS 287A.315, the County Official may pledge the County's full faith and credit and taxing power within the limitations of Sections 11 and 11b of Article XI of the Oregon Constitution, and may agree to pay the Financing Agreements from any and all of the County's legally available funds. Subject to the limitations of this Order, the Financing Agreements may be in such form and contain such terms as the County Official may approve, including covenants for the benefit of the lenders or credit enhancement providers.

2. Negotiate, execute and deliver one or more escrow agreements or similar documents (the "Escrow Agreements") which provide for the issuance of one or more series of "certificates of participation" or "full faith and credit obligations" (the "Obligations") which represent ownership interests in the financing payments due from the County under the Financing Agreements. Subject to the limitations of this Order, the Escrow Agreements and each series of Obligations may be in such form and contain such terms as the County Official may approve, including covenants for the benefit of the lenders or credit enhancement providers.
3. Determine whether the interest payable on each Financing Agreement will be includable in gross income or excludable from gross income under the Internal Revenue Code of 1986, as amended (the "Code").
4. Covenant for the benefit of the owners of tax-exempt obligations to comply with all provisions of the Code which are required for the interest component of financing payments payable under the related Financing Agreements to be excluded from gross income for federal income tax purposes.
5. Deem final and authorize the distribution of a preliminary official statement for each series of Obligations, authorize the preparation and distribution of a final official statement or other disclosure document for each series of Obligations, and enter into agreements to provide continuing disclosure for owners of each series of Obligations.
6. Apply for and purchase ratings, municipal bond insurance, or other forms of credit enhancements for the Financing Agreements and Obligations, and enter into related agreements, as necessary.
7. Enter into additional covenants for the benefit of the purchasers of the Financing Agreements and Obligations which the County Official determines are desirable to sell the Financing Agreements and Obligations on favorable terms.



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8. Engage the services of verification agents, escrow agents, paying agents and any other professionals whose services are desirable for the financings.
9. Enter into one or more escrow deposit agreements for the refunding and take actions to call, defease and redeem all or any portion of the outstanding Refundable Obligations.
10. Contribute legally available funds of the County towards the refunding.
11. Subject to this Order, determine the final principal amount of each Financing Agreement, the interest rate or rates which each Financing Agreement and each series of Obligations shall bear, and the County's prepayment rights and other terms of each Financing Agreement and each series of Obligations.
12. Solicit competitive bids for the purchase of each series of the Obligations and award their sale to the bidder offering the most favorable terms to the County, select one or more underwriters, negotiate the terms of the sale of each series of Obligations, and sell that series to those underwriters; or select one or more commercial banks, negotiate the terms of the sale of each Financing Agreement and sell each Financing Agreement to those commercial banks.
13. Prepare and submit an advanced refunding plan to the Oregon State Treasurer's office for the refunding of the Refundable Obligations.
14. Execute and deliver any other certificates or documents and take any other actions which the County Official determines desirable to accomplish the refunding with the Financing Agreements and the Obligations in accordance with this Order.

DATED this 22<sup>nd</sup> day of November, 2017.

**CLACKAMAS COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

DRAFT

Approval of Previous Business Meeting Minutes:  
October 26, 2017

# **BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES**

A complete video copy and packet including staff reports of this meeting can be viewed at

<http://www.clackamas.us/bcc/business.html>

**Thursday, October 26, 2017 – 10:00 AM**

**Public Services Building**

**2051 Kaen Rd., Oregon City, OR 97045**

**PRESENT:** Commissioner Jim Bernard, Chair  
Commissioner Sonya Fischer  
Commissioner Ken Humberston  
Commissioner Paul Savas  
Commissioner Martha Schrader

## **CALL TO ORDER**

- Roll Call
- Pledge of Allegiance

## **I. PRESENTATION** (Following are items of interest to the citizens of the County)

1. Recognizing the Water Environment Services Department for Receiving Certification as a Clackamas County Leader in Sustainability  
Eben Polk, Office of Sustainability presented the staff report. He introduced Kelly Stewart from the Office of Sustainability and Chanin Bays from Water Environment Services who spoke about the project.

## **II. CITIZEN COMMUNICATION**

<http://www.clackamas.us/bcc/business.html>

1. Al Notz, Molalla - concerns regarding a marijuana grow near their home.
2. Ramona Notz, Molalla – concerns regarding a marijuana grow near their home.
3. Kevin Johnson, Gladstone – spoke against the new proposed Gladstone library.
4. Everett Hall, Happy Valley – issues with his property tax statement.
5. Brainard Brauer, Oregon City – speed and safety issues on Redland Road.

~Board Discussion~

## **III. CONSENT AGENDA**

Chair Bernard asked the Clerk to read the consent agenda by title,

Chair Bernard then asked for a motion.

### **MOTION:**

Commissioner Humberston: I move we approve the consent agenda.  
Commissioner Fischer: Second.  
all those in favor/opposed:  
Commissioner Fischer: Aye.  
Commissioner Humberston: Aye.  
Commissioner Schrader: Aye.  
Commissioner Savas: Aye.  
Chair Bernard: Aye – the Ayes have it, the motion carries 5-0.

## **A. Health, Housing & Human Services**

1. Approval of an Intergovernmental Revenue Agreement with Oregon Department of Education, Early Learning Division for Preschool Promise Capacity Building – *Children, Youth & Families*
2. Approval of an Agency Services Contract with Cascadia Behavioral Healthcare, Inc. to Provide Peer Support Services – *Behavioral Health*

3. Approval of an Agency Service Contract with Lifeworks NW for Outpatient Substance Abuse Services for Uninsured and Indigent Clackamas County Residents – *Behavioral Health*
4. Approval of an Agency Services Contract with Cascadia Behavioral Healthcare, Inc. for Supported Employment Services – *Behavioral Health*
5. Approval of Amendment No. 1 to an Intergovernmental Agreement with Multnomah County for the Reduction of Opioid Overdose and Death Program – *Public Health*
6. Approval of Amendment No. 2 to the Intergovernmental Agreement with the State of Oregon, acting by and through its Oregon Health Authority for Operation as the Local Public Health Authority for Clackamas County – *Public Health*

**B. Elected Officials**

1. Approval of an Intergovernmental Grant Agreement for the Child Abuse Multi-Disciplinary Intervention Program (CAMI) for the District Attorney’s Office – *District Attorney*
2. Approval of a Contract with Mark43 for Public Safety Records Management Solution for the Clackamas County Sheriff’s Office – *CCSO via Procurement*

**C. Public & Government Affairs**

1. **Board Order No. 2017-119** for an Extension of the Cable Television Franchise with Canby Telephone Association dba Canby Telcom

**D. Technology Services**

1. Approval to Enter into a Service Level Agreement between Clackamas Broadband eXchange and Marylhurst University for Dark Fiber Connection

**E. Business & Community Services**

1. Approval of Contract with CXT, Inc. for the Purchase of a Precast Concrete Restroom at Feyrer Park - *Procurement*

**IV. COUNTY ADMINISTRATOR UPDATE**

<http://www.clackamas.us/bcc/business.html>

**V. COMMISSIONERS COMMUNICATION**

<http://www.clackamas.us/bcc/business.html>

**MEETING ADJOURNED – 11:22 AM**

**NOTE: Regularly scheduled Business Meetings are televised and broadcast on the Clackamas County Government Channel. These programs are also accessible through the County’s Internet site. DVD copies of regularly scheduled BCC Thursday Business Meetings are available for checkout at the Clackamas County Library in Oak Grove. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel. [www.clackamas.us/bcc/business.html](http://www.clackamas.us/bcc/business.html)**



JUVENILE DEPARTMENT  
JUVENILE INTAKE AND ASSESSMENT CENTER  
2121 KAEN ROAD | OREGON CITY, OR 97045

November 22, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of Intergovernmental Agreement with the State of Oregon Acting  
by and through its Oregon Department of Education, Youth Development  
Division**

<b>Purpose/ Outcomes</b>	This IGA between the State of Oregon, by and through the Oregon Department of Education Youth Development Division, and Clackamas County for Juvenile Crime Prevention Funding
<b>Dollar Amount and Fiscal Impact</b>	The maximum contract value is \$411,672.00
<b>Funding Source</b>	State of Oregon
<b>Duration</b>	Effective July 1, 2017 through June 30, 2019
<b>Previous Board Action</b>	None: IGA for 2015-2017 fiscal year signed on behalf of the Board by Health, Housing and Human Services
<b>Strategic Plan Alignment</b>	Ensure safe, healthy, and secure communities. The revenue received from this IGA provides funds to provide Diversion Panel Services for local cities.
<b>Contact Person</b>	Lisa Krzmarzick, Sr. Administrative Analyst, Juvenile Dept., ext. 8788

**BACKGROUND:**

Attached is an Intergovernmental Agreement provided by the State of Oregon, through the Oregon Department of Education Youth Development Division to the County to provide funds for Diversion Panel Services. Low risk/Low level first-time offenders are sent to Diversion Panels within their city of residence. This allows the youth to be held accountable in his/her community, and to give back. Diversion Panels are an important first step in our continuum of service levels holding youth accountable for their behavior.

**RECOMMENDATION:**

Staff recommends the Board of County Commissioners approve the attached Intergovernmental Agreement.

Respectfully submitted,

Christina L. McMahan, Director  
Juvenile Department

## INTERGOVERNMENTAL AGREEMENT

Agreement No. **11086**

This Agreement is between the State of Oregon acting by and through its **Oregon Department of Education, Youth Development Division** (“Agency”) and **Clackamas County** (“County”), each a “Party” and, together, the “Parties”.

### SECTION 1: AUTHORITY

This Agreement is authorized by ORS 190.110.

### SECTION 2: PURPOSE

WHEREAS, House Bill 3231, chapter 37, and 2015 Oregon Revised Statutes (ORS) 417.850(5), Additional duties of Youth Development Council, authorizes the agency to ensure initiation of contracts based on approved local high-risk juvenile crime prevention plans and oversee contract changes.

WHEREAS, County has requested financial assistance from Agency for the foregoing purposes;

WHEREAS, Agency is willing, upon the terms and conditions of this Agreement, to provide financial assistance to County for the foregoing purposes; and

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### SECTION 3: EFFECTIVE DATE AND DURATION

Upon signature by all applicable parties, this Agreement shall be effective on **July 1, 2017**. Unless terminated earlier in accordance with its terms, this Agreement shall terminate on **June 30, 2019**.

### SECTION 4: AUTHORIZED REPRESENTATIVES

#### 4.1 Agency’s Authorized Representative is:

Anya Sekino  
255 Capitol St NE  
Salem, OR 97310  
503.378.5156 Fax  
503.378.5115 Office  
[anya.sekino@state.or.us](mailto:anya.sekino@state.or.us)



apply that skill and knowledge with care and diligence to perform its obligations under this Agreement in a professional manner and in accordance with the highest standards prevalent in the related industry, trade or profession; and

- 7.5 County shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform its obligations under this Agreement.

The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations or warranties provided by County.

## **SECTION 8: GOVERNING LAW, CONSENT TO JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between Agency or any other agency or department of the State of Oregon, or both, and County that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court. COUNTY, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Except as provided in this section, neither party waives any form of defense or immunity, whether 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 other court. The parties acknowledge that this is a binding and enforceable agreement and, to the extent permitted by law, expressly waive any defense alleging that either party does not have the right to seek judicial enforcement of this Agreement.

## **SECTION 9: OWNERSHIP OF WORK PRODUCT**

- 9.1 As used in this Section 9 and elsewhere in this Agreement, the following terms have the meanings set forth below:
- 9.1.1 "**County Intellectual Property**" means any intellectual property owned by County and developed independently from the work under this Agreement.
  - 9.1.2 "**Third Party Intellectual Property**" means any intellectual property owned by parties other than County or Agency.
  - 9.1.3 "**Work Product**" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item that County is required to deliver to Agency under this Agreement and all intellectual property rights therein.
- 9.2 All Work Product created by County under this Agreement, including derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an



employment to invent, shall be the exclusive property of Agency. Agency and County agree that any Work Product that is an original work of authorship created by County under this Agreement is a "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created by County under this Agreement is not "work made for hire," County hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all original Work Product created by County under this Agreement, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Agency's reasonable request, County shall execute such further documents and instruments necessary to fully vest such rights in Agency. County forever waives any and all rights relating to Work Product created by County under this Agreement, including without limitation, any and all rights arising under 17 U.S.C. §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

If the Work Product created by County under this Agreement is a derivative work based on County Intellectual Property, or is a compilation that includes County Intellectual Property, County hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, and display the pre-existing elements of the County Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

If the Work Product created by County under this Agreement is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, County shall secure on Agency's behalf and in the name of Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing element of the Third party Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

- 9.3 If Work Product is County Intellectual Property, County hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the County Intellectual Property, and to authorize others to do the same on Agency's behalf.
- 9.4 If Work Product is Third Party Intellectual Property, County shall secure on Agency's behalf and in the name of Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on Agency's behalf.
- 9.5 If state or federal law requires that Agency or County grant to the United States a license to any intellectual property in the Work Product, or if state or federal law requires that Agency or the United States own the intellectual property in the Work Product, then County shall execute such further documents and instruments as Agency may reasonably request in order to make any such grant or to assign ownership in such intellectual property to the United States or Agency.

## **SECTION 10: CONTRIBUTION**

- 10.1 If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a "Third Party Claim") against a Party (the "Notified Party") with respect to which the other Party (the "Other Party") may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party,

along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this Section and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's contribution obligation under this Section 10 with respect to the Third Party Claim.

- 10.2** With respect to a Third Party Claim for which Agency is jointly liable with Local Government (or would be if joined in the Third Party Claim ), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Local Government in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of Local Government on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of Local Government on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under the Oregon Tort Claims Act (OTCA) and any otherwise applicable Oregon law if the State had sole liability in the proceeding.
- 10.3** With respect to a Third Party Claim for which Local Government is jointly liable with Agency (or would be if joined in the Third Party Claim), Local Government shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of Local Government on the one hand and of Agency on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Local Government on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Local Government's contribution amount in any instance is capped to the same extent it would have been capped under the OTCA and any otherwise applicable Oregon law if it had sole liability in the proceeding.

## **SECTION 11: COUNTY DEFAULT**

County will be in default under this Agreement upon the occurrence of any of the following events:

- 11.1** County fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement;
- 11.2** Any representation, warranty or statement made by County in this Agreement or in any documents or reports relied upon by Agency to measure the delivery of services, the expenditure of funds or the performance by County is untrue in any material respect when made;
- 11.3** County (a) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (b) admits in writing its inability, or is

generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) is adjudicated a bankrupt or insolvent, (e) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (g) 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 Bankruptcy Code, or (h) takes any action for the purpose of effecting any of the foregoing; or

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

## **SECTION 12: AGENCY DEFAULT**

Agency will be in default under this Agreement if Agency fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement.

## **SECTION 13: REMEDIES**

- 13.1** In the event County is in default under Section 11, Agency may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (a) termination of this Agreement under Section 16, (b) reducing or withholding payment for work or Work Product that County has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (c) requiring County to perform, at County's expense, additional work necessary to satisfy its performance obligations or meet performance standards under this Agreement, (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, or (e) exercise of its right of recovery of overpayments under Section 14 of this Agreement or setoff, or both. These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.
- 13.2** In the event Agency is in default under Section 12 and whether or not County elects to exercise its right to terminate this Agreement under Section 16.3.3, or in the event Agency terminates this Agreement under Sections 16.2.1, 16.2.2, 16.2.3, or 16.2.5, County's sole monetary remedy will be (a) for work compensable at a stated rate, a claim for unpaid invoices for work completed and accepted by Agency, for work completed and accepted by Agency within any limits set forth in this Agreement but not yet invoiced, for authorized expenses incurred, and for interest within the limits of ORS 293.462, less any claims Agency has against County, and (b) for deliverable-based work, a claim for the sum designated for completing the deliverable multiplied by the percentage of work completed on the deliverable and accepted by Agency, for authorized expenses incurred, and for interest within the limits of ORS 293.462, less previous amounts paid for the deliverable and any claims that Agency has against County. In no event will Agency be liable to County for any

expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to County exceed the amount due to County under this Section 13.2, County shall promptly pay any excess to Agency.

## **SECTION 14: RECOVERY OF OVERPAYMENTS**

If payments to County under this Agreement, or any other agreement between Agency and County, exceed the amount to which County is entitled, Agency may, after notifying County in writing, withhold from payments due County under this Agreement, such amounts, over such periods of times, as are necessary to recover the amount of the overpayment.

## **SECTION 15: LIMITATION OF LIABILITY**

EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 10, NEITHER PARTY WILL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE. NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

## **SECTION 16: TERMINATION**

**16.1** This Agreement may be terminated at any time by mutual written consent of the Parties.

**16.2** Agency may terminate this Agreement as follows:

**16.2.1** Upon 30 days advance written notice to County;

**16.2.2** Immediately upon written notice to County, if Agency fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Agency's reasonable administrative discretion, to perform its obligations under this Agreement;

**16.2.3** Immediately upon written notice to County, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Agency's performance under this Agreement is prohibited or Agency is prohibited from paying for such performance from the planned funding source;

**16.2.4** Immediately upon written notice to County, if County is in default under this Agreement and such default remains uncured 15 days after written notice thereof to County; or

**16.2.5** As otherwise expressly provided in this Agreement.

**16.3** County may terminate this Agreement as follows:

**16.3.1** Immediately upon written notice to Agency, if County fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in County's

reasonable administrative discretion, to perform its obligations under this Agreement;

- 16.3.2 Immediately upon written notice to Agency, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that County's performance under this Agreement is prohibited or County is prohibited from paying for such performance from the planned funding source;
  - 16.3.3 Immediately upon written notice to Agency, if Agency is in default under this Agreement and such default remains uncured 15 days after written notice thereof to Agency; or
  - 16.3.4 As otherwise expressly provided in this Agreement.
- 16.4 Upon receiving a notice of termination of this Agreement, County will immediately cease all activities under this Agreement, unless Agency expressly directs otherwise in such notice. Upon termination, County will deliver to Agency all documents, information, works-in-progress, Work Product and other property that are or would be deliverables under the Agreement. And upon Agency's reasonable request, County will surrender all documents, research or objects or other tangible things needed to complete the work that was to have been performed by County under this Agreement.

## **SECTION 17: INSURANCE**

County shall maintain insurance as set forth in Section 24, and incorporated herein by this reference.

## **SECTION 18: NONAPPROPRIATION**

Agency's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon Agency receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. 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 Agency.

## **SECTION 19: AMENDMENTS**

The terms of this Agreement may not be altered, modified, supplemented or otherwise amended, except by written agreement of the Parties.

## **SECTION 20: NOTICE**

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement must be given in writing by facsimile, email, personal delivery, or postage prepaid mail, to a Party's Authorized Representative at the physical address, fax number or email address set forth in this Agreement, or to such other addresses as either Party may indicate pursuant to this Section 20. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation generated by the recipient's email system that the

notice has been received by the recipient's email system. Any notice given by facsimile becomes effective upon electronic confirmation of successful transmission to the designated fax number.

## **SECTION 21: SURVIVAL**

All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under Sections 8, 9, 10, 14, 15 and 21 hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

## **SECTION 22: SEVERABILITY**

The Parties agree that 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 provision held to be invalid.

## **SECTION 23: COUNTERPARTS**

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

## **SECTION 24: COMPLIANCE WITH LAW**

In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local law. Both parties shall comply and County shall require all Providers by contract to comply with all state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the conduct of Activities and or delivery of Services. Without limiting the generality of the foregoing, both parties expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations; (b) all state laws requiring reporting of client abuse; (d) ORS 30.670 to 30.685, ORS 659.430 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the conduct of Activities. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. All employers, including County and Agency, that employ subject workers who conduct Activities in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. County shall require by contract that all Providers comply with these requirements and obtain any insurance required elsewhere in this Agreement.

## **SECTION 25: INDEPENDENT CONTRACTORS**

The Parties agree and acknowledge that their relationship is that of independent contracting parties and that County is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

## **SECTION 26: INTENDED BENEFICIARIES**

Agency and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.

## **SECTION 27: FORCE MAJEURE**

Neither Party is responsible for any failure to perform nor any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. Agency may terminate this Agreement upon written notice to County after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

## **SECTION 28: ASSIGNMENT AND SUCCESSORS IN INTEREST**

County may not assign or transfer its interest in this Agreement without the prior written consent of Agency and any attempt by County to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. Agency's consent to County's assignment or transfer of its interest in this Agreement will not relieve County of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

## **SECTION 29: SUBCONTRACTS**

County shall not, without Agency's prior written consent, enter into any subcontracts for any of the work required of County under this Agreement. Agency's consent to any subcontract will not relieve County of any of its duties or obligations under this Agreement.

## **SECTION 30: TIME IS OF THE ESSENCE**

Time is of the essence in County's performance of its obligations under this Agreement.

## **SECTION 31: MERGER, WAIVER**

This Agreement and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations,

oral or written, not specified herein regarding this Agreement. No waiver or consent under this Agreement binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given. EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

### **SECTION 32: RECORDS MAINTENANCE AND ACCESS**

County shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, County shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of County, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document County's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of County, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." County acknowledges and agrees that Agency and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. County shall retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. Subject to foregoing minimum records retention requirement, County shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

### **SECTION 33: HEADINGS**

The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Agreement.

### **SECTION 34: ADDITIONAL REQUIREMENTS**

County shall comply with the additional requirements set forth in Exhibit D and Exhibit E, attached hereto and incorporated herein by this reference.

### **SECTION 35: AGREEMENT DOCUMENTS**

**Order of Precedence:** This Agreement consists of the following documents, which are listed in descending order of precedence. In the event of a conflict between two or more of these documents, the language in the document with the highest precedence shall control.

This Agreement without Exhibits	
Exhibit A	General Definitions
Exhibit B	Funding Area Descriptions & Program Definitions
Exhibit C	Award
Exhibit D	Special Terms and Conditions



Exhibit E Additional Terms and Conditions  
Exhibit F Approved Budget Distribution - JCP Plan

**SECTION 36: SIGNATURES**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

**STATE OF OREGON acting by and through its Department of Education**

\_\_\_\_\_  
Karen K Harrison, Contracting Officer Date

**Clackamas County**

\_\_\_\_\_  
Name, Title Date

**Approved for Legal Sufficiency in accordance with ORS 291.047**

Jake J. Hogue, Assistant Attorney General via email November 13, 2017  
Name, Title Date

## EXHIBIT A GENERAL DEFINITIONS

As used in this Agreement, the following words and phrases shall have the indicated meanings.

1. **"Activity" or "Service"** means an activity or service falling within a Funding Area, whose costs are covered in whole or in part with financial assistance Agency pays to County pursuant to this Agreement
2. **"Administrative Costs"** means Allowable Costs incurred by County or a Provider in administering implementation of the Plan, as determined in accordance with Office of Management and Budget Circulars A-87 and A-122, as revised from time to time.
3. **"Allowable Costs"** means those costs that are reasonable and necessary for the implementation of the Plan as determined in accordance with Office of Management and Budget Circulars A-87 and A-122, as revised from time to time.
4. **"Claim"** has the meaning set forth in Section 8.
5. **"Agreement"** means this 2017-2019 County Intergovernmental Agreement.
6. **"General Funds"** means all funds paid to County under this Agreement.
7. **"Funding Area"** means any one of the areas enumerated and further described in Exhibit B.
8. **"Funding Area Description"** means the description of a Funding Area set forth on Exhibit B.
9. **"Misexpenditure"** has the meaning set forth in Section C of Exhibit E.
10. **"Provider"** has the meaning set forth as used in Exhibit B Funding Area Description, Provider also includes County if County conducts an Activity within that Funding Area directly.
13. **"Underexpenditure"** has the meaning set forth in Section C of Exhibit E.

**EXHIBIT B**

**FUNDING AREA DESCRIPTION & PROGRAM DEFINITIONS**

1. **Juvenile Crime Prevention (JCP).** JCP Services are described below.
  1. **Definitions.** In addition to the Definitions of Exhibit A of this Agreement, the following words and phrases shall have the indicated meanings in this Exhibit B:
    1. **"Client"** means any individual who receives a Service.
    2. **"Diversion Services"** means services outlined in the Plan and provided under a separate contract with OYA for Diversion Services.
    3. **"Evaluation Costs"** means Allowable Costs incurred by a County or a Provider and associated with completion of administration of risk screen, interim review, and JJIS data fields.
    4. **"JCP Basic Services Funds"** means funds provided under a separate contract with OYA for JCP Basic Services.
    5. **"JCP Basic Services" or "Basic Services"** means services outlined in the Plan and provided under a separate contract with OYA for detention and other juvenile department services including shelter care, treatment services, graduated sanctions and aftercare for youth offenders.
    6. **"JCP Funds"** means funds provided under this Agreement for JCP Services.
    7. **"YDC"** means the Youth Development Council
    8. **"JJIS"** is the Juvenile Justice Information Systems operated by OYA and the Oregon counties.
    9. **"Juvenile Crime Prevention Services" or "JCP Services"** means services outlined in the Plan and provided under this Agreement to youth who are at high risk for commission of juvenile crime and (a) who have more than one of the following risk factors: anti-social behavior, poor family functioning; failure in school, substance abuse problems, or negative peer association and (b) who are demonstrating at-risk behaviors that have come to the attention of government or community agencies, schools or law enforcement and that will lead to the youth's imminent or increased involvement in the juvenile justice system.
    10. **"OYA"** means the Oregon Youth Authority.
    11. **"Plan"** means the County's High-Risk Juvenile Crime (JCP) Prevention Plan approved by YDC, the provisions of which are incorporated herein by this reference.
    12. **"Service"** for purposes of Juvenile Crime Prevention Program Requirements,

means any JCP Service or group of related services delivered as part of Plan implementation.

13. **"Target Population for Juvenile Crime Prevention Services"** means youth ages 10 to 17 targeted for Juvenile Crime Prevention in the Plan who have more than one of the following risk factors:
  - a. Anti-social behavior;
  - b. Poor family functioning or poor family support;
  - c. Failure in school;
  - d. Substance abuse problems; or
  - e. Negative peer association; andwho are clearly demonstrating at-risk behaviors that have come to the attention government or community agencies, schools, or law enforcement and that will lead to imminent or increased involvement in the juvenile justice system
14. **"YDD"** means the Youth Development Division.
15. **"Budget Distribution"** means document submitted as a Statement of Work that describes the proposed use of monies.
16. **"Lead JCP Agency"** mean an Agency appointed by the Board of County Commissioners for use in supporting the delivery of JCP Services in accordance with the terms and conditions of this Agreement with the County.

II. **GENERAL TERMS AND CONDITIONS.** In addition to the other terms and conditions of this Agreement, County shall comply and, as indicated, require all Providers by contract to comply with the following:

1. **Conditions Precedent to Disbursement.** Agency's obligation to disburse JCP Funds to County under this Agreement is subject to satisfaction , with respect to each disbursement, of each of the following conditions precedent:

- a. County is in compliance with ORS 279B.200, 279B.230 and 279B.235.
- b. Agency has received a written quarterly JCP disbursement request from County on a form designated by Agency.
- c. With respect to each disbursement , Agency has received from County all reports required by Section II(3) of this Exhibit B to be submitted to Agency on or prior to the date of disbursement request.
- d. The JCP disbursement request is received no later than 30 days after the termination of this Agreement

2. **Expenditure/Obligation of Award.** .County may expend the JCP Funds

provided to County under this Agreement solely on Allowable Costs necessarily incurred to provide Services during the term of this Agreement, subject to the following limitations (in addition to any other restrictions or limitations imposed by this Agreement, whether in the applicable Funding Area Descriptions, special conditions identified in the Award, or otherwise):

- a. No more than 10% of the JCP Funds paid under this Agreement to County shall be expended on Administrative Costs and Evaluation Costs. These limits apply in total to all County government organizational units, Providers, and subcontractors. This applies to all JCP disbursements pursuant to this Agreement. County shall record Administrative Costs on forms provided by the Agency
- b. County may expend JCP Funds solely on JCP Services.
- c. County shall maintain previous levels of JCP Services funding for the Target Population or shall not reduce such levels of JCP Services funding by an amount greater than the Target Population's proportional share of reductions of County revenue.

County must transfer all JCP Funds received under this Agreement to its "Lead JCP Agency" appointed by the Board of County Commissioners for use in supporting the delivery of JCP Services in accordance with the terms and conditions of this Agreement.

3. **Reports.** County shall submit to Agency, on forms designated by Agency, the following written reports:
  - a. Youth risk need and interim review information will be required on the Services delivered to youth with JCP Funds at such frequency as may be requested by the Agency.
  - b. During the term of this Agreement, a quarterly written, detailed expenditure report on the County's expenditures of JCP Funds during the prior calendar quarter.
  - c. No later than 30 days after the termination of this Agreement, a written, detailed expenditure report on the County's expenditure of JCP Funds during the 2017-2019 Fiscal Year

### III. JUVENILE CRIME PREVENTION PROGRAM REQUIREMENTS.

#### 1. Plan

##### a. Plan Implementation

County shall implement, or through Providers, shall require to be implemented, the JCP Services and JCP Basic Services portions of the Plan. The County has developed or agrees to develop the JCP Services, JCP Basic Services and Diversion Services portions of the Plan according to guidelines provided by Agency.

**b. Amendment to Plan**

County may request amendment of the Plan by notifying Agency in writing thirty (30) days prior to the submission of such proposed amendment. All amendments to the Plan shall be in a format prescribed by Agency. County must obtain approvals for an amendment that makes any significant change in the Plan. A significant change in the Plan includes but is not limited to any funding change in the categories of services outlined in the Plan. For the purposes of this Section 1.b, Juvenile Crime Prevention Services, Basic Services, and Diversion Services are deemed separate funding sources. County shall follow the following requirements if it desires to change the Plan:

- (i) The Plan cannot be amended to change allocations between Juvenile Crime Prevention Services and Basic Services/Diversion Services.
- (ii) Changes to the JCP budget in the Plan aggregating 10% or greater of the total budget for any of the funding sources must be reviewed and approved by the Agency in writing, prior to the changes taking effect.
- (iii) County shall submit written notification to Agency for any changes to the JCP budget in the Plan aggregating less than 10% of the total budget for any of the funding sources. This notification will be reviewed by Agency. The Agency reserves the right to require that the County notification be reviewed by the YDC for approval prior to the changes taking effect.
- (iv) All amendments to the Plan which comply with this Section shall be on file with Agency and shall become a part of the Plan and this Agreement from its effective date without the necessity of executing a formal amendment to this Agreement. For purposes of this Section, the effective date of a Plan amendment is the date the Plan amendment is approved or notification is received by the Agency.
- (v) In the event Agency increases or decreases the amount of funding in this Agreement pursuant to Exhibit E in an amount aggregating 10% or greater of the total budget for JCP Services, County may amend the Plan in response to the funding change, but only in a manner that is consistent with state law and rules. Such Plan amendment shall be effective no sooner than the effective date of the funding change. No later than five (5) days from its effective date, County must send any Plan amendment to Agency, who must review the amendment within thirty (30) days of its effective date. The Plan must be approved as presented or as agreed upon by the parties no later than sixty (30) days from the effective date.

**2. Cultural Competency.** County shall deliver all Services and require all Providers to deliver Services in a culturally competent and gender appropriate manner.

**3. Grievance System.** During the term of this Agreement, County shall establish and operate a system through which youths receiving Services, and the youths' parents or

guardian, may present grievances about the delivery of the Services. At the time arrangements are made for delivery of Services to a particular youth, County shall advise the youth and the parents or guardian of the youth of the existence of this grievance system.

4. **Outcomes.** County shall target its Juvenile Crime Prevention Services to the Target Population for Juvenile Crime Prevention and shall implement those services with the goal of achieving the following high level outcomes: (i) reduction of juvenile arrest rate in County, (ii) reduction of juvenile recidivism rate in County, and (iii) reduction (or maintenance) in the use of beds at OYA's Close Custody Facilities by youth from County to (or at) a level at or below Discretionary Bed Allocation. The specific targets for high level outcomes are set forth in the Plan. County shall also implement its Juvenile Crime Prevention Services and Basic Services with the goal of achieving the intermediate outcomes identified in the Plan.

#### 5. Evaluation

a. County shall furnish Agency with such data, information and reports, on County's implementation of the Juvenile Crime Prevention Services and expenditure of the funds therefore paid to County hereunder, in such format and at such frequency as may be reasonably requested by Agency or as needed to comply with state or federal laws, regulations, or executive orders. County agrees to and does hereby grant the State the right to reproduce use and disclose all or any part of such data, information or reports furnished under this Agreement.

b. County agrees to produce screening and assessment data as required by the Agency in such form and at such times as Agency may reasonably request.

c. In addition to the other reporting requirements of this Agreement, the County must ensure that all OYA required JJIS data fields are entered into JJIS.

d. If the County does not meet the intermediate outcomes identified in the Plan for Juvenile Crime Prevention Services, Agency shall conduct a performance review of the County's efforts under the Plan in order to identify ways in which the Juvenile Crime Prevention Services portion of the Plan may be improved. If, upon review, Agency determines that there are reasonable grounds to believe that County is not in substantial compliance with the Plan or this Agreement, Agency may notify County regarding the alleged noncompliance and offer technical assistance, which may include peer review or other assistance, to reach such compliance. Nothing in this Section shall be construed to limit or restrict any Agency right arising out of County's default, as described in Exhibit E.

6. **Evidence-Based Programs.** County shall work with Agency to develop a process to ensure that programs and services funded under this Agreement are appropriate and workable and meet the guidelines of evidence-based programs and cost effectiveness as described under SB 267 (2003), ORS 182.515, as applicable. County shall work with Agency to develop a reporting process on County's evidence-based programs and services funded under this Agreement.

7. **Records Maintenance, Access and Confidentiality.** County shall maintain and shall require all Providers by contract to maintain a Client record for each youth that receives a Service.



**EXHIBIT C  
AWARD**

FUNDING AREA	GENERAL FUND	FEDERAL FUNDS	CFDA NUMBER
2. JCP Prevention	<b>\$411,672.00</b>		

**EXPLANATION OF AWARD**

The Award set forth above reflects the maximum amount of financial assistance that Agency will provide to County under this Agreement in support of Activities or Services in the specified Funding Areas.

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

**EXHIBIT D  
SPECIAL TERMS AND CONDITIONS**

1. Special Restrictions on Expenditure of Award. In addition to any other restriction or limitation on County 's expenditure of financial assistance, County may expend financial assistance provided under this Agreement only in accordance with the limitations set forth in the local JCP Plan prepared by County and approved in writing by Agency. County may not expend financial assistance provided under this Agreement in excess or contravention of the foregoing limits.
  
2. Carryover. Notwithstanding Section 1 of Exhibit E, if authorized by Agency in writing in accordance with the local JCP Plan prepared by County and approved in writing by Agency, financial assistance disbursed to County under this Agreement that is not expended at Agreement termination. All financial assistance retained by County in accordance with this section that is not expended within 30 days after the termination of this Agreement shall be deemed Under-expenditure subject to recovery under Section 1 of Exhibit E.
  
3. Reporting. In accordance with the local JCP Plan prepared by County and approved in writing by Agency, County shall submit such fiscal and activity reports to Agency on the Activities and Services funded with financial assistance provided under this Agreement, as Agency may reasonably request from time to time.

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

**EXHIBIT E**  
**ADDITIONAL TERMS AND CONDITIONS**

**1. Disbursement, Use and Recovery of Award.**

- a. **Disbursement and Use Generally.** Subject to the conditions precedent set forth below, Agency shall disburse the financial assistance described in the Award to County in accordance with the local JCP Plan prepared by County and approved in writing by Agency on an expense reimbursement basis or, at Agency's discretion, in periodic proportional allotments. The mere disbursement of financial assistance to County does not vest in County any right to retain those funds. Disbursements not provided on an expense reimbursement basis are considered an advance of funds to County which County may retain only (i) if properly expended, in accordance with terms and conditions of this Agreement, prior to the termination of this Agreement or (ii) if otherwise authorized in writing by Agency pursuant to this Agreement. County shall use disbursed financial assistance for the purposes allowed in this Agreement. County shall not be obligated to provide a level of Activities or Services in Funding Areas beyond the financial assistance provided by Agency.
- b. **Conditions Precedent to Disbursement.** Agency's obligation to disburse financial assistance to County under this Agreement is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
- (i) Agency has received sufficient funding, appropriations and other expenditure authorizations to allow Agency, in the exercise of its reasonable administrative discretion, to make the disbursement.
  - (ii) No default as described in Section 11 of this Agreement or in Section 9 of this Exhibit E has occurred.
  - (iii) County's representations and warranties set forth in Section 2 of this Exhibit are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
  - (iv) All other conditions to disbursement set forth in this Agreement have been satisfied.
- c. **Recovery of Award.**
- (i) **Notice of Underexpenditure or Misexpenditure.** In the event of Underexpenditure or a Misexpenditure (each as defined below) of any moneys disbursed to County under this Agreement, Agency and County shall engage in the process described in this Section 1.c to determine the appropriate amount that Agency may recover from County, and the appropriate method for implementing such recovery. For purposes of this Section 1.c, an "Underexpenditure" means money disbursed to County by Agency under this Agreement that has not been expended by County at Agreement termination,

other than money, if any, that County is expressly permitted to retain and expend in the future under other provisions of this Agreement, and "Misexpenditure" means money disbursed to County by Agency under this Agreement and expended by County that:

- (a) Is identified by the federal government as expended contrary to applicable statutes, rules, OMB Circulars or any other authority that governs the permissible expenditure of such money, for which the federal government has requested reimbursement by the State of Oregon; or
- (b) Is identified by the State of Oregon or Agency as expended in a manner other than that permitted by this Agreement, including without limitation, any money expended by County, contrary to applicable statutes, rules, OMB Circulars or any other authority that governs the permissible expenditure of such money; or
- (c) Is identified by the State of Oregon or Agency as expended on an Activity that did not meet the standards and requirements of this Agreement with respect to that Funding Area.
- (d) The term "Misexpenditure" does not include any County payments or expenditures that are:
  - (A) Made pursuant to Oregon Administrative Rules;
  - (B) Made with Agency's written discretion or approval; or
  - (C) Consistent with the local plans submitted by County and approved by the Agency.
- (e) If County payments or expenditures are later determined to be impermissible due to a subsequent modification or applicable statutes, federal rules, OMB Circulars or any other authority not listed in Section 1.c (i) (d) above that governs the expenditures of such monies by County, the parties agree to meet and negotiate in good faith an appropriate apportionment of responsibility for the repayment of the impermissible payments.

In the event of Underexpenditure or Misexpenditure, Agency shall provide to County notice thereof.

- (ii) **County's Response.** From the date of County's receipt of the notice of Underexpenditure or Misexpenditure, County shall have the lesser of (i) 30 calendar days, or (ii) if an Underexpenditure or Misexpenditure relates to a federal government request for reimbursement, 30 calendar days fewer than the number of days (if any) the Agency has to appeal a final written decision from the federal government, to either:
  - (a) Make a payment to the Agency in the full amount of the Underexpenditure or Misexpenditure identified by the Agency; or

- (b) Notify the Agency that County wishes to repay the amount of the Underexpenditure or Misexpenditure from future payments pursuant to Section 1.c(iv) below; or
- (c) Notify the Agency that it wishes to engage in the applicable appeal process set forth in Section 1.c (iii) below.

The Agency shall not require County to perform additional services to be paid from the Underexpenditure. If County fails to respond within the time required under Section 1.c (ii) above, Agency may recover the amount of the Underexpenditure or Misexpenditure from future payments as set forth in Section 1.c(iv) below.

- (iii) **Appeals Process.** If County notifies Agency that it wishes to engage in an appeal process with respect to a noticed Underexpenditure or Misexpenditure, the parties shall comply with the following procedures, as applicable:

- (a) **Appeal from Agency-Identified Underexpenditure or Misexpenditure.**

If the Agency's notice of Underexpenditure or Misexpenditure is based on an Underexpenditure or Misexpenditure other than a Misexpenditure of the type identified in Section 1.c(i)(a) above, County and the Agency shall engage in non-binding discussions to give the County an opportunity to present reasons why it believes that there is, in fact, no Underexpenditure or Misexpenditure or that the amount of the Underexpenditure or Misexpenditure is different than the amount identified by the Agency, and to give the Agency the opportunity to reconsider its notice based on such presentation and discussion. County and Agency may negotiate an appropriate apportionment of responsibility for the repayment of an Underexpenditure or Misexpenditure. In determining an appropriate apportionment of responsibility, County and Agency may consider any relevant factors. An example of a relevant factor is the extent to which either party contributed to an interpretation of a statute, regulation or rule prior to the expenditure that was officially reinterpreted after the expenditure. If after such discussions Agency and County disagree as to whether or not there has been an Underexpenditure or Misexpenditure or to the amount thereof, "the parties may agree to consider further appropriate dispute resolution processes, including, subject to Department of Justice and County Counsel approval, arbitration. If Agency and County reach agreement on the amount owed to Agency, County shall promptly repay that amount to Agency by issuing payment to Agency or by directing Agency to withhold future payments pursuant to 1.c.(iv) below. However, the parties shall not violate federal or state statutes, administrative rules, other applicable authority, or this Agreement in selecting the method or amount of repayment. If the parties are unable to reach agreement within a reasonable period of time, Agency may employ other remedies available under this Agreement or otherwise available at law or in equity.

- (iv) **Recovery From Future Payments.** To the extent that Agency is entitled to recover an Underexpenditure or Misexpenditure from future payments as permitted in this Section 1.c, Agency may recover the Underexpenditure or Misexpenditure by offsetting the amount thereof against future amounts owed to County by Agency. Agency shall provide County written notice of its intent to

recover the amount of the Underexpenditure or Misexpenditure from amounts owed County by Agency as set forth in this Section 1.c(iv), and shall identify the amounts owed by Agency which the Agency intends to offset (including the Agreement or Agreements, if any, under which the amounts owed arose). County shall then have 14 calendar days from the date of Agency's notice in which to request the deduction be made from other amounts owed to County by Agency and identified by County. Agency shall comply with County's request for alternate offset; unless the County's proposed alternative offset would cause the Agency to violate federal or state statutes, administrative rules or other applicable authority. In the event that Agency and County are unable to agree on which specific amounts owed to County by Agency the Agency may offset in order to recover the amount of the Underexpenditure or Misexpenditure, then the Agency may select the particular amounts from which it will recover the amount of the Underexpenditure or Misexpenditure, within the following limitations: Agency shall first look to amounts owed to County (but unpaid) under this Agreement. If that amount is insufficient, then Agency may look to any other amounts currently owing or owed in the future to County by Agency. In no case, without the prior consent of County, shall the Agency deduct from any one payment due County under the Agreement or agreement from which Agency is offsetting funds an amount in excess of twenty-five percent (25%) of that payment. The Agency may look to as many future payments as necessary in order to fully recover the amount of the Underexpenditure or Misexpenditure. Consistent with Section 1.c.(v)(d), nothing in this Section 1.c.(iv) shall cause County to violate state or federal constitutions, statutes, regulations, rules or other applicable state or federal authority.

- (v) **Additional Provisions related to parties rights/obligations with respect to Underexpenditures or Misexpenditures.**
- (a) Agency's right to recover Underexpenditures and Misexpenditures from County under this Agreement is not subject to or conditioned on County's recovery of any money from any other entity.
  - (b) If the exercise of the Agency's right to offset under this provision requires the County to complete a re-budgeting process, nothing in this provision shall be construed to prevent the County from fully complying with its budgeting procedures and obligations, or from implementing decisions resulting from those procedures and obligations.
  - (c) Nothing in this provision shall be construed as a requirement or agreement by the County to negotiate and execute any future Agreement with the Agency.
  - (d) Nothing in this Agreement shall require County or Agency to act in violation of state or federal law or the Constitution of the State of Oregon.
  - (e) Nothing in this Section 1.c shall be construed as a waiver by either party of any process or remedy that might otherwise be available.

- (vi) **Modification of Award.** In the event of a modification in the amount of the Award pursuant to the terms of this Agreement, Agency shall provide written notice of such modification to County and provide County with a modified Award. After such notice, County shall not expend previously disbursed Award moneys in excess of the modified Award. County shall return any remaining disbursed funds in excess of the modified Award to the Agency within 30 calendar days of the noticed modification.

2. **County Representations.** County represents to Agency as follows:

- a. **Organization and Authority.** County is a political subdivision of the State of Oregon duly organized and validly existing under the laws of the State of Oregon. County has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.
- b. **Due Authorization.** The making and performance by County of this Agreement (1) have been duly authorized by all necessary action of County and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of County's charter or other organizational document and (3) 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 County is a party or by which County or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by County of this Agreement.
- c. **Binding Obligation.** This Agreement has been duly executed and delivered by County and constitutes a legal, valid and binding obligation of County, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- d. **Accuracy of Information.** The statements made in and the information provided in connection with any applications, requests or submissions to Agency hereunder or in connection with the financial assistance provided to County hereunder are true and accurate in all materials respects.
- e. **Activities or Services.** The performance of each Activity will comply with the terms and conditions of this Agreement and meet the standards for such Activity as set forth herein, including but not limited to, any terms, conditions, standards and requirements set forth in the Award and applicable Funding Area Description.
- f. **Cumulative Representations and Warranties.** The representations set forth in this Section are in addition to, and not in lieu of, any other representations or warranties set forth in this Agreement or implied by law.

3. **Agency Representations.** Agency represents to County as follows:

- a. **Organization and Authority.** Agency has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.





such subcontractors shall also be considered Providers for purposes of this Agreement. County shall not permit any person or entity to be a Provider unless the person or entity holds all licenses, certificates, authorizations and other approvals required by applicable law to deliver the services. The Provider Agreement must be in writing and contain each of the provisions that must be included in a Provider Agreement under the terms of this Agreement or in order to permit County to comply with its obligations under this Agreement with respect to the Activities conducted by the Provider. County shall maintain an originally executed copy of each Provider Agreement at its office and shall furnish a copy of any Provider Agreement to Agency upon request.

7. **Provider Monitoring.** County shall monitor the use by Providers of .all Award funds distributed to such Providers. County shall advise all Providers of the requirements applicable to them and to the use of Award funds under this Agreement, state and federal laws, state and federal regulations, the provisions of other applicable contracts and any supplemental requirements imposed by the County. County shall require by contract that Providers comply with such requirements and satisfy Plan and other program goals related to their Award financing. County shall monitor relevant activities of Providers to ensure that Award funds are used for authorized purposes in compliance with such requirements and to determine whether Plan and other performance goals are being achieved. If findings/recommendations occur from such audits, or from other audits or other County monitoring with respect to Award funds, County shall issue management decisions to relevant Providers within 30 calendar days after receipt of such audit reports or generation of monitoring findings/recommendations and shall ensure that Providers take appropriate and timely corrective action. County also shall provide copies of such audit and monitoring findings/recommendations and of corresponding County management decisions to the Agency within thirty (30) days of County's deadline herein for issuing its respective management decision.
8. **Records Maintenance, Access and Confidentiality.**
  - a. **Access to Records and Facilities.** The Agency, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers and records of the County and all Providers that are directly related to this Agreement, the financial assistance provided hereunder, or any Activity for the purpose of making audits, examinations, excerpts, copies and transcriptions: County shall include this provision in all Provider Agreements and require all Providers to include this provision in all subcontracts. In addition, County shall permit, and require all Providers by contract to permit, authorized representatives of Agency to perform site reviews of all Activities of County or of Provider.
  - b. **Retention of Records.** County shall retain and keep accessible and require all Providers by contract to retain and keep accessible all books, documents, papers, and records, that are directly related to this Agreement, the financial assistance provided hereunder or any Activity, for a minimum of three (3) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the termination of this Agreement. If there are unresolved audit or other questions at the end of the three-year period, County shall retain the records until the questions are resolved.
  - c. **Expenditure Records.** County shall document and require all Providers by contract to document the expenditure of all financial assistance paid by Agency under this Agreement. Unless applicable federal law requires County or a Provider to utilize a different accounting system, County shall create and maintain and require all Providers

by contract to create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit Agency to verify how the financial assistance paid by Agency under this Agreement was expended.

**d. Confidentiality of Client Information.**

- (i) All information as to personal facts and circumstances obtained by the Contractor on the client shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of the client, the responsible parent of a minor child, or his or her guardian except as required by other terms of this Contract. Nothing prohibits the disclosure of information in summaries, statistical, or other form, which does not identify particular individuals.
- (ii) The use or disclosure of information concerning clients shall be limited to persons directly connected with the administration of this Contract. Confidentiality policies shall be applied to all requests from outside sources.
- (iii) Agency, Contractor and any subcontractor will share information as necessary to effectively serve Agency clients.

**9. County Default.** In addition to the default provisions described in Section 11 of this Agreement (“County Default”), County shall be in default under this Agreement upon the occurrence of any of the following events:

- a. County fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein, including but not limited to, County's failure to comply with the Plan;
- b. Any representation, warranty or statement made by County herein or in any documents or reports relied upon by Agency to measure County performance hereunder, including without limitation, the conduct of Activities and or delivery of Services, the expenditure of financial assistance or the performance by County, is untrue in any material respect when made;
- c. County (i) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or 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) is adjudicated a bankrupt or insolvent, (v) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, 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 Bankruptcy Code, or (viii) takes any action for the purpose of effecting any of the foregoing; or
- d. A proceeding or case is commenced, without the application or consent of County, in any court of competent jurisdiction, seeking (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of County, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of County or of all or any substantial part of its assets, or (iii) similar relief in respect to County under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such

proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against County is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

10. **Agency Default.** In addition to the default provisions described in Section 12 of this Agreement (“Agency Default”), Agency shall be in default under this Agreement upon the occurrence of any of the following events:

- a. Agency fails to perform, observe or discharge any of its covenants, agreements, or obligations set forth herein; or
- b. Any representation, warranty or statement made by Agency herein or in any documents or reports made in connection herewith reasonably relied upon by County to measure performance by Agency is untrue in any material respect when made.

11. **Termination.**

a. **County Termination.** County may terminate this Agreement in its entirety or may terminate its obligation to conduct Activities or provide Services in a particular Funding Area described in the Award:

- (i) At its sole discretion upon 30 days advance written notice to Agency, or
- (ii) Upon 30 days advance written notice to Agency, if Agency is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as County may specify in the notice; or
- (iii) Upon 30 days advance written notice to Agency, if County does not obtain funding, appropriations and other expenditure authorizations from County's governing body, federal, state or other sources sufficient to permit County to satisfy its performance obligations under this Agreement, as determined by County in reasonable exercise of its administrative discretion; or
- (iv) Immediately upon written notice to Agency, if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that County no longer has the authority to meet its obligations under this Agreement.

b. **Agency Termination.** Agency may terminate this Agreement in its entirety or may terminate its obligation to provide financial assistance under this Agreement for a particular Funding Area described in the Award:

- (i) Upon 30 days advance written notice to County, if Agency determines, in its sole discretion, to end all or any portion of the financial assistance to County under this Agreement; or
- (ii) Upon 30 days advance notice to County, if Agency does not obtain funding, appropriations and other expenditure authorizations from federal, state or other sources sufficient to meet the payment obligations of Agency under this Agreement, as determined by Agency in the reasonable exercise of its

administrative discretion. Notwithstanding the preceding sentence, the Agency may terminate immediately upon written notice to County or at such other times as it may determine if action by the federal government, the Oregon Legislative Assembly or the Emergency Board reduces funding to be provided by Agency under this Agreement or the Agency's legislative authorization and the effective date for such reduction is less than 30 days from the date the action is taken.

- (iii) Immediately upon written notice to County if state or federal laws, regulations or guidelines are modified, changed or interpreted in such a way that the Agency does not have the authority to provide financial assistance for one or more Funding Areas or no longer has the authority to provide the financial assistance from the funding source it had planned to use.
- (iv) Upon 30 days advance written notice to County, if County is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as Agency may specify in the notice.
- (v) Immediately upon written notice to County, if any license or certificate required by law or regulation to be held by County or a Provider to conduct an Activity and or deliver a Service is for any reason denied, revoked, suspended, not renewed or changed in such a way that County or a Provider no longer meets requirements to conduct that Activity and or deliver the Service. This termination right may only be exercised with respect to the Funding Area impacted by loss of necessary licensure or certification.
- (vi) Immediately upon written notice to County, if Agency determines that County or any of its Providers have endangered or are endangering the health or safety of individuals.

## 12. Effect of Termination

- a. **Generally.** If Agency disbursements of financial assistance under this Agreement for a particular Funding Area are reduced under Section 1(a) and 1(b)(i) of Exhibit E, or as a result of Agency's exercise of its rights under this Exhibit E, or as a result of an amendment to this Agreement reducing the amount of financial assistance awarded for that Funding Area, County is not required by this Agreement to utilize other County funds to replace the funds no longer received under this Agreement as a result of the disbursement reduction. Furthermore, County may, from and after the date of a disbursement reduction described in the preceding sentence, reduce or eliminate the quantity of Activities within that Funding Area commensurate with the size of the disbursement reduction for that Funding Area. Nothing in this Section 12(a) shall affect the County's obligations under this Agreement with respect to financial assistance actually received by County under this Agreement or with respect to Activities actually performed.
- b. **Entire Agreement.** Upon termination of this Agreement in its entirety, Agency shall have no further obligation to pay or disburse financial assistance to County under this Agreement, whether or not Agency has paid or disbursed to County all financial assistance described in the Award. Notwithstanding the foregoing, Agency shall make payments to reimburse County for services provided prior to the effective date of

termination where such services are authorized pursuant to this Agreement and are not disputed by Agency. County shall have no further obligation to perform activities or services under this Agreement after termination in its entirety except to provide information as required under this Agreement and to cooperate with Agency with respect to the enforcement of surviving rights and obligations under Subsection 12d.

- c. **Award for Individual Funding Area.** Upon termination of Agency's obligation to provide financial assistance under this Agreement for a particular Funding Area, Agency shall have no further obligation to pay or disburse any financial assistance to County under this Agreement for that Funding Area, whether or not Agency has paid or disbursed to County all financial assistance described in the Award for that Funding Area. Notwithstanding the foregoing, Agency shall make payments to reimburse County for services provided prior to the effective date of termination where such services are authorized pursuant to this Agreement and are not disputed by Agency. County shall have no further obligation to perform services or activities under this Agreement within a particular Funding Area if Agency's obligation to provide financial assistance for that particular Funding Area has been terminated except to provide information as required under this Agreement and to cooperate with Agency with respect to the enforcement of surviving rights and obligations under Subsection 12d.
- d. **Survival.** Notwithstanding Subsection a. through c. above, termination of this Agreement shall not extinguish or prejudice Agency's right to enforce this Agreement in accordance with its terms with respect to financial assistance disbursed to County under this Agreement, or Activities conducted or Services performed, prior to the termination. Specifically, but without limiting the generality of the preceding sentence, termination of this Agreement shall not affect Agency's right to recover from County, in accordance with the terms of this Agreement, any financial assistance disbursed to County that is identified as an Underexpenditure or Misexpenditure. Termination of this Agreement, in whole or in part, shall not affect County's right to receive financial assistance to which it is entitled, as described above in Subsections a. through c. If a termination right set forth in this Exhibit E is exercised, both parties shall make reasonable good faith efforts to minimize unnecessary disruption or other problems associated with the termination.

13. **Modification of Award.** If the Oregon Legislative Assembly, Legislative Emergency Board or Oregon Department of Administrative Services increases or decreases the amount of money appropriated, authorized or allotted to Agency for implementation of the Services described in this Agreement, Agency shall provide written notice of such a change to County. The parties shall negotiate an agreement to adjust County's levels of service in a commensurate amount and in proportion to the increase or decrease in the appropriation, authorization or allotment to the Agency. As appropriate, the parties shall execute an amendment to this Agreement reflecting the increase or decrease in the Award and adjustment in levels of service. Nothing in this section shall limit or restrict Agency's rights under this Agreement to suspend disbursement of financial assistance or to terminate this Agreement (or portion thereof as provided in this Exhibit E) as a result of a reduction in appropriations or allotments. This Section is not applicable to any funding change that requires a different or new service to be provided. Further, all parties agree that County may reduce, adjust or terminate levels of service commensurate with the amount of any reduction of money appropriated for implementation of the Plan, in accordance with Exhibit E, Section 1(b)(v) of this Agreement. In response to a funding change pursuant to this Section 11 of the Agreement, County shall submit a new Service Plan to Agency for approval in a format and timeline prescribed by Agency. Such Service Plan shall be effective no sooner than the effective date of the funding change.

14. **Resolution of Disputes over Additional Financial Assistance Claimed by County.** If after termination of this Agreement, County believes that Agency disbursements of financial assistance under this Agreement for a particular Funding Area are less than the amount of financial assistance that Agency is obligated to provide to County under this Agreement for that Funding Area, as determined in accordance with applicable financial assistance calculation methodology, County shall provide Agency with written notice thereof. Agency shall have 30 calendar days from the effective date of County's notice to pay County in full or notify County that it wishes to engage in a dispute resolution process. If Agency notifies County that it wishes to engage in a dispute resolution process, County and Agency's Assistant Administrator shall engage in non-binding discussion to give Agency an opportunity to present reasons why it believes that it does not owe County any additional financial assistance or that the amount owed is different than the amount identified by County in its notices, and to give County the opportunity to reconsider its notice. If Agency and County reach agreement on the additional amount owed to County, Agency shall promptly pay that amount to County. If Agency and County continue to disagree as to the amount owed, the parties may agree to consider further appropriate dispute resolution processes, including, subject to Department of Justice and County Counsel approval, non-binding arbitration. Nothing in this Section shall preclude the County from raising underpayment concerns at any time prior to termination of this Agreement under Section 15 below.
  
15. **Resolution of Disputes, Generally.** In addition to other processes to resolve disputes provided in this Exhibit, either party may notify the other party that it wishes to engage in a dispute resolution process. Upon such notification, the parties shall engage in non-binding discussion to resolve the dispute. If the parties do not reach agreement as a result of non-binding discussion, the parties may agree to consider further appropriate dispute resolution processes, including, subject to Department of Justice and County Counsel approval, binding arbitration. The rights and remedies set forth in this Agreement are not intended to be exhaustive and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies available under this Agreement or otherwise available at law or in equity.

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## Exhibit F Approved Budget Distribution - JCP Plan

Clackamas County  
Juvenile Crime Prevention Plan Update  
2017-2019

### 1. POSITIVE YOUTH DEVELOPMENT APPROACH AND PROGRAMMING

#### Clackamas County City Diversion Panels

The development of the Clackamas County City Diversion Panel was based on a restorative justice model, and internationally recognized and utilized framework that guides how a community might respond to harm, discipline or crime with a focus on meeting the needs of everyone impacted through processes that emphasize responsibility, relationships, and respect. Restorative Justice also has the underlying assumptions that community has a crucial role to play in our response to juvenile delinquency, and that holding youth accountable in their own community provides the youth an opportunity to make logical cause and effect associations about actions and consequences.

In July of 2002, the Clackamas County Juvenile Department officially began the City Diversion Panel Project. Several forces came together which led to their creation. One important development coming forward was a funding source. A State Juvenile Crime Prevention initiative was implemented and as a result, each participating County received State money to prevent juvenile crime. Secondly, research had recently been released which indicated “low risk” offenders should be held accountable for their behavior but the consequence should be quick, appropriate and not excessive. Thirdly, some cities felt more could be done to hold juvenile offenders accountable and were asking for an opportunity to work with juvenile offenders who live in their communities. Lastly, the Juvenile Department knew that 80% of juvenile crime is committed by 8% of the offenders. The Juvenile Department was anxious to identify these “High Risk” offenders and focus the bulk of its attention on having a serious impact on juvenile crime. Hence, the creation of the City Diversion Panels allowed the Cities to be involved with its low risk offenders; they allowed more juveniles to be held accountable and they provided an opportunity for the Juvenile Department to focus its attention on “High Risk” juvenile offenders.

In July of 2002, Canby, Gladstone, Lake Oswego, Milwaukie, Molalla, Oregon City, Sandy, West Linn and Wilsonville began their City Diversion Panels. Estacada came on board in January of 2003. In January 2008, Happy Valley developed their City Diversion Panel; they also serve Clackamas youth. In early 2009 a Latino Diversion Panel was established in Milwaukie and Canby to better serve monolingual families in Clackamas County.

In July of 2014, the Juvenile Department initiated a community-driven process in Happy Valley and Canby to re-imagine their diversion programs with a primary focus being to expand community involvement and strengthen their alignment with restorative justice values and principles, the original guiding framework for City Diversion. These two Diversion Programs are now operating as pilots to establish a foundation of operating principles for which the other Panels may follow.

The youth referred to Diversion Panels are typically first time offenders who were involved in violations like possession of alcohol or marijuana and misdemeanors such as criminal mischief or theft. Youth face a panel of volunteer community members who decide upon an appropriate consequence. On average, each City Diversion Panel serves 25 youth each year, totaling about 205 youth annually.

Today each city has a Diversion Panel Coordinator who coordinates panel activities and is employed by a local nonprofit. The Juvenile Department has a liaison staff person who facilitates communication and trainings.

**Youth Program Quality Principles:**

Our two contracted non-profit partners that are administering the local diversion panel programs are Parrott Creek Family Service and Todos Juntos.

Todos Juntos has been active in serving youth exclusively in Clackamas County for over 14 years. Todos Juntos' policies and program delivery are non-discriminatory: though Todos Juntos expertise can target the Hispanic community, many Anglo and other cultural groups are represented in their services. One-fourth of the 40+ Todos Juntos staff are Hispanic and fully bi-lingual. Staff are required to participate in culturally appropriate service and assessment trainings. Todos Juntos facilitators are from participants' own culture, giving them the capacity to facilitate monolingual Spanish speakers and assist in their community adjustment. By offering these programs in Spanish by bilingual and bicultural staff from the youth's own cultural community, they connect students to history and to personal and community identity.

Parrott Creek Family Services has served over 25,000 youth and families since their program began in 1968. Their services help participants learn to recognize and acknowledge how disruptive patterns hurt themselves and others. They leave their programs with the concrete skills to control and change impulsive negative behaviors, ultimately helping them reach their full potential. Parrott Creek works with both the youth and their family to address these issues and help them build the skills and trust they need to get back on the right path to success.

Their programs are built to support the whole family—including parents, siblings, grandparents, or any other significant individuals involved in the family dynamic.

**2. JUVENILE CRIME PREVENTION RISK ASSESSMENT TOOL**

Northwest Professional Consortium (NPC) Research is developing a Juvenile Crime Prevention Risk Assessment "quick screening" tool to identify youth who have risk factors that are most predictive for criminal reoffending in Clackamas County. It is anticipated this tool will be used by the Clackamas County Juvenile Department (CCJD) employees assigned to work in the Juvenile Intake and Assessment Center, as well as by providers that CCJD contracts with to provide services to youth in the community. NPC will train CCJD staff and non-profit Diversion Panel Coordinators how to use the "quick screen" tool.



All youth brought to the Clackamas County Juvenile Department's Intake and Assessment Center by law enforcement officers are input into the JJIS database, which makes an initial determination of risk and protective factors. Additional assessments of youth include a mental health screen, and appraisals of threat of harm to community and to self. Based upon these evaluations, youth are then referred to the appropriate programs and services.

Youth determined through this initial screening process to be in need of the lowest level of services are referred to the JCP Prevention-funded, community-based Diversion programs. Clackamas County uses the JCP risk screen to confirm the eligibility of referred youth and they are admitted to JCP programming in accordance with criteria established by the State Juvenile Crime Prevention Advisory Committee and Oregon statute (ORS 417.855). They must have more than one of the following risk factors: antisocial behavior, poor family functioning or poor family support, school failure, substance abuse, or negative peer association.

In addition to having at least two risk factors, they must also be clearly demonstrating at-risk behaviors that have come to the attention of government or community agencies, schools, or law enforcement and, if left unaddressed, these behaviors will lead to imminent or increased involvement in the juvenile justice system. Youth referred for JCP funded services are 10-18 years.

### 3. Planning Process

Clackamas County's intention is to fund the Local Intervention Programs (City Diversion Panels) to address juvenile crime prevention. This was one of the strategies originally defined in the 2011-2013 Plan and updated for the 2013-2015 and 2015-2017 biennium.

Clackamas County Positive Youth Development Collective, which guides policy and decision-making on youth-related issues include:

- Mary Rumbaugh/Clackamas County Behavioral Health Division
- Rodney Cook/Clackamas County Children, Youth & Families Division
- Dawn Emerick/ Clackamas County Public Health and Health Centers
- State DHS – District 15 (Director vacant, to be filled)
- Christina L. McMahan/Clackamas County Juvenile Department
- Bryan Fuentes, Clackamas Workforce Partnership
- Molly Aleshire/CTEC Youth Services
- Rose Fuller/Northwest Family Services
- Lennie Bjornsen/Gladstone SD
- Patty McMillan/Clackamas County Safe Communities
- Lana Shotwell/Trillium Family Services
- John Duke/Outside In.

The proposed plan addresses the needs of “priority” and “opportunity” youth 10-18 years with misdemeanor charges or that have otherwise come to the attention of law enforcement through the following community- based programs:

School and related outcomes tracked for JCP funded programming include number of referrals, youth served, number that successfully complete, number of hours worked, number of youth served in cognitive skills classes, dollars earned to re-pay victims and number of community service events and hours.

The decision to continue funding these programs is based upon the results – outcomes for youth involved in Clackamas County’s system have continued to improve over time and state data shows that, Clackamas County has the third largest juvenile population among Oregon counties, and a recidivism rate 23.7%. Clackamas County is always striving towards communication, collaboration, and partnership between the County and local agencies and organizations. This teamwork increases the wraparound for youth and families in need and keeps them engaged using strengths-based principles.

Diversion Panels had 205 dispositional agreements and 96.7% of youth participants successfully completed the program in 2015-16. The recidivism rate for diversion was 7.5%. Diversion Panels served 245 youth in 2016; 101 female, 144 male youth. Of youth served 6 were 12 or younger, 102 were ages 13-15, and 137 youth were 16 and older. In 2016 Diversion Panels included five African American youth, 6 Asian youth, 23 Hispanic youth, 1 Native American youth, 1 other youth, and 209 White youth.

#### 4. Relation to Local Data on Disproportionate Minority Contact (DMC)

Current Relative Rate Index data continue to confirm that the diversion alternatives created for Latino youth has eliminated the disparity for this population in terms of “cases diverted”. Equitable access in service delivery for Latino youth has been sustained by incorporating bi-lingual/bi-cultural service provision into contract requirements and through the creation of bi-lingual/bi-cultural Diversion Panels. See attached (1) New JJIS Racial and Ethnic Disparity Report.

#### 5. Population to be Served

The proposed plan addresses the needs of “priority” and “opportunity” youth 10-18 years with misdemeanor charges or that have otherwise come to the attention of law enforcement (exceptions are made for children younger than 10 years whose older siblings are involved in the system). Generally, they are first-time offenders charged with criminal mischief, property offenses, theft, and/or possession of alcohol.

JPC programming typically serves Clackamas County youth as follows: African American 2.0%; Asian 5.8%; Caucasian 77.9%; Latino 13.5% and Native American 0.9%. All youth brought to the Clackamas County Juvenile Department’s Intake and Assessment Center by law enforcement officers are input into the JJIS database, which makes an initial determination of risk and protective factors. Additional assessments of youth include a mental health screen, and appraisals of threat of harm to community

and to self. Based upon these evaluations, youth are then referred to the appropriate programs and services. Youth are reassessed every 6 months and at case closure.

## 6. JCP Strategies and Outcomes

City Diversion Panels operate in eleven cities. The panels are based upon evidence-based adolescent diversion models endorsed by the Office of Juvenile Justice and Delinquency Prevention. Panel members are residents/citizens in each community, who assign community service that corresponds to each youth's offense. Diversion panels serve at-risk youth (age 10-18 years) with misdemeanor charges who have at least two risk factors as identified using the JCP Risk Assessment tool. Diversion has an "effective" and "promising" rating on the OJJDP Model Programs Guide.

JCP programming performance evaluation aligns with the High Risk Juvenile Crime Prevention Performance Measures Policy outlined in Appendix H of the JCP guidelines document. Youth demographic and performance data is tracked in the JCP Data Manager and/or JJIS. Performance measures tracked include:

- Comparison of number and percent of first referrals for youth not previously referred to the juvenile justice system; and comparison of the number and percent of youth who have a subsequent referral to the juvenile justice system (recidivism)
- Client and program level outcome measures collected by programs through initial JCP Assessments

### Output information:

- Number of active cases carried over from the previous reporting period
- Number of new youth enrolled during the reporting period
- Number of youth ending service during the reporting period
- Total number of youth served in the reporting period (number carried over from the previous period combined with the number of youth enrolled)
- Number of active cases at the end of the reporting period

### Descriptive information:

- Risk profiles of youth enrolled during the reporting period
- Demographic data - age ranges, gender, and race/ethnicity

See attached (2) 2015 Diversion Panel Reports.

## 7. Evidence Based Practice and Cultural Appropriateness

In an effort to address disproportionate minority contact by the Juvenile Justice System, two Latino-specific Diversion Panels were created and continue to operate in the City of Canby and City of Milwaukie. This provides a more culturally relevant diversion option to keep low-risk Latino youth out of

the Juvenile Justice System. Two Regional Diversion Panels served 24 Latino Youth in 2015. These youth completed 111 hours of restorative community service work.

Cited below are some of the research articles which align with our program:

Butts, Jeffrey A., et al. 2002. *The Impact of Teen Court on Young Offenders*. Washington DC: The Urban Institute.

Collins, Joy, et al. 2013. *Statewide Evaluation of the DCJ Juvenile Diversion Program*. Colorado: OMNI Institute.

Unknown Author. 2011. *Juvenile Diversion Guidebook: Prepared by the Models for Change Juvenile Diversion Workgroup*. Washington DC: Models for Change.

Schneider, Anne L. 1986. *Restitution and Recidivism Rates of Juvenile Offenders: Results from Four Experimental Studies*. *Criminology*. 24(3): 533-553.

#### 8. Relation to the Continuum of Services

CCJD also partners with local police departments, the County Sheriff's office, and non-profit agencies to provide the most appropriate services to youth based upon their presenting behaviors and risk factors. These services are structured according to a system of graduated sanctions includes several service areas:

- Prevention Services include local Diversion Panels
- Basic Services comprised of local Diversion Panels, Detention Services, and Shelter Care
- Diversion Services include Detention and Shelter Care

An important component of CCJD services is the Intake and Assessment Center (IAC), which is the result of a collaborative effort with the Clackamas County Sheriff's Office. The IAC is open 24 hours a day, 7 days per week and is the point of entry for all youth who are taken into custody by police. Youth who present with misdemeanor and higher level offenses receive a number of assessments at IAC to determine if there is a prior juvenile record, a history of child abuse/neglect, drug and/or alcohol problems or mental health issues, and if the youth are a threat to the community or to themselves. The services administered by the IAC facilitate referral of youth to appropriate programs and services.

Level 1 (lowest level) offenders are referred to JCP funded Diversion Panels in their own communities, which are comprised of volunteer community members who decide how the youth will be held accountable for their actions based upon their offense and personal circumstances. Typical consequences might include completion of a written essay, participation in counseling,

attending drug and alcohol education program, attending a victim impact panel, completing specified hours of community services, or combinations of these.

Level 2 youth present with misdemeanor offenses and are put on a Formal Accountability Agreement (FAA) for a period of 3-6 months. Youth at this level and higher are fingerprinted and photographed.

Level 3 offenders are referred to Juvenile Court Counselors, who hold them accountable through FAAs. Informal sanctions and wrap-around services are emphasized.

Level 4 youth present with felony charges. Court mandated sanctions and targeted treatment interventions are typical at this level.

Specialized services offered through the CCJD include sex offender treatment, MIP/DUII counseling, Juvenile Drug Court, Cognitive Skills training, mental health services, and Victim Offender mediation. Additionally, CCJD provides Hispanic youth and their families with language-specific information about its systems and processes and employs two bi-cultural and bi-lingual counselors that serve Hispanic youth referred to the department. Interpreters are available to accompany youth and families with limited English language skills to court and to appointments with lawyers. As a result of recently implemented services to address racial and ethnic disproportion, diversion panel services are now available to Spanish-speaking youth and their families.

Youth in need of services and treatment beyond that which is provided by CCJD are referred to the Oregon Youth Authority. At this point in the continuum, they are placed in out-of-home care situations, which include foster care, secure residential and correctional facilities.

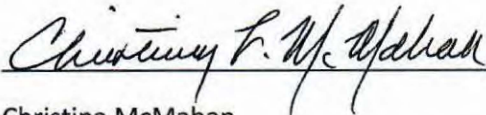
See Attachment (3) JCP table

## 9. Budget

The Prevention budget is allocated as follows:

JCP FUNDED SERVICES	BUDGET FY 17/18		BUDGET FY 18/19	
Local Intervention Programs (City Diversion Panels)	\$156,231	\$205,836	<del>-\$156,231</del>	\$205,836

All of the funds will go to Local Intervention Programs for our City Diversion Panels.



Christina McMahan  
Director, Clackamas County Juvenile Department



Capt. Jenna Morrison  
Director

**CLACKAMAS COUNTY COMMUNITY CORRECTIONS**  
**1024 MAIN STREET • OREGON CITY • OREGON • 97045**  
**TELEPHONE 503-655-8603 • • • FAX 503-650-8942**

November 22, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement between Clackamas County Community Corrections and  
Tri-County Metropolitan Transportation

<b>Purpose/Outcome</b>	This Agreement allows Community Corrections to purchase bus tickets and passes through Trimet’s electronic fare system.
<b>Dollar Amount and Fiscal Impact</b>	\$50,000.00 average annual purchase
<b>Funding Source</b>	State and local funds.
<b>Duration</b>	Agreement terminates upon request.
<b>Previous Board Action/Review</b>	New Agreement.
<b>Contact Person</b>	Captain Jenna Morrison, Director - Community Corrections – 503-655-8725

**BACKGROUND:** Community Corrections provides services to clients on supervision, individuals released from the Clackamas County Jail, Oregon Department of Corrections and those in the community at risk of returning to custody. Services provided include assessment, treatment, employment and housing services. The goal of these services is to allow clients their best opportunity to meet the requirements of supervision and experience their best opportunity for successful, pro-social reintegration into the community. Transportation is often a barrier for clients getting back on their feet. Bus tickets and passes are issued to those clients who would otherwise not be able to get to appointments, court appearances, job interviews, daycare providers or other necessary appointments.

**RECOMMENDATION:** Community Corrections respectfully requests that the Board of County Commissioners approves this Intergovernmental Agreement with Trimet to purchase bus tickets and passes.

Respectfully submitted,

Captain Jenna Morrison  
Director, Community Corrections



Contract No. IP170826EV

**TRI-COUNTY METROPOLITAN TRANSPORTATION  
DISTRICT OF OREGON (TriMet)**

**MONTHLY PASS PROGRAM CONTRACT**

This Contract is entered into **November 1, 2017**, by and between the Tri-County Metropolitan Transportation District of Oregon (TriMet) and **CLACKAMAS COUNTY COMMUNITY CORRECTIONS** (Participant), located at 1024 Main Street, Oregon City, OR 97045.

In consideration of TriMet's desire to make its fare instruments (electronic fare cards and ticket and pass products) available to Participant, and the convenience, economic and operational efficiencies to Participant in making TriMet fare instruments available to its members, the parties agree to the following terms:

1. Term

This Contract shall commence on the date entered above and remain in effect until terminated by either party as provided under the provisions of this Contract.

2. Agreement to Purchase TriMet Fare Instruments

Participant shall use its best efforts to market and sell TriMet fare instruments to their members only, in accordance with the terms and conditions set forth in Exhibit A, which is attached to and made a part of this Contract. This Contract and any attached exhibits constitute the entire agreement between the parties on the subject matter hereof. By signature hereto, Participant certifies that it has read and agrees to be bound by all of the Program Requirements, including but not limited to those applicable to the Institutional Web Portal (Services).

3. Participant is an Independent Contractor

Participant is an independent contractor for all purposes and is solely responsible for performance of its obligations under this Contract. Participant's employees, agents, and subcontractors, if any, shall not be deemed to be employees or agents of TriMet. Participant is responsible for all federal, state and local taxes and fees applicable to or arising out of this Contract. Nothing in this Contract shall be construed to create a partnership, joint venture or agency relationship between the parties to this Contract.

4. Correspondence/Communications

(a) Participant shall designate and authorize a Program Administrator(s) to assist in implementation of these procedures, including authorizations necessary for the Program Administrator to access and utilize TriMet's Institutional Web Portal on behalf of Participant. Participant assumes sole responsibility for ensuring that Program Administrator(s) are duly authorized to administer the Program on behalf of Participant.

(b) TriMet's Representative and Participant's Program Administrator shall be responsible for routine, day-to-day correspondence and communications regarding Participant's implementation of the Program. Upon commencement of this Contract, TriMet and Participant shall provide written notice to each other of the name and address of their respective designated Representative and Program Administrator, and shall provide prompt written notice of any change thereto.

(c) All notices required to be given by the terms of this Contract shall be provided in writing and signed by the person serving the notice, and shall be sufficient if given in person, emailed, mailed postage pre-paid certified return receipt or telefaxed (with confirmation record) to the persons at the signature addresses below, or to such other address as either party may notify the other of in writing. Any notice given personally shall be deemed to have been given on the day that it is personally delivered, emailed or telefaxed (with confirmation record), and if mailed three days after the date of the postmark of such mailing.

5. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TRIMET, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SERVICES PROVIDERS AND LICENSORS SHALL NOT BE LIABLE TO PARTICIPANT OR ANYONE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (REGARDLESS OF WHETHER WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), HOWEVER CAUSED, WHETHER BASED ON OR UPON CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT, WARRANTY OR ANY OTHER LEGAL THEORY. IN NO EVENT SHALL TRIMET'S TOTAL LIABILITY TO YOU IN CONNECTION WITH THE ANNUAL PASS PROGRAM AND THE SERVICES FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION EXCEED AMOUNTS PAID TO TRIMET THEREUNDER DURING THE PRIOR 12 MONTHS.

6. Indemnity

PARTICIPANT AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS TRIMET AND ITS OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AGENTS, LICENSORS, SUPPLIERS, SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY CLAIMS, LIABILITIES, DAMAGES, JUDGMENTS, AWARDS,



LOSSES, COSTS, EXPENSES OR FEES (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING OUT OF OR RELATING TO VIOLATION OF THIS CONTRACT, INCLUDING WITHOUT LIMITATION PARTICIPANT'S USE OF THE SERVICES OTHER THAN AS EXPRESSLY AUTHORIZED IN THIS CONTRACT.

7. Suspension of Fare Instruments

TriMet may immediately suspend availability of fare instruments to Participant where remittal of payment is late past the payment due date set forth at Exhibit A, Paragraph (2)(B)(1). TriMet shall provide the Participant written notice of such suspension. Availability of Fare Instruments may be resumed only when past delinquent payments are paid by Participant to TriMet, and where the Participant provides reasonable assurances that it will perform according to the terms of this Contract. TriMet may immediately suspend access to the Institutional Web Portal described in Exhibit A if Participant violates any of the terms, conditions, or requirements of Exhibit A.

8. Termination for Convenience

Either party may terminate this Contract by providing at least 30 days prior written notice to the other party. TriMet may discontinue availability of fare instruments upon receipt or delivery of a written notice of termination. Within three (3) days from the effective date of termination under this Paragraph 8, Participant shall submit any payments due to TriMet, and return all fare instruments that remain unsold or undistributed. Participant will receive a credit for such returned fare instruments in accordance with Exhibit A, Paragraph (1)(A)(i). Termination under this Paragraph 8 shall not affect any right, obligation or liability of the parties which accrued prior to the effective date of such termination.

9. Termination for Default

If Participant fails to perform in the manner called for in this Contract, including Exhibits and Amendments, TriMet may terminate this Contract for default. Termination shall be effected by serving a notice of termination on Participant setting forth the manner in which Participant is in default. Unless otherwise stated in TriMet's notice of termination, within three (3) days from the effective date of termination under this Paragraph 9, Participant shall submit any payments due to TriMet, and return all fare instruments that remain unsold or undistributed, which shall be subject to the credit provisions of Exhibit A, Paragraph (1)(A)(i) as determined by TriMet. If it is later determined by TriMet that Participant had an excusable reason for not performing, such as a strike, fire, flood or other event that is not the fault of, or is beyond the control of Participant, TriMet, in its sole discretion, may allow Participant to continue to perform under this Contract or may treat the termination as a termination for convenience.

10. Jurisdiction

This Contract shall be governed by the laws of the State of Oregon without resort to any jurisdiction's conflict of laws, rules or doctrines, and the parties agree to submit to the jurisdiction and venue of the courts of Multnomah County, Oregon.

11. Compliance with Laws and Nondiscrimination

Participant shall adhere to all applicable federal, state and local laws, regulations and policies, including, but not limited to, equal employment opportunity, nondiscrimination and affirmative action. During the term of this Contract, Participant shall not discriminate against any person because of race, religion, color, sex, sexual orientation, age, national origin, marital status or disability.

12. Credit Investigation

TriMet reserves the right, in its sole discretion, to require at any time during this Contract, that Participant provide a credit report from a TriMet approved credit reporting agency or an audited financial statement in lieu of a credit report. In such event, TriMet will notify Participant of the information required and timelines for submission of the report or statement.

13. Records and Audit

Participant shall maintain proper accounting records relating to this Contract and make such records available to TriMet at its business location at all reasonable times. Participant shall retain and make available such records for the term of this Contract plus six (6) years from its termination or expiration and permit authorized representatives of TriMet to inspect, audit and obtain copies of such records. TriMet may take a physical inventory of fare instruments at Participant's business location(s) upon reasonable advance written notice to Participant and during Participant's regular business hours. Such inventory shall be conducted in a manner not to interfere with the Participant's business operations.

14. No Waiver

TriMet's failure to object to any breach of this Contract shall not constitute a waiver of TriMet's right to object to any additional breach or to require Participant to comply with the terms of this Contract.

15. No Third Party Beneficiary

Participant and TriMet are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or will be construed to give or provide any benefit or right, whether directly or indirectly, or

otherwise to third persons unless such third persons are individually identified by name herein and expressly described as an intended beneficiary of the terms of this Contract.

16. Execution of Contract

This Contract and any attached exhibits or written modifications thereto, may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a "pdf" format date file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or "pdf" signature page were an original thereof.

17. Authority

Each party represents that the individual signing below on their respective behalf, is duly authorized by that party to enter into this Contract.

**CLACKAMAS COUNTY BOARD OF  
COUNTY COMMISSIONERS**

**THE TRI-COUNTY METROPOLITAN  
TRANSPORTATION DISTRICT OF OREGON**

Chair: \_\_\_\_\_  
*signature*

By: \_\_\_\_\_  
*signature*

Date: \_\_\_\_\_


Date: \_\_\_\_\_

Name: \_\_\_\_\_  
*please print*

Name: Bernie Bottomly  
Executive Director of Public Affairs

\_\_\_\_\_  
Recording Secretary

Approved to as Form:

  
\_\_\_\_\_  
County Counsel

## EXHIBIT A

Participant shall purchase and provide fare instruments to its members according to the following terms and procedures:

### I. Use of Institutional Web Portal; Website Terms of Service

- A. The Participant's Program Administrator shall use an Institutional Web Portal (Services) as a tool to administer and manage the Participant's Program.
- B. Program Administrators, pending approval by TriMet, shall be given secure login credentials to access their Monthly Pass Program account using the Services. Program Administrators shall use the Services for the sole purpose of managing their Program, and only as provided in these Requirements. Program Administrators are responsible for any activity that occurs under their account. Program Administrators shall keep usernames and passwords secure and shall not allow anyone else to use them to access the Services. TriMet is not responsible for any loss that results from the unauthorized use of Program Administrator's username and password, with or without Program Administrator's knowledge.
- C. Using the Services, Program Administrators shall be able to perform certain tasks including, but not limited to:
  - 1) Order fare instruments.
  - 2) Order fare products, including calendar monthly passes and tickets.
  - 3) Manage and edit their Program account profile, such as maintaining contact information and shipping information.
  - 4) Manage their member's fare cards, including blocking cards (deactivate) in case of loss or theft, and unblocking cards (reactivate).
- D. All content included in or through the Services, such as text (including blog posts, schedules, arrival information, fare information), graphics (including maps), designs, logos, presentations, videos, data, instructions, photos, and software (the "Materials"), is the property of TriMet or its licensors. The Materials are protected by copyright, trademark and other intellectual property laws. TRIMET®, WES®, TRANSITTRACKER™, HOP FASTPASS™ and other trademarks, service marks and logos that we use, are trademarks of TriMet. Third-party trademarks that appear in connection with the Services are the property of their respective owners. The trademarks displayed in connection with the Services may not be used without express written permission.
- E. TriMet grants Participant a personal, United States, royalty-free, non-assignable and non-exclusive license to use the Materials available as part of the Services. This license is for the sole purpose of using the Services for TriMet's intended purposes and is subject to the license restrictions below.
- F. Unless laws prohibit these restrictions or you have our written permission, Participant may not:
  - 1) Copy, modify, distribute, sell, or lease any part of our Services or included software;

- 2) Reverse engineer or attempt to extract the source code of our software or copy the scripts of the website;
  - 3) Download, print, copy, distribute or otherwise use Materials for commercial purposes, including commercial publication, sale or personal gain;
  - 4) Use any manual process or robot, spider, scraper, or other automated means to collect information or Materials from the Services or from users of the Services;
  - 5) Circumvent any of the technical limitations of the Services or interfere with the Services, including by preventing access to or use of the Services by our other users;
  - 6) Change or remove any copyright, trademark, or other proprietary notices, including without limitation attribution information, credits, and copyright notices that have been placed on or near the Materials;
  - 7) Impersonate any person or entity or misrepresent yourself or your entity in connection with the Services, or attempt to use another user's account without the user's permission; or
  - 8) Post or transmit through the Services any material that reasonably could be considered obscene, lewd, lascivious, excessively violent, harassing, or otherwise objectionable to some or all users.
- G. Feedback and participation are important to us. With respect to any content submitted or made available to TriMet (including through our "Contact Us" pages and social media channels), Participant grants to TriMet a non-exclusive, perpetual, worldwide, fully paid and royalty-free, transferable license to use, copy, distribute, publicly display, modify, and create derivative works from such content, for the limited purpose of operating, promoting, and improving the Services, and to develop new Services. In the event that Participant submits or posts any creative suggestions, proposals, or ideas about TriMet products and services, Participant agrees that such submissions will be automatically treated as non-confidential and non-proprietary. TriMet may use Participant's Feedback without any obligation or credit to Participant.
- H. **The Services and Materials are provided "as is," "as available," and without warranties of any kind. All use of the Services and Materials is at Participant's sole risk. To the fullest extent permitted by law, TriMet disclaims all warranties of any kind, whether express, implied or statutory, including without limitation implied warranties of title, quality, performance, merchantability, fitness for a particular purpose, accuracy, and non-infringement, as well as warranties implied from a course of dealing or course of performance. TriMet does not warrant that the Services will be continuous, prompt, secure, or error-free. TriMet assumes no liability for any errors or omissions, including the inaccuracy of content, or for any damages or losses that Participant or any third party may incur as a result of the unavailability of the Services. TriMet assumes no responsibility, and shall not be liable for, any damages to Participant's equipment, devices or other property caused from use of the Services.**

## 2. SALES AND ACCOUNTING OF FARE INSTRUMENTS

Participant will purchase monthly passes and tickets according to the procedures defined in this Exhibit A.

## A. PROGRAM FARE INSTRUMENTS; BASIS OF SALES; REQUIREMENTS

### 1) Hop Fastpass™ Fare Cards

TriMet provided contactless fare cards containing a valid fare product shall be used as the valid fare instrument. TriMet shall provide fare cards for Participants, and may charge a reasonable administrative fee for this service. Fare cards are intended to be reused by the Participant, and can be reloaded with additional fare products. Participant shall keep fare instruments in secure locked storage, accessible only to the designated Program Administrator(s). Participants shall be required to maintain a record associating the fare card ID number (16-digit card number) with a unique member identifier (such as name and/or email address). Participant shall be required to upload this list via CSV file to the Institutional Web Portal to facilitate the purchase and loading of fare products to cards. Participant's members are required to tap their contactless card at card readers prior to each vehicle boarding and upon occupying any TriMet district areas requiring proof of fare payment.

### 2) Monthly Passes

Participant may purchase monthly passes from TriMet for its members in accordance with the procedures set forth in this Contract. Calendar monthly passes shall be made available for purchase via the Institutional Web Portal beginning on the 10<sup>th</sup> day of the month prior to the month in which the pass is valid, through the 9<sup>th</sup> day of the valid month (e.g. a monthly pass valid for March will be available for purchase between February 10<sup>th</sup> and March 9<sup>th</sup>). The Participant's payment is due in accordance with Paragraph B (1) Accounting Period set forth below. The next month's passes will not be made available until the prior month's outstanding balance is paid in full.

### 3) Tickets

Participant may purchase unvalidated 1-Day Passes and 2½-Hour Tickets via the Institutional Web Portal, at anytime during the month. Tickets may be ordered as non-reloadable limited use fare media, or as products loaded to reloadable fare cards. Members must tap fare instruments at card readers to activate the ticket. Tickets ordered as limited use fare media shall be delivered to Participant. Participant's payment is due in accordance with Paragraph B (1) Accounting Period set forth below.

### 4) Delivery

Orders of reloadable fare cards or limited use non-reloadable fare products shall be delivered to Participant, normally within ten (10) business days. A shipping and handling fee may apply. TriMet shall not be responsible for late deliveries. All mailings or deliveries shall be at a location (including to the address of the Locations) designated by Participant. Post Office boxes or deposit boxes are not acceptable. Participant shall be responsible for providing correct addresses and delivery information to TriMet.

5) Refunds: Replacement Cards

Fare instruments are non-refundable, and non-transferable. However, TriMet may replace lost, stolen, or damaged fare cards for Participant's members, and may charge a reasonable administrative fee for this service. To be eligible for replacement, the member's fare card must first be disabled by Participant's Program Administrator. Participant may also request that TriMet disable the fare card, and in this case, TriMet reserves the right to require Participant to provide additional information about the lost, stolen or damaged fare card, such as card ID number.

6) Designated Agents

- a. Participant may elect to participate in the Program through their designated agent ("Agent"). Agent will enter into a contract with TriMet for implementation of the Program in accordance with these requirements, including the purchase of and payment for fare instruments.
- b. Agent must be an incorporated entity, established for the purpose of providing administrative services to facilitate employer transportation options or other related services, including commercial or industrial property management and/or other transportation related services.
- c. Agent shall provide TriMet with written authorization from Participant on Participant's official letterhead evidencing the Agent's designation.

B. ACCOUNTING PERIOD

1) Accounting Period

Payment for monthly passes and tickets is due net 30 days from the invoice date.

2) Late Payment Fee

A payment will be considered late if it is received after the due date defined in Paragraph (2)(B)(1), as applicable. Delinquent balances shall be subject to and assessed a 1.5% monthly, or 18 % annual finance charge.

C. PAYMENT

- 1) TriMet will accept from Participant payments of all amounts due only in the form of a check drawn from Participant's bank, an electronic funds transfer or Participant's credit card. TriMet will not accept customer personal checks
- 2) TriMet assumes no liability for lack of member payment. If Participant elects to accept credit cards, debit cards or personal checks from members as payment for TriMet fare instruments, Participant assumes all risks, responsibilities and liabilities associated with the transaction.

3. Advertising and Point of Sale Promotion

To assist Participant in marketing fare instruments and providing transit information to its members, TriMet may provide point-of-sale information displays and on-site transit-use promotional material as mutually agreed upon between TriMet and Participant.

4. Participant Information

Participant shall submit a completed Federal IRS Form W-9 either by email to [AccountsReceivable@trimet.org](mailto:AccountsReceivable@trimet.org) or by mail to TriMet, Attn: Accounts Receivable, 1800 SW 1<sup>st</sup> Avenue, Suite 300, Portland, Oregon, 97201.





Capt. Jenna Morrison  
Director

**CLACKAMAS COUNTY COMMUNITY CORRECTIONS**  
**1024 MAIN STREET • OREGON CITY • OREGON • 97045**  
**TELEPHONE 503-655-8603 • • • FAX 503-650-8942**

November 22, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement between Clackamas County Community Corrections and  
Clackamas Community College to Provide GED Instructional Services

<b>Purpose/Outcome</b>	This Agreement allows Clackamas Community College to provide GED instructional services at the Transition Center.
<b>Dollar Amount and Fiscal Impact</b>	The annual value is \$35,840 and \$107,520 if renewed for two (2) one (1) year terms as allowed by the agreement.
<b>Funding Source</b>	State and local funds.
<b>Duration</b>	January 1, 2018 through December 31, 2018.
<b>Previous Board Action/Review</b>	New Agreement. Prior Agreement approved April 14, 2016 through December 31, 2017.
<b>Contact Person</b>	Captain Jenna Morrison, Director - Community Corrections – 503-655-8725

**BACKGROUND:** The Transition Center provides services to individuals released from the Clackamas County Jail, Oregon Department of Corrections, Clackamas County Residential Treatment & Counseling program, and those in the community at risk of returning to custody. The Transition Center is a collaborative effort between many community partners to provide additional resources to the jail and law enforcement to help improve public safety and offender accountability. One of those resources is a program to complete their General Educational Development (GED). The Jail has a long standing GED program with Clackamas Community College to provide GED prep and testing. Since the Transition Center opened in February 2016, those same services have been offered to our clients. In addition to those new to the GED program, we are able to offer a continuation of instruction and testing to those that have started the program in jail.

**RECOMMENDATION:** Community Corrections respectfully requests that the Board of County Commissioners approves this Intergovernmental Agreement with Clackamas Community College to provide GED instructional services.

Respectfully submitted,

Captain Jenna Morrison  
Director, Community Corrections

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
CLACKAMAS COUNTY, OREGON  
AND  
CLACKAMAS COMMUNITY COLLEGE**

This Intergovernmental Agreement ("Agreement") is entered into by and between **Clackamas County** ("COUNTY"), a political subdivision of the State of Oregon, and **Clackamas Community College** ("COLLEGE"). This Agreement is authorized pursuant to ORS 190.110.

1. **Effective Date and Duration.** This Agreement shall become effective upon completion of the signatures below. Unless earlier terminated or extended, this Agreement shall expire on December 31, 2018 ("Expiration Date"). This Agreement may be renewed for two (2) additional one (1) year agreements, unless otherwise terminated by the parties pursuant to Section 9 below. This Agreement may be otherwise extended by mutual written agreement of the parties at any time prior to its Expiration Date.
2. **Statement of Work.**
  - A. COLLEGE agrees to:
    - i. Recruit and hire qualified instructor(s) as well as pay for substitute instructors as necessary.
    - ii. Provide liability and Worker's Compensation insurance coverage for instructor(s).
    - iii. Confirm the class schedule prior to the start of each term.
    - iv. As needed per mutual agreement with COUNTY, procure up to eight (8) sets of classroom textbooks at a cost to the county of up to \$500.
    - v. Provide GED 2014 Instruction and Test Preparation Activities as described in Exhibit A.
  - B. The COUNTY agrees to:
    - i. Provide appropriate classroom facilities with access to student computers and internet service.
    - ii. Inform COLLEGE, in a timely manner, of any changes or conflicts with regularly scheduled classes.
    - iii. Assist with student registration according to COLLEGE policies and procedures.
    - iv. Provide a locked cabinet for the classroom textbooks and access to a working printer and photocopier services as Transition Center staffing allows.
    - v. Pay the Compensation for instruction services and textbooks as outlined in section III.

Classes will be taught two times per week, for ten weeks during each term as published by COLLEGE. Classes will be held Mondays and Wednesdays, 3:20pm-7:00pm, or at a date/time agreed upon by both COUNTY and COLLEGE. Instruction will occur on the main floor of the Transition Center in one of the two conference rooms. The tables, student computers, white boards and large screen computer monitor will be available for the sole use of the COLLEGE during instructional time.

The COLLEGE shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services.

3. **Compensation.** The COUNTY agrees to pay COLLEGE an amount not to exceed \$8,960.00 per school term, for a maximum of four(4) terms per calendar year, for the services outlined in Section 2.A. above except for the service described in Section 2.A.4. The services described in Section 2.A.4. shall be billed by COLLEGE to COUNTY on a fixed fee of \$500 per eight (8) sets of textbooks as required outside of and in addition to the \$35,840 maximum value of this agreement.

All requests for payment are subject to the approval of the COUNTY and will be submitted to Nora Jones at 1024 Main St, Oregon City OR, 97045.

4. **Liaison Responsibility.** Camilo Sanchez (503) 594-3029, will act as liaison for the COLLEGE. Kelli Zook (503) 722-6188, will act as liaison for the COUNTY.

7. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties.

8. **Payment.**

- A. COLLEGE will submit payment requests after each school term.  
B. COUNTY shall pay all invoices within 30 days.

9. **Termination.**

- A. The parties may agree to an immediate termination of this Agreement or at a time certain upon mutual written consent.  
B. Either party may terminate this Agreement effective not less than 30 days from delivery of written notice for any reason. COLLEGE shall be responsible for any costs of Work done on its behalf prior to the effective date of the termination.  
C. Either party may terminate this Agreement in the event of a breach by the other party. However, prior to such termination, the party seeking termination shall give the other party written notice of the party's intent to terminate. If the breaching party has not cured the breach within 10 days or a longer period as granted in the cure notice, the party seeking compliance may terminate this Agreement.

11. **Funds Available and Authorized.** Both parties certify that at the time the Agreement is written that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within each party's current appropriation and limitation through fiscal year 2017-2018. Both parties understand and agree that payment of amounts under this Agreement attributable to Work performed after the end of the current fiscal year is contingent on either party receiving appropriations, limitations, or other expenditure authority. This agreement is expressly subject to the debt limitation of Oregon counties set forth in Article, XI, Section 10, of the Oregon Constitution and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

12. **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.

13. **Access to Records.** Both parties, the State of Oregon, and the Federal Government, and their duly authorized representatives shall have access to the documents, papers, and records which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcript.
14. **Record and Fiscal Control System.** All payroll and financial records pertaining in whole or in part to this agreement shall be clearly identified and readily accessible. Such records and documents should be retained for a period of three (3) years after receipt of final payment under this agreement; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.
15. **Compliance with Applicable Law.** Both parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the Work under this Agreement. Both party's performance under this Agreement is conditioned upon either parties compliance with the provisions of the Oregon Revised Statutes, including but not limited to ORS 279A, B, and C, which are incorporated by relevant reference herein.
16. **No Third Party Beneficiary.** The COUNTY and COLLEGE are the only parties to this Agreement and as such, are the only parties entitled to enforce its terms. Nothing contained in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.
17. **Indemnification.** Subject to the limitation of the Oregon Tort Claims Act and the Oregon Constitution, COLLEGE agrees to indemnify, defend and hold harmless the COUNTY and its officers, agents and employees against all liability, loss and costs arising from actions, suits, claims or demands attributable solely and exclusively to acts or omissions of COLLEGE, and COLLEGE's officers, agents and employees, in performance of this agreement.  
  
Subject to the limitations of the Oregon Tort Claims Act and the Oregon Constitution, COUNTY agrees to indemnify, defend and hold harmless COLLEGE and its officers, agents and employees against all liability, loss and costs arising from actions, suits, claims or demands attributable solely and exclusively to acts or omissions of COUNTY, and COUNTY's officers, agents and employees, in performance of this agreement.
18. **Merger Clause.** This Agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall 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.
18. **Oregon Law and Forum.** This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
19. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the parties.

20. The COLLEGE will uphold the nondiscrimination policy approved by the COLLEGE Board. By entering into this agreement, COUNTY agrees with COLLEGE in the timely reporting and response necessary for investigation. Nondiscrimination policy as outlined in Exhibit B.
21. The COLLEGE is subject to Americans with Disabilities Act (ADA). By entering into this agreement, COUNTY will comply with the ADA to work with the COLLEGE in addressing any accommodation requirements made by program participants.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their duly authorized officers or representatives as of the day and year first above written.

**Clackamas Community College**

**Clackamas County Board of County Commissioners**

\_\_\_\_\_  
Authorized Signature,

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Recording Secretary

Approved as to Form:

\_\_\_\_\_  
County Counsel

- Exhibit A – Course Overview
- Exhibit B – Clackamas Community College Nondiscrimination Policy



Capt. Jenna Morrison  
Director

**CLACKAMAS COUNTY COMMUNITY CORRECTIONS**  
 1024 MAIN STREET • OREGON CITY • OREGON • 97045  
 TELEPHONE 503-655-8603 • • • FAX 503-650-8942

November 22, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Grant Agreement JR -17-003 between the  
State of Oregon, Criminal Justice Commission and Clackamas County

<b>Purpose/Outcome</b>	Establish a Pretrial Program, expand Short-Term Transition Leave and Corrections Substance Abuse Programs
<b>Dollar Amount and Fiscal Impact</b>	\$2,339,234.54 This IGA value includes \$241,158.20 for Victim Services.
<b>Funding Source</b>	State of Oregon, Criminal Justice Commission
<b>Duration</b>	July 1, 2017-June 30, 2019
<b>Previous Board Action/Review</b>	Grant application approved August 10, 2017
<b>Strategic Plan Alignment</b>	Provide supervision, resources, intervention, and treatment services. Ensure Safe, Healthy and Secure Communities
<b>Contact Person</b>	Captain Jenna Morrison, Director, Community Corrections – 503-655-8725

**BACKGROUND:** The Justice Reinvestment Grant Program’s goal is to reduce prison population and avert future prison construction, reduce recidivism through evidence-based practices and data-driven research, increase public safety through collaboration, and increase offender accountability. Community Corrections, the Jail, the Court, the District Attorney’s Office, and members of the Defense Counsel, are working together to achieve that goal by developing a Pretrial Program. Community Corrections will expand the Short-Term Transitional Leave (STTL) program and Corrections Substance Abuse Program (CSAP). The STTL program provides housing and resources for people releasing from prison with up to 120 days remaining on their sentence. Community Corrections provides supervision, housing, and resources to assist these clients in their transition into the community. The CSAP program provides residential treatment and programming to 56 clients at the Residential Services locations in Milwaukie for up to one year. This grant will allow that program to expand services to 80 clients. By creating the Pretrial Program and expanding the STTL and CSAP programs, Community Corrections expects to reduce recidivism and the prison population while increasing public safety and offender accountability. Ten percent of the award will support community-based non-profit Victim Services programs.

**RECOMMENDATION:** Community Corrections respectfully requests that the Board of County Commissioners approves Grant Agreement JR-17-003 between Clackamas County and the Criminal Justice Commission, for the 2017-2019 Justice Reinvestment funding of Community Corrections programs.

Respectfully submitted,

Captain Jenna Morrison  
Director, Community Corrections



CRIMINAL JUSTICE COMMISSION  
JUSTICE REINVESTMENT GRANT PROGRAM  
GRANT AGREEMENT

885 Summer Street NE  
Salem, OR 97301

This Grant Agreement (“Agreement”) is made and entered into by and between the **State of Oregon**, acting by and through its Criminal Justice Commission, hereafter referred to as “**CJC**,” and **Clackamas County** hereinafter referred to as “**Grantee**” and collectively referred to as the “**Parties**.” This Agreement shall become effective on the later of July 1, 2017 or the date when this Agreement is fully executed and approved as required by applicable law.

1. **Grant.** In accordance with the terms and conditions of this Agreement, CJC shall provide Grantee an amount not to exceed \$2,837,206.54 (the “Grant Funds”) to assist Grantee in implementing the project described in Exhibit A (the “Project”) during the period beginning on the Project Start Date and ending on the Project End Date (the “Project Period”), as those dates are specified in Exhibit A. Grantee shall implement the project in a substantially continuous manner during the Project Period and complete the Project no later than the Project End Date. The Grant Funds may be used by Grantee solely for Eligible Costs (as described in Section 4.a) incurred by Grantee within the line items of the Project Budget (set forth in Exhibit A) during the Project Period. CJC’s obligation to disburse Grant Funds under this Agreement shall end 90 days after the Project End Date.

2. **Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

Exhibit A: **Project Description and Budget**  
Exhibit B: **Subagreement Insurance Requirements**

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits; Exhibit A; Exhibit B.

3. **Reports.** Grantee shall submit the reports required by this section.

a. **Progress Reports.** Grantee shall submit to CJC reports every 6 months during Project implementation as well as such other reports and information on the Project as CJC may reasonably request (collectively, “Progress Reports”). Progress Reports must be received by CJC no later than, January 25, and July 20 for the prior calendar 6 month period. Progress Reports must be submitted through CJC’s grant administration website and contain all of the requested data. Grantee must receive prior approval from CJC to submit a Progress Report after its due date.

b. **Financial Reports.** Grantee shall submit to CJC a Financial Report each quarter to detail expenditures of Grant Funds during the prior calendar quarter. Financial

Reports must be received by CJC no later than October 25, January 25, April 25, and July 25 for the prior calendar quarter; provided, however, that the final Financial Report must be submitted no later than the earlier of 30 days after completion of the Project or 30 days after the Project End Date. Failure to submit a Financial Report by the due date could result in a suspension of further disbursement of Grant Funds in addition to other remedies arising from Grantee's default. Grantee must receive prior approval from CJC to submit a Financial Report after its due date.

**4. Disbursement and Recovery of Grant Funds.**

**a. Disbursement Generally.** Subject to Section 4.b, CJC shall disburse the Grant Funds in two substantially equal installments no later than January 30, 2018 and September 30, 2018. The Grant Funds may be used solely for Eligible Costs incurred in carrying out the Project. "Eligible Costs" are the reasonable costs incurred by Grantee (or a subgrantee or subrecipient under a Subagreement) during the Project Period in implementation of the Project, and that are not excluded by CJC, either by this Agreement or by exclusion as a result of financial review or audit, subject to the following requirements and limitations:

- i. Rates for travel expenses shall not exceed those allowed by the Oregon travel policy, available at <http://www.oregon.gov/das/Financial/Acctng/Pages/Travel.aspx>.
- ii. When purchasing equipment costing over \$5,000, the Grantee must provide a description of the equipment, purchase price, date of purchase, and identifying numbers, if any, to the CJC Grant Administrator at [cjcgrants@oregon.gov](mailto:cjcgrants@oregon.gov).
- iii. As specified in OAR 213-060-0050(3), no more than 10 percent of the Grant Funds may be used for administrative costs.

**b. Conditions Precedent to Disbursement.** CJC's obligation to disburse Grant Funds to Grantee is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:

- i. CJC has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow CJC, in the exercise of its reasonable administrative discretion, to make the disbursement.
- ii. Grantee is in compliance with the terms of this Agreement.
- iv. Grantee has, to the satisfaction of CJC and the Grant Review Committee, met its outcome or performance measures (as proposed in its Application and agreed to by CJC) and achieved the criteria as outlined in OAR 213-060-0060, including but not limited to reduction of prison utilization.

iii. Grantee's representations and warranties set forth in Section 5 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.

iv. All Progress Reports due on or before the date of disbursement have been completed and submitted to CJC.

iv. All Financial Reports due on or before the date of disbursement have been completed and submitted to CJC.

**5. Recovery of Unexpended Grant Funds.** Any Grant Funds disbursed to Grantee under this Agreement that remain unexpended on the earlier of termination of this Agreement, completion of the Project, or the Project End Date must be returned to CJC. Grantee shall return all Unexpended Funds to CJC within 14 days after the earlier of termination of this Agreement, completion of the Project, or the Project End Date.

**6. Representations and Warranties of Grantee.** Grantee represents and warrants to CJC as follows:

**a. Organization and Authority.** Grantee is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Grantee has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Grantee of this Agreement (1) have been duly authorized by all necessary action of Grantee and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Grantee's charter or other governing documents, (3) 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 may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Grantee of this Agreement.

**b. Binding Obligation.** This Agreement has been duly executed and delivered by Grantee and constitutes a legal, valid and binding obligation of Grantee, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

**c. No Solicitation.** Grantee's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

**d. No Debarment.** Neither Grantee nor its principals is presently debarred, suspended, or voluntarily excluded, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state agency. Grantee

agrees to notify CJC immediately if it is debarred, suspended or otherwise excluded by any state agency or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.

The warranties set in this section are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

**7. Records Maintenance and Access; Audit.**

**a. Records, Access to Records and Facilities.** Grantee shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards, and state minimum standards for audits of municipal corporations. Grantee shall ensure that each of its subgrantees and subrecipients complies with these requirements. CJC, the Secretary of State of the State of Oregon (the "Secretary"), and their duly authorized representatives shall have access to the books, documents, papers and records of Grantee that are directly related to this Agreement, the funds provided hereunder, or the Project for the purpose of making audits and examinations. In addition, CJC, the Secretary, and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Grantee shall permit authorized representatives of CJC and the Secretary to perform site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment purchased by Grantee as part of the Project, and any transportation services rendered by Grantee.

**b. Retention of Records.** Grantee shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the Project End Date. If there are unresolved audit questions at the end of the six-year period, Grantee shall retain the records until the questions are resolved.

**c. Expenditure Records.** Grantee shall document the expenditure of all funds disbursed by CJC under this Agreement. Grantee shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit CJC to verify how the moneys were expended.

**8. Grantee Subagreements and Procurements**

**a. Subagreements.** Grantee may enter into agreements with subgrantees and subrecipients ( "Subagreements") for implementation of portions of the Project.

**i.** Each Subagreement must be in writing executed by Grantee and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the Subagreement. Use of a Subagreement does not relieve Grantee of its responsibilities under this Agreement.

ii. Grantee shall notify CJC of each Subagreement and provide CJC with a copy of a Subagreement upon request by CJC. Any material breach of a term or condition of a Subagreement relating to Grant Funds provided under this Agreement must be reported by Grantee to CJC within ten (10) days of its discovery.

**b. Subagreement indemnity; insurance.**

*Each Grantee Subagreement shall require each other party to such Subagreement, that is not a unit of local government as defined in ORS 190.003, or a unit of state government as defined in ORS 174.111, to indemnify, defend, save and hold harmless the CJC and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to the Subagreement or any of such party's officers, agents, employees or contractors ("Claims"). It is the specific intention of the Parties that CJC shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the CJC, be indemnified by the other party to the Subagreement from and against any and all Claims.*

Any such indemnification shall also provide that neither the other party to such Subagreement nor any attorney engaged by such party shall defend a Claim in the name of the State of Oregon or an agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that the other party to such Subagreement is prohibited from defending State or that such other party is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against the other party to such Subagreement if State elects to assume its own defense.

Grantee shall require each other party to each of its Subagreements, that is not a unit of local government as defined in ORS 190.003, or a unit of state government as defined in ORS 174.111, to obtain and maintain insurance of the types and in the amounts provided in Exhibit B to this Agreement.

**c. Procurements.**

i. Grantee shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, including all applicable provisions of the Oregon Public Contracting Code and rules.

ii. All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. Justification must be provided to CJC for

any non-competitive or sole-source procurement. Justification should include a description of the equipment, materials or services procured, an explanation of why it was necessary to procure noncompetitively, time constraints and any other pertinent information. All sole source procurements in excess of \$100,000 must receive prior written approval from CJC in addition to any other approvals required by law applicable to Grantee. Intergovernmental agreements between units of government are excluded from this requirement to obtain CJC approval of sole source procurements.

iii. The Grantee shall be alert to organizational conflicts of interest or non-competitive practices among vendors that may restrict or eliminate competition or otherwise restrain trade. A vendor that develops or drafts specifications, requirements, statements of work, or Requests for Proposals (RFP) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award in such procurement. A request for a waiver of this restriction must be submitted to and approved by CJC in advance and in writing.

**9. Default.** Grantee shall be in default under this Agreement upon the occurrence of any of the following events:

a. Grantee fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein, including but not limited to a failure to make progress on the four goals of the Justice Reinvestment Grant Program, as described in Exhibit A; or

b. Any representation, warranty or statement made by Grantee herein or in any documents or reports relied upon by CJC to monitor implementation of the Project, the use of the Grant Funds or the performance by Grantee is untrue in any material respect when made.

**10. Remedies upon Default.** If Grantee's default is not cured within 30 calendar days of written notice thereof to Grantee from CJC or such longer period as CJC may authorize in its sole discretion, CJC may pursue any remedies available under this Agreement, at law or in equity. Such remedies include, but are not limited to, termination of this Agreement as provided in Section 11.a.ii, suspension of further disbursements of Grant Funds, recovery of Grant Funds (including but not limited to return, upon CJC's demand, of any Grant Funds expended in violation or contravention of one or more of the provisions of this Agreement), and declaration of ineligibility for the receipt of future awards from CJC.

**11. Termination**

a. **Termination by CJC.** CJC may terminate this Agreement upon thirty (30) days advance written notice of termination to Grantee. In addition, CJC may terminate this Agreement effective upon delivery of written notice of termination to Grantee, or at such later date as may be established by CJC in such written notice, if:

- i. Grantee fails to implement the Project during the Project Period or commencement or continuation of the Project by Grantee is, for any reason, rendered improbable, impossible, or illegal; or
- ii. Grantee is in default under this Agreement and has failed to cure the default within the time period specified in Section 10; or
- iii. Grantee takes an action without the approval of CJC that, under the provisions of this Agreement, requires the approval of CJC; or
- iv. CJC fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow CJC, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement; or
- v. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
- vi. The Project would not produce results commensurate with the further expenditure of funds.

**b. Termination by Grantee.** Grantee may terminate this Agreement effective upon delivery of written notice of termination to CJC, or at such later date as may be established by Grantee in such written notice, if:

- i. After conferring with CJC, Grantee has determined that the requisite local funding to continue the Project is unavailable to Grantee or Grantee is unable to continue implementation of the Project as a result of circumstances not reasonably anticipated by Grantee at the time it executed this Agreement and that are beyond Grantee's reasonable control; or
- ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.

**c. Effect of Termination.** Upon termination of this Agreement, CJC may end all further disbursements of Grant Funds. Termination of this Agreement shall not affect Grantee's obligations under this Agreement or CJC's right to enforce this Agreement against Grantee in accordance with its terms, with respect to Grant Funds actually received by Grantee or with respect to portions of the Project actually implemented. Specifically, but without limiting the generality of the preceding sentence, Sections 7 and 12 shall survive termination of this Agreement.

## 12. GENERAL PROVISIONS

**a. Contribution.** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against CJC or Grantee relating to this Agreement or the Project and with respect

to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's contribution obligation with respect to the Third Party Claim.

With respect to a Third Party Claim for which CJC is jointly liable with Grantee (or would be if joined in the Third Party Claim), CJC shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Grantee in such proportion as is appropriate to reflect the relative fault of the CJC on the one hand and of the Grantee on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of CJC on the one hand and of Grantee on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. CJC's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if CJC had sole liability in the proceeding.

With respect to a Third Party Claim for which Grantee is jointly liable with CJC (or would be if joined in the Third Party Claim), Grantee shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by CJC in such proportion as is appropriate to reflect the relative fault of Grantee on the one hand and of CJC on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Grantee on the one hand and of CJC on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Grantee's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

**b. Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.



**c. Amendments; budget changes.** This Agreement may be amended only by a written instrument signed by both Parties and approved as required by applicable law. Grantee may propose changes to the Project Budget in Exhibit A that do not increase the total budget amount. If Grantee's proposed changes do not alter any line item in the Project Budget by more than ten percent, the proposed changes to the Project Budget will be effective upon written approval by CJC delivered to Grantee as provided in Section 12.f. All other changes to the Project Budget must be implemented through a formal amendment to this Agreement before the changes become effective.

**d. Duplicate Payment.** Grantee is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for costs covered by Grant Funds under this Agreement from any agency of the State of Oregon or any other party, organization or individual.

**e. No Third Party Beneficiaries.** CJC and Grantee are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

Grantee acknowledges and agrees that the Federal Government, absent express written consent by the Federal Government, is not a party to this Agreement and shall not be subject to any obligations or liabilities to the Grantee or any other person pertaining to any matter resulting from the this Agreement.

**f. Notices.** Except as otherwise expressly provided in this Agreement, any notices to be given by a Party to the other Party hereunder shall be given in writing by personal delivery, facsimile, email, or mailing the same by registered or certified mail, postage prepaid, to Grantee Contact or CJC Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 11.f. Any notice personally delivered shall be deemed to be given when actually delivered. Any notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against CJC, such facsimile transmission must be confirmed by telephone notice to CJC Contact. Any notice by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any notice by registered or certified mail shall be deemed to be given three (3) days after mailing. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed notices under this Section unless receipt by the other Party is expressly acknowledged in writing by the receiving party.

**g. Work Product.** To the extent it has the necessary rights, Grantee hereby grants to CJC a non-exclusive, irrevocable, perpetual, royalty-free, license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display for governmental purposes, all documents, reports and works of authorship created,

produced or obtained as part of or in connection with the Project ("Work Product"). Grantee shall deliver copies of Work Product to CJC upon request. In addition, if applicable law requires that the CJC own any intellectual property created, produced or obtained as part of or in connection with the Project, then Grantee shall execute such further documents and instruments as CJC may reasonably request in order to assign ownership in the intellectual property to CJC.

**h. Governing Law, Consent to Jurisdiction.**

i. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

ii. Any claim, action, suit or proceeding (collectively, "Claim") between CJC (and/or any other agency or department of the State of Oregon) and Grantee that arises from or relates to this Agreement must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon (unless Oregon law requires that it be brought and conducted in another Oregon county). Grantee hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such form is an inconvenient forum.

iii. Notwithstanding Section 12.h.ii above, if a Claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This Section 12.h.iii applies to a Claim brought against CJC or any other agency or department of the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This Section 12.h.iii is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

i. **Compliance with Law.** Grantee shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project. Without limiting the generality of the foregoing, Grantee expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

j. **Insurance; Workers' Compensation.** All employers, including Grantee, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage

limits of not less than \$500,000 must be included. Grantee shall ensure that each of its subgrantees and subrecipients complies with these requirements.

**k. Independent Contractor.** Grantee shall implement the Project as an independent contractor and not as an agent or employee of CJC. Grantee has no right or authority to incur or create any obligation for or legally bind CJC in any way. CJC cannot and will not control the means or manner by which Grantee implements the Project, except as specifically set forth in this Agreement. Grantee is responsible for determining the appropriate means and manner of implementing the Project. Grantee acknowledges and agrees that Grantee is not an "officer", "employee", or "agent" of CJC, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.

**l. 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 shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

**m. Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.

**n. Integration and Waiver.** This Agreement, including all Exhibits, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision.

Grantee, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

**Approved by Grantee**

\_\_\_\_\_  
Signature of Grantee Date

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Federal Tax ID Number

\_\_\_\_\_  
State Tax ID Number

**Approved by Criminal Justice Commission**

\_\_\_\_\_  
Michael Schmidt, Executive Director Date

**Approved for Legal Sufficiency**

Approved for Legal Sufficiency by AAG David Elott by email dated November 3, 2017

\_\_\_\_\_  
David Elott Date

CJC Contact  
CJC Grant Administrator  
Madeleine Dardeau  
885 Summer St. NE  
Salem, OR 97301-2524  
Madeleine.E.Dardeau@oregon.gov  
503-378-4830

Grantee Contact  
Jenna Morrison  
1024 Main Street  
Oregon City, OR 97045  
jmorrison@clackmas.us  
503-655-8725

## EXHIBIT A

### Project Description and Budget

The goal of the Criminal Justice Commission's *Justice Reinvestment Grant Program* ("Grant Program") is to financially support Oregon localities in fulfilling the requirements of House Bill (HB) 3194 (2013) by reducing prison populations of offenders convicted of felonies described in ORS 137.717, 475.752 to 475.935, 811.182, 813.010, or 813.011 and averting future prison construction; reducing recidivism through evidence-based practices and data-driven research; increasing public safety through collaboration; and increasing offender accountability.

The Grant Program requires a data-driven approach to (1) analyze criminal justice trends to understand drivers of local prison use; (2) promote the effective implementation of investments that increase public safety and improve offender accountability; (3) measure the impact of policy changes and reinvestment resources; and (4) tie results to future funding. Accordingly, Grantee shall base implementation of its Project on existing research and evidence-based practices.

In implementing its Project, Grantee shall the establish a process to assess offenders in its county and provide a continuum of community-based sanctions, services and programs that results in progress on the following four goals of the Grant Program: (1) reducing recidivism of offenders, (2) reducing utilization of prison capacity by offenders convicted of felonies described in ORS 137.717, 475.752 to 475,935, 811.182, 813.010, or 813.011, (3) increasing public safety, and (4) holding offenders accountable.

Project Start Date: July 1, 2017

GRANT #: JR-17-003

GRANTEE PROGRAM CONTACT:

Jenna Morrison

EMAIL: [jmorrison@clackamas.us](mailto:jmorrison@clackamas.us)

TELEPHONE: 503-655-8725

Project End Date: December 31, 2019

GRANTEE FISCAL CONTACT:

Nora Jones

EMAIL: [NORAJON@clackamas.us](mailto:NORAJON@clackamas.us)

TELEPHONE: 503-655-8780

#### BUDGET SUMMARY:

	Grant Funds Awarded
2015-17 Underspending	\$ 497,972
Program 1: Pretrial Program	\$1,429,658
Program 2: Short Term Transitional Leave Expansion	\$134,793
Program 3: Corrections Substance Abuse Program Expansion	\$533,625.34
10% Victims: Safety Compass	\$42,164.20
10% Victims: Los Niños Cuentan	\$72,500
10% Victims: Clackamas Women's Services and Children's Center	\$126,494
Total	\$2,837,206.54

## EXHIBIT B

### Subagreement Insurance Requirements

Grantee shall require each other party to a Subagreement that is not a unit of local government as defined in ORS 190.003, or a unit of state government as defined in ORS 174.111, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, CERTIFICATES OF INSURANCE, and NOTIFICATION OF CHANGE OR CANCELLATION before the subgrantee performs under Subagreement, and ii) maintain the insurance in full force throughout the duration of the Subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to CJC. Grantee shall not authorize a subgrantee to begin work under a Subagreement until the insurance is in full force. Thereafter, Grantee shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Grantee shall incorporate appropriate provisions in the Subagreements permitting it to enforce subgrantee compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subagreement as permitted by the Subagreement, or pursuing legal action to enforce the insurance requirements. In no event shall Grantee permit a subgrantee to work under a Subagreement when the Grantee is aware that the subgrantee is not in compliance with the insurance requirements.

#### TYPES AND AMOUNTS.

i. WORKERS COMPENSATION. Workers' Compensation Insurance as required by applicable workers' compensation laws for persons performing work under a Subagreement including Employers' Liability Insurance with limits not less than \$500,000 each accident.

#### ii. PROFESSIONAL LIABILITY

Required by CJC    Not required by CJC.

Professional Liability Insurance covering any damages caused by an error, omission or negligent act related to the services to be provided under the Subagreement, in an amount not less than  \$2,000,000 per occurrence. Annual aggregate limit shall not be less than \$4,000,000. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability Insurance coverage, or the subgrantee shall provide Tail Coverage as stated below.

#### iii. COMMERCIAL GENERAL LIABILITY.

Required by CJC    Not required by CJC.

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to CJC. This insurance shall include personal injury liability, products and completed operations and contractual liability coverage for the indemnity provided under the Subagreement. Coverage shall be written on an occurrence form basis in an

amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

iv. AUTOMOBILE LIABILITY.

Required by CJC  Not required by CJC.

Automobile Liability Insurance covering all owned, non-owned and hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage.

ADDITIONAL INSURED. The Commercial General Liability insurance and Automobile Liability insurance must include the State of Oregon, CJC, and their officers, employees and agents as Additional Insureds but only with respect to the activities to be performed under the Subagreement. Coverage must be primary and non-contributory with any other insurance and self-insurance.

"TAIL" COVERAGE. If any of the required insurance is on a "claims made" basis and does not include an extended reporting period of at least 24 months, the subgrantee shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subagreement, for a minimum of 24 months following the later of: (i) the subgrantee's completion and Grantee's acceptance of all work required under the Subagreement or, (ii) the expiration of all warranty periods provided under the Subagreement.

CERTIFICATE(S) OF INSURANCE. Grantee shall obtain from the subgrantee a certificate(s) of insurance for all required insurance before the subgrantee performs under the Subagreement. The certificate(s) list the State of Oregon, its officers, employees and agents as a Certificate holder and as Additional Insured, specify that subgrantee shall pay for all deductibles, self-insured retention and self-insurance, if any, that all coverage shall be primary and non-contributory with any other insurance and self-insurance, and confirm that either an extended reporting period of at least 24 months is provided on all claims made policies or that tail coverage is provided. As proof of insurance, CJC has the right to request copies of the certificate(s) or insurance policies relating to the insurance requirements in this Agreement.

NOTICE OF CHANGE OR CANCELLATION. The subgrantee or its insurer must provide at least 30 days' written notice to Grantee and CJC before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

INSURANCE REQUIREMENT REVIEW. Grantee agrees to periodic review of insurance requirements by CJC under this agreement and to provide updated requirements as mutually agreed upon by Grantee.



**OFFICE OF COUNTY COUNSEL**

**PUBLIC SERVICES BUILDING**  
 2051 KAEN ROAD OREGON CITY, OR 97045

November 22, 2017

Board of County Commissioners  
 Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with Clackamas River Water  
 Related to Deferral of System Development Charges for 115<sup>th</sup> St. Property

**Stephen L. Madkour**  
 County Counsel

**Kathleen Rastetter**  
**Chris Storey**  
**Scott C. Ciecko**  
**Alexander Gordon**  
**Amanda Keller**  
**Nathan K. Boderman**  
**Christina Thacker**  
**Shawn Lillegren**  
**Jeffrey D. Munns**  
 Assistants

<b>Purpose/Outcomes</b>	Approve an IGA that will defer payment of applicable SDC's for the transitional housing project on the 115 <sup>th</sup> St. property.
<b>Dollar Amount and Fiscal Impact</b>	No SDCs shall be owed provided the project vacates the site within 2 years; otherwise, all applicable SDCs shall be due and payable.
<b>Funding Source</b>	N/A
<b>Duration</b>	No later than December 31, 2020.
<b>Previous Board Action</b>	9/20/16 – Policy Session to Discuss Project 10/11/16 – Approval to Use Letter of Intent to Solicit Development Plans for Project 12/6/16 – Board Direction to Pursue Zoning Solution for Temporary Shelter Uses 3/14/17 – Policy Session to Discuss Project Progress 6/27/17 – Approval to Enter Negotiations with Project Operator
<b>Strategic Plan Alignment</b>	1. Build Public Trust Through Good Government 2. Ensure Safe, Healthy and Secure Communities
<b>Contact Person</b>	Emily Klepper (503-742-5933)
<b>Contract No.</b>	N/A

**BACKGROUND:**

During the FY 2016/17 budgeting process, the Board of County Commissioners set aside \$300,000 of County General Funds to assist with the development of a shelter community for houseless veterans. The shelter community will be developed on a site currently owned by the Clackamas County Development Agency in the vicinity of SE Jennifer St. and SE 115<sup>th</sup> Ave., and the Agency anticipates that this will be a temporary commitment of the site that will last no longer than two years from the date that residents first occupy the site. The site is within the service district boundary of Clackamas River Water, and development of the site requires that a one inch water meter be installed to serve the anticipated demands of the community.

Clackamas River Water imposes system development charges (SDCs), pursuant to ORS 223.297-223.314, on all new development within the boundaries of the district. These SDCs are normally due prior to the installation of the water meter. Given the temporary commitment of the site, and



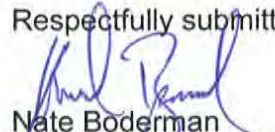
the anticipated duration of the project, Clackamas River Water has agreed to grant a temporary deferral of the collection of the applicable SDCs and connection fees. In the event the project exceeds the anticipated two-year timeline, Clackamas River Water would reserve the right to collect the deferred fees.

An Intergovernmental Agreement (IGA) has been prepared that memorializes the agreement summarized above. This IGA was presented and accepted by the Clackamas River Water Board of Commissioners at its November 9, 2017 meeting.

**RECOMMENDATION:**

Staff recommends the Board of County Commissioners, acting in its capacity as the Development Agency Board, execute the IGA with Clackamas River Water.

Respectfully submitted,



Nate Boderman  
Assistant County Counsel

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CLACKAMAS COUNTY  
DEVELOPMENT AGENCY AND CLACKAMAS RIVER WATER  
RELATED TO THE WAIVER OF SYSTEM DEVELOPMENT CHARGES**

THIS AGREEMENT (this "Agreement") is entered into by and between the Clackamas County Development Agency ("AGENCY"), a corporate body politic, and CLACKAMAS RIVER WATER ("DISTRICT"), a regional water service provider formed under to ORS Chapter 264, pursuant to ORS Chapter 190 (Cooperation of Governmental Units), collectively referred to as the "Parties" and each a "Party."

**RECITALS**

WHEREAS, authority is conferred upon local governments under ORS 190.010 to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform;

WHEREAS, the Agency owns land commonly known as Tax Lot No. 22E15A01500 (the "Property") which is within the boundaries of the District;

WHEREAS, the Agency plans to lease the Property to a third-party operator to allow them to operate a transitional shelter community to serve houseless military veterans within Clackamas County (the "Project");

WHEREAS, the Agency and District anticipate that a one inch water meter would need to be installed to service the water demands of the proposed transitional shelter community;

WHEREAS, the District imposes system development charges ("SDCs"), pursuant to ORS 223.297-223.314, on all new development within the boundaries of the District, which is payable prior to the installation of the water meter;

WHEREAS, the current SDC rate adopted by the District for the installation of a one inch water meter is \$8,060.00, in addition to a required connection fee of \$600.00;

WHEREAS, the Agency anticipates that the Project will be a temporary commitment of the Property that will last no longer than two years from the date that residents first occupy the Property in connection with the Project;

WHEREAS, the Agency requests, and the District has agreed to grant a temporary deferral of the collection of the applicable SDCs and connection fees for the anticipated duration of the Project; and

WHEREAS, the District reserves the right to collect any foregone SDC or connection fees in the event the Project extends beyond the anticipated two-year timeline;

NOW, THEREFORE, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Term.** This Agreement shall be effective upon execution, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or December 31, 2020, whichever is sooner.
2. **Obligations of the Agency.**
  - A. The Agency, by and through a third-party operator, agrees to complete the work associated with the Project, which will include development of a fully operational transitional shelter

community that will accommodate approximately 30 houseless military veterans on the Property.

- B. If the Project requires water service from the District beyond two years from the date that residents first occupy the Property in connection with the Project, the Agency will be obligated to pay to the District any SDC and connection fees that are applicable to the Project. Payment by the Agency shall be for the actual meter size and at the rates in effect at the time of the District's assessment.
- C. The Agency shall submit payment in connection with the assessment described above within 45 days of invoice from the District.

The Agency shall submit payment to the District at the following address:

Clackamas River Water  
Attn: General Manager  
16770 SE 82nd Dr,  
Clackamas, OR 97015

- D. If the Project does not require water service from the District beyond two years from the date that residents first occupy the Property in connection with the Project, the District may remove the water meter at any time after the need for water ends and the Agency will not be responsible for the payment of SDCs or connection fees at that time. Thereafter, the Agency or any other owner of the Property will be required to pay to the District the applicable SDCs, connection fees, and any other applicable charges to restore water service to the Property.

### 3. **Obligations of the District.**

- A. Except as set forth in Sections 2(B) and 2(D) above, the District hereby agrees to defer the collection of SDCs and connection fees that would otherwise be applicable to the Property in connection with development of the Project.
- B. Prior to charging any SDC or connection fees that may be applicable to the Project, the District shall provide written notice to the Agency no sooner than 30 days prior to invoicing the Agency for any fee arising under Section 2(B) of this Agreement.

The Agency shall submit payment to the District at the following address:

Clackamas County Development Agency  
Attn: David Queener  
150 Beaver Creek Rd.  
Oregon City, OR 97045

### 4. **Termination.**

- A. The Agency and the District, by mutual written agreement, may terminate this Agreement at any time.
- B. This Agreement shall terminate immediately upon payment by the Agency of the applicable SDC and connection fees applicable to the Property in connection with development of the Project.
- C. Either the Agency or the District may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days

of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.

- D. The Agency or the District shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- E. Nothing herein shall prevent the Parties from meeting to mutually discuss the Project. Each Party shall use best efforts to coordinate with the other to minimize conflicts.
- F. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

## 5. Party Contacts

- A. David Queener or his designee will act as liaison for the Agency for the Project.

### **Contact Information:**

Clackamas County Development Agency  
150 Beaver Creek Road  
Oregon City, OR 97045  
(503) 742-4322 or [davidque@co.clackamas.or.us](mailto:davidque@co.clackamas.or.us)

- B. Todd Heidgerken or his designee will act as liaison for the District for the Project.

### **Contact Information:**

Clackamas River Water  
16770 SE 82nd Dr,  
Clackamas, OR 97015  
503-722-9220

- C. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

## 6. General Provisions

- A. **Oregon Law and Forum.** This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
- B. **Applicable Law.** The Parties hereto agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be

deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.

- D. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- E. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- F. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- G. **Relationship of the Parties.** No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- H. **No Third-Party Beneficiary.** Neither Party intends that this Agreement benefit, or create any right or cause of action in, or on behalf of, any person or entity other than the Agency or the District.
- I. **No Assignment.** No Party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of the other Party, which consent may be withheld for any reason. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties.
- J. **Counterparts.** This Agreement may be executed in any number of counterparts (electronic, facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
- K. **Authority.** Each Party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a Party represents that it has been authorized by that Party to execute and deliver this Agreement.

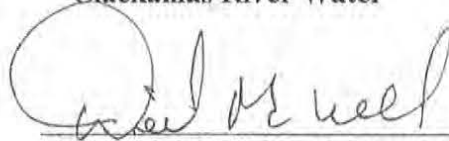
L. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

**IN WITNESS HEREOF**, the Parties have executed this Agreement by the date set forth opposite their names below.

**Clackamas County Development Agency**

**Clackamas River Water**

\_\_\_\_\_  
Chair, Clackamas County Development  
Agency Board

  
\_\_\_\_\_  
President, Clackamas River Water

\_\_\_\_\_  
Date

11-9-17  
\_\_\_\_\_  
Date

P0734675.v1



**OFFICE OF COUNTY COUNSEL**

**PUBLIC SERVICES BUILDING**  
2051 KAEN ROAD OREGON CITY, OR 97045

November 22, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Declaring a Local State of Emergency and Declaring Emergency Measures to Address Landslide Issues on Dickey Prairie Road

**Stephen L. Madkour**  
County Counsel

**Kathleen Rastetter**  
**Chris Storey**  
**Scott C. Ciecko**  
**Alexander Gordon**  
**Amanda Keller**  
**Nathan K. Boderman**  
**Christina Thacker**  
**Shawn Lillegren**  
**Jeffrey D. Munns**  
Assistants

<b>Purpose/Outcomes</b>	Declaring an Emergency and Imposing Emergency Measures
<b>Dollar Amount and Fiscal Impact</b>	Eventual costs associated with the emergency declaration are not presently known
<b>Funding Source</b>	County Road Fund, County General Fund
<b>Duration</b>	6 months unless extended
<b>Previous Board Action</b>	The Board discussed this matter on November 7, 2017 and authorized staff to advance this matter for the Board's approval at a business meeting.
<b>Strategic Plan Alignment</b>	1. Build public trust through good government 2. Ensure safe, healthy and secure communities
<b>Contact Person</b>	Nate Boderman, County Counsel
<b>Contract No.</b>	N/A

**BACKGROUND:**

Dickey Prairie Road is a maintained County road located southeast of Molalla. In March 2017, after a prolonged period of heavy precipitation, cracks formed on the southbound lane of Dickey Prairie Road due to a landslide. The Department of Transportation and Development (DTD) immediately closed the damaged lane at the slide area because the road could not be traversed safely.

In July 2017, the cracks in the closed portion of Dickey Prairie Road started to grow substantially larger. The project engineering geologist determined that this slide shouldn't be moving that quickly during the dry summer months. This landslide has caused a retaining wall that was holding up the road to fail. It was surmised that the cracks were growing during the dry season because the retaining wall was continuing to fail.

In August, DTD held a public meeting to inform the residents that live on the south side of the landslide of the current situation. Dickey Prairie is a dead-end road, and if the road became unpassable at this location, staff predicts that access to 14 residences will be cut off.

In October, DTD removed the failed lane that was being held up by the failing retaining wall. The lane was removed in attempt to retard the rate at which the wall is failing by removing the

load the wall was supporting. DTD also removed asphalt from the open northbound lane and left gravel to make the remaining lane easier to maintain and to more quickly perform small interim repairs should the landslide cause damage to the only remaining open lane. Today, and for the foreseeable future, Dickey Prairie continues to operate as a one lane road.

The County's consultant believes that a much larger and ancient landslide exists underneath the current landslide affecting Dickey Prairie Road. If the ancient slide underneath this landslide was to move, there is a strong possibility that there would be substantial damage to Dickey Prairie Road and that access to the residences on the south side of the slide would be cut off. If Dickey Prairie Road were to be substantially damaged, it would take an extended period of time before the road could be repaired to a condition to re-establish access to and from the residences on the south side of the slide area.

If Dickey Prairie Road becomes impassable, a detour route will need to be established quickly to provide access to the area south of the slide for residents and emergency services. Unfortunately, there are no existing public roads to use as an alternative access to the residences south of the landslide. The existing site terrain makes constructing a temporary detour close to the landslide unworkable.

The most practical detour route is to use an existing private logging road on Weyerhaeuser's property and to re-establish an abandoned logging road on other adjacent properties. The abandoned portion of the logging road crosses two private properties and land that is managed by the Bureau of Land Management (BLM). The portion of the abandoned road that crosses BLM will be relatively easy to re-establish because the road was used for a timber thinning operation about 5 years ago. The portion of abandoned logging road that crosses the two private landowners' properties will require more work to make the road passable by passenger vehicles. The intersection of the abandoned logging road and Dickey Prairie Road is blocked by a ditch and gravel berm. The intersection of the abandoned logging road and Weyerhaeuser's road is blocked by boulders.

Weyerhaeuser and the BLM are generally open to allowing the County use their roads in an emergency. Preliminary indications are that the private landowners are amenable to the proposed use as well. If the abandoned logging road is improved to a condition that would allow use by passenger vehicles, access to the detour route would remain blocked until the route is needed.

DTD believes maintaining access for the residents and emergency service providers for the 14 residences on the south side of the landslide area is critical to the safety and welfare of people who live in this area. It is staff's opinion that the existing condition of Dickey Prairie Road and the slide area meets the definition of an emergency in ORS 401 and Clackamas County Code Chapter 6.03. Thus, a declaration of an emergency is warranted. There are currently no feasible detours over publically-maintained lands that would provide alternative access in the event Dickey Prairie Road becomes impassable. DTD would like to expend road funds to have a detour route prepared and waiting should the need arise. Roads funds are restricted funds, and cannot generally be used to make improvements on private property. Pursuant to the authority in ORS 368.715 and County Code 6.03.060, in the event of an emergency, these restricted funds may be redirected for emergency use, which would include improving a detour route over private property temporarily open to public use where no other public road is available.

///



**RECOMMENDATION:**

At the Board's direction, staff has prepared an emergency declaration and associated emergency measures for the Board's consideration.

Respectfully submitted,



Nate Boderman  
Assistant County Counsel

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Declaring a  
Local State of Emergency and  
Declaring Emergency Measures  
To Address Landslide Issues  
Affecting Dickey Prairie Road



RESOLUTION NO.  
Page 1 of 4

**WHEREAS**, ORS 401.305 provides authority for Clackamas County to act as an emergency management agency, including authority to establish policies and protocols for defining and directing responsibilities during times of emergency; and

**WHEREAS**, Clackamas County has enacted a local ordinance (County Code Chapter 6.03) pursuant to the authority granted by ORS Chapter 401, which provides for executive responsibility in times of emergency and specifically delegates authority to declare a state of emergency to the County Chair, Vice-Chair (if Chair is unavailable), Remaining Board Member (if Vice-Chair is unavailable) and County Administrator or designee (if Remaining Board Member is unavailable); and

**WHEREAS**, both state law and the County Code define emergency as a manmade or natural event or circumstance causing or threatening loss of life, injury to persons, the environment or property; human suffering or financial loss to the extent that extraordinary measures must be taken to protect the public health, safety and welfare; and

**WHEREAS**, the following conditions have resulted in the need for a state of emergency:

A portion of Dickey Prairie Road has become compromised due to landslide activity and a failing retaining wall, which could ultimately result in the road becoming impassable, thereby cutting off access to approximately 14 residences.

**WHEREAS**, the following damage to life and property can be expected from the above conditions:

Residents living south of the slide area would be cut off from access to the road system and emergency responders.

**WHEREAS**, the entire County is in a state of emergency and if not the entire County, an emergency is declared for the following area(s):

The Dickey Prairie Road slide area, located between the intersection of Dickey Prairie Road and S. Lais Road, and the terminus of Dickey Prairie Road.

**WHEREAS**, County Code Chapter 6.03 and ORS 401.309 authorize certain actions to be taken during a state of emergency when necessary for public safety or for

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Declaring a  
Local State of Emergency and  
Declaring Emergency Measures  
To Address Landslide Issues  
Affecting Dickey Prairie Road



RESOLUTION NO.  
Page 2 of 4

the efficient conduct of activities to minimize or mitigate the effects of the emergency;  
and

**WHEREAS**, ORS 401.055 provides that upon request of Clackamas County, the Governor may declare a state of emergency by proclamation; and

**WHEREAS**, a preliminary assessment of property damage or loss, injuries or death is set forth hereinabove,

**NOW, THEREFORE, BE IT RESOLVED THAT:**

1. Jim Bernard, Chair, on behalf of the Board of County Commissioners, formally declares a state of emergency for Clackamas County, effective as of the date and time set forth below, for the area described above.
2. Upon this declaration of a state of emergency the undersigned official is empowered to assume centralized control of and have authority over all departments and offices of the County, and further the County Department of Emergency Management is empowered to carry out the appropriate functions and duties identified in County Code Chapter 6.03 during times of emergency and shall implement the Clackamas County Emergency Operations Plan.
3. Incident Command shall take all necessary steps authorized by law to coordinate response and recovery from this emergency, including, but not limited to, requesting assistance from the State of Oregon. If this declaration is not ordered by a majority of the Clackamas County Board of Commissioners, it shall be taken before the Board at its next available meeting for ratification.
4. Emergency procurements of goods or services are authorized pursuant to ORS 279B.080, ORS 279C.335(6), ORS 279C.380(4), and Local Contract Review Board Rules C-047-0280 and C-049-0150.

**IT IS FURTHER RESOLVED THAT:**

5. The following measures are necessary, or may become necessary as determined by Incident Command, for public safety or for the efficient conduct of

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Declaring a  
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Affecting Dickey Prairie Road



RESOLUTION NO.

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activities to minimize or mitigate the effects of the emergency (indicate selected measures):

       A. Establish a curfew for the area designated as an emergency area which fixes the hours during which all persons other than officially authorized personnel may be upon the public streets or other public places;

       B. Prohibit or limit the number of persons who may gather or congregate upon any public street, public place, or any outdoor place within the area designated as an emergency area;

  X   C. Barricade streets and roads, as well as access points onto streets and roads. In addition, prohibit vehicular or pedestrian traffic, or restrict or regulate the same in any reasonable manner in the area designated as an emergency area for such distance or degree of regulation as may be deemed necessary under the circumstances.

  X   D. Evacuate persons from the area designated as an emergency area;

       E. Close taverns or bars and prohibit the sale of alcoholic beverage throughout Clackamas County or a portion thereof;

  X   F. Suspend standard competitive bidding procedures to obtain necessary goods, services and/or equipment, utilizing the procedures in the Clackamas County Local Contract Review Board Rules;

  X   G. Commit to mutual aid agreements;

  X   H. Redirect funds for emergency use;

  X   I. Order such other measures as are found to be immediately necessary for the protection of life and/or property. [Codified by Ord. 05-2000, 7/13/00]

6. Emergency measures that are not selected in section 5 above may be implemented by Incident Command, provided however that such measures shall

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be taken before the Clackamas County Board of Commissioners at its next available meeting for ratification.

7. This declaration of emergency shall expire on May 22, 2017.

**DATED** this 22<sup>nd</sup> day of November, 2017.

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary



**DAN JOHNSON**  
MANAGER

**DEVELOPMENT AGENCY**

**DEVELOPMENT SERVICES BUILDING**  
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

November 22, 2017

Board of County Commissioners  
Development Agency Board

Members of the Board:

Approval of a Disposition Agreement with Oregon Beverage Recycling Cooperative

<b>Purpose/Outcomes</b>	Authorization for the Chair to execute a Disposition Agreement to convey real property from the Clackamas County Development Agency to Oregon Beverage Recycling Cooperative (OBRC)
<b>Dollar Amount and Fiscal Impact</b>	The agreement stipulates sale of the property for \$3,008,000
<b>Funding Source</b>	Not Applicable. No funding considered as a part of this property transaction
<b>Duration</b>	Establishes a due diligence period of 150 days, closing within 90 days of due diligence and substantial completion of the project within 24 months
<b>Previous Board Action</b>	Executive Session
<b>Strategic Plan Alignment</b>	Build public trust through good government
<b>Contact Person</b>	David Queener, Program Supervisor – Development Agency 503-742-4322 or <a href="mailto:davidque@co.clackamas.or.us">davidque@co.clackamas.or.us</a>

**BACKGROUND:**

The Development Agency owns a 12.68 acre parcel, which is part of the Clackamas Industrial Area Opportunity site. OBRC presented a proposal to the Agency to acquire the property for redevelopment purposes, which was presented to the Board for consideration in Executive Session. The Board directed staff to proceed with negotiations for disposition of the property to OBRC subject to terms agreeable by the Board.

The Disposition Agreement, which the Board is being asked to approve today, is the result of preceding negotiations and is contingent on subsequent terms. Terms of the Disposition Agreement dictate purchase of the property for \$3,008,000 and consistency with the development proposal as presented at the Executive Session.

County Counsel has reviewed and approved this Agreement.

**RECOMMENDATION:**

Staff respectfully recommends that the Board, as the governing body of the Clackamas County Development Agency, move by consent to:

- Approve the Disposition Agreement with OBRC
- Delegate authority to the Chair to execute the aforementioned Agreement, inclusive of any non-material changes, and any other necessary documents on behalf of the Development Agency Board at closing
- Delegate staff authority to act on behalf of the Agency at closing
- Record the Disposition Agreement in the Deed Records of Clackamas County at no cost to the Development Agency

Respectfully submitted,

David Queener  
Program Supervisor, Development Agency

## DISPOSITION AGREEMENT

THIS DISPOSITION AGREEMENT (this "**Agreement**") is by and between the CLACKAMAS COUNTY DEVELOPMENT AGENCY, the Urban Renewal Agency of Clackamas County, a corporate body politic (the "**Agency**"), and OREGON BEVERAGE RECYCLING COOPERATIVE, an Oregon domestic cooperative (the "**Developer**"). The latest date on which this Agreement is signed by Agency and Developer (as indicated below their signatures herein) is referred to in this Agreement as the "**Effective Date**."

The Agency and the Developer hereby agree as follows:

### RECITALS

A. This Agreement is entered into by the Agency in furtherance of its objectives under the Clackamas Industrial Area Renewal Plan ("**Plan**") by providing for the disposition of certain real property and the development of the "Property" (as hereinafter defined) as provided in this Agreement. The Agency has found that the development of the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the County of Clackamas, Oregon (the "**County**") and the Plan and the health safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

B. The Plan was originally approved and adopted on July 26, 1984 by Order No. 84-1045 of the Clackamas County Commission, as amended from time to time, and the Plan, together with such amendments are incorporated herein by this reference. Agency represents and warrants that the Plan, as it presently exists, is in full force and effect. A copy of the Plan is on file in the Clackamas County Department of Transportation and Development.

C. Agency desires to sell the Property to Developer, and Developer desires to purchase the Property from Agency, on and subject to the terms and conditions set forth in this Agreement.

## AGREEMENT

### **ARTICLE 1: SUBJECT OF AGREEMENT**

#### Section 1.1: The Property.

The "**Property**" consists of approximately 12.68 acres (and approximately 9.36 net developable acres) of land owned by the Agency located east of SE 120<sup>th</sup> Avenue and south of Capps Road, as more particularly shown on the map attached hereto as **Exhibit "A"** and more particularly described in the legal description attached hereto as **Exhibit "B."**

#### Section 1.2: Post-Closing Agreement.



At Closing, Agency and Developer will enter into that Post-Closing Escrow Holdback and Development Agreement in the form attached hereto as **Exhibit "C"** (the "**Post-Closing Agreement**"). Among other things, the Post-Closing Agreement provides for Developer to meet certain building improvement conditions and economic development goals, as more specifically described therein.

Section 1.3: The Agency.

The Agency is a corporate body politic of the State of Oregon, as the duly designated Urban Renewal Agency of Clackamas County, Oregon, exercising governmental functions and powers and organized and existing under Oregon Revised Statutes, Chapter 457. The term "**Agency**" as used in this Agreement includes the Urban Renewal Agency of Clackamas County, Oregon and any assignee of or successor to its rights, powers, duties and responsibilities. The principal offices and mailing address of the Agency for purposes of this Agreement is:

Clackamas County Development Agency  
c/o Development Agency Program Supervisor  
150 Beaver Creek Road  
Oregon City, OR 97045  
Attn: Dave Queener  
Email: [DavidQue@co.clackamas.or.us](mailto:DavidQue@co.clackamas.or.us)

Section 1.4: The Developer.

The term "**Developer**" as used in this Agreement is Oregon Beverage Recycling Cooperative, or any permitted assignee of Developer, as provided in Section 1.6 below. The principal office and mailing address of the Developer for purposes of this Agreement is:

Oregon Beverage Recycling Cooperative  
P.O. Box 4468  
Portland, OR 97208  
Attn: John Andersen  
Email: [jandersen@obrc.com](mailto:jandersen@obrc.com)

Section 1.5: Escrow Officer/Title Company.

The principal office and mailing address of the Escrow Officer and Title Company for purposes of this Agreement is:

Chicago Title Insurance Company of Oregon  
10151 SE Sunnyside Rd. #300  
Clackamas, Oregon 97015  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

Section 1.6: Prohibition Against Change in Ownership, Management and Control of Developer.

The qualifications and identity of Developer and its Manager are of particular concern to Agency and were essential to the selection of Developer by Agency for development of the Property. No voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement, except as expressly set forth herein. All assignments of this Agreement shall require written consent of Agency, which consent shall not be unreasonably withheld, conditioned or delayed. No consent shall be required if Developer assigns to an accommodation party, including an exchange accommodation titleholder, in conjunction with a Section 1031 like-kind exchange, which is permitted below under Section 8.19. Subject to the notice and opportunity to cure provisions set forth in Section 7 below, this Agreement may be terminated by Agency at its option before Closing if there is a controlling change (voluntary or involuntary) in the ownership of Developer or any successor-in-interest of Developer inconsistent with this Agreement. A controlling change is a change in more than fifty percent (50%) of the members of Developer.

**ARTICLE 2: DEVELOPER'S DUE DILIGENCE**

Section 2.1: Title Commitment.

Within fourteen (14) business days after the Effective Date, Agency will cause the Title Company (defined in Section 3.3 below) to furnish to Developer its preliminary title report on the Property (the "**Preliminary Commitment**"), along with copies of all documents that give rise to exceptions listed in the Preliminary Commitment (the "**Underlying Documents**"). Within thirty (30) days of receiving the last of the Preliminary Commitment, the Underlying Documents and the Initial Survey (defined in Section 2.2 below), Developer will give Agency written notice setting forth the title exceptions that are not acceptable to Developer (the "**Unacceptable Exceptions**"). All exceptions other than those timely objected to will be deemed acceptable to Developer as "**Permitted Exceptions.**" Agency will have ten (10) days after receiving Developer's notice within which to notify Developer in writing whether Agency is willing or able to eliminate the Unacceptable Exceptions. If Agency agrees to eliminate the Unacceptable Exceptions, Agency will be obligated to do so on or before Closing (defined in Section 3.3 below) at its cost. If Agency is unwilling or unable to eliminate the Unacceptable Exceptions, Developer may terminate this Agreement or elect to accept the Unacceptable Exceptions and proceed to close escrow by giving written notice to Agency within ten (10) days of receiving notice from Agency. If Developer does not provide timely written notice of its election to terminate this Agreement, it will be deemed to have waived its objections to the Unacceptable Exceptions and all of the Unacceptable Exceptions shall become Permitted Exceptions. Developer shall have the same rights as set forth above to approve (or disapprove and terminate this Agreement with respect to) any subsequent title matters or exceptions that are disclosed in any subsequent title reports that may be issued after the receipt of the initial Preliminary Commitment. Upon termination of this Agreement by Developer as provided in this Section 2.1, the Earnest Money shall be refunded to Developer and neither party shall have any further obligations or liability hereunder, except for those obligations herein that expressly

survive such termination.

Section 2.2: Survey.

Within fourteen (14) business days after the Effective Date, Agency shall deliver the most recent survey (in electronic format CAD & PDF), if any, in its possession to Developer (the "**Initial Survey**"). At its option and expense, Developer may order an update to the Survey (or a new survey) (the Initial Survey, as updated or a new survey, as applicable, is referred to herein as the "**Survey**"). If applicable, Developer shall deliver a copy of any new or updated survey to Agency promptly upon receipt. Within thirty (30) days after receipt of the Survey, Developer may deliver to Agency, in writing, any objections to any matters shown on the Survey (the "**Objections**"). Developer's failure to timely object to any such matters shall be deemed to constitute Developer's approval thereof and such shall then become Permitted Exceptions, as defined in Article 2. If Developer timely objects to any matters shown on the Survey, then Agency shall have the right, but not the obligation, to agree in writing to cure before Closing such Objections, or to decline to cure such Objections. Agency will have ten (10) days after receiving Developer's Objections within which to notify Developer in writing whether Agency is willing or able to cure the Objections. If Agency agrees to cure the Objections, Agency will be obligated to do so by Closing at its cost. If Agency is unwilling or unable to cure the Objections, Developer may terminate this Agreement or elect to accept the Objections and proceed to close escrow by giving written notice to Agency within ten (10) days of receiving notice from Agency. If Developer does not provide timely written notice of its election to terminate this Agreement, it will be deemed to have waived its Objections and all of the Objections shall become Permitted Exceptions. Notwithstanding anything to the contrary above, although Developer may elect to update the Initial Survey or obtain a new survey, Developer is not obligated to do so. Upon termination of this Agreement by Developer as provided above, the Earnest Money shall be refunded to Developer and neither party shall have any further obligations or liability hereunder, except for those obligations herein that expressly survive such termination.

Section 2.3: Property Documents.

Within fourteen (14) business days after the Effective Date, Agency shall deliver all documents and materials, in electronic format, which Agency has in its possession (or access to) which concern the Property or its development, including but not limited to: existing surveys, environmental assessments (Phase I and II); soils or geotechnical reports; wetland reports, analysis and permits; traffic studies; development feasibility studies; copies of use and development permits; and any covenants, conditions, restrictions, maintenance agreements, development standards applicable to the Property and not otherwise set forth herein (except those that appear in zoning codes, comprehensive plans or other readily available government planning documents).

Section 2.4: Due Diligence Period.

Subject to extension as provided herein, Developer shall have a period of one hundred fifty (150) days after the Effective Date (the "**Initial Due Diligence Period**", which period, as

may be extended as provided herein, is referred to herein as the "**Due Diligence Period**") to conduct its due diligence investigation of the Property and to satisfy itself concerning all aspects of the Property and the suitability of the Property for Developer's intended uses, including without limitation the physical condition of the Property, the amount of land available to support Developer's intended use, zoning, access, and utilities. During the period from the Effective Date until the earlier of Closing or termination of this Agreement, Developer and its employees, agents, consultants, contractors, prospective tenants or purchasers, and lenders may enter the Property to perform such tests, inspections and studies as Developer may deem necessary, including without limitation environmental assessments. Developer hereby indemnifies and holds the Agency and the County, and their elected officials, officers, agents and employees harmless from any injury or damages arising out of any activity of Developer, its agents, employees and contractors performed and conducted on the Property for the purposes of completing its due diligence. Due diligence may include, without limitations, physical inspections of the Property; soils investigations and coring; Phase I and, as necessary, Phase II environmental assessments; and examination of survey and title exceptions. Developer shall restore the Property to its pre-examination state after conducting such due diligence at its own expense. Developer agrees to provide the Agency with copies of all third party reports concerning the condition of the Property obtained or produced as a result of its due diligence investigation. On or before expiration of the Due Diligence Period, Developer at its option and in its sole and absolute discretion may provide Agency with a notice approving its due diligence investigation of the Property and electing to proceed with acquisition of the Property as provided herein (the "**Approval Notice**"). Alternatively, Developer at its option and in its sole and absolute discretion may provide notice to Agency of its election to terminate this Agreement prior to the expiration of the Due Diligence Period. If Developer fails to provide either the Approval Notice or a termination notice prior to expiration of the Due Diligence Period, Developer shall be deemed to have elected to proceed with this Agreement as if an Approval notice were given to Agency prior to expiration of the Due Diligence Period. Upon such termination (or deemed termination), except as otherwise expressly provided herein, neither party shall have any further rights, duties or obligations hereunder and the Earnest Money shall be fully and immediately refunded to Developer.

During the Initial Due Diligence Period, Developer and Agency will negotiate in good faith and seek to reach mutual agreement on the terms and conditions of the following written agreements to be signed and recorded at Closing: (i) Storm Line Easement in favor of Agency with respect to certain existing underground storm water lines located on a portion of the Property, and (ii) Road Maintenance Agreement with respect to the maintenance (and sharing of associated costs) of that portion of SE 120<sup>th</sup> Avenue located south of Capps Road serving the Property and the adjacent parcel to the west. Agency shall provide Developer with drafts of the foregoing agreements within forty-five (45) days of the Effective Date. If the parties do not reach mutual agreement on the Storm Line Easement and Road Maintenance Agreement on or before the date that is thirty (30) days prior to the expiration of the Due Diligence Period, either party may thereafter terminate this Agreement by notice to the other whereupon neither party shall have any further liability hereunder and the Earnest Money will be immediately refunded to Developer.

Notwithstanding the foregoing, Developer shall have the right to extend the Due Diligence Period for up to two (2) separate periods of thirty (30) days each by giving notice thereof to Agency prior to the then-current expiration date and depositing with the Title Company \$10,000 for each extension; all such amounts shall be non-refundable to Developer in the event Developer does not close this transaction (except in the case of default hereunder by Agency), but will be credited to the Purchase Price payable by Developer at Closing. In addition, if Agency fails to deliver (or cause to be delivered) to Developer the Preliminary Commitment or any of the property documents required under this Article 2 by the applicable deadline, the Due Diligence Period will be automatically extended by the number of days occurring from such deadline to the date such documents are delivered to Developer.

Section 2.5: Design Drawings.

The Developer shall prepare and submit to the Agency architectural design development drawings of the Developer's proposed improvements ("**Design Drawings**"), or any portion thereof, for Agency review and written approval within the Due Diligence Period. The Design Drawings shall be generally consistent with the Scope of Development, attached hereto as **Exhibit "F."** The plans and documents as may be required shall also be submitted to the County for the purposes of compliance with all codes, regulations and other requirements in connection with the construction of the Developer's proposed improvements. Agency shall diligently, in good faith, review the Design Drawings to determine whether they are in substantial conformance with the Scope of Development as proposed by the Developer and shall issue its decision within twenty (20) days after receipt of same. If Agency does not approve the Design Drawings, Agency shall specify, in writing, its specific objections to same, and Developer shall have a reasonable opportunity to revise the Design Drawings. Agency approval shall not be deemed approval by the County Design Review Board or any other agency or department.

Section 2.6: Governmental Approvals.

Prior to the Closing Date, Agency agrees to join in executing any applications reasonably required by Developer in connection with its attempts to obtain governmental permits and approvals for its intended development or use of the Property. Developer shall reimburse Agency for its actual, reasonable out-of-pocket expenses that are usual and customary (if any) incurred in cooperating with Developer's attempts to obtain governmental permits or approvals; provided Agency gives Developer notice of the amount and purpose of all such expenses prior to those expenses being incurred by Agency. Agency's agreement to cooperate with Developer in connection with Developer's governmental approvals and any other provision of this Agreement shall not be construed as making either party an agent or partner of the other party.

Section 2.7: No Liens.

Prior to Closing, the Developer shall not place or allow to be placed on the Property or any part thereof any mortgage, trust deed, encumbrance or lien, unless specifically pre-approved in writing by the Agency. The Developer shall remove or have removed any levy, lien or

attachment made on the Property, or any part thereof, or provide assurance of the satisfaction therein within a reasonable time, but in any case no later than thirty (30) days of such levy, lien or attachment coming into existence without permission prior to Closing. Developer may contest or challenge the validity or amount of any such lien or encumbrance provided such challenge or contest is taken in accordance with applicable law and within a reasonable time, so long as Developer provides security satisfactory to Agency protecting the Agency's interests, or (in the case of construction liens) bonds against the liens as permitted by statute.

### **ARTICLE 3: DISPOSITION OF PROPERTY**

#### Section 3.1: Purchase and Sale of the Property; Total Purchase Price.

In accordance with, and subject to all the terms, covenants, and conditions of this Agreement, the Agency agrees to sell to Developer, or Developer's permitted assignee of this Agreement, and Developer agrees to purchase from Agency, the Property, for the amount of Three Million Eight Thousand and no/100 Dollars (\$3,008,000.00) (the "**Purchase Price**").

#### Section 3.2: Earnest Money Deposit.

Developer shall, within one (1) business day after the Effective Date, deliver to the Title Company (defined below) the sum of Sixty Thousand and no/100 Dollars (\$60,000.00) as earnest money by wire transfer of immediately available funds (the "**Earnest Money**") to be held and applied in accordance with the terms of this Agreement. If Developer fails to timely deposit the Earnest Money as provided above, this Agreement shall terminate and neither Developer nor Agency shall have any further obligations to one another. The Earnest Money will be held in an interest bearing account approved by Developer, and all interest earned thereon shall be added to and become part of the Earnest Money. The Earnest Money will be applied to the Purchase Price due by Developer at Closing. If this Agreement terminates prior to expiration of the Due Diligence Period for any reason, the Earnest Money and any accrued interest, shall be fully and immediately refunded by the Title Company to Developer. Upon expiration of Developer's Due Diligence Period, the Earnest Money, and any accrued interest, shall become nonrefundable, but shall be credited toward payment of the Purchase Price at Closing.

#### Section 3.3: Closing.

This transaction shall close (the "**Closing**") on a date to be selected by Developer and reasonably acceptable to Agency that is on or before ninety (90) days after the expiration of the Due Diligence Period (as may be extended as provided herein, the "**Closing Date**"). Closing shall occur in escrow on or before the Closing Date by and through a mutually acceptable escrow officer (the "**Escrow Officer**") of Chicago Title Insurance Company of Oregon, 10151 SE Sunnyside Rd. #300, Clackamas, OR 97015 (the "**Title Company**"), in accordance with the terms and conditions of this Agreement. Developer agrees, subject to the terms and conditions hereunder for its benefit, to accept conveyance of the Property and pay to Agency at Closing the Purchase Price for the Property by wire transfer of immediately available funds, subject to the credits, debits, prorations and adjustments provided for in this Agreement, including a credit for

the Earnest Money. The Agency and the Developer agree to perform all acts necessary to close this transaction in accordance with the terms of this Agreement. Each party may submit escrow instructions to the Escrow Officer consistent with this Agreement.

Section 3.4: Deed Form.

At Closing, the Agency shall convey to Developer fee simple title to the Property by Bargain and Sale Deed, duly executed, acknowledged and delivered in the form of **Exhibit "D"** attached hereto (the "**Deed**"), free and clear of all liens, claims and encumbrances other than the Permitted Exceptions. Conveyance of title to the Property to Developer shall conclusively establish satisfaction or waiver of all closing conditions set forth in Article 4 herein.

Section 3.5: Title Insurance; Prorations; Adjustments; Commissions.

3.5.1 Agency shall be responsible for obtaining any and all ALTA standard title insurance for the Property, and Developer shall be responsible for any additional premiums for ALTA extended coverage and additional title endorsements required. At Developer's request, Agency will execute and deliver at Closing an affidavit certifying that there are no unrecorded leases or agreements affecting the Property, there are no parties in possession of the Property, that there are no mechanic's or statutory liens against the Property, and as to such other matters as may be reasonably requested by the Title Company or Developer for issuance of extended coverage title insurance in favor of Developer.

3.5.2 Real property taxes and assessments and other Property expenses for the current year (if any) shall be prorated and adjusted between the parties as of the Closing Date. Agency shall be responsible for any and all real property taxes for the period of time prior to the recording of the Deed and the Developer shall be responsible for such taxes for the period of time on and subsequent thereto. Escrow fees shall be shared equally by Developer and the Agency. Developer shall be responsible for all professional fees incurred by Developer in connection with its investigation of the Property, all recording fees and payment of its respective legal fees and expenses. Agency shall pay the costs of its own attorneys, consultants and advisors with respect to this transaction.

3.5.3 Developer and Agency hereby acknowledge and agree that Eric Fuller & Associates, Inc. is exclusively representing Developer and that no other broker shall be entitled to a commission with this transaction. Agency shall pay Eric Fuller & Associates, Inc. a brokerage fee of 2.5% of the Purchase Price.

Section 3.6: Events of Closing.

Provided the Escrow Officer has received sums equal to the Purchase Price as well as any costs, prorations and adjustments as provided herein, and is in a position to cause the title insurance policy to be issued as described herein, this transaction shall be closed on the Closing Date as follows:

3.6.1 The Escrow Officer shall perform the prorations and adjustments described in Section 3.5, and the parties shall be charged and credited accordingly.

3.6.2 Developer shall pay the entire Purchase Price to Agency by wire transfer of immediately available funds, adjusted for the charges, prorations, adjustments and credits set forth in this Agreement, including a credit for the Earnest Money.

3.6.3 Any liens required to be paid by Agency at closing shall be paid and satisfied of record at Agency's expense.

3.6.4 Agency shall convey the real property to Developer by execution and delivery of the Deed, subject only to the Permitted Exceptions.

3.6.5 The Title Company shall be irrevocably committed to issue the policy described in Section 4.2.5, upon recordation of the Deed.

3.6.6 Agency shall deliver Agency's Certification of Nonforeign Status as provided in Section 8.14 herein.

3.6.7 The parties shall execute and deliver the Post-Closing Escrow and Development Agreement in the form attached hereto as **Exhibit "C."**

3.6.8 The parties shall execute and deliver, with notary acknowledgment, a Memorandum of Post-Closing Agreement in the form attached hereto as **Exhibit "E"** (the "**Memorandum**").

3.6.9 The Escrow Officer shall record the following documents in the following order: (i) Deed and (ii) Memorandum.

3.6.10 Developer shall deposit the sum of One Hundred and Twenty-Five Thousand Dollars (\$125,000) by wire transfer of immediately available funds, as a security deposit, to be held by the Title Company pursuant to the terms of the Post-Closing Escrow and Development Agreement, attached hereto as **Exhibit "C."**

3.6.11 The parties will take such further actions and execute and deliver such other instruments as may be reasonably necessary or desirable to consummate the transactions contemplated by this Agreement.

Section 3.7: Possession.

Possession of the Property shall be delivered to the Developer concurrently with the conveyance of title on the Closing Date. The Developer shall accept title and possession on the Closing Date, unless such date is extended as provided herein.

Section 3.8: Conditions of the Property.

The Developer acknowledges that it is purchasing the Property "As Is," except as



provided otherwise herein.

## **ARTICLE 4: CLOSING CONDITIONS**

### **Section 4.1: Agency's Closing Conditions.**

Agency's obligations to convey the Property under this Agreement are expressly conditioned upon the satisfaction of the following conditions:

4.1.1 The fulfillment by Developer of all its obligations and covenants under this Agreement to be performed on or before the Closing Date, including but not limited to the deposit of the Purchase Price required for conveyance of the Property and the deposit of the security deposit as set forth in Section 3.6.10 with the Title Company at or before Closing, and the attachment of all exhibits to the Post-Closing Agreement as of that time.

4.1.2 Design Drawings (as defined in Section 2.5) for the Developer Improvements have been prepared and submitted by Developer in accordance with the terms of this Agreement and have been reviewed and approved by Agency, such approval not to be unreasonably withheld, conditioned or delayed, within twenty (20) days after receipt of such Design Drawings, as being in accordance with the Plan and this Agreement; and Developer shall have completed its design review process and the Design Drawings shall have been approved by the County Design Review Board or any subsequent appellate body and such approval is not subject to further appeal under Oregon land use law. The Developer shall complete the process with the County Design Review Board, and any subsequent appeal ("**Design Approval**"), within the Due Diligence Period, as it may be extended pursuant to Section 2.4. Design Drawings for the purpose of Agency's review shall mean architectural design development drawings of the site improvements.

4.1.3 That all of Developer's representations and covenants set forth in this Agreement are true and correct in all material respects on the Closing Date.

The foregoing conditions may be waived only by Agency. If any one or more of such conditions are not satisfied as of the Closing Date, Agency at its option may terminate this Agreement, in which event the Earnest Money shall be refunded by the Title Company to Developer and neither party shall have any further obligation or liability hereunder (except for such obligations that expressly survive such termination), except to the extent such condition is not satisfied solely as a result of a breach of this Agreement by Developer, in which case the provisions of Section 7.1 below shall apply.

### **Section 4.2: Developer's Closing Conditions.**

Developer's obligations to close the purchase of the Property under this Agreement are expressly conditioned upon the satisfaction of the following conditions:

4.2.1 Developer giving the Approval Notice, or being deemed to have given its

approval pursuant to Section 2.4.

4.2.2 The fulfillment by Agency of all its obligations and covenants under this Agreement to be performed on or before the Closing Date.

4.2.3 That all of Agency's representations and covenants set forth in this Agreement are true and correct in all material respects on the Closing Date.

4.2.4 There being no change in the condition or legal requirements of the Property, whether directly or indirectly, including any dumping of refuse or environmental contamination, after Effective Date, and that no legal action or proceeding (including condemnation) affecting the Property or Developer's intended use thereof shall have been threatened or commenced.

4.2.5 That the Title Company shall be irrevocably committed to issue an owner's title insurance policy insuring that fee simple title is vested in Developer as of the Closing Date, in the amount of the Purchase Price, subject only to the Permitted Exceptions.

The foregoing conditions may be waived only by Developer. If any one or more of such conditions are not satisfied as of the Closing Date, Developer at its option may terminate this Agreement, in which event the Earnest Money shall be refunded to Developer and neither party shall have any further obligation or liability hereunder (except for such obligations that expressly survive such termination), except to the extent such condition is not satisfied solely as a result of a breach of this Agreement by Agency, in which case the provisions of Section 7.2 below shall apply.

## **ARTICLE 5: RESERVED**

Reserved

## **ARTICLE 6: REPRESENTATIONS AND WARRANTIES**

### Section 6.1: Developer's Representations and Covenants.

Developer represents, warrants and covenants as follows:

6.1.1: Developer is an Oregon domestic cooperative, duly organized and validly existing, and is qualified to do business in the state in which the Property is located. Developer has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate the transactions contemplated hereby;

6.1.2: There is no agreement to which Developer is a party or which, to Developer's knowledge, is binding on Developer which is in conflict with this Agreement. There is no action or proceeding pending or, to Developer's knowledge, threatened against Developer which challenges or impairs Developer's ability to execute or perform its obligations under this Agreement;

6.1.3: Developer has the financial capacity to cause those improvements set forth in the Post-Closing Escrow and Development Agreement to be constructed;

6.1.4: John Andersen, in his capacity as the President of Developer is individually authorized to act on behalf of, and bind, the Developer;

6.1.5: To the best of Developer's knowledge (without any requirement of further investigation), all information, documents and instruments delivered to Agency by Developer in connection with this Agreement are complete and true copies of such documents or original counterparts thereof;

6.1.6: Developer has not obligated itself in any manner to convey, transfer, or otherwise encumber the Property after the Closing to any party that may reasonably be expected to impair performance under the Post-Closing Escrow and Development Agreement in any material respect, and further Developer promises not to enter into an agreement with any other party that could reasonably be expected to negatively impact or impair Developer's performance under the Post-Closing Escrow and Development Agreement in any material respect;

6.1.7: Developer is not a "foreign person" for purposes of Section 1445 of the Internal Revenue Code; and

6.1.8: To the best of Developer's knowledge, Developer, for a period of no fewer than six calendar years preceding the effective date of this Agreement, has faithfully complied with (i) all applicable tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) any tax provisions imposed by a political subdivision of this state that applied to Developer, to Developer's property, operations, receipts, or income, or to Developer's performance of or compensation for any work performed by Developer; (iii) any tax provisions imposed by a political subdivision of this state that applied to Developer, or to goods, services, or property, whether tangible or intangible, provided by Developer; and (iv) any applicable rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Section 6.2: Agency's Representations and Covenants.

Agency represents, warrants and covenants as follows:

6.2.1 Agency has been duly organized and is validly existing as a corporate body politic, in good standing in the State of Oregon. Agency has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate the transactions contemplated hereby;

6.2.2 To the best of Agency's knowledge (without any requirement of further investigation), there are no actions, suits, claims, legal proceedings, condemnation or eminent domain proceedings, or any other proceedings affecting the Property, or any portion thereof, at law or in equity, before any court or governmental agency, domestic or foreign, nor is there any basis for any such proceeding which, if adversely determined, might affect the use or operation of the Property for Developer's intended purpose, the value of the Property, or adversely affect

the ability of Agency to perform its obligations under this Agreement; provided, however, that Agency makes no representation or warranty regarding the use of the Property under current or future land use codes, building codes, or other generally applicable laws and regulations, and Developer acknowledges their obligation to investigate the same as part of their due diligence process;

6.2.3 To the best of Agency's knowledge (without any requirement of further investigation), there are no liens, bonds, encumbrances, covenants, conditions, reservations, restrictions, easements or other matters affecting the Property except as disclosed in the Preliminary Commitment, and Agency has not received notice and has no knowledge of any pending liens or special assessments to be made against the Property;

6.2.4 From the Effective Date until the Closing Date, Agency shall use commercially reasonable efforts to properly maintain the Property in its current condition as of the Effective Date less reasonable impact of natural conditions and Developer's due diligence efforts;

6.2.5 To the best of Agency's knowledge (without any requirement of further investigation), all Property information, documents and instruments delivered to Developer by Agency are complete and true copies of such documents or original counterparts thereof;

6.2.6 To the best of Agency's knowledge (without any requirement of further investigation), other than this Agreement, the documents to be executed and delivered hereunder at Closing and the Permitted Exceptions, there are no contracts or agreements of any kind relating to the Property to which Agency or its agents is a party and which would be binding on Developer after Closing;

6.2.7 Agency has not obligated itself in any manner to sell the Property to any party other than Developer and promises not to enter into an agreement with any other party for the sale or lease of any portion of the Property while this Agreement is in effect;

6.2.8 Agency is not a "foreign person" for purposes of Section 1445 of the Internal Revenue Code;

6.2.9 To the best of Agency's knowledge (without any requirement of further investigation), Agency is not (and is not engaged in this transaction on behalf of) a person or entity with which Developer is prohibited from doing business pursuant to any law, regulation or executive order pertaining to national security including, but not limited to, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001; Executive Order 13224; the Bank Secrecy Act; the Trading with the Enemy Act; the International Emergency Economic Powers Act; sanctions and regulations promulgated pursuant thereto by the Office of Foreign Assets Control, as well as laws related to the prevention and detection of money laundering in 18 U.S.C Sections 1956 and 1957;

6.2.10 To the best of Agency's knowledge (without any requirement of further investigation), Agency's sale of the Property is not subject to any federal, state or local withholding obligation of Developer under the tax laws applicable to Agency or the Property;

6.2.11 Agency has received no written notice of and has no knowledge of any material

violations or investigations of violations of any applicable laws or ordinances affecting the Property that have not been corrected or resolved;

6.2.12 To the best of Agency's knowledge (without any requirement of further investigation), during the time Agency has owned the Property, Agency has not released to the soil or groundwater on the Property any hazardous substances in any material concentration or quantity;

6.2.13 To the best of Agency's knowledge (without any requirement of further investigation), the Property is in compliance with all applicable environmental laws, there are no material concentrations of hazardous wastes or hazardous substances on, in or under the Property, and there are no underground storage tanks within the Property. As used in this Agreement, the term "environmental laws" includes any and all state, federal and local statutes, regulations, and ordinances to which the Property is subject and relating to the protection of human health and the environment, as well as any judgments, orders, injunctions, awards, decrees, covenants, conditions, or other restrictions or standards relating to same; and the term "hazardous substances" includes all hazardous and toxic substances, wastes, or materials, including without limitation all substances, wastes, and materials containing either petroleum, including crude oil or any fraction thereof, or any of the substances referenced in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601(14), and similar or comparable state or local laws.

For the purposes of this Agreement, "Agency's knowledge" is defined as the knowledge of Mr. Dan Johnson, David Queener and Mr. Ken Itel.

Section 6.3: Survival.

All representations and warranties contained in this Agreement shall be true on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date, and shall survive Closing and not be merged into any documents delivered at Closing.

**ARTICLE 7: DEFAULTS AND REMEDIES**

Section 7.1: Agency's Remedies.

In the event that this transaction fails to close solely on account of a default by Developer under this Agreement, this Agreement shall terminate and the Earnest Money, any accrued interest, and any extension fees paid by Developer pursuant to Section 2.4 shall be forfeited by Developer and retained by Agency as liquidated damages as Agency's sole remedy for such default. Such amount has been agreed by the parties to be reasonable compensation and the exclusive remedy for Developer's default, since the precise amount of such compensation would be difficult to determine. For any default by Developer that does not cause the transaction to fail, but which nevertheless causes damage to the Agency, the Agency shall be entitled to such remedies as may be available under applicable law.

In the event that any of the following occur prior to the conveyance of title to the Property, then this Agreement, and any rights of the Developer, or any assignee or transferee, in this Agreement, or the Property, or any portion thereof, shall, at the option of the Agency, be

terminated by the Agency, in which event the Earnest Money (and any interest earned thereon) shall be retained by the Agency as liquidated damages and as its property without any deduction, offset or recoupment whatsoever, and neither the Developer nor the Agency shall have further rights against or liability to the other under this Agreement:

7.1.1 Developer (or any successor in interest thereto) assigns or attempts to assign this Agreement or any rights therein, or to the Property, in violation of this Agreement;

7.1.2 There is a change in the ownership of the Developer contrary to the provisions of Section 1.6 hereof; or

7.1.3 The Developer does not submit Design Drawings as required by this Agreement in the manner and by the dates respectively provided in this Agreement therefore; or

7.1.4 The Developer does not tender the Purchase Price or take title to the Property on tender of conveyance by the Agency pursuant to this Agreement after the satisfaction or waiver of all of Developer's Closing Conditions set forth in Section 4.2

Section 7.2: Developer's Remedies.

If this transaction fails to close because of Agency's default hereunder, the Earnest Money, and any accrued interest, shall be returned to Developer. Developer shall be entitled to such remedies for breach of contract as may be available under applicable law, including (without limitation) the remedy of specific performance, injunctive relief and/or the right to recover its damages.

Section 7.3: Default.

Except for the parties' wrongful failure to close or satisfy a condition to Closing by the Closing Date, neither party shall be deemed in default under this Agreement unless such party is given written notice of its failure to comply with this Agreement and such failure continues for a period of fifteen (15) days following the date such notice is given.

**ARTICLE 8: GENERAL PROVISIONS**

Section 8.1: Applicable Law.

The law of the State of Oregon shall govern the interpretation and enforcement of this Agreement without giving effect to the conflicts of law provision thereof.

Section 8.2: Attorney Fees.

The parties shall bear their own costs and attorney fees in the event an action is brought to enforce, modify or interpret the provisions of this Agreement.

Section 8.3: Acceptance of Service of Process.

In the event that any legal or equitable action is commenced by the Developer against the Agency, service of process on the Agency shall be made by personal service on the Program Supervisor of the Agency, or in such other manner as may be provided by law. In the event that any legal or equitable action is commenced by the Agency against the Developer, service of process on the Developer shall be made in such manner as may be provided by law.

Section 8.4: Notice, Demands and Communications Between the Parties.

All notices given pursuant to this Agreement shall be in writing sent to the addresses shown in Section 1.3 and Section 1.4 of this Agreement and to the attention of the person indicated, and shall be either: (i) mailed by first class mail, postage prepaid, certified or registered with return receipt requested, (ii) delivered in person or by local or national courier, or sent by electronic mail.

Any notice (i) sent by mail in the manner specified in this section shall be deemed served or given three (3) business days after deposit in the United States Postal Service, (ii) delivered in person or by local or national courier shall be deemed served or given upon receipt or refusal of delivery, and (iii) sent by electronic mail shall be deemed served or given upon transmission subject to confirmation of receipt. Notice given to a party in any manner not specified above shall be effective only if and when received by the addressee as demonstrated by objective evidence in the possession of the sender. Each party may change its address for notice by giving not less than ten (10) days' prior notice of such change to the other party in the manner set forth above.

Section 8.5: Nonliability of Officials and Employees.

No member, shareholder, director, officer, elected official, employee, affiliate, agent or representative of any of the parties shall be personally liable to the other party or any successor-in-interest thereto, in the event of any default or breach by either party or for any amount that may become due to either party or its successor, or any obligations under the terms of this Agreement.

Section 8.6: Merger.

None of the provisions of this Agreement are intended to or shall be merged by reason of any deed referred to herein and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement, but shall be deemed made pursuant to this Agreement.

Section 8.7: Headings.

Any title of the several parts and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 8.8: Time of Essence.

Time is of the essence of this Agreement. All obligations of the Agency and the Developer to each other shall be due at the time specified by the Agreement, or as the same may be extended by mutual agreement of the parties in writing.

Section 8.9: Severability.

If any clause, sentence or any other portion of the terms and conditions of this Agreement become illegal, null or void for any reason, or held by any court of competent jurisdiction to be so, the remaining portion will remain in full force and effect.

Section 8.10: No Partnership.

Neither anything in this Agreement or the documents delivered in connection herewith nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the parties to this Agreement.

Section 8.11: Nonwaiver of Government Rights.

Subject to the terms and conditions of this Agreement, by making this Agreement, the Agency is specifically not obligating itself, the County, or any other agency with respect to any discretionary governmental action relating to the acquisition of the Property or development, operation and use of the improvements to be constructed on the Property, including, but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental agency approvals that are or may be required.

Section 8.12: Entire Agreement; Waivers.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all prior negotiations or previous agreements between the parties or the predecessors in interest with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in a writing signed by the appropriate authorities of the Agency and the Developer, and all amendments thereto must be in a writing signed by the appropriate authorities by the Agency and the Developer.

Section 8.13: Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.



Section 8.14: Non-Foreign Persons.

The parties agree to comply with the terms of Internal Revenue Code Section 1445 and at Closing, Agency shall execute and deliver to Developer and Title Company a non-foreign person affidavit in a form mutually acceptable to the parties. Agency represents and warrants that it is not a "foreign person" as that term is used in Internal Revenue Code Section 1445 and Agency agrees to furnish Developer with any necessary documentation to that effect.

Section 8.15: Waiver.

Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

Section 8.16: Weekends and Holidays.

If the time for performance of any of the terms, conditions and provisions of this Agreement shall fall on a Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter.

Section 8.17: Neutral Construction.

This Agreement has been negotiated with each party having the opportunity to consult with legal counsel and shall not be construed against either party by virtue of which party drafted all or any part of this Agreement.

Section 8.18: Exhibits.

All exhibits listed on the signature page below and attached hereto are incorporated into and constitute a part of this Agreement.

Section 8.19: 1031 Like-Kind Exchange.

If Developer intends for this transaction to be a part of a Section 1031 like-kind exchange, then the Agency agrees to cooperate in the completion of the like-kind exchange so long as the like-kind exchange can be completed within the timelines set forth herein, Agency incurs no additional liability in doing so, and so long as any expenses (including attorneys fees and costs) incurred by the Agency that are related only to the exchange are paid or reimbursed to the Agency at or prior to closing.

**ARTICLE 9: SUCCESSOR INTEREST**

This Agreement shall be binding upon and inure to the benefit of the parties, and their permitted successors and assigns.

## **ARTICLE 10: STATUTORY DISCLAIMER**

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

**"AGENCY"**

CLACKAMAS COUNTY DEVELOPMENT  
AGENCY, a corporate body politic

By: \_\_\_\_\_  
Chair

Date: \_\_\_\_\_, 2017

**"DEVELOPER"**

OREGON BEVERAGE RECYCLING  
COOPERATIVE, an Oregon domestic cooperative

By: \_\_\_\_\_

Date: \_\_\_\_\_, 2017

**LIST OF EXHIBITS**

EXHIBIT A	Property Map
EXHIBIT B	Legal Description - Property
EXHIBIT C	Post-Closing Agreement
EXHIBIT D	Form of Bargain and Sale Deed
EXHIBIT E	Memorandum of Post-Closing Agreement
EXHIBIT F	Scope of Development

# EXHIBIT A

## Property Map

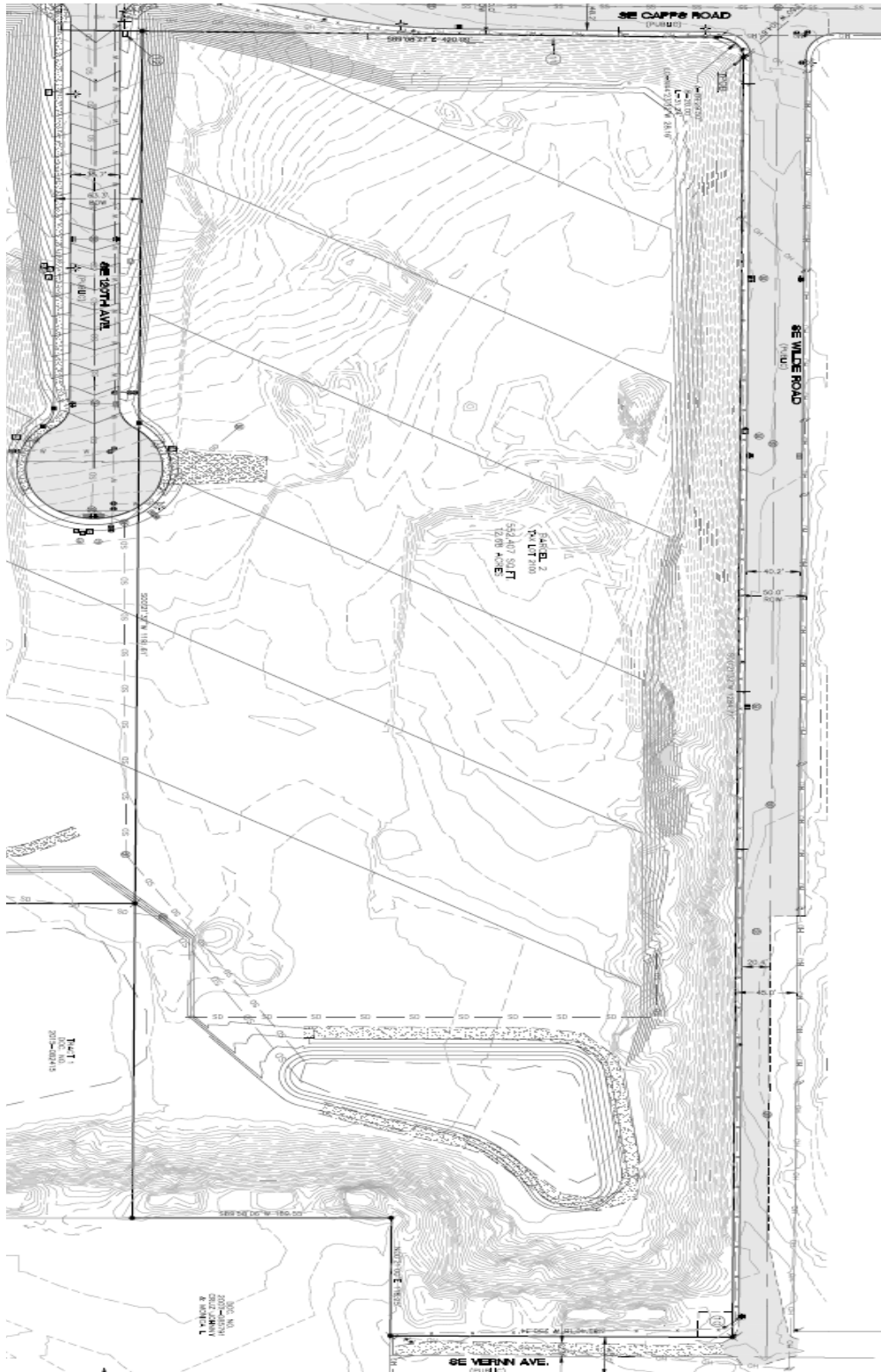


Exhibit A - DISPOSITION AGREEMENT

## EXHIBIT B

### Legal Description - Property

A portion of that tract of land being described as Tract 2, Property Line Adjustment Deed Document Number 2015-082415, Clackamas County Deed Records. Said tract of land being situated in the northeast one quarter and the southeast one quarter of Section 15 Township 2 South, Range 2 East, of the Willamette Meridian, Clackamas County, Oregon, and more particularly described as follows:

Commencing at the north one sixteenth section corner between sections 15 and 14 of said Township and Range, said point being marked by a 1-1/4" inside diameter iron pipe;

Thence, South 42°13'50" West, 104.67 feet to a point of tangency, said point being on the east line of said Parcel 2 tract, said point also being on the west right of way line of Wilde Road, County Road No. 3093, said point also being the true point of beginning of the herein described tract;

Thence, along the east line of said tract and along said west right of way line, South 0°21'32" West, 1284.77 feet to the intersection of said west right of way line and the north right of way line of Vernon Avenue, Local Access Road No. P2089, said point also being the southeast corner of said tract;

Thence, along said north right of way line, North 89°40'18" West, 250.34 feet to point on the west line of that tract of land described in Deed Document Number 2007-085791, Clackamas County Deed Records;

Thence, along the east line of said Document Number 2007-085791 tract, North 0°23'38" East, 118.25 feet to the northeast corner thereof;

Thence, along the north line of said tract, South 89°58'06" West, 189.55 feet;

Thence, leaving said line, North 0°21'32" East, 1191.61 feet to a point on the south right of way line of Capps Road, County Road Number 88;

Thence, along said south line, South 89°08'27" East, 420.02 feet to a point of curve;

Thence along the arc of a tangent curve to the right, having a radius of 20.00 feet, a delta angle of 89°29'50", an arc length of 31.24 feet, the chord of which bears South 44°23'32" East, a chord length of 28.16 feet to the true point of beginning.

Said tract of land contains 12.6793 acres more or less.

## EXHIBIT C

### Post-Closing Agreement

#### POST-CLOSING ESCROW AND DEVELOPMENT AGREEMENT

**THIS POST-CLOSING ESCROW AND DEVELOPMENT AGREEMENT** (this "**Agreement**") is entered into by and among **CLACKAMAS COUNTY DEVELOPMENT AGENCY**, the Urban Renewal Agency of Clackamas County, a corporate body politic (the "**Agency**") and **OREGON BEVERAGE RECYCLING COOPERATIVE**, an Oregon domestic cooperative ("**Developer**"), and Chicago Title Insurance Company of Oregon ("**Escrow Holder**"). The latest date on which this Agreement is signed by Agency, Developer and Escrow Holder (as indicated below by their signatures herein) is referred to in this Agreement as the "**Effective Date**."

#### RECITALS

A. Pursuant to that Disposition Agreement effective \_\_\_\_\_, 2017 (the "**DA**"), Developer acquired from Agency that certain real property comprised of approximately 12.68 acres (and approximately 9.36 net developable acres) of land owned by the Agency located east of SE 120<sup>th</sup> Avenue and south of Capps Road in Clackamas County, Oregon, as more particularly described in Exhibit "B" of the DA (the "**Property**"). All capitalized terms used in this Agreement and not otherwise defined herein shall have their meaning as set forth in the DA.

B. In connection with the DA and in furtherance of the Plan, Agency desires that Developer construct the Building Improvements (defined below), and Developer wishes to do so, on and subject to the terms and conditions of this Agreement. As used herein, the "**Building Improvements**" means the industrial building and associated improvements on the Property as described in **Exhibit "A,"** attached hereto.

C. In addition, the parties desire to establish at Closing an escrow account (the "**Account**") in the total amount of One Hundred Twenty-Five Thousand and No/100 Dollars (\$125,000.00) (the "**Funds**"), payable at Closing by the developer, to be held by the Escrow Holder as security for satisfaction of the obligation of the Developer to complete the Development Goals, as provided herein.

D. Escrow Holder has agreed to serve as the escrow agent for the Account and to disburse the amounts deposited with it in accordance with the terms of this Agreement.

#### AGREEMENT

**DEVELOPMENT GOALS.** Subject to the terms and conditions of this Agreement, Developer will pursue satisfaction of the following development goals relating to the development of the Property (collectively, the "**Development Goals**") within the specified time periods:

**Building Improvements; Floor Area Ratio Goal.** Subject to the terms and conditions of this Agreement, Developer will pursue Substantial Completion of the Building Improvements in accordance with and within the limitations specified in **Exhibit "A,"** "Scope of Development," attached hereto and made a part hereof, within twenty-four (24) months after the Effective Date. As used in this Agreement, "Substantial Completion" of a work or improvement shall mean that (i) the applicable work or improvement has been completed to the point that it can be used for its intended purpose and the only incomplete items are minor or insubstantial details typically found in a so-called "punch list" and (ii) the final governmental permit or approval (as applicable) has been received with respect to such work or improvement. The Developer agrees, at its own cost and expense, to install or construct, or cause to be installed or constructed, the required Building Improvements in accordance with the terms of this Agreement and with all applicable specifications, standards and codes and requirements, including those of the County and the State of Oregon. The Building Improvements shall provide a floor area ratio (as defined in Clackamas County Code Section 11.03.020(V)) of not less than 0.29 or as agreed by Agency and Developer based on reasonable standards relating to the building size layout. The goal under this Section 1.1 shall be deemed met upon Substantial Completion of the Building Improvements providing the floor area ratio in accordance with the foregoing.

**Job Quantity Goal.** Within twelve (12) months after the Building Improvements are fully occupied by tenant(s) or owners, the ratio of total number of workers employed at the building to the total square feet of floor area in such building shall be equal to or greater than 1 worker per 1100 square feet of building floor area. For example, if the building is a total of 250,000 square feet of floor area, the minimum number of workers to satisfy this goal is 227. The foregoing ratio shall be deemed satisfied for the Building Improvements upon the first instance of such ratio being met at any time during the 12-month period after the Building Improvements are fully occupied by tenant(s) or owners. The goal under this Section 1.2 shall be deemed satisfied when all of Building Improvements have so satisfied the ratio within the applicable 12-month period.

**Wage Goal.** Within twelve (12) months after the Building Improvements are fully occupied by tenant(s) and/or owners, the average annual wages of all employees in such building, excluding senior executive positions (e.g., CEO, COO, CFO, etc.), shall be equal to or greater than the National Annual Mean Wage, as determined by the official publication of the Bureau of Labor Statistics available as of the Effective Date, as provided below. The goal under this Section 1.3 shall be deemed satisfied upon the first instance of the foregoing minimum average annual wages of the tenant(s) or owners being met at any time during the 12-month period. The applicable National Annual Mean Wage shall be based on the major occupational group used by the Bureau of Labor Statistics (Occupational Employment Statistics) for Developer: Code 423930. For purposes of this goal, "employer" shall refer to the initial tenant(s) and/or owner(s) of each building; and "employees" shall mean workers who are paid through the normal payroll system of the employer, for whom Federal Insurance Contribution Act ("FICA"), and federal and state income taxes are deducted from his or her gross wages and then forwarded to the appropriate agencies by employer on behalf of the worker, as to whom the employer pays federal and state unemployment insurance, and as to whom the employer contributes to FICA, and shall not include workers hired through an agency to provide temporary services to employer or workers acting as independent contractors. For purposes of audit, the Agency intends to seek relevant employee information from the Oregon Employment Department. If the Agency is not

able to obtain information from the Oregon Employment Department to determine the relevant wages, the Agency may request that Developer seek such information from each employer as provided in Section 1.4 below.

**Supporting Information.** Developer will use commercially reasonable efforts to include the following provision (or substantially similar provision) in its lease or sale agreement with each occupant of the Building Improvements:

"Upon request of [Developer] or [Agency] from time to time during the first fifteen (15) months of full occupancy, [Tenant/Owner] agrees to certify in writing the total number of employees and average annual wages of employees working at the [Premises/Property] as of the date(s) requested, provided that the average annual wages shall exclude the wages of senior executive positions (e.g., CEO, COO, CFO, etc.)."

If any occupant is unwilling to agree to such provision, Developer will use commercially reasonable efforts to obtain such information from the occupant as it is willing to provide with respect to the above Development Goals. The parties may rely upon such information provided by the occupants of the Building Improvements, together with all other reasonably reliable data and estimates, for purposes of evidencing satisfaction with the Development Goals under Section 1.2 and Section 1.3 above.

**CONSTRUCTION SCHEDULE.** Developer shall use commercially reasonable efforts to begin and complete all construction and development of the Building Improvements within the time specified in the Schedule of Performance, specified in **Exhibit "B,"** attached hereto and made a part hereof, except as otherwise permitted herein.

**GOVERNMENTAL PERMITS.** Before commencement of construction or development of any buildings, structures or other works or improvements in connection with the Building Improvements upon the Property, the Developer shall, at its own expense, secure or cause to be secured, any and all land use, construction, and other permits which may be required by any governmental agency. The Agency shall cooperate with the Developer and permitting agencies in obtaining the necessary permits.

**TERM.** The term of this Agreement shall commence on the Effective Date and, except as otherwise provided herein, end on the date that all funds in the Account have been disbursed in accordance with the terms of this Agreement.

**ACCOUNT.**

**Appointment.** Agency and Developer appoint Escrow Holder to receive and hold the Funds in the Account for the benefit of Agency and Developer and to disburse the funds in the Account in accordance with the terms of this Agreement. Escrow Holder accepts that appointment.

**Account Deposit.** On the date hereof, Developer shall deposit the Funds in the Account. Until disbursed as provided herein, all funds in the Account (as may vary from time to time, the "**Account Funds**" or the "**Security Deposit**") shall be held by the Escrow Holder in accordance with the terms of this Agreement.



**Investment of Funds.** Escrow Holder shall invest the Account Funds in an interest-bearing account fully insured by the Federal Deposit Insurance Corporation. All interest earned on Account Funds shall automatically be added to and become part of the funds in the Account.

**Disbursement of Account Funds.** Except as otherwise expressly provided in this paragraph, upon Substantial Completion of the Building Improvements and satisfaction of all of the other Development Goals set forth above in Section 1, all Funds shall be disbursed to Developer following written request by Developer that is approved in writing by Agency, which approval will not be unreasonably withheld, conditioned or delayed. For purposes of this provision, the Agency's approval is not unreasonably withheld where a tenant or owner of property fails to confirm in writing the total number of employees and average annual wages of employees working at the Property and the Agency cannot otherwise obtain such employee information from the Oregon Employment Department or other reasonably reliable source, for purposes of determining if the Development Goals have been satisfied. The sole condition for disbursement of the Security Deposit to Developer is the Substantial Completion of the Building Improvements and satisfaction of all of the other Development Goals set forth above in Section 1. Notwithstanding the foregoing, if the Building Improvements are not substantially completed within twenty-four (24) months after the Effective Date, subject to delays due to force majeure or other causes beyond the reasonable control of Developer, or if the Developer fails to satisfy any of the remaining Development Goals by the deadlines set forth in Section 1.2 or Section 1.3, the entire Security Deposit shall be disbursed to Agency, subject to the written approval of Developer, which approval will not be unreasonably withheld, conditioned or delayed. The sole condition for disbursement of the Security Deposit to Agency is the failure to achieve any of the deadlines associated with the Development Goals set forth in Section 1 by the foregoing deadlines. The Security Deposit shall be disbursed by a single payment, and shall not be paid on a pro rata basis or otherwise disbursed in installments.

**Disbursements.** Escrow Holder shall disburse to the payee within three (3) business days after receipt of a written request of a party, approved in writing by the other party. With respect to any disbursement request of a party that is subject to the approval of the other party, such approval shall be deemed given if the other party fails to give notice of disapproval to the requesting party within twenty (20) business days of receipt of the request.

**Termination of Account.** The Account shall be terminated upon disbursement of all Account Funds as provided in this Agreement.

**LIMITATION OF LIABILITY.** Notwithstanding any other provision herein, the liability of either party under this Agreement shall be strictly limited solely to a sum equal to the Account Funds as provided by this Agreement. In no event shall either party have any obligations or liability whatsoever with respect to this Agreement in excess of the Account Funds or with respect to any assets of either party (other than the Account Funds). Except solely for either party's right to disbursement of the Account Funds as provided in this Agreement, both parties hereby waive, release, covenant not to sue and forever discharge the other party and its elected officials, officers, directors, shareholders, employees, affiliates, agents, successors and assigns of, for, from and against any and all Claims (defined below) arising from or related to this Agreement, whether such Claims relate to the period before, on or after the Closing Date. As used herein, "**Claims**" shall mean any and all actual or threatened claims, detriments, rights,

remediation, counterclaims, liens, controversies, obligations, agreements, executions, debts, covenants, promises, suits, causes of action, actions, demands, liabilities, losses, damages, assessments, judgments, fines, penalties, threats, sums of money, accounts, costs, expenses, known or unknown, direct or indirect, at law or in equity (including, without limitation, reasonable attorneys' fees and other professional fees of attorneys and professionals selected by Developer), whether incurred in connection with any investigation, non-judicial, quasi-judicial, judicial, mediative, arbitative, or administrative actions or proceedings or otherwise (including pretrial, trial, appellate, administrative, bankruptcy or insolvency proceedings) or in settlement or in any other proceeding and whether or not suit was filed thereon. The provisions of this Section 6 shall survive the expiration or termination of this Agreement.

### **ESCROW HOLDER.**

**Duties of Escrow Holder.** Escrow Holder shall act with reasonable diligence in performing its duties hereunder. Agency or Developer may at any time, from time to time, require an accounting of all monies deposited into and remitted from the Account. Within ten (10) days after the end of each calendar quarter, Escrow Holder shall send to Agency and Developer a statement showing all deposits, withdrawals, and interest credits of the Account for the previous calendar quarter, as well as the current balance of the Account.

**Claims of Escrow Holder.** Escrow Holder shall have no claim against the Account or Account Funds and relinquishes any right or claim it may have against the Account and such Account Funds.

### **Resignation of Escrow Holder.**

Escrow Holder may resign as escrow agent hereunder at any time by giving sixty (60) days prior written notice to Agency and Developer. In such event Agency shall select a new escrow agent doing business in Portland, Oregon, whose selection shall be subject to the reasonable approval of Developer. Promptly after selection of the new escrow agent, Escrow Holder shall transfer over to the new escrow agent all of the funds in the Account and shall be relieved of any duties hereunder arising thereafter except for the obligation to give the reports required hereunder with respect to any prior or current periods. Contemporaneously with such transfer, Escrow Holder shall deliver to Agency and Developer a report showing the amount transferred. The new escrow agent shall execute and deliver an instrument accepting its appointment and the new escrow agent shall be vested with all of the estates, properties, rights, powers and duties of the predecessor escrow agent as if originally named as Escrow Holder.

If Escrow Holder resigns upon written notice as provided for hereinabove and successor escrow agent is not appointed within thirty (30) days after such notice, then Escrow Holder may petition to an Oregon court of competent jurisdiction to name a successor and agrees to perform its duties hereunder until its successor is named.

**Instructions to Escrow Holder.** All instructions to Escrow Holder shall be submitted in writing, signed by an authorized representative of the submitting party, with a simultaneous copy to the other party.

**Escrow Fees.** Escrow fees shall be shared equally by Developer and the Agency.

**DEVELOPER OBLIGATIONS UNDER THE PLAN.** Pursuant to Section 715 and 745 of the Plan, Developer agrees as follows:

The Property shall be used for the purposes designated in the Plan.

Developer shall obtain necessary approvals for the Building Improvements from all federal, state and/or local agencies that may have jurisdiction on the Property and the Building Improvements to be developed thereon.

The development of the Property shall be in accord with the regulations prescribed in the County's Comprehensive Plan, Zoning and Development Ordinance, and any other applicable local, state or federal laws regulating the development of property.

Agency acknowledges receipt of a copy of the plans and specifications for construction of the Building Improvements referenced on Exhibit A attached.

Developer shall commence and complete the Building Improvements within the period of time as provided in this Agreement.

Developer covenants that it will not discriminate against any person or group of persons on account of age, race, color, creed, religion, sex, marital status, national origin, ancestry or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property.

Developer shall maintain the Property in a clean, neat and safe condition.

The foregoing covenants shall be binding upon and run for the benefit of the parties hereto and their respective assigns and successors in interest, subject to Section 9.12. In the event the Developer or any of its lessees, licensees, agents or other occupants, uses the Property in a manner inconsistent with Section 8 of this Agreement, the Agency may bring all appropriate legal and equitable actions.

## **GENERAL PROVISIONS.**

**Attorneys' Fees.** The parties shall bear their own costs and attorney fees in the event an action is brought to enforce, modify or interpret the provisions of this Agreement.

### **Notice.**

All notices given pursuant to this Agreement shall be in writing and shall either be (i) mailed by first class mail, postage prepaid, certified or registered with return receipt requested, or (ii) delivered in person or by nationally recognized overnight courier, or (iii) sent by email.

Any notice (i) sent by mail in the manner specified in subsection (a) of this section shall be deemed served or given three (3) business days after deposit in the United States Postal Service, (ii) delivered by nationally recognized overnight courier shall be deemed served or given on the date delivered or refused (or the next business day if not delivered on a business

day), and (iii) given by email shall be deemed given on the date sent if sent during business hours of a business day in Portland, Oregon (or the next business day if not so sent). Notice given to party in any manner not specified above shall be effective only if and when received by the addressee as demonstrated by objective evidence in the possession of the sender.

The address of each party to this Agreement for purposes of notice shall be as follows:

AGENCY: Clackamas County Development Agency  
c/o Development Agency Manager  
150 Beavercreek Road  
Oregon City, Oregon 97045  
Attn: Dave Queener  
Email: [davidque@co.clackamas.or.us](mailto:davidque@co.clackamas.or.us)

DEVELOPER: Oregon Beverage Recycling Cooperative  
P.O. Box 4468  
Portland, OR 97208  
Attn: John Andersen  
Email: [jandersen@obrc.com](mailto:jandersen@obrc.com)

ESCROW HOLDER: Chicago Title Insurance Company of Oregon  
10151 SE Sunnyside Road, Suite 300  
Clackamas, Oregon 97015  
Attn: \_\_\_\_\_  
Email: \_\_\_\_\_

**Nonliability of Officials and Employees.** No member, elected official, official or employee of any of the parties shall be personally liable to the other party or any successor-in-interest thereto, in the event of any default or breach by either party or for any amount that may become due to either party or its successor, or any obligations under the terms of this Agreement.

**Headings.** Any title of the several parts and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

**Time of Essence.** Time is of the essence of this Agreement. All obligations of the Agency and the Developer to each other shall be due at the time specified by the Agreement, or as the same may be extended by mutual agreement of the parties in writing.

**Severability.** If any clause, sentence or any other portion of the terms and conditions of this Agreement become illegal, null or void for any reason, or held by any court of competent jurisdiction to be so, the remaining portion will remain in full force and effect.

**No Partnership.** Neither anything in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to

create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the parties to this Agreement.

**Nonwaiver of Government Rights.** Subject to the terms and conditions of this Agreement, by making this Agreement, the Agency is specifically not obligating itself, the County, or any other agency with respect to any discretionary action relating to the acquisition of the Property or development, operation and use of the improvements to be constructed on the Property, including, but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental agency approvals that are or may be required.

**Non-Integration.** This Agreement supplements the obligations of the parties under the DA, all of which shall be construed to be consistent with one another to the maximum extent possible. The terms and provisions of this Agreement do not modify or otherwise affect the terms and provisions of any other agreement between some or all of the parties hereto. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the Agency and the Developer, and all amendments thereto must be in writing by the appropriate authorities by the Agency and the Developer.

**Further Assurances.** The parties to this Agreement agree to execute and deliver such additional documents and to perform such additional acts as may be reasonably necessary to give effect to the terms and provisions contemplated herein.

**Counterparts; Facsimile and Electronic Signatures.** This Agreement may be executed in counterparts. Facsimile and electronic transmission of any signed original document, and retransmission of any signed facsimile or electronic transmission, shall be the same as delivery of an original. At the request of either party, or an escrow officer, the parties shall confirm facsimile transmitted signatures by signing an original document.

**Binding Effect.** Except as otherwise provided herein, no party hereunder shall assign its rights and/or obligations under this Agreement without the consent of the other, which consent shall not be unreasonably withheld, conditioned or delayed. This Agreement is made for the sole benefit of the parties hereto and their permitted successors and assigns, and no other person or party shall have any right of action under this Agreement or any right to the funds in the Account. Subject to the terms of this Section 9.12, this Agreement shall be binding upon and inure to the benefit of the parties, and their respective heirs, personal representatives, successors and assigns

**Force Majeure.**

**Event of Force Majeure.** The time for performing obligations under this Agreement shall be extended, on a day-for-day basis, due to, and a party shall not be liable for, or deemed in breach of this Agreement because of, any failure or omission to timely carry out or observe its obligations under this Agreement, to the extent that such performance is rendered impossible or is materially and demonstrably delayed by any event where the failure to perform or the delay is beyond the reasonable control of, and could not have been reasonably foreseen by, the nonperforming party; provided that such event is not caused by or attributable to the

negligence or fault of, or breach of its obligations hereunder by, such party, and could not have been avoided by prudent commercial practices (any such event, a "Force Majeure Event").

**Notice of Force Majeure Events.** As a condition to claiming a Force Majeure Event, the claiming party shall promptly give the other party a written notice describing the particulars of the Force Majeure Event of the occurrence of any such Force Majeure Event, including an estimate of the expected duration and the probable impact of the Force Majeure Event on the performance of such party's obligations hereunder. The parties hereto agree to use reasonable efforts to notify each other of potential Force Majeure Events and update each other on developments regarding potential Force Majeure Events.

**Mitigation.** Suspension or extension of a party's obligations or performance under this Agreement due to a Force Majeure Event shall be of no greater scope and no longer duration than is reasonably required by such Force Majeure Event. The party claiming a Force Majeure Event shall have a duty to alleviate and mitigate the cause and effect arising from such Force Majeure Event, and to resume performance of its affected obligations under this Agreement promptly after being able to do so. The burden of proof with respect to a Force Majeure Event shall be on the party claiming the same.

**Exhibits.** All exhibits listed on the signature page below and attached hereto are incorporated into and constitute a part of this Agreement.

**Saturday, Sunday and Legal Holidays.** If the time for performance of any of the terms, conditions and provisions of this Agreement shall fall on Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter.

**Neutral Construction.** This Agreement has been negotiated with each party having the opportunity to consult with legal counsel and shall not be construed against either party.

**Applicable Law.** This Agreement shall be construed, applied and enforced in accordance with the laws of the State of Oregon without giving effect to the conflicts of law provision thereof.

**Waiver.** Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or waiver of the provision itself or any other provision.

**Memorandum of Agreement.** On or about the Effective Date, the parties will execute and deliver a memorandum of this Agreement in mutually acceptable form, which shall be recorded in the official records of Clackamas County, Oregon. This Agreement shall not be recorded. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective assigns and successors in interest. Upon termination of this Agreement, the parties shall execute and record at Developer's expense an instrument in mutually acceptable form evidencing such termination.

**[SIGNATURES START ON NEXT PAGE]**

**IN WITNESS WHEREOF** the parties have executed this Agreement to be effective as of the day and year first above written.

**DEVELOPER:**

**Oregon Beverage Recycling Cooperative**  
an Oregon domestic cooperative

By: \*DRAFT- FOR INFORMATION ONLY\*

Name: \_\_\_\_\_

Date of Execution: \_\_\_\_\_



**IN WITNESS WHEREOF** the parties have executed this Agreement to be effective as of the day and year first above written.

**AGENCY:**  
**Clackamas County Development Agency**  
a corporate body politic

By: \*DRAFT- FOR INFORMATION ONLY\*  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date of Execution: \_\_\_\_\_

**IN WITNESS WHEREOF** the parties have executed this Agreement to be effective as of the day and year first above written.

**ESCROW HOLDER:**

By: \*DRAFT- FOR INFORMATION ONLY\*

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

List of Exhibits

Exhibit A	Scope of Development
Exhibit B	Schedule of Performance

## **EXHIBIT A to Post-Closing and Escrow Agreement**

### **Scope of Development**

The approximate 12.68 gross acres (0.36 net buildable acres) will be developed with:

1. Processing area of approximately 61,000 SF of warehouse
2. Bottle wash area of approximately 21,000 SF of warehouse
3. PET processing area of approximately 12,000 SF of warehouse
4. Corporate office of approximately 21,000 SF
5. Approximately 194 employee parking stalls
6. Approximately 72 truck/trailer parking stalls
7. On-site storm drainage pond
8. On-site landscaping

The processing and corporate office buildings will most likely be concrete tilt up construction however OBRC reserves the right to select the final building materials based upon costs.

## **EXHIBIT B to Post-Closing and Escrow Agreement**

### **Schedule of Performance**

The following milestones are approximate dates based on execution of the Disposition Agreement on November 1, 2017

- |   |                |
|---|----------------|
| 1. Developer Due Diligence Completed (150 days)           | March 30, 2018 |
| 2. Closing on Land Purchase (90 days after due diligence) | June 30, 2018  |
| 3. Start of Site Work and Vertical Construction           | July 1, 2018   |
| 4. Substantial Completion (210 days)                      | June 30, 2019  |
| 5. Occupancy  | Q-3, 2019      |

**EXHIBIT D**

**Form of Bargain and Sale Deed**

**AFTER RECORDING SEND TO:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**UNTIL A CHANGE IS REQUESTED  
ALL TAX STATEMENTS SHALL  
BE SENT TO:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**STATUTORY BARGAIN AND SALE DEED**

**CLACKAMAS COUNTY DEVELOPMENT AGENCY**, the Urban Renewal Agency of Clackamas County, a corporate body politic ("Grantor") conveys to **OREGON BEVERAGE RECYCLING COOPERATIVE**, an Oregon domestic cooperative ("Grantee") all of Grantor's interest in that certain real property located in Clackamas County, Oregon, as more particularly described on Exhibit A attached hereto.

The true consideration for this conveyance is Three Million Eight Thousand and no/100 Dollars (\$3,008,000.00).

There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property subject to this conveyance.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR

PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

DATED as of \_\_\_\_\_, 201\_\_.

**CLACKAMAS COUNTY DEVELOPMENT AGENCY**, a corporate body politic

By: \*DRAFT- FOR INFORMATION ONLY\*  
Name:  
Its:

STATE OF OREGON            )  
  ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 201\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of Clackamas County Development Agency, a corporate body politic.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires:

## EXHIBIT A to Bargain and Sale Deed

### Legal Description

A portion of that tract of land being described as Tract 2, Property Line Adjustment Deed Document Number 2015-082415, Clackamas County Deed Records. Said tract of land being situated in the northeast one quarter and the southeast one quarter of Section 15 Township 2 South, Range 2 East, of the Willamette Meridian, Clackamas County, Oregon, and more particularly described as follows:

Commencing at the north one sixteenth section corner between sections 15 and 14 of said Township and Range, said point being marked by a 1-1/4" inside diameter iron pipe;

Thence, South 42°13'50" West, 104.67 feet to a point of tangency, said point being on the east line of said Parcel 2 tract, said point also being on the west right of way line of Wilde Road, County Road No. 3093, said point also being the true point of beginning of the herein described tract;

Thence, along the east line of said tract and along said west right of way line, South 0°21'32" West, 1284.77 feet to the intersection of said west right of way line and the north right of way line of Vernon Avenue, Local Access Road No. P2089, said point also being the southeast corner of said tract;

Thence, along said north right of way line, North 89°40'18" West, 250.34 feet to point on the west line of that tract of land described in Deed Document Number 2007-085791, Clackamas County Deed Records;

Thence, along the east line of said Document Number 2007-085791 tract, North 0°23'38" East, 118.25 feet to the northeast corner thereof;

Thence, along the north line of said tract, South 89°58'06" West, 189.55 feet;

Thence, leaving said line, North 0°21'32" East, 1191.61 feet to a point on the south right of way line of Capps Road, County Road Number 88;

Thence, along said south line, South 89°08'27" East, 420.02 feet to a point of curve;

Thence along the arc of a tangent curve to the right, having a radius of 20.00 feet, a delta angle of 89°29'50", an arc length of 31.24 feet, the chord of which bears South 44°23'32" East, a chord length of 28.16 feet to the true point of beginning.

Said tract of land contains 12.6793 acres more or less.

**EXHIBIT E**

**Memorandum of Post-Closing Agreement**

**When Recorded Return To:**

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**MEMORANDUM OF POST-CLOSING AGREEMENT**

This Memorandum of Post-Closing Agreement (this "**Memorandum**") is made and dated as of \_\_\_\_\_, 201\_\_ (the "**Effective Date**"), by **CLACKAMAS COUNTY DEVELOPMENT AGENCY**, the Urban Renewal Agency of Clackamas County, a corporate body politic (the "**Agency**"), and **OREGON BEVERAGE RECYCLING COOPERATIVE**, an Oregon domestic cooperative (the "**Developer**").

The Developer acquired that certain real property described on attached Exhibit A (the "**Property**") from the Agency.

In connection with the acquisition of the Property, the Agency and the Developer entered into that certain Post-Closing Escrow Holdback and Development Agreement dated as of \_\_\_\_\_, 201\_\_ (the "**Post-Closing Agreement**"). Capitalized terms used in this Memorandum without definition will have the meanings given in the Post-Closing Agreement.

The Post-Closing Agreement, among other things, provides for Developer to make certain improvements to or for the Property, including construction of one or more industrial building(s) of approximately 120,000 square feet of total building floor area.

This Memorandum is solely for recording purposes and shall not be construed to in any way alter, modify, amend, or supplement the Post-Closing Agreement or any term or condition thereof.

This Memorandum may be executed in one or more counterparts, all of which shall be considered one and the same Memorandum and shall be effective when one or more counterparts have been signed and delivered by the Owners.

**IN WITNESS WHEREOF**, the parties have executed this Memorandum as of the Effective Date.







**EXHIBIT A to Memorandum of  
Post-Closing Agreement**

**Property Description**

A portion of that tract of land being described as Tract 2, Property Line Adjustment Deed Document Number 2015-082415, Clackamas County Deed Records. Said tract of land being situated in the northeast one quarter and the southeast one quarter of Section 15 Township 2 South, Range 2 East, of the Willamette Meridian, Clackamas County, Oregon, and more particularly described as follows:

Commencing at the north one sixteenth section corner between sections 15 and 14 of said Township and Range, said point being marked by a 1-1/4" inside diameter iron pipe;

Thence, South 42°13'50" West, 104.67 feet to a point of tangency, said point being on the east line of said Parcel 2 tract, said point also being on the west right of way line of Wilde Road, County Road No. 3093, said point also being the true point of beginning of the herein described tract;

Thence, along the east line of said tract and along said west right of way line, South 0°21'32" West, 1284.77 feet to the intersection of said west right of way line and the north right of way line of Vernon Avenue, Local Access Road No. P2089, said point also being the southeast corner of said tract;

Thence, along said north right of way line, North 89°40'18" West, 250.34 feet to point on the west line of that tract of land described in Deed Document Number 2007-085791, Clackamas County Deed Records;

Thence, along the east line of said Document Number 2007-085791 tract, North 0°23'38" East, 118.25 feet to the northeast corner thereof;

Thence, along the north line of said tract, South 89°58'06" West, 189.55 feet;

Thence, leaving said line, North 0°21'32" East, 1191.61 feet to a point on the south right of way line of Capps Road, County Road Number 88;

Thence, along said south line, South 89°08'27" East, 420.02 feet to a point of curve;

Thence along the arc of a tangent curve to the right, having a radius of 20.00 feet, a delta angle of 89°29'50", an arc length of 31.24 feet, the chord of which bears South 44°23'32" East, a chord length of 28.16 feet to the true point of beginning.

Said tract of land contains 12.6793 acres more or less.

## **EXHIBIT F**

### **Scope of Development**

The approximate 12.68 gross acres (0.36 net buildable acres) will be developed with:

9. Processing area of approximately 61,000 SF of warehouse
10. Bottle wash area of approximately 21,000 SF of warehouse
11. PET processing area of approximately 12,000 SF of warehouse
12. Corporate office of approximately 21,000 SF
13. Approximately 194 employee parking stalls
14. Approximately 72 truck/trailer parking stalls
15. On-site storm drainage pond
16. On-site landscaping

The processing and corporate office buildings will most likely be concrete tilt up construction however OBRC reserves the right to select the final building materials based upon costs.




Gregory L. Geist  
Director

November 22, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of the Intergovernmental Agreement between  
Water Environment Services and Clean Water Services  
for Liquid Biosolids Management

<b>Purpose/Outcomes</b>	From time to time, the Tri-City Water Pollution Control Plant loses the ability to dewater their liquid biosolids. This IGA will allow the Tri-City Plant to transport liquid biosolids to the Durham Advanced Wastewater Treatment Facility in Tigard, OR.
<b>Dollar Amount and Fiscal Impact</b>	Water Environment Services FY2017-18 budget.
<b>Funding Source</b>	Water Environment Service FY2017-18 annual budget. No General Funds impacted.
<b>Duration</b>	From the date of execution of the Contract until November 1, 2020.
<b>Previous Board Action</b>	N/A
<b>Strategic Plan Assignment</b>	<ol style="list-style-type: none"> <li>1. This service supports the WES Strategic Plan to provide wastewater treatment services to members of the community.</li> <li>2. This service supports the County Strategic Priority to ensure safe, healthy, and secure communities.</li> </ol>
<b>Contact Person</b>	Chanin Bays, Biosolids Supervisor, 503/557-2820, <a href="mailto:CBays@clackamas.us">CBays@clackamas.us</a> 

**BACKGROUND:**

The Tri-City Water Pollution Control Plant (Tri-City) produces Class B biosolids that are dewatered via centrifuge and hauled to Sherman County, OR. At times, both the primary centrifuge and the back-up centrifuge at Tri-City are unavailable. The Tri-City plant has limited storage capacity for liquid biosolids so it must be removed from the plant daily.

The purpose of this agreement is to allow Water Environment Services staff to haul liquid Class B biosolids from Tri-City to the Durham Advanced Wastewater Treatment Facility in Tigard, OR.

This Intergovernmental Agreement has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

District staff recommends the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services, approve and execute the Intergovernmental Agreement between Water Environment Services and Clean Water Services for Liquid Biosolids Management.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'M L M' with a stylized flourish.

Greg Geist, Director  
Water Environment Services

## INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement (IGA), is entered into this 1<sup>st</sup> Day of November, 2017, between Clean Water Services (District) and Water Environment Services, (WES).

### RECITALS

1. From time to time, WES may be unable to beneficially use the Class B biosolids generated at its Tri-City Facility (Tri-City).
2. WES desires to have District accept its class B biosolids at District's Durham Advanced Wastewater Treatment Facility and beneficially use them when WES' Tri-City facility is unable to do so.
3. District, in its sole discretion, will determine the amounts, if any, of class B biosolids it will receive, process, and beneficially use under the conditions contained herein.

NOW, THEREFORE, the parties agree as follows:

#### A. WES OBLIGATIONS AND DISPOSAL CONDITIONS

1. Class B Biosolids. WES warrants that all biosolids delivered to District will be Class B biosolids as defined in OAR Chapter 340, Division 50 and 40 CFR Part 503 (Biosolids). At or prior to delivery, WES shall provide District with characteristics data that demonstrates that the Biosolids meets the requirements of Class B Biosolids.
2. Measurement of Discharge Volume. WES shall determine the volume of Biosolids discharged by using one of the following methods:
  - a) subtracting the empty truck weight from the full truck weight and converting the weight of the material discharged to gallons. Truck weights shall be determined by use of scales available at District facilities, or by certified commercial scales; or
  - b) if the actual volume capacity of the truck tank is known, using the known volume and assuming a full tank was discharged.
3. Interference. If District determines that Biosolids are: a) causing, or could cause, interference with District facility operations, including any interference or pass-through that might cause the District facility to exceed any conditions of its NPDES permit or b) contains contamination that could make the District facility biosolids or recycled water unsuitable for their intended uses, or c) otherwise not suitable for discharge to District facilities, District may immediately reduce or halt the acceptance of Biosolids.
4. Spills/Cleanup. WES and its hauler must prevent spills or tracking of Biosolids at District's facilities. WES shall be responsible for the clean up and removal from

District's premises of all spills, contaminated matter and contaminated clean up material including clean up of the discharge location as needed following the discharge of each load. If WES does not clean up and remove all spillage, contaminated matter and contaminated cleanup material from District's premises immediately, District shall cleanup and remove the spillage, contaminated matter and contaminated cleanup material and WES shall reimburse District for the entire cost of cleanup.

5. Hours and Location of Operation. WES may unload the Biosolids from their WES facility, located at 15941 S. Agnes Avenue, Oregon City, OR 97045 at times approved by District at District's Durham Advanced Wastewater Treatment Facility (Durham Facility), located at 16060 SW 85<sup>th</sup> Avenue, Tigard, OR 97224.
6. Hauling Tickets. WES shall be responsible for having its hauler complete a hauling ticket provided by District for each load of Biosolids that is hauled to District's Durham Facility. Completion of the tickets shall be required to track how many gallons of Biosolids have been hauled to the facility.
7. Sampling Procedure. WES or its hauler shall collect and provide District with a representative sample from each truckload of Biosolids discharged to District. The sample of Biosolids shall be collected as the Biosolids are being pumped from WES' Tri-City facility to the hauling truck. The sample container shall be labeled with the date and load number. The sample size shall be 500 ml (1 pint). The driver shall deliver the container to the District and place the sample in the sample refrigerator at the discharge site.
8. Off-loading Biosolids. WES shall off-load the Biosolids at the disposal point designated by District. Whenever WES or its hauler is at District's Durham Facility, District shall have access to all parts of District's facility at all times, including access to the designated off-loading area. To allow monitoring of the discharge and any effects on District facility, WES shall have its hauler notify District personnel when loads arrive at the disposal point. District will provide WES with appropriate contact information.
9. Compliance with Terms. WES shall ensure that its subcontractors, including delivery contractors and delivery truck drivers, have read, understand and agreed to the terms and conditions contained herein regarding hauling, delivery, off-loading and cleanup.
10. Qualification. This IGA does not obligate WES to dispose of Biosolids at any District facility.

## **B. DISTRICT OBLIGATIONS**

1. Acceptance/Amount. District, in its sole discretion, will determine the amount, if any, and rate of Biosolids it will process and beneficially use.



2. Services. District warrants that the services it furnishes under this IGA will be in full compliance with OAR Chapter 340, Division 50 and 40 CFR Part 503 and other applicable federal, state and local laws.

### C. DISPOSAL FEE AND INVOICING

The initial fee for disposing of Biosolids at District's Durham Facility will be \$0.15 per gallon. This fee may be adjusted from time to time. All fee adjustments shall be based on changes to District's Rates and Charges.

Invoices will be prepared by District on a monthly basis. WES shall have 30 days from the date of District's invoice to make payment. Payments shall be mailed to: Clean Water Services, 2550 SW Hillsboro Highway, Hillsboro, OR 97123.

### D. GENERAL TERMS

1. Laws and Regulations. WES and District agree to abide by all applicable laws and regulations.
2. Term of this IGA. This IGA is effective from the date of execution by both parties and shall remain in effect until November 1, 2020, unless terminated as provided herein. The term may be extended for up to two additional one-year terms, upon mutual agreement of WES and District.
3. Indemnification. Within the limits of the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the parties shall indemnify and defend the others and their officers, employees, agents, and representatives from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from this IGA in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the negligent or other legally culpable acts or omissions of the indemnitor, its employees, agents, contractors or representatives.
4. Integration. This document constitutes the entire agreement between the parties on the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings, representations or communications of every kind on the subject. No course of dealing between the parties and no usage of trade shall be relevant to supplement any term used in this IGA. Acceptance or acquiescence in a course of performance rendered under this IGA shall not be relevant to determine the meaning of this IGA and no waiver by a party of any right under this IGA shall prejudice the waiving party's exercise of the right in the future.
5. Reserved.

6. Termination. This IGA may be terminated immediately by mutual written agreement of both parties, or by either of the parties notifying the other in writing, with the termination being effective in 30 days.
7. Resolution of Disputes. If any dispute out of this IGA cannot be resolved by the project managers from each party, the WES Director and District's General Manager will attempt to resolve the issue. If the WES Director and District's General Manager are not able to resolve the dispute, the parties will submit the matter to mediation, each party paying its own costs and sharing equally in common costs. In the event the dispute is not resolved in mediation, the parties will submit the matter to arbitration. The decision of the arbitrator shall be final, binding and conclusive upon the parties and subject to appeal only as otherwise provided in Oregon law.
8. Interpretation of Agreement.
  - A. This IGA shall not be construed for or against any party by reason of the authorship or alleged authorship of any provision.
  - B. The paragraph headings contained in this IGA are for ease of reference only and shall not be used in constructing or interpreting this IGA.
9. Severability/Survival. If any of the provisions contained in this IGA are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired. All provisions concerning the limitation of liability, indemnity and conflicts of interest shall survive the termination of this IGA for any cause.
10. Approval Required. This IGA and all amendments, modifications or waivers of any portion thereof shall not be effective until approved by 1) District's General Manager or the General Manager's designee and, when required by applicable District rules, District's Board of Directors and 2) the governing body of WES.
11. Choice of Law/Venue. This IGA and all rights, obligations and disputes arising out of the IGA shall be governed by Oregon law. All disputes and litigation arising out of this IGA shall be decided by the state courts in Oregon. Venue for all disputes and litigation shall be in Washington County, Oregon.

IN WITNESS WHEREOF, the parties have caused this IGA to be executed the day and year first written above.

CLEAN WATER SERVICES

WATER ENVIRONMENT SERVICES

By: \_\_\_\_\_  
General Manager or Designee

By: \_\_\_\_\_  
Chair


APPROVED AS TO FORM

ATTEST

\_\_\_\_\_  
District Counsel

By: \_\_\_\_\_  
Secretary

APPROVED AS TO FORM

  
\_\_\_\_\_  
County Counsel



Gregory L. Geist  
Director

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of the Goods and Services Contract between  
Clackamas County Service District #1 and Valley Landfills, Inc. dba Republic Services  
for Biosolids and Grit Disposal

<b>Purpose/Outcomes</b>	Grit must be removed from the wastewater treatment plants on a regular basis and landfilled. When biosolids cannot be applied to agricultural fields it must also be landfilled. Removal of these materials is critical to the operation of the plants.
<b>Dollar Amount and Fiscal Impact</b>	Clackamas County Service District #1 FY2017-18 budget. The total as needed amount per Contractor is \$400,000 per year for 3 years with a cumulative not to exceed total contract value of \$1,200,000.
<b>Funding Source</b>	Clackamas County Service District #1 FY 2017-18 annual budget. No General Funds impacted.
<b>Duration</b>	From execution of the Contract to June 30, 2020
<b>Previous Board Action</b>	N/A
<b>Strategic Plan Assignment</b>	1. This service supports the WES Strategic Plan to provide wastewater treatment services to members of the community. 2. This service supports the County Strategic Priority to ensure safe, healthy and secure communities.
<b>Contact Person</b>	Chanin Bays, WES, Resource Recovery Programs Supervisor, 503-557-2820

**BACKGROUND:**

Grit is the settled solid material that is removed from the waste stream during primary treatment. Unlike biosolids, this material is not stabilized and has no resource value so it is landfilled. The contracts will allow the Tri-City WWTP, Kellogg Creek WWTP and the Hoodland WWTP to dispose of their grit.

Biosolids are typically applied to agricultural fields in Sherman County, Oregon as a soil amendment. Occasionally there are circumstances when biosolids quality does not meet Department of Environmental Quality (DEQ) criteria for land application, or District trucks cannot get to/from Sherman County due to winter weather, accidents or fire closing Interstate 84. The contracts will allow the Tri-City WWTP and the Kellogg Creek WWTP to dispose of their dewatered biosolids if needed.

District is contracting with all landfills in the area to maximize options and pricing for landfill disposal.

**PROCUREMENT PROCESS:**

A formal Invitation to Bid was published on August 2, 2017 for the above mentioned bid request. The project was advertised in accordance with ORS and LCRB Rules. Four (4) bids were received: Hillsboro Landfill, Inc. - \$40 per ton + Metro and DEQ fees; Valley Landfills, Inc. dba Republic Services - \$35 per ton + Metro and DEQ fees; Wasco County Landfill - \$19.58 per ton + Metro fees; and Waste Management Disposal of Oregon, Inc. - \$27 per ton + Metro fees.

After review of all bids, it was determined to contract with all four landfills on an as needed basis. The total as needed amount per Contractor is \$400,000 per year for three (3) years with a total not to exceed contract value of \$1,200,000. The Contract will expire on June 30, 2020.

This contract has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

District staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Clackamas County Service District #1, approve the Goods and Services Contract with Valley Landfills, Inc. dba Republic Services for an annual contract value of \$400,000 with a total cumulative contract total of not to exceed \$1,200,000 and authorize the Director of Water Environment Services to sign on behalf of Clackamas County Service District #1.

Respectfully submitted,

Greg Geist, Director  
Water Environment Services

Placed on the \_\_\_\_\_ agenda by Procurement.

## OREGON GOVERNMENTAL CONTRACTING ADDENDUM

This Oregon Governmental Contracting Addendum (“Addendum”) is entered into by Clackamas County Service District #1 and Water Environment Services (“collectively referred to as “District”), and **Valley Landfills Inc., dba Republic Services** (“Contractor”). As used below, "Contract" or “Contract Documents” or similar term shall include this Addendum and the Industrial Waste & Disposal Services Agreement. To the extent there is any conflict between the Contract Documents, the terms of this Addendum shall control.

- A. The Contract shall become effective upon signature of both parties and unless earlier terminated shall expire **June 30, 2020**. Upon agreement of the parties, the Contract may be extended for one (1) additional three (3) year period.
- B. The services under this Contract are not exclusive and are on an “as needed” basis. The District agrees to pay Contractor, from available and authorized funds, a sum not to exceed **\$400,000** per fiscal year of the Contract (July 1 to June 30) with a Contract maximum not to exceed of \$1,200,000. This contract covers Grit and BioSolids (inclusive by Service Agreements) disposal from the District’s.
- C. All employers, including Contractor, which employ workers who work under this Contract in the State of Oregon shall comply with Oregon Revised Statutes ("ORS") Chapter 656.017 and provide required workers' compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements. Contractors shall maintain employer’s liability insurance with limits of \$500,000 each accident, \$500,000 per disease for each employee, and \$500,000 minimum policy limit.
- D. The Contract Documents are expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. The following terms and conditions are made a part of this Contract:
  - 1. Contractor shall:
    - a) Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract Documents.
    - b) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract Documents.
    - c) Not permit any lien or claim to be filed or prosecuted against District on account of any labor or material furnished.
    - d) Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
  - 2. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract Documents as such claim becomes due, the proper officer representing District may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract Documents.
  - 3. The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference.
  - 4. Contractor shall promptly, as due, make payment to any person or co-partnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of Contractor, of all sums which Contractor

agrees to pay for such services and all moneys and sums which Contractor collected or deducted from the wages of Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

5. Payment and late fees shall only be in accordance with ORS 293.462.
- E. The insurance described in this section shall provide thirty (30) days written notice to the District in the event of a cancellation or material change. This policy(s) shall be primary insurance with respect to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.
1. The Contractor agrees to furnish the District evidence of commercial general liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence, \$2,000,000 general annual aggregate for personal injury and property damage for the protection of the District, its officers, commissioners, agents and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof in any way related to the Contract Documents. The general aggregate shall apply separately to this project / location. The District, at its option, may require a complete copy of the above policy.
  2. If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Contract Documents for a duration of thirty-six (36) months or the maximum time period the Contractor's, whichever is greater, insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided the coverage's retroactive date is on or before the effective date of the Contract Documents.
  3. The Contractor agrees to furnish the District evidence of business automobile liability insurance in the amount of not less than \$500,000 combined single limit for bodily injury and property damage for the protection of the District, its officers, commissioners, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Addendum. The District, at its option, may require a complete copy of the above policy.
  4. The insurance, other than the Workers' Compensation, Professional liability and Pollution liability insurance, shall include the District as an additional insured. Proof of insurance must include a copy of the endorsement showing the District as a scheduled insured or other evidence of a blanket form additional insurance endorsement acceptable to the District. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without thirty (30) days written notice by the Contractor to the District. This policy(s) shall be primary insurance with respect to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.
  5. The Contractor will provide written notice to the District within sixty (60) days after any reduction in the general aggregate limit.
  6. Any obligation that District agree to a waiver of subrogation is hereby stricken.
- F. The laws of the State of Oregon shall govern as to the interpretation, validity, and effect of this Contract without giving effect to conflict of law provisions thereof.

**G.** This Contract may be terminated by either party upon at least ten (10) days written notice to the other.

**H.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to the Work under this Contract. Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle District to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

1. Termination of this Contract, in whole or in part;
2. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to District's setoff right, without penalty; and
3. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. District shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance.

These remedies are cumulative to the extent the remedies are not inconsistent, and District may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

**I.** The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with:

1. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
2. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor;
3. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and
4. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**J.** Indemnification

1. The Contractor agrees to indemnify, hold harmless and defend the District, its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees or agents.
2. Any obligation of the District to indemnify, hold harmless and defend the Contractor, its officers, agents and employees, or any other indemnitee, shall only be to the extent provided by Article XI,



Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300) from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based on damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the District or the District's employee or agents.

- K. No attorney fees shall be paid for or awarded to either party in the course of any dispute, indemnification, or other recovery. It is the intent of the parties that each shall bear the costs of its own legal counsel.
- L. Any documents that are requested to be maintained as confidential by either party shall only be maintained as confidential to the extent permitted by the Oregon Public Records Law (ORS 192.410-505).
- M. This Addendum may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

By their signatures below, the parties to this Addendum agree to the terms, conditions, and content expressed herein. The Contractor agrees to perform the scope of work as described in the contract documents and meet the performance standards set forth therein.

**Valley Landfills Inc.**  
Dbas Republic Services  
Dbas Coffin Butte Landfill  
28972 Coffin Butte Road  
Corvallis, OR 97330

**Water Environment Services**

\_\_\_\_\_  
Gregory Geist, Director                      Date

\_\_\_\_\_  
Authorized Signature                      Date

**Clackamas County Service District No. 1**

\_\_\_\_\_  
Name/Title (Printed)

\_\_\_\_\_  
Gregory Geist, Director                      Date

103101-18  
Oregon Business Registry #

Approved As To Form:

DBC / Oregon  
Entity Type / State of Formation

\_\_\_\_\_  
Clackamas County Counsel                      Date



Gregory L. Geist  
Director

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of the Goods and Services Contract between  
Water Environment Services and Valley Landfills, Inc. dba Republic Services  
for Biosolids and Grit Disposal

<b>Purpose/Outcomes</b>	Grit must be removed from the wastewater treatment plants on a regular basis and landfilled. When biosolids cannot be applied to agricultural fields it must also be landfilled. Removal of these materials is critical to the operation of the plants.
<b>Dollar Amount and Fiscal Impact</b>	Water Environment Services FY2017-18 budget. The total as needed amount per Contractor is \$400,000 per year for 3 years with a cumulative not to exceed total contract value of \$1,200,000.
<b>Funding Source</b>	Water Environment Services FY 2017-18 annual budget. No General Funds impacted.
<b>Duration</b>	From execution of the Contract to June 30, 2020
<b>Previous Board Action</b>	N/A
<b>Strategic Plan Assignment</b>	1. This service supports the WES Strategic Plan to provide wastewater treatment services to members of the community. 2. This service supports the County Strategic Priority to ensure safe, healthy and secure communities.
<b>Contact Person</b>	Chanin Bays, WES, Resource Recovery Programs Supervisor, 503-557-2820

**BACKGROUND:**

Grit is the settled solid material that is removed from the waste stream during primary treatment. Unlike biosolids, this material is not stabilized and has no resource value so it is landfilled. The contracts will allow the Tri-City WWTP, Kellogg Creek WWTP and the Hoodland WWTP to dispose of their grit.

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**PROCUREMENT PROCESS:**

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After review of all bids, it was determined to contract with all four landfills on an as needed basis. The total as needed amount per Contractor is \$400,000 per year for three (3) years with a total not to exceed contract value of \$1,200,000. The Contract will expire on June 30, 2020.

This contract has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

District staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services, approve the Goods and Services Contract with Valley Landfills, Inc. dba Republic Services for an annual contract value of \$400,000 with a total cumulative contract total of not to exceed \$1,200,000 and authorize the Director of Water Environment Services to sign on behalf of Water Environment Services.

Respectfully submitted,

Greg Geist, Director  
Water Environment Services

Placed on the \_\_\_\_\_ agenda by Procurement.

## OREGON GOVERNMENTAL CONTRACTING ADDENDUM

This Oregon Governmental Contracting Addendum (“Addendum”) is entered into by Clackamas County Service District #1 and Water Environment Services (“collectively referred to as “District”), and **Valley Landfills Inc., dba Republic Services** (“Contractor”). As used below, "Contract" or “Contract Documents” or similar term shall include this Addendum and the Industrial Waste & Disposal Services Agreement. To the extent there is any conflict between the Contract Documents, the terms of this Addendum shall control.

- A. The Contract shall become effective upon signature of both parties and unless earlier terminated shall expire **June 30, 2020**. Upon agreement of the parties, the Contract may be extended for one (1) additional three (3) year period.
- B. The services under this Contract are not exclusive and are on an “as needed” basis. The District agrees to pay Contractor, from available and authorized funds, a sum not to exceed **\$400,000** per fiscal year of the Contract (July 1 to June 30) with a Contract maximum not to exceed of \$1,200,000. This contract covers Grit and BioSolids (inclusive by Service Agreements) disposal from the District’s.
- C. All employers, including Contractor, which employ workers who work under this Contract in the State of Oregon shall comply with Oregon Revised Statutes ("ORS") Chapter 656.017 and provide required workers' compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements. Contractors shall maintain employer’s liability insurance with limits of \$500,000 each accident, \$500,000 per disease for each employee, and \$500,000 minimum policy limit.
- D. The Contract Documents are expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. The following terms and conditions are made a part of this Contract:
  - 1. Contractor shall:
    - a) Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract Documents.
    - b) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract Documents.
    - c) Not permit any lien or claim to be filed or prosecuted against District on account of any labor or material furnished.
    - d) Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
  - 2. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract Documents as such claim becomes due, the proper officer representing District may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract Documents.
  - 3. The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference.
  - 4. Contractor shall promptly, as due, make payment to any person or co-partnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of Contractor, of all sums which Contractor

agrees to pay for such services and all moneys and sums which Contractor collected or deducted from the wages of Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

5. Payment and late fees shall only be in accordance with ORS 293.462.
- E. The insurance described in this section shall provide thirty (30) days written notice to the District in the event of a cancellation or material change. This policy(s) shall be primary insurance with respect to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.
1. The Contractor agrees to furnish the District evidence of commercial general liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence, \$2,000,000 general annual aggregate for personal injury and property damage for the protection of the District, its officers, commissioners, agents and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof in any way related to the Contract Documents. The general aggregate shall apply separately to this project / location. The District, at its option, may require a complete copy of the above policy.
  2. If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Contract Documents for a duration of thirty-six (36) months or the maximum time period the Contractor's, whichever is greater, insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided the coverage's retroactive date is on or before the effective date of the Contract Documents.
  3. The Contractor agrees to furnish the District evidence of business automobile liability insurance in the amount of not less than \$500,000 combined single limit for bodily injury and property damage for the protection of the District, its officers, commissioners, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Addendum. The District, at its option, may require a complete copy of the above policy.
  4. The insurance, other than the Workers' Compensation, Professional liability and Pollution liability insurance, shall include the District as an additional insured. Proof of insurance must include a copy of the endorsement showing the District as a scheduled insured or other evidence of a blanket form additional insurance endorsement acceptable to the District. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without thirty (30) days written notice by the Contractor to the District. This policy(s) shall be primary insurance with respect to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.
  5. The Contractor will provide written notice to the District within sixty (60) days after any reduction in the general aggregate limit.
  6. Any obligation that District agree to a waiver of subrogation is hereby stricken.
- F. The laws of the State of Oregon shall govern as to the interpretation, validity, and effect of this Contract without giving effect to conflict of law provisions thereof.

**G.** This Contract may be terminated by either party upon at least ten (10) days written notice to the other.

**H.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to the Work under this Contract. Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle District to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

1. Termination of this Contract, in whole or in part;
2. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to District's setoff right, without penalty; and
3. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. District shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance.

These remedies are cumulative to the extent the remedies are not inconsistent, and District may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

**I.** The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with:

1. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
2. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor;
3. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and
4. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**J.** Indemnification

1. The Contractor agrees to indemnify, hold harmless and defend the District, its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees or agents.
2. Any obligation of the District to indemnify, hold harmless and defend the Contractor, its officers, agents and employees, or any other indemnitee, shall only be to the extent provided by Article XI,

Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300) from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based on damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the District or the District's employee or agents.

- K. No attorney fees shall be paid for or awarded to either party in the course of any dispute, indemnification, or other recovery. It is the intent of the parties that each shall bear the costs of its own legal counsel.
- L. Any documents that are requested to be maintained as confidential by either party shall only be maintained as confidential to the extent permitted by the Oregon Public Records Law (ORS 192.410-505).
- M. This Addendum may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

By their signatures below, the parties to this Addendum agree to the terms, conditions, and content expressed herein. The Contractor agrees to perform the scope of work as described in the contract documents and meet the performance standards set forth therein.

**Valley Landfills Inc.**  
Dbas Republic Services  
Dbas Coffin Butte Landfill  
28972 Coffin Butte Road  
Corvallis, OR 97330

**Water Environment Services**

\_\_\_\_\_  
Gregory Geist, Director                      Date

\_\_\_\_\_  
Authorized Signature                      Date

**Clackamas County Service District No. 1**

\_\_\_\_\_  
Name/Title (Printed)

\_\_\_\_\_  
Gregory Geist, Director                      Date

103101-18  
Oregon Business Registry #

Approved As To Form:

DBC / Oregon  
Entity Type / State of Formation

\_\_\_\_\_  
Clackamas County Counsel                      Date



Gregory L. Geist  
Director

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Goods and Services Contract between Polydyne, Inc.  
and Water Environment Services  
for Thickening and Dewatering Polymer

<b>Purpose/Outcomes</b>	To supply Water Environment Services with vital thickening and dewatering polymer for gravity belt thickening of waste-activated sludge and for centrifuge dewatering of biosolids.
<b>Dollar Amount and Fiscal Impact</b>	Funds are budgeted in the Water Environment Services FY 2017-18 budget for an amount not to exceed \$180,000 annually split proportionately with Clackamas County Service District No. 1, with a cumulative total contract value of \$900,000.
<b>Funding Source</b>	Water Environment Services Operating Funds. No General Funds impacted.
<b>Duration</b>	Execution through June 30, 2022
<b>Previous Board Action/Review</b>	None
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. This project supports the WES Strategic Plan for customers to continue to benefit from a well-managed utility and to provide partner communities with reliable wastewater infrastructure to serve existing customers and support future growth.</li> <li>2. This project supports the County Strategic Plan of building a strong infrastructure that delivers services to customers.</li> </ol>
<b>Contact Person</b>	Greg Eyerly, Water Quality Manager, 503-557-2802

**BACKGROUND:**

Water Environment Services (“District”) requires a supply of polymer product for centrifuge dewatering of approximately 2100 dry tons per year of mixed primary and waste-activated, anaerobically digested biosolids. The use of polymer assists in the efficient treatment of the plant’s solids. Polymer is vital to the District’s wastewater treatment process.

**PROCUREMENT PROCESS:**

This project advertised in accordance with ORS and LCRB Rules on March 15, 2017, with vendor proposals due April 26, 2017. Three (3) proposals were received: BASF Corporation; Kemira Chemicals, Inc.; and Polydyne, Inc. After evaluation of all proposals and product testing according to specifications detailed within the RFP, Polydyne, Inc. was selected to enter into contract. The total contract amount is not to exceed \$180,000.00 annually split proportionately with Clackamas County Service District No. 1 with a total contract value not to exceed \$900,000.00. The term of this contract is from contract execution through June 30, 2022.



This contract has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

District staff recommends the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services approve the Goods and Services Contract with Polydyne, Inc. for Thickening and Dewatering Polymer.

Respectfully submitted,

Greg Geist, Director  
Water Environment Services

Placed on the \_\_\_\_\_ agenda by Procurement.



## GOODS AND SERVICES CONTRACT

This Goods and Services Contract (this “Contract”) is entered into between **Polydyne, Inc.** (“Contractor”), and Clackamas County Service District No. 1, and Water Environment Services (“WES”), both political subdivisions of the State of Oregon (collectively referred to as “District”) for the purposes of providing **Thickening and Dewatering Polymer**.

### **I. TERM**

This Contract shall become effective upon signature of both parties and shall remain in effect until **June 30, 2022**. This Contract and any amendments to this Contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County acting as the Governing Body for the District. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

### **II. SCOPE OF WORK**

This Contract covers the Scope of Work as described in RFP #2017-19 Thickening and Dewatering Polymer issued March 15, 2017, attached and hereby incorporated by reference as Attachment “A.” This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Attachment “A”, and the Contractor’s Proposal attached and hereby incorporated by reference as Attachment “B.” Work shall be performed in accordance with a schedule approved by the District. The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The District Representative for this contract is: Dan Strong.

### **III. COMPENSATION**

1. **PAYMENT.** The District agrees to compensate the Contractor on a time and material basis as detailed in this Contract. The maximum annual compensation authorized under this Contract shall not exceed **\$180,000.00**, and the total Contract compensation shall not exceed **\$900,000.00**.
2. **TRAVEL EXPENSE REIMBURSEMENT.** Authorized:  Yes  No  
If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the Clackamas County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.
3. **INVOICES.** Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent District contract and/or purchase order numbers. All charges shall be billed monthly (unless a different payment period is outlined in Attachment A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute (“ORS”) 293.462. Invoices shall be submitted to the District’s Representative at: 15941 Agnes Ave, Oregon City, OR 97045 or via email at [danstro@clackamas.us](mailto:danstro@clackamas.us).

### **IV. CONTRACT PROVISIONS**

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. District and its duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination,

excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

**2. AVAILABILITY OF FUNDS.** District certify that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the District's reasonable administrative discretion, to continue to make payments under this Contract.

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

**4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate District official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.

**5. EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

**6. GOVERNING LAW.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between District and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

**7. HAZARD COMMUNICATION.** Contractor shall notify District prior to using products containing hazardous chemicals to which District employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon District's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.

**8. INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the District and Clackamas County, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.

**9. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the District reserve the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, District cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the work. Contractor is not to be considered an agent or employee of District for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to the District employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System); and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under Oregon Revised Statutes ("ORS") Chapter 656.

At present, the Contractor certifies that he or she, if an individual is not a program, Clackamas County, District or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

**10. INSURANCE.** Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. Contractor shall provide insurance as indicated below:

**A. COMMERCIAL GENERAL LIABILITY**

The Contractor agrees to furnish the District evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the District and Clackamas County, and their officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Contract. The general aggregate shall apply separately to this project / location. The District, at its option, may require a complete copy of the above policy.

**B. AUTOMOBILE LIABILITY**

The Contractor agrees to furnish the District evidence of business automobile liability insurance with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the District and Clackamas County, and their officers, elected officials, agents, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The District, at its option, may require a complete copy of the above policy.

**C.** Contractor shall provide District a certificate of insurance naming the District and Clackamas County, and their officers, elected officials, agents, and employees additional insureds. If Contractor's insurance policy does not include a blanket endorsement for additional

insured status when/where required by written contract (as required in this Contract), the insurance, shall include the District and Clackamas County and their agents, officers, and employees as expressly scheduled additional insured. Use CG 20 10 or its equivalent. Such insurance shall provide sixty (60) days written notice to the District in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the District under this insurance. This policy(s) shall be primary insurance with respect to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.

**D.** If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor agrees to qualify and remain qualified for the term of this Contract as an insured employer under ORS 656. The Contractor shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

**E.** If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the Contractor's insurer will provide "tail" coverage as subscribed, whichever is greater, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided it's retroactive date is on or before the effective date of this Contract.

**F.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the District. This policy(s) shall be primary insurance with respect to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.

**G.** Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the District.

**11. LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

**12. NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or District at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any such communication or notice delivered by facsimile shall be deemed to be given when receipt of transmission is generated by the transmitting machine. To be effective against District, such facsimile transmission must be confirmed by telephone notice to District's supervising representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

**13. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of District. District and Contractor intend that such Work Product be deemed "work made for hire" of which District shall be deemed the author. If for

any reason the Work Product is not deemed “work for hire,” Contractor hereby irrevocably assigns to District all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as District may reasonably request in order to fully vest such rights in the District. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

**14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to District that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (4) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

**A. Performance Warranty.** Contractor warrants that the goods provided to the District shall consistently perform according to the performance characteristics described in the Scope of Work.

**B. Service Warranty.** Contractor warrants that the services provided herein to the District, if any, will be performed in a workmanlike manner and in accordance with the highest professional standards. Contractor’s liability and District’s remedy under this services warranty are limited to Contractor’s prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the District to Contractor. The District agree to provide Contractor reasonable access to the goods for purposes of repair or replacement under this services warranty. Failure of Contractor to promptly correct problems pursuant to this Service Warrant shall be deemed a material breach of this Contract.

**15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in the following Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, and 21.

**16. SEVERABILITY.** If any term or provision of this Contract 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 shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

**17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the work required by this Contract, or assign or transfer any of its interest in this Contract, by operation of law or otherwise, without obtaining prior written approval from the District. In addition to any provisions the District may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this section and Sections 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. District’s consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract. District may assign all or part of this Contract at any time without further permission required to the Contractor. District may assign all or part of this Contract at any time without further permission required to the Contractor.

**18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

**19. TAX COMPLIANCE CERTIFICATION.** Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle District to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to District's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. District shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and District may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**20. TERMINATION.** This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the District for convenience upon thirty (30) days' written notice to the Contractor; (B) District may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the District, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Contract is prohibited or the District are prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the District for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the District, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the District (or from applicable federal, state, or other sources) to permit the District in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, District may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

**21. REMEDIES.** (A) In the event of termination pursuant to Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by the District, less previous amounts paid and any claim(s) which the District has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to District on demand. (B) In the

event of termination pursuant to Sections 20(B)(ii) or 20(C), the District shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless District expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to District all documents, information, works-in-progress and other property that are or would be deliverables had the Contract work been completed. Upon District's request, Contractor shall surrender to anyone District designates, all documents, research or objects or other tangible things needed to complete the work.

**22. NO THIRD PARTY BENEFICIARIES.** District and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

**23. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence under this Contract.

**24. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

**25. FORCE MAJEURE.** Neither District nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, District's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

**26. WAIVER.** The failure of District to enforce any provision of this Contract shall not constitute a waiver by District of that or any other provision.

**27. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract: (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished. (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the District may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. (C) The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. (D) The Contractor shall promptly, as due, make payment to any person or copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the



Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

**28. DELIVERY.** All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the Contractor, unless specified otherwise in this Contract. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to the District except as to latent defects, fraud and Contractor's warranty obligations.

**29. INSPECTIONS.** Goods and services furnished under this Contract will be subject to inspection and test by the District at times and places determined by the District. If the District finds goods and services furnished to be incomplete or not in compliance with the District, the District, at its sole discretion, may either reject the goods and services, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods and services to the District at a reduced price, whichever the District deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the District, the District may reject the goods and services and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the District's rights as a Buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

**30. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

SIGNATURE PAGE FOLLOWS





Gregory L. Geist  
Director

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Goods and Services Contract between Polydyne, Inc.  
and Clackamas County Service District No. 1  
for Thickening and Dewatering Polymer

<b>Purpose/Outcomes</b>	To supply Clackamas County Service District No. 1 with vital thickening and dewatering polymer for gravity belt thickening of waste-activated sludge and for centrifuge dewatering of biosolids.
<b>Dollar Amount and Fiscal Impact</b>	Funds are budgeted in the Clackamas County Service District No. 1 FY 2017-18 budget for an amount not to exceed \$180,000 annually split proportionately with Water Environment Services, with a cumulative total contract value of \$900,000.
<b>Funding Source</b>	Clackamas County Service District No. 1 Operating Funds. No General Funds impacted.
<b>Duration</b>	Execution through June 30, 2022
<b>Previous Board Action/Review</b>	None
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. This project supports the WES Strategic Plan for customers to continue to benefit from a well-managed utility and to provide partner communities with reliable wastewater infrastructure to serve existing customers and support future growth.</li> <li>2. This project supports the County Strategic Plan of building a strong infrastructure that delivers services to customers.</li> </ol>
<b>Contact Person</b>	Greg Eyerly, Water Quality Manager, 503-557-2802

**BACKGROUND:**

Clackamas County Service District No. 1 (“District”) requires a supply of polymer product for centrifuge dewatering of approximately 2100 dry tons per year of mixed primary and waste-activated, anaerobically digested biosolids. The use of polymer assists in the efficient treatment of the plant’s solids. Polymer is vital to the District’s wastewater treatment process.

**PROCUREMENT PROCESS:**

This project advertised in accordance with ORS and LCRB Rules on March 15, 2017, with vendor proposals due April 26, 2017. Three (3) proposals were received: BASF Corporation; Kemira Chemicals, Inc.; and Polydyne, Inc. After evaluation of all proposals and product testing according to specifications detailed within the RFP, Polydyne, Inc. was selected to enter into contract. The total contract amount is not to exceed \$180,000.00 annually split proportionately with Clackamas

County Service District No. 1 with a total contract value not to exceed \$900,000.00. The term of this contract is from contract execution through June 30, 2022.

This contract has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

District staff recommends the Board of County Commissioners of Clackamas County, acting as the governing body of Clackamas County Service District No. 1 approve the Goods and Services Contract with Polydyne, Inc. for Thickening and Dewatering Polymer.

Respectfully submitted,

Greg Geist, Director  
Water Environment Services

Placed on the \_\_\_\_\_ agenda by Procurement.



## GOODS AND SERVICES CONTRACT

This Goods and Services Contract (this “Contract”) is entered into between **Polydyne, Inc.** (“Contractor”), and Clackamas County Service District No. 1, and Water Environment Services (“WES”), both political subdivisions of the State of Oregon (collectively referred to as “District”) for the purposes of providing **Thickening and Dewatering Polymer**.

### **I. TERM**

This Contract shall become effective upon signature of both parties and shall remain in effect until **June 30, 2022**. This Contract and any amendments to this Contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County acting as the Governing Body for the District. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

### **II. SCOPE OF WORK**

This Contract covers the Scope of Work as described in RFP #2017-19 Thickening and Dewatering Polymer issued March 15, 2017, attached and hereby incorporated by reference as Attachment “A.” This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Attachment “A”, and the Contractor’s Proposal attached and hereby incorporated by reference as Attachment “B.” Work shall be performed in accordance with a schedule approved by the District. The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The District Representative for this contract is: Dan Strong.

### **III. COMPENSATION**

1. **PAYMENT.** The District agrees to compensate the Contractor on a time and material basis as detailed in this Contract. The maximum annual compensation authorized under this Contract shall not exceed **\$180,000.00**, and the total Contract compensation shall not exceed **\$900,000.00**.
2. **TRAVEL EXPENSE REIMBURSEMENT.** Authorized:  Yes  No  
If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the Clackamas County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.
3. **INVOICES.** Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent District contract and/or purchase order numbers. All charges shall be billed monthly (unless a different payment period is outlined in Attachment A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute (“ORS”) 293.462. Invoices shall be submitted to the District’s Representative at: 15941 Agnes Ave, Oregon City, OR 97045 or via email at [danstro@clackamas.us](mailto:danstro@clackamas.us).

### **IV. CONTRACT PROVISIONS**

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. District and its duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination,

excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

**2. AVAILABILITY OF FUNDS.** District certify that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the District's reasonable administrative discretion, to continue to make payments under this Contract.

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

**4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate District official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.

**5. EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

**6. GOVERNING LAW.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between District and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

**7. HAZARD COMMUNICATION.** Contractor shall notify District prior to using products containing hazardous chemicals to which District employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon District's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.

**8. INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the District and Clackamas County, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.

**9. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the District reserve the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, District cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the work. Contractor is not to be considered an agent or employee of District for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to the District employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System); and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under Oregon Revised Statutes ("ORS") Chapter 656.

At present, the Contractor certifies that he or she, if an individual is not a program, Clackamas County, District or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

**10. INSURANCE.** Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. Contractor shall provide insurance as indicated below:

**A. COMMERCIAL GENERAL LIABILITY**

The Contractor agrees to furnish the District evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the District and Clackamas County, and their officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Contract. The general aggregate shall apply separately to this project / location. The District, at its option, may require a complete copy of the above policy.

**B. AUTOMOBILE LIABILITY**

The Contractor agrees to furnish the District evidence of business automobile liability insurance with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the District and Clackamas County, and their officers, elected officials, agents, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The District, at its option, may require a complete copy of the above policy.

**C.** Contractor shall provide District a certificate of insurance naming the District and Clackamas County, and their officers, elected officials, agents, and employees additional insureds. If Contractor's insurance policy does not include a blanket endorsement for additional

insured status when/where required by written contract (as required in this Contract), the insurance, shall include the District and Clackamas County and their agents, officers, and employees as expressly scheduled additional insured. Use CG 20 10 or its equivalent. Such insurance shall provide sixty (60) days written notice to the District in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the District under this insurance. This policy(s) shall be primary insurance with respect to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.

**D.** If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor agrees to qualify and remain qualified for the term of this Contract as an insured employer under ORS 656. The Contractor shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

**E.** If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the Contractor's insurer will provide "tail" coverage as subscribed, whichever is greater, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided it's retroactive date is on or before the effective date of this Contract.

**F.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the District. This policy(s) shall be primary insurance with respect to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.

**G.** Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the District.

**11. LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

**12. NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or District at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any such communication or notice delivered by facsimile shall be deemed to be given when receipt of transmission is generated by the transmitting machine. To be effective against District, such facsimile transmission must be confirmed by telephone notice to District's supervising representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

**13. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of District. District and Contractor intend that such Work Product be deemed "work made for hire" of which District shall be deemed the author. If for



any reason the Work Product is not deemed “work for hire,” Contractor hereby irrevocably assigns to District all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as District may reasonably request in order to fully vest such rights in the District. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

**14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to District that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (4) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

**A. Performance Warranty.** Contractor warrants that the goods provided to the District shall consistently perform according to the performance characteristics described in the Scope of Work.

**B. Service Warranty.** Contractor warrants that the services provided herein to the District, if any, will be performed in a workmanlike manner and in accordance with the highest professional standards. Contractor’s liability and District’s remedy under this services warranty are limited to Contractor’s prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the District to Contractor. The District agree to provide Contractor reasonable access to the goods for purposes of repair or replacement under this services warranty. Failure of Contractor to promptly correct problems pursuant to this Service Warrant shall be deemed a material breach of this Contract.

**15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in the following Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, and 21.

**16. SEVERABILITY.** If any term or provision of this Contract 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 shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

**17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the work required by this Contract, or assign or transfer any of its interest in this Contract, by operation of law or otherwise, without obtaining prior written approval from the District. In addition to any provisions the District may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this section and Sections 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. District’s consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract. District may assign all or part of this Contract at any time without further permission required to the Contractor. District may assign all or part of this Contract at any time without further permission required to the Contractor.

**18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

**19. TAX COMPLIANCE CERTIFICATION.** Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle District to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to District's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. District shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and District may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**20. TERMINATION.** This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the District for convenience upon thirty (30) days' written notice to the Contractor; (B) District may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the District, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Contract is prohibited or the District are prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the District for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the District, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the District (or from applicable federal, state, or other sources) to permit the District in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, District may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

**21. REMEDIES.** (A) In the event of termination pursuant to Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by the District, less previous amounts paid and any claim(s) which the District has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to District on demand. (B) In the

event of termination pursuant to Sections 20(B)(ii) or 20(C), the District shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless District expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to District all documents, information, works-in-progress and other property that are or would be deliverables had the Contract work been completed. Upon District's request, Contractor shall surrender to anyone District designates, all documents, research or objects or other tangible things needed to complete the work.

**22. NO THIRD PARTY BENEFICIARIES.** District and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

**23. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence under this Contract.

**24. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

**25. FORCE MAJEURE.** Neither District nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, District's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

**26. WAIVER.** The failure of District to enforce any provision of this Contract shall not constitute a waiver by District of that or any other provision.

**27. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract: (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished. (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the District may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. (C) The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. (D) The Contractor shall promptly, as due, make payment to any person or copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the

Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

**28. DELIVERY.** All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the Contractor, unless specified otherwise in this Contract. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to the District except as to latent defects, fraud and Contractor's warranty obligations.

**29. INSPECTIONS.** Goods and services furnished under this Contract will be subject to inspection and test by the District at times and places determined by the District. If the District finds goods and services furnished to be incomplete or not in compliance with the District, the District, at its sole discretion, may either reject the goods and services, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods and services to the District at a reduced price, whichever the District deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the District, the District may reject the goods and services and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the District's rights as a Buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

**30. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

SIGNATURE PAGE FOLLOWS

