

October 31, 2024

BCC Agenda Date/Item: \_\_\_\_\_

Board of County Commissioners  
 Clackamas County

**Approval of a Consent to Transfer, Assignment, and Assumption of a HOME Loan Agreement by KCK Partners, LLC for the Mt. Scott Terrace affordable housing project.  
 No fiscal impact. No County General Funds are involved.**

<b>Previous Board Action/Review</b>	HOME Loan Approved, May 27, 2004 HOME Loan amendment approved - April 28, 2005 HOME Loan Transfer to Guardian Holding, Inc. approved - August 5, 2021, Agenda Item 20210805 II.A.3 HOME Loan Subordination (re-finance) approved - November 2, 2021, Agenda Item 20211124 IV.b.ii HOME Loan Transfer item briefed at Issues - October 29, 2024		
<b>Performance Clackamas</b>	This HOME fund loan helps ensure Safe, Healthy, and Secure Communities by assisting in affordable housing production.		
<b>Counsel Review</b>	Yes, Andrew Naylor	<b>Procurement Review</b>	N/A
<b>Contact Person</b>	Mark Sirois	<b>Contact Phone</b>	503-351-7240

**EXECUTIVE SUMMARY:** On behalf of the Housing and Community Development Division (HCDD), Health, Housing & Human Services requests approval of a Consent to Transfer, Assignment, and Assumption of a HOME Loan Agreement for the Mt. Scott Terrace affordable housing project in Happy Valley to KCK Partners, LLC.

Mt. Scott Limited Partnership, Guardian Holding, Inc. is selling this property to KCK Partners, LLC, who have agreed to own the property as affordable housing, uphold the obligations of the HOME Program, and repay the HOME Loan.

This transfer does not change the terms of the loan; it only transfers the loan from one entity to another with the sale of the property. County counsel has reviewed and approved this HOME Loan transfer document. No County general funds are involved.

**RECOMMENDATION:** Staff respectfully requests that the Board of County Commissioners approve the Transfer of the HOME Loan and authorize Chair Smith to sign on behalf of Clackamas County.

Respectfully submitted,

*Rodney A. Cook*

Rodney A. Cook  
 Director of Health Housing and Human Services

**ATTACHMENTS:**

- Consent to Transfer

For Filing Use Only

**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

**CLACKAMAS COUNTY, OREGON,**

c/o Health, Housing and Human Services; Community Development  
2051 Kaen Rd., Suite 245  
Oregon City, Oregon 97045  
Attention: HOME Program Manager

**CONSENT TO TRANSFER, ASSIGNMENT, AND ASSUMPTION OF HOME LOAN  
AGREEMENT, PROMISSORY NOTE, TRUST DEED, AND RESTRICTIVE  
COVENANTS  
(HOME LOAN)**

This Consent to Transfer, Assignment, and Assumption Agreement (this “**Assignment**”) dated as of September 26, 2024 (the “**Effective Date**”) is executed by and between MT. SCOTT ASSOCIATES LIMITED PARTNERSHIP, an Oregon limited partnership (“**Assignor**”), KCK PARTNERS, LLC, an Oregon limited liability company (“**Assignee**”), and Clackamas County, a political subdivision of the State of Oregon (the “**County**”).

**RECITALS:**

A. Assignor is the owner of a multifamily residential apartment project targeted to working families with children (the “**Project**”), located at 10125 SE Bob Schumacher Rd., Portland, Clackamas County, Oregon, and more particularly described in Exhibit A (the “**Property**”).

B. Assignor and County entered into a Clackamas County HOME Program Loan Agreement dated May 27, 2004, an Amendment to HOME Loan Agreement dated April 28, 2005, a Promissory Note date September 2, 2004, a modified Promissory Note of May 9, 2005, a Declaration of Land Use Restrictive Covenants dated September 2, 2004 and recorded September 3, 2004 as Recorder’s Number 2004-082773, a 2<sup>nd</sup> modified Declaration of Land Use Restrictive Covenants dated January 16, 2007 and recorded January 17, 2007 as Recorder’s Number 2007-003798, (the “**Second Modification**”), which modified and replaced the First Modification; and a First Amendment to Second Modification of Clackamas County Home Program Declaration of Land Use Restrictive Covenants dated October 1, 2015 and recorded October 23, 2015 as Recorder’s Number 2015-071424, which modified the Second Modification, and a Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing dated September 2, 2004 and recorded September 3, 2004 as Recorder’s Number 2004-082774 and a modified Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing dated May 9, 2005 and recorded May 13, 2005 as Recorder’s Number 2005-04365 0(collectively the “**HOME Documents**”).

C. The Assignor entered into an Indemnification and Contribution Agreement dated April 30, 2021 and an Assignment and Assumption of Sole Member's Interests dated April 30, 2021 effective January 15, 2019, to acquire, own and operate the Project and the Property from Assignor (the "Option").

C. Assignor transferred the Option to Assignee, who has exercised the Option to acquire, own and operate the Property and the Project.

D. Assignor is willing to assign its rights under the HOME Documents which are incorporated by this reference.

E. Assignee is willing to accept the duties under the HOME Documents.

F. Assignee represents and warrants that it has the knowledge, expertise, and resources to fully perform under the HOME Documents including, but not limited to, operating the Property in accordance with the HOME Documents, the HOME regulations set forth in 42 CFR Part 92, and other applicable law.

F. County is willing to consent to the transfer of the Project and the Property and the assignment and assumption of the HOME Documents to Assignee.

### ASSIGNMENT

NOW, THEREFORE, in consideration of the premises and the promises contained herein, Assignor, Assignee, and County agree as follows:

1. **Recitals.** The recitals are incorporated by reference.
2. **Assignment.** Assignor assigns to Assignee, all right, title and interest of Assignor in and to the HOME Documents.
3. **Assumption.** Assignee assumes all of Assignor's obligations under the HOME Documents. By execution of this Assignment, Assignee hereby fully and unconditionally assumes all of the obligations, liabilities, covenants, representations, and warranties of Assignor under the HOME Documents, and further agrees to comply with and perform all the duties, obligations and covenants of HOME Documents at the time and in the manner provided therein.
4. **Consent.** County hereby consents to the transfer of the Property and the Project to Assignee and the assumption of the HOME Documents by Assignee.
5. **Limitation of Liability.** Assignor shall not be liable for any claims, demands, or causes of action arising out of or by virtue of the HOME Documents which are based upon facts or circumstances occurring after the Effective Date. County agrees that the Assignee shall only be obligated with regard to any claims, demands, or causes of action arising out of or by virtue of the HOME Documents which are based upon facts or circumstances occurring after the Effective Date.
6. **Notice.** After the Effective Date, all notices to be delivered under the HOME Documents to Assignor shall instead delivered to Assignee at the following address:

CLACKAMAS COUNTY, OREGON,  
c/o Health, Housing and Human Services; Community Development  
2051 Kaen Rd., Suite 245

Oregon City, Oregon 97045

Attention: HOME Program Manager

5. **Counterparts.** This Assignment may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall constitute one and the same instrument.
6. **Governing Law; Venue and Consent to Jurisdiction.** This Assignment shall be governed by the laws of Oregon. Any controversy arising under or in relation to this Assignment shall be litigated exclusively in the Clackamas County Circuit Court.
7. **Severability; Amendments.** The invalidity or unenforceability of any provision of this Assignment shall not affect the validity or enforceability of any other provision of this Assignment, all of which shall remain in full force and effect. This Assignment contains the complete and entire agreement among the parties as to the matters covered, rights granted and the obligations assumed in this Assignment. This Assignment may not be amended or modified except by written agreement signed by the parties hereto.
8. **Construction.**
  - a. The captions and headings of the sections of this Assignment are for convenience only and shall be disregarded in construing this Assignment.
  - b. Any reference in this Assignment to an "Exhibit" or "Schedule" or a "Section" or an "Article" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit or schedule attached to this Assignment or to a Section or Article of this Assignment. All exhibits and schedules attached to or referred to in this Assignment, if any, are incorporated by reference into this Assignment.
  - c. Any reference in this Assignment to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time.
  - d. Use of the singular in this Assignment includes the plural and use of the plural includes the singular.
  - e. As used in this Assignment, the term "including" means "including, but not limited to" or "including, without limitation," and is for example only and not a limitation.

**ASSIGNOR:**

**MT. SCOTT ASSOCIATES LIMITED PARTNERSHIP,**  
an Oregon limited partnership

By: Mt. Scott Terrace, LLC,  
an Oregon limited liability company  
Its: General Partner

By: GM Mt. Scott Terrace LLC,  
an Oregon limited liability company  
Its: Manager

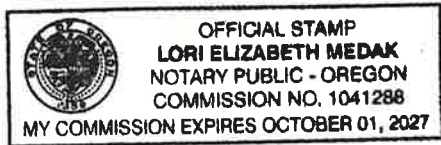
By: Guardian Development LLC,  
an Oregon limited liability company  
Its: Manager

By: Guardian Real Estate Services LLC,  
an Oregon limited liability company  
Its: Manager

By: Guardian Holding, Inc.,  
an Oregon corporation  
Its: Manager

By: \_\_\_\_\_  
Name: Thomas B. Brenneke  
Title: President

Address: 760 SW 9th Avenue, Suite 2200  
Portland, OR 97205



STATE OF OREGON                    )  
  ) ss.  
COUNTY OF W. MULTNOMAH )

The foregoing instrument was acknowledged before me on this 26 day of SEPTEMBER, 2024, by Thomas B. Brenneke as President of Guardian Holding, Inc., an Oregon corporation, as Manager of Guardian Real Estate Services, LLC, an Oregon limited liability company, as Manager of Guardian Development LLC, an Oregon limited liability company, as Manager of GM Mt. Scott Terrace LLC, an Oregon limited liability company, as Manager of Mt. Scott Terrace, LLC, an Oregon limited liability company, as General Partner of Mt. Scott Associates Limited Partnership, an Oregon limited partnership.

**ASSIGNEE:**

**KCK PARTNERS, LLC,**  
an Oregon limited liability company

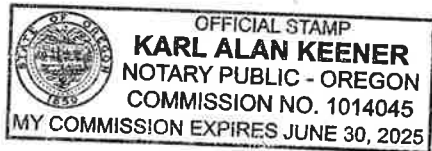
By:   
Name: Kevin R. Coleman  
Title: Manager

Address: 11483 SE Amity-Dayton Highway  
Dayton, OR 97114

STATE OF OREGON )  
 ) ss.  
COUNTY OF Yamhill )

This instrument was acknowledged before me this 25<sup>th</sup> day of September, 2024  
by Kevin Coleman, as Manager of the KCK Partners, LLC, an Oregon limited  
liability company.

  
Notary Public for Oregon



**COUNTY**

**CLACKAMAS COUNTY, OREGON,**  
a political subdivision of the State of Oregon  
acting through its Housing and Community Development Division

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

Name: Tootie Smith  
Its: Board Chair  
Address: 2051 Kaen Road,  
Oregon City, Oregon 97045

STATE OF OREGON                            }  
  }  
County of Clackamas                    } *SS.*

This instrument was acknowledged before me on \_\_\_\_\_, 2024 by Tootie Smith, Board Chair,  
of Clackamas County, a politic subdivision of the State of Oregon.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_

## EXHIBIT A

### LEGAL DESCRIPTION

#### PARCEL I:

The East 20 rods of:

A 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:

Beginning at the Southeast corner of Lot 2 of said section, being the Southeast corner of the Samuel W. McMahan Homestead, Notification No. 5746; thence West, on the South line of said Lot 2, 40 rods; thence North 40 rods; thence East 40 rods to the quarter section line; thence South 40 rods to the place of beginning.

EXCEPTING THERFROM a strip of land along the North end of said premises 150 feet in width, to be cut off by a line parallel with and 150 feet South of the South line of Otty Road as it existed on September 15, 1999.

ALSO EXCEPTING THERFROM those portions thereof lying North of the South line of the land conveyed to Clackamas County Development Agency, a political subdivision of the State of Oregon, by Warranty Deed recorded December 23, 1999 as Fee No. 99-117404.

#### PARCELL II:

A part 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 at the Southeast corner of Lot 2 of said section being the Southeast corner of the Samuel W. McMahan Homestead Notification No. 5746; thence West 330.00 feet to a ½ inch pipe in the South line of said Lot 2; thence North 485.8 feet to a ½ inch pipe which is also the Northwest corner of that certain parcel conveyed by Bertha C. Bohlman to William E. England, et. ux. by deed recorded October 29, 1952 in Book 462, page 209, Deed Records, and the true place of beginning; thence continuing North 170.00 feet to the center of Otty Road; thence East along the center of Otty Road to an intersection with the center of SE 92<sup>nd</sup> Avenue marked by a 1 inch pipe; thence South 170.00 feet along the center of SE 92<sup>nd</sup> Avenue to the northeast corner of the said England tract; thence West 330.00 feet to the true place of beginning.

EXCEPTING THERFROM that portion lying North of the South line of the land conveyed to Clackamas County Development Agency, a political subdivision of the State of Oregon, by Warranty Deed recorded December 23, 1999, Fee No. 99-117404.