

June 13, 2024

BCC Agenda Date/Item: _____

Board of County Commissioners
 Clackamas County

Approval of a Board Resolution approving a \$4,000,000 loan for the Hillside Park Phase 1 Project – Building C and delegation of signature authority to finalize all documentation for closing. Funded through federal HOME Investment Partnership Program grant funds. No County General Funds are involved.

Previous Board Action/Review	October 2019 – Approval of the Hillside Park Master Plan Design July 2021 – Approval of Resolution authorizing submittal of Section 18 disposition application January 2022 – Notification of release Request for Expressions of Interest from developers August 2022 – Related Northwest selected as the developer September 2022 – Approval of Exclusive Negotiation Agreement with Related Northwest September 2023 – Approval to provide Housing Authority Board endorsement commitment of Regional Affordable Housing Bond funds March 20, 2024 – Policy Session on Hillside Park Redevelopment April 4, 2024 – Development Agreement Approval May 11, 2024 – Board approval of Bond Inducement Resolution 1985 06/11/2024_ Board Resolution approving the loan for Phase 1. Briefed at issues		
Performance Clackamas	1. Which indicator of success does this item affect? Ensure Safe, Healthy, and Secure Communities		
Counsel Review	Andrew Naylor 5-23-2024	Procurement Review	N/A
Contact Person	Mark Sirois	Contact Phone	503-351-7240

EXECUTIVE SUMMARY: On behalf of the Housing and Community Development Division (HCDD), Health, Housing & Human Services requests approval of a \$4,000,000 loan to the Housing Authority through the Limited Partnership for Building C in Phase 1 of the Hillside Park Redevelopment project and to designate limited signature authority for the finalization of loan documents for closing. The signature authority would include the Board Chair, County Administrator, and/or the Department of Health, Housing and Human Services Director.

Loans are made available from the annual HOME Investment Partnerships Program grant from the US Department of Housing and Urban Development (HOME). HOME funds are designed to support the creation of affordable housing for low-income households such as this project. This \$4,000,000 HOME loan for Building C of the

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Hillside Park Redevelopment project will be braided with other funding sources for the project to make the project financially viable.

Approval of this Resolution gives final approval of the loan of \$4,000,000 in HOME Funds and authorizes limited signature authority to negotiate, approve, and execute all final documents reasonably necessary to complete the HOME Loan and the Building C portion of the Project including, but not limited to, the HOME Loan documents, subordination agreements, closing documents, and other documents reasonably related to the completion of the Building C portion of the Project.

Near final HOME loan documents, reviewed by County Counsel are attached for consideration along with the Resolution. All final closing documents will also be reviewed by the County Counsel before a designated signer signs for closing.

This loan is made available by the HOME grant funds from HUD, and no County General funds are involved.

RECOMMENDATION: Staff recommends that the Board adopt the Resolution authorizing the HOME loan of \$4,000,000 to the Hillside Park Redevelopment Limited Partnership for Phase 1 Building C and delegating signature authority for the finalization of documents to secure the loan.

Respectfully submitted,

Rodney A. Cook

Rodney A. Cook
Director of Health Housing and Human Services

ATTACHMENTS:

- **Resolution**
- **Draft HOME loan**
- **Draft Promissory Note**
- **Draft Trust Deed**
- **Draft Land Use Restrictive Covenant**

LOAN AGREEMENT

CLACKAMAS COUNTY HOME PROGRAM

Name of Project: Hillside Park Phase 1 Building C

This Loan Agreement (“Agreement”) is entered into between **Hillside Park Building C, Housing Partners Limited Partnership**, an Oregon limited partnership (“Owner”), of which the Housing Authority of Clackamas County (the “General Partner”) is the sole General Partner, and Clackamas County (“County”), a Participating Jurisdiction under the HOME investment Partnerships Program (“HOME”).

This Agreement includes the following attachments:

- | | |
|-----------------------------|------------------------------------------------------------|
| A. Legal Description | E. HOME Affordability Requirements |
| B. Sources and Uses | F. Affirmative Marketing and MBE/WBE Outreach Requirements |
| C. Schedule of Tasks | G. Project Completion documentation |
| D. HOME Match Contributions | H. HOME Payment Request Form |
| | I. VAWA Notification and Certification |

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. **Annual Income.** Annual income as defined at 24 CFR 5.609.
 - b. **Affordability Requirements.** The Affordability Requirements refer to the restrictions on rents and tenant incomes set forth in Section 10 below.
 - c. **CHDO.** Community Housing Development Organization. This is a HOME specific designation. There is no CHDO designated for this project.
 - d. **Effective Date.** Effective Date has the meaning set forth in Section 35 of this Agreement.
 - e. **HOME-Assisted Units or HOME Unit.** HOME-Assisted units (“HOME units”) are those units in the Project which were partially or totally rehabilitated, constructed, or otherwise assisted with the use of HOME Funds. The HOME-Assisted units are designated in Section 4 below.
 - f. **HOME Funds.** HOME Funds means the total amount of HOME Program dollars being provided by the County to the Project under this Agreement, as set forth in Section 2 below.
 - g. **HOME Program and HOME Regulations.** The HOME-American Rescue Plan or “HOME-ARP” funds are administered by the HOME Program and HOME Regulations. The federal HOME Investment Partnership Program (HOME Program) is authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990. HUD’s regulations and requirements for the HOME Program are located in 24 CFR Part 92. This Agreement shall be construed to ensure compliance with all applicable HOME regulations. Should anything in this Agreement or the other Loan Documents conflict with the HOME regulations, the HOME regulations shall prevail.
 - h. **HUD.** The United States Department of Housing and Urban Development
 - 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. **Low-Income and Very Low-Income.** A Low-Income household is one whose total income does not exceed 80% of the County’s Median Income. A Very Low-Income household is one whose total income does not exceed 50% of the County’s Median Income.

- k. **Median Income.** Median Income means the median income for Clackamas County, adjusted for family size, as published by HUD, from time to time.
- l. **Owner.** The initial Owner and any subsequent Project owner, subject to the County consenting to any transfer under Section 33 below.
- m. **Period of Affordability.** Has the meaning set forth in Section 9 below.
- n. **Project.** The Project, will consist of Owner's interest in the real property located at 2889 SE Hillside Court, Milwaukie, Oregon 97222 (**the Property**), upon which Owner will build 3 buildings of residential units, currently described as Buildings A, B and C. The legal description of the property (the "Property") comprising the Project is set forth in **Attachment A**.
- o. **Project Completion Date.** The later of the date when (a) the construction is completed, (b) the final HOME drawdown has been disbursed to the Project, and (c) the County has entered the project completion information into HUD's disbursement and information system. County must enter the project completion information into the HUD system, or otherwise provide it to HUD, within 120 days following the final project drawdown. This date will start the HOME Period of Affordability, as set forth in Section 9 below.
- p. **Transfer.** For purposes of this Agreement, "Transfer" shall mean any refinance, 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 Property (including the Project and any other improvement thereon); provided, however, that "Transfer" shall not mean the transfer of the Property 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, as reasonably determined by the County.

2. HOME FUNDS; LOAN TERMS

- a. **Amount and Purpose:** County shall loan HOME funds in the amount of **\$4,000,000** to the **Owner** for the Project. The HOME funds will be used for the development of the Project as specified in **Attachment B**. The HOME Funds will only be used for HOME eligible costs (see 24 CFR 92.206 and 92.214). Use of the HOME Funds for any other purpose, without the expressed written consent of the County is prohibited and may constitute a breach of this agreement. Pursuant to 24 CFR 92.504, Owner may not request disbursement of funds until funds are needed for payment of eligible costs and documentation to substantiate costs is provided to County. Requests for disbursement must be limited to the amount needed.
- b. **Loan Terms:**
 - i. The HOME Funds will be provided as a **0.0% interest deferred payment loan, with a maturity date of 55 years**. Loan repayment, satisfaction or conveyance shall not relieve Owner of any performance, affordability or programmatic obligations and requirements of the HOME program.
 - ii. Notwithstanding the loan terms described above, and subject to available sale or refinance proceeds, the entire amount of the loan (\$4,000,000) together with any accrued interest or fees, shall be paid in full upon occurrence of a Transfer 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 Sections 9 & 10 below, failure to acquire title to the Property, or failure to execute the Trust Deed and Declaration of Land Use Restrictive Covenants within 30 days of signing the Loan Documents) and such default continues beyond any applicable notice, grace or cure periods.
- c. **Loan Documents:** The loan shall be evidenced by this Agreement, a Promissory Note, and a Declaration of Land Use Restrictive Covenants, and secured by a Trust Deed executed by Owner in favor of the County all of which together are incorporated by reference into this Agreement and are referred to collectively as the "**Loan Documents**."
- d. **Recording Requirement:** The Owner agrees to execute and record, or cause to be recorded, on the Project, the Trust Deed and the Declaration of Land Use Restrictive Covenants, within 30 days after signing the Loan Documents.

3. PAYMENT OF OBLIGATION.

- a. The outstanding principal balance of the loan shall be repaid in full on the maturity date set forth in Section 2(b)(i) above or upon occurrence of the events described in Section 2(b)(ii) above. Except as provided in Section 2(b)(i) and (ii) above, or upon the occurrence of an event of default under the Loan Documents, payment of principal shall not be required prior to such maturity date. No late fees will be charged.
- b. Payments shall be made at such place as County 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.

4. HOME-ASSISTED UNITS

- a. Eighteen (18) units in the project are HOME-Assisted Units. The total number of HOME-Assisted units has been calculated on the total amount of HOME funds invested in the project, including, but not limited to, this loan. The HOME units are as follows:

Bedroom Size	TOTAL UNITS	LOW Home Units	HIGH Home Units	Total HOME Assisted Units
1-bedroom (tenant) unit:	25	2	3	5
2-bedroom (tenant) unit:	75	3	10	13
TOTALS	100	5	13	18

- b. Fixed/Floating: The HOME-Assisted units are designated as **FLOATING HOME** units as defined at 24 CFR 92.252.
- c. See Section 10 below and **Attachment E** for rent and income limits for the HOME-Assisted Units.
- d. Special Needs Set-aside. A minimum of 5% of the units in the project (but not less than one) must be accessible to individuals with mobility impairment, and an additional 2%, at a minimum, of the units (but not less than one unit) must be accessible to individuals with sensory impairments. 5 units will be accessible to individuals with physical/mobility impairment; and 2 units will be accessible to individuals with sensory impairments.

5. SOURCES AND USES OF FUNDS; SCHEDULE OF TASKS

- a. 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 (i) it has, or will obtain, commitments of the funds from each of the sources identified, (ii) the sources of funds are sufficient to fund the project in full, and (iii) HOME funds shall only be used for HOME-eligible costs (see 24 CFR 92.206 and 92.214).
- b. The Schedule of Tasks to be undertaken in order to complete the Project is set forth in **Attachment C**.

6. MATCH REQUIREMENT

The Owner certifies that it will provide a match for the HOME funds, in an amount equal to or greater than 25% of the HOME funds, from eligible non-federal sources as allowed by 24 CFR 92.218 through 92.222. **Attachment D** documents the project-related eligible sources of matching contributions.

7. HOME REGULATIONS

The Owner agrees to comply with all applicable HOME Regulations and all other applicable federal regulations, which are hereby incorporated by this reference herein, and with the other requirements of the Loan Documents.

8. ENVIRONMENTAL REVIEW (24 CFR 92.352)

- a. The environmental effects of each activity carried out with HOME funds must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) and the related authorities in 24 CFR Parts 50 and 58.
- b. The County is responsible for environmental review, decision-making, and action for each activity that it carries out with HOME funds, in accordance with 24 CFR part 58. The County will not commit any HOME funds 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. HOME Funds 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 HOME 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 the County for the purpose of updating the environmental review record.

9. PERIOD OF AFFORDABILITY (24 CFR 92.252)

- a. **The Initial Period of Affordability is the HUD-required Period of Affordability. This shall be 20 years for all new HOME units**, without regard to the term of the loan or the transfer of ownership, except as noted in Subsection (d), below. The Initial Period of Affordability begins on the Project Completion Date entered into HUD IDIS.
- b. The **Extended Period of Affordability**, begins at the end of the Initial Period of Affordability and continues for an additional 35 years or until such time as the loan is deemed paid in full.
- c. The Period of Affordability includes both the Initial and the Extended Periods of Affordability, for a total Period of Affordability of 55 years.
- d. **Termination of Period of Affordability.** In accordance with 24 CFR 92.252(e), 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, obtains an ownership interest in the Project or the Property.

10. AFFORDABILITY REQUIREMENTS (RENTS AND TENANT INCOMES (24 CFR 92.252))

- a. Prior to occupancy of new units, Owner shall provide to County documentation to demonstrate compliance with program requirements on unit designation, HOME rents, tenant selection, and lease provisions including:
 - i. HOME tenant lease;
 - ii. Written tenant selection criteria
 - iii. Any waiting list preferences
 - iv. Initial HOME assisted designated units and sizes
 - v. HOME rent levels and utility costs for each HOME tenant
 - vi. Identification by unit number of each HOME-assisted unit no later than the time of initial occupancy (listed on Rental Completion HUD form 40097).

County staff will review and determine that HOME Program requirements are met before assisted units are occupied. County will confirm with Owner that HOME Program requirements are satisfied.

- b. Owner shall ensure that the Project is occupied by households that are eligible as low-income families meeting the requirements of 24 C.F.R. 95.252 within six months of the date of the Project Completion Date.
- c. To ensure compliance with the HOME "Program Rule," at initial occupancy all of the HOME-Assisted Units must be rented to tenants whose incomes at the time of the tenant's initial occupancy, are less than or equal to 60% of the Median Income.
- d. **Low-HOME Units.** If the number of HOME-Assisted Units is 5 or more, at least 20% of the HOME-assisted units must be occupied initially and throughout the Period of Affordability by tenants, who at the time of their initial occupancy are very-low-income tenants and the initial rents for those units must not exceed the Low HOME rents shown in **Attachment E**. These rents are subject to periodic adjustment by HUD. If the unit receives federal or state project-based rental assistance, the Low-HOME rent shall not exceed the allowable rent under the rental assistance program.
- e. **High-HOME Units.** After initial occupancy as indicated in paragraph (a) above, the remaining HOME-Assisted Units must be rented during the Period of Affordability to tenants, who at the time of their initial occupancy are low-income tenants and the initial rents for these units must not exceed the High HOME rents shown in **Attachment E**. These rents are subject to periodic adjustments by HUD.
- f. Increases in Tenant's Income:

- i. Low-HOME rent units
 - 1. If the income of a tenant in a Low-HOME rent unit rises above 50% of Median Income, but does not exceed 80% of Median Income, then the next available HOME-Assisted Unit (for fixed-unit projects) or the next available comparable unit (for floating-unit projects) must be rented to a very-low-income tenant. The unit occupied by the tenant whose income so increased becomes a High-HOME unit and the High-HOME rent must be charged, provided that in no event shall the rent of a tenant of a HOME-assisted unit that has been allocated federal low-income housing tax credits ("LIHTC") increase beyond the maximum applicable LIHTC rent for such unit.
 - 2. The rent for the unit occupied by the tenant whose income has increased above 80% of Median Income will be set in accordance with subparagraph iii below.
- ii. High-HOME rent units
 - 1. The income of a tenant in a High-HOME rent unit can increase to 80% of Median Income with no change in the status as a HOME-Assisted Unit or in the tenant's rent.
 - 2. If the income of a tenant in a High-HOME rent unit rises above 80% of Median Income, then the next available HOME-Assisted Unit (for fixed-unit projects) or the next available comparable unit (for floating-unit projects) must be rented to a tenant whose income does not exceed 80% of Median Income.
 - 3. The rent for the unit occupied by the tenant whose income has increased above 80% of Median Income will be set in accordance with subparagraph iii below.
- iii. Project-based Rent Subsidy: In accordance with 24 CFR 92.252(b)(2), if the unit receives federal or state project-based rental subsidy, the maximum rent is the rent allowable under the federal or state project-based rental subsidy program.
- iv. Over-income Tenants: In accordance with 24 CFR 92.252(i), a tenant who no longer qualifies as a low-income household must pay as rent 30 percent of the household's adjusted gross income, except that:
 - 1. In no event shall the tenant of a HOME-assisted unit that has been allocated LIHTCs be charged rent in excess of the maximum applicable LIHTC rent for such unit.
 - 2. If the HOME-assisted unit is a floating unit, a tenant who no longer qualifies as a low-income household is not required to pay as rent an amount that exceeds the market rent for a comparable unassisted unit in the neighborhood.
- g. Certification and Recertification of Tenant Income: OWNER must certify each tenant's household income, and must recertify such income annually in accordance with HOME regulations.
- h. The maximum monthly allowances for utilities and services, excluding telephone, are attached hereto as Exhibit E. These maximum monthly allowances are updated annually, and Owner is responsible for contacting County to ensure compliance with the maximum monthly allowance amounts.
- i. Procedures for any rent increases for HOME units: Each year that HUD updates the High and Low HOME rents, County will send these updated HOME rent limits to the OWNER. Owners will provide the County with information on rents and occupancy of HOME-assisted units to demonstrate compliance during the annual re-certification process that includes an HOME RENTAL PROJECT COMPLIANCE REPORT which lists the HOME units and rent amounts. The County will contact the OWNER during or after the annual recertification process to approve or disapprove any HOME rent levels.

11. TENANT SELECTION CRITERIA; LEASE REQUIREMENTS (24 CFR 92.253)

- a. Owner shall adopt written tenant selection policies and criteria, which must be pre-approved by the County. The criteria must: (i) be consistent with the purpose of providing housing for very-low-income and low-income households, (ii) be reasonably related to program eligibility and the applicant's ability to perform the lease obligations, (iii) provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as practicable, and (iv) give prompt written notification to any rejected applicant of the grounds for any rejection.
- b. 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.

- c. Owner shall comply with all terms and conditions of 24 CFR 92.253, regardless of whether specified herein.
- d. In compliance with 24 CFR 92.253(d), neither the Owner nor General Partner may discriminate against rental assistance subsidy holders.
- e. Tenant leases may not contain any of the following provisions:
 - i. Agreement by the tenant to be sued or to have a judgment entered in favor of Owner;
 - ii. Except as allowed by Oregon law, agreement by the tenant to allow Owner to take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties;
 - iii. Agreement by the tenant not to hold Owner liable for any action or failure to act;
 - iv. Agreement by the tenant that Owner may institute a lawsuit without notice to the tenant;
 - v. Agreement by the tenant that Owner may evict tenant without instituting court proceedings in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
 - vi. Agreement by the tenant to waive any right to a trial by jury, to waive the tenant's right to appeal, or otherwise challenge in court, a court decision in connection with the lease; or
 - vii. Agreement by the tenant to pay attorney fees or costs even if the tenant wins in a court proceeding against the Owner. The tenant may, however, be obligated to pay costs and attorney fees if the tenant loses.
 - viii. Agreement by the tenant (other than a tenant in transitional housing) to accept supportive services that are offered.
- f. The Owner may not terminate the tenancy or refuse to renew the tenant's lease except for serious or repeated violation of the terms of the lease, for violation of law, for completion of the tenancy period for transitional housing, or for other 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. Labor (24 CFR 92.354)

If the Project involves construction (rehabilitation or new construction) of housing that includes 12 or more units assisted with HOME funds, Owner shall comply with the Davis–Bacon Act (40 U.S.C. 3141) and all regulations related to the same, and shall pay all laborers and mechanics employed in the development of any part of the housing not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis–Bacon Act (40 U.S.C. 3141). Owner shall further comply with the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701).

Owner shall comply with the Copeland “Anti-Kickback” Act (40 USC 3145), as supplemented by Department of Labor regulations at 29 CFR Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States), which are incorporated by reference into this Agreement. Owner shall include this clause in any contract with a contractor or subcontractor. A breach of the contract clause above may be grounds for termination of this Agreement, and for debarment as a contractor and subcontractor as provided in 29 CFR 5.12.

13. Construction

If the Project involves construction such that it meets the definition of a federally assisted construction contract, the following shall apply:

During performance of this Agreement, Owner agrees as follows:

- a. Owner hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or

undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The Owner further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not

applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

Owner agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

Owner further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

14. PROPERTY STANDARDS (24 CFR 92.251)

- a. Upon completion, the Project must meet all of the applicable Property Standards in 24 CFR 92.251 for new construction. County staff will periodically inspect the Project during construction and at completion 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.

15. INDEMNIFICATION AND INSURANCE

Owner agrees to indemnify, defend and hold harmless the County and its elected officials, officers, agents and employees against all liability, loss and costs arising from actions, suits, claims, or arising out of or related to Owner's acts or omissions in performance of this Agreement. This includes, but is not limited to, any and all claims by HUD for repayment as result of the funds dispersed hereunder being used for an ineligible purpose under the HOME Program, HOME Regulations, or applicable law, or because the Project does not meet requirements of the HOME Program, HOME Regulations, or other applicable law. Owner's indemnification obligations do not apply to claims arising solely out of County's own negligent acts or omissions.

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 \$2,000,000 per occurrence, \$4,000,000 aggregate, and Rent Loss insurance in an amount equal to 12 months rental income. Owner shall provide County proof of insurance in the required amounts upon execution of this Agreement, and again upon request of the County. Owner shall give County 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.

Owner shall diligently undertake to repair or restore the Project if damaged or destroyed, with such work commencing no later than 120 days after the damage or 30 days following receipt of the insurance proceeds and completed within one-year of the damage, and that the Owner is responsible to make up any insufficiency in insurance proceeds.

Article II of the Trust Deed shall control in the event that any part of or interest in the Project is taken or damaged by reason of any public improvement, eminent domain, condemnation proceeding, or in any similar manner (a "Condemnation")

16. EVENTS OF DEFAULT

Owner will be in default under this Agreement upon the occurrence of one or more of the following:

- Owner's noncompliance with the term and conditions of the Loan Documents;
- A petition, proceeding, or case is filed by or against Owner under federal or state bankruptcy, insolvency, receivership, or other law;
- Owner's non-payment of judgments within 30 days;
- Owner's suspension of business;
- Liens against the Project are not paid in 60 days;
- Construction is abandoned for more than 15 days for cause not beyond reasonable control of developer;
- Construction is stopped by governmental authority or entitlement withdrawn or suspended;
- A prohibited Transfer of the Property occurs;
- Any representation, warranty or statement made by Owner in this Agreement or in any documents or reports relied upon by County to measure performance under this Agreement, or the performance by Owner is untrue in any material respect when made;
- Owner's noncompliance with the Affordability Requirements at any time during the Period of Affordability;
- Owner's default under other secured loans, leases (if Owner's interest in the Property is a leasehold interest), foreclosure, bankruptcy, receivership and non-payment;
- Owner's failure to execute the Trust Deed and Declaration of Land Use Restrictive Covenants within 30 days of signing the Loan Documents.

The following shall also be an event of default under the Loan Documents:

- a. Failure to Secure all Funding. The Owner must secure all fund sources identified in **Attachment B**, as evidenced by a commitment letter or similar agreement, within 12 months from the Effective Date identified in Section 35.
- b. Failure to Meet Full Occupancy Requirement. Within 18 months from the Project Completion Date, the Project must achieve full occupancy. HOME assisted units must be occupied by HOME eligible households.
- c. Noncompliance with the Affordability Requirements at any time during the term of this Agreement.

Upon occurrence of an event of default, County will provide Owner thirty (30) days' written notice of the default with an opportunity to cure.

17. REMEDIES FOR DEFAULT

- a. In the event of default, County may pursue any remedy available to it at law, in equity, or under the terms of this Agreement. Without limiting the foregoing, County 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, (iii) in accordance with 24 CFR 200.339, suspend or terminate this Agreement if Owner fails to materially comply with any term of this Agreement, (iv) permit the Agreement to be terminated in whole or in part in accordance with 24 CFR 200.339, (v) seek injunctive relief or specific performance to ensure Owner complies with Affordability Requirements; (vi) require repayment of any HOME Funds spent for an ineligible purpose; and/or (vii) pursue any other remedy available at law, under contract, or in equity including, but not limited to, any additional remedy set forth in 24 CFR 200.339.
- b. The County, and any tenant or applicant who meets the income limitation applicable under 24 CFR Part 92 (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 Agreement in state court.

18. AFFIRMATIVE MARKETING (24 CFR 92.351)

If the Project contains five or more HOME-Assisted Units, the Owner must comply with 24 CFR 92.351 and 24 CFR 92.253, and must implement and follow the adopted Affirmative Marketing Plan of the County, **Attachment F** (the "Plan"). Owner shall maintain records evidencing compliance with the Plan.

19. MINORITY/WOMEN'S BUSINESS

In accordance with Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise), the County has adopted procedures and requirements for HOME 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 F**.

20. 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 Other Federal requirements apply to both employment opportunities and the provision of housing and are specified in 24 CFR 5.105(a), (b) and 24 CFR 5.106:
 - 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);
 - 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); and
 - x. Equal Access in accordance with the individual's gender identity
- b. Disclosure requirements. The disclosure requirements and prohibitions of 31 U.S.C. 1352 on limitations of influence and implementing regulations at 24 CFR Part 87 on lobbying; and the requirements for funding competitions established by the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3531 et seq.).
- c. 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.

21. CHDO Designation: Not Applicable for this Project.

22. DISBURSEMENT OF FUNDS

- a. County will disburse HOME funds when the following conditions are satisfied:
 - i. All the Loan Documents are signed;
 - ii. The Trust Deed and Declaration of Land Use Restrictive Covenants are signed and recorded; and
 - iii. The Owner has provided the County with the most recently available documentation that all sources of financing for the Project are committed or in the process of being committed.
- b. Draw Request

- i. Owner agrees to complete and return a new vendor packet to set up payment location. This will be provided by the County, once the Loan Documents have been signed.
 - ii. 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.
 - iii. The County shall verify requested amounts for satisfactory completion prior to payment. Payments shall be based upon work completed and approved by the County.
 - iv. Draw Documentation: Owner shall initiate each request for a disbursement of HOME funds by delivering the following documentation to the County. Completed **Attachment H**: HOME Disbursement Request Forms must be accompanied by detailed source documentation for actual expenses that reflected on payment request section of Disbursement Request Form.
 - v. Review of Draw Requests by County. The County will review each HOME disbursement Request Form packet that will be funded in whole or in part with HOME dollars. In the event that the County has any objection to any such draw request, County will provided notice via email to Owner within eight (8) business days after the date on which the County received the draw documentation with respect to such draw request and shall specify in detail the basis for each of the objections and requirements for correction of each such objection.
- c. Other Submittals and Approvals
- i. Cost certification audit (this item should be submitted within 30 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.
 - iv. Operating reserve withdrawals within 30 days of such withdrawals.
 - v. Annual project financial statements/audit within 90 days of the end of the Project's fiscal year
 - vi. Owner financial statements/audit, within 90 days of the end of their fiscal year (June 1st to July 30th).
- d. Five percent (5%) of HOME funds will be withheld until the Owner provides the County with the documentation outlined in **Attachment G**.
- e. The Owner must submit Form HUD-40097 (Project Completion Report - Part C, household characteristics for each HOME-assisted unit) within 120 days of the request for final disbursement.

23. CONTRACTOR DEBARMENT AND SUSPENSION

In order to comply with the requirements of 2 CFR 2424, 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 the HOME Funds, are currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in federal projects.

24. SECTION 3 REQUIREMENTS

Section 3 of the Housing and Urban Development Act of 1968, 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.

25. LEAD BASED PAINT AND HAZARDOUS MATERIALS (24 CFR 92.355)

- a. For all units in the Project (not just HOME-Assisted Units) and for common areas, the Owner shall comply with the 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.) as amended requiring prohibition of the use of lead-based paint whenever HOME Funds are used directly or indirectly for construction, rehabilitation, or modernization of residential structures; elimination of immediate lead-based paint hazards in residential structures; and notification of the hazards of lead-based paint poisoning to purchasers and tenants of residential structures constructed prior to 1978. **This part is not applicable to new construction.**

- b. For purposes of this Section 25, "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. For the purposes of this Section 23, "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
- c. If, at any time, County 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 County has reason to believe that a violation of an Environmental Law has occurred or may occur with respect to the Property or Improvements, County may require the Owner to obtain or may itself obtain, at Owner's expense, an environmental assessment of such condition or threatened condition by a qualified environmental consultant. Owner shall promptly provide to County a complete copy of any environmental assessment obtained by Owner.
- d. 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, Owner shall, within 30 days after written demand by County for Owner'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 Owner including, without limitation, County's reasonable professional fees and costs incurred in connection with monitoring or review of the legal aspects of such Remedial Work. In the event Owner shall fail to timely commence, or cause to be commenced, such Remedial Work, County 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 8.0% per annum compounded annually until paid.
- e. Owner shall hold County, 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 Owner's warranties in this Section 25, 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.
- f. To the best of Owner's knowledge, Owner represents and warrants to County that:
 - i. Neither the Property nor Owner is in violation of any Environmental Law or subject to any existing, pending, or threatened investigation by any governmental authority under any Environmental Law.
 - ii. Owner 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.
 - iii. To the best of Owner'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.
- g. All representations, warranties, and covenants in this Section 25 shall survive the satisfaction of the Obligations, the reconveyance of the Trust Property, or the foreclosure of this Trust Deed by any means.

26. DISPLACEMENT, RELOCATION, ACQUISITION, AND REPLACEMENT (24 CFR 92.353)

In accordance with the County HCD Anti-displacement Policy and Relocation Assistance Plan, the 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).

27. VIOLENCE AGAINST WOMEN ACT (VAWA) REQUIREMENTS (24 CFR 92.359)

Owner shall comply with all requirements of the Violence Against Women Act (VAWA) set forth in 24 CFR Part 5, Subpart L, and all other requirements set forth in 24 CFR 92.359. VAWA notice and certification form is located in **Attachment I**.

28. CONFLICT OF INTEREST (24 CFR 92.356)

Unless an exception is granted by the County pursuant to 24 CFR 92.356(f)(2), no covered person, as defined in 24 CFR 92.356(c), may engage in any activity prohibited by 24 CFR 92.356. This section does not apply to an employee or agent who occupies a HOME-Assisted Unit as the project manager or maintenance worker.

29. FAITH BASED ACTIVITIES

- a. Organizations that are directly funded under the HOME program pursuant to 24 CFR 5.109, 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. An organization that participates in the HOME 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. HOME funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HOME funds 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.

30. RECORDS

- a. Owner must 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 the County.
- c. Record Retention Periods
 - i. Except as stated in this subparagraph, records must be retained for five years following the Project Completion Date.
 - 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 92.353.
 - 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., the County, and any of their representatives, have the right of 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 HOME Funds, as well as access to the Project. Upon request, the Owner must assist the County by serving notice to affected tenants, as required under Oregon Law.

31. MONITORING

- a. Within 60 days of the Project completion Date, as defined in 24 CFR 92.2, the County staff will make an on-site visit to monitor compliance with the HOME rent and occupancy standards.
- b. The County will monitor PROJECT performance to ensure compliance with the requirements of this Agreement. During the initial Period of Affordability, the monitoring will be conducted in accordance with applicable law including, but not limited to, 24 CFR 92.251 and 24 CFR 92.504(d), and will include on-site inspections and a review of all records required in Section 30 above.

32. 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.

33. 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.

34. 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.

35. EFFECTIVE DATE AND TERM

The Effective Date of this Agreement is the date it is signed by all parties. This Agreement is effective through the Period of Affordability required under Section 9 of this Agreement.

36. ADDITIONAL TERMS AND CONDITIONS

- a. Program income: "program income," as defined under 24 CFR 92.2, shall be remitted to the County.
- b. Owner must comply with all applicable uniform administrative requirements as described in 24 CFR 92.505 or other applicable law.
- c. Owner shall carry out each activity under this Agreement in compliance with all applicable Federal laws and regulations described in subpart H of 24 CFR Part 92.
- d. Reversion of assets: upon expiration of this Agreement, Owner must transfer to County any HOME funds on hand at the time of expiration and any accounts receivable attributable to use of HOME funds.
- e. Repayment: any repayment or recapture of HOME funds must be remitted to the County.
- f. Fees: Owners are prohibited from charging fees that are not customarily charged in rental housing such as laundry room access fees, and other fees. However, rental project owners may charge reasonable application fees to prospective tenants may charge parking fees to tenants only if such fees are customary for rental housing projects in the neighborhood; and may charge fees for services such as bus transportation or meals, as long as such services are voluntary. If this project is a homeownership project, developers are prohibited from charging servicing, origination, processing, inspection, or other fees for the costs of providing homeownership assistance.
- g. Owner shall comply with the project requirements of 24 CFR Part 92, Subpart F.
- h. Owner shall comply with all other applicable requirements and restrictions set forth in 24 CFR Part 92, whether or not specifically described herein.

- 37. COMPLIANCE AND FURTHER ASSURANCES.** Owner shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time. Owner agrees to take all necessary steps, and execute and deliver any and all necessary written instruments, to perform under this Agreement and the other Loan Documents including, but not limited to, executing all additional documentation necessary for County to comply with applicable Federal requirements. All terms and conditions required under applicable federal law regarding the HOME Program and HOME Regulations are hereby incorporated by this reference herein.
- 38. GOVERNING LAW.** This Agreement, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Owner that arises out of or relates to the performance of this Agreement 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. In no event shall this section be construed as a waiver by the County 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, from any claim or from the jurisdiction of any court. Owner, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.
- 39. 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 the Agreement did not contain the particular term or provision held to be invalid.
- 40. TIME IS OF THE ESSENCE.** Owner agrees that time is of the essence in the performance this Agreement.
- 41. WAIVER.** The failure of County to enforce any provision of this Agreement shall not constitute a waiver by County of that or any other provision.
- 42. NO ATTORNEY FEES.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.
- 43. LIMITATION OF LIABILITIES.** This Agreement and the other Loan Documents are expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and are contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- 44. MERGER.** THIS AGREEMENT 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 AGREEMENT 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. OWNER, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS AGREEMENT, AND OWNER AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

OWNER:

HILLSIDE PARK BUILDING C
HOUSING PARTNERS LIMITED
PARTNERSHIP
44 Montgomery, 13th Floor
San Francisco, CA 94104

CLACKAMAS COUNTY

Chair: Tootie Smith
Commissioner: Paul Savas
Commissioner: Martha Schrader
Commissioner: Mark Shull
Commissioner: Ben West

By: Related/Hillside Park Building C
Development Co., LLC,
a California limited liability company
EIN: 92-3895819

By _____
Name: Ann Silverberg
Title: President

By: HOUSING AUTHORITY OF
CLACKAMAS COUNTY,
a public body corporate and politic of the State
of Oregon. EIN: 93-6001542
Title: Managing General Partner

By _____
Name: Chris Aiosa
Title: Executive Director

(signature)
Printed Name: Tootie Smith
Board Chair

Date

Date

Attachment A. Legal Description

PROPERTY DESCRIPTION – HILLSIDE PARK PHASE I

A PORTION OF PARCEL 2 OF PARTITION PLAT NO. 2020-026, CLACKAMAS COUNTY PLAT RECORDS, BEING A PORTION OF THAT TRACT OF LAND CONVEYED BY DEED TO HOUSING AUTHORITY OF CLACKAMAS COUNTY RECORDED IN BOOK 281, PAGE 156, CLACKAMAS COUNTY DEED RECORDS, SITUATED IN THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 1 SOUTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, CITY OF MILWAUKIE, COUNTY OF CLACKAMAS AND STATE OF OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID PARCEL 2, ALSO BEING A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF S.E. 32ND AVENUE (WIDTH VARIES) AND THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE ALONG THE EAST LINE OF SAID PARCEL 2 AND SAID WESTERLY RIGHT-OF-WAY LINE, THROUGH THE FOLLOWING COURSES: NORTH 01°11'03" WEST, 30.00 FEET; SOUTH 87°46'57" WEST, 6.00 FEET; NORTH 01°11'03" WEST, 494.89 FEET TO THE INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF S.E. HILLSIDE COURT (WIDTH VARIES); THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, SOUTH 66°48'56" WEST, A DISTANCE OF 465.10 FEET TO THE INTERSECTION WITH THE WESTERLY RIGHT-OF-WAY LINE OF S.E. C STREET (WIDTH VARIES); THENCE LEAVING SAID LINE, NORTH 76°23'29" WEST, A DISTANCE OF 125.67 FEET TO THE SOUTHEAST CORNER OF PARCEL 1 OF SAID PARTITION PLAT NO. 2020-026 AND A POINT OF NON-TANGENT CURVE, THE RADIUS OF WHICH BEARS SOUTH 24°15'11" WEST; THENCE ALONG THE ARC OF A 60.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 93°33'17" (CHORD BEARS SOUTH 67°28'32" WEST, 87.44 FEET), AN ARC LENGTH OF 97.97 FEET; THENCE CONTINUING ALONG SAID SOUTH LINE OF PARCEL 1, SOUTH 66°35'49" WEST, A DISTANCE OF 225.59 FEET TO THE SOUTHWEST CORNER THEREOF, ALSO BEING A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF THE SOUTHERN PACIFIC RAILROAD AND A POINT OF NON-TANGENT CURVE, THE RADIUS OF WHICH BEARS NORTH 67°40'17" EAST; THENCE ALONG THE ARC OF A 2826.93 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 06°08'15" (CHORD BEARS SOUTH 25°23'50" EAST, 302.67 FEET), AN ARC LENGTH OF 302.81 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL 2; THENCE ALONG THE SOUTH LINE OF SAID PARCEL 2 THROUGH THE FOLLOWING COURSES: NORTH 88°02'48" EAST, 446.49 FEET; NORTH 00°56'39" WEST, 3.29 FEET; NORTH 88°33'04" EAST, 317.18 FEET TO THE TRUE POINT OF BEGINNING. CONTAINING 337,693 SQUARE FEET, MORE OR LESS.

THE EAST LINE OF SAID PARCEL 2, HAVING A BEARING OF NORTH 01°11'03" WEST PER SAID PARTITION PLAT NO. 2020-026, WAS USED AS THE BASIS OF BEARINGS FOR THIS DESCRIPTION.

Attachment B. Sources and Uses of Funds

Sources of funding for project: as of pro-forma data provided on 07/19/2023

Source of Funding	Amount	Use of Funds summary (list proforma line item details for use and timing)
HOME	\$4,000,000	Development & Construction Costs
4% LIHTC (Equity)	\$22,775,955	Development & Construction Costs
Weatherization	\$75,000	Development & Construction Costs
Permanent Bank Loan	\$18,303,080	Development & Construction Costs
Metro Bond Funds (HACC)	\$14,545,455	Development & Construction Costs
Pending Sources	\$1,000,000	Development & Construction Costs
Deferred Development fee	\$4,985,000	Development & Construction Costs
BizOregon Brownfield	\$329,253	Development & Construction Costs
Total Proposed Development Cost	\$66,013,742	

Uses of HOME funds: Eligible expenses include acquisition, construction, engineering and architectural services and other related activities.

Attachment C. Schedule of Tasks

As of date: 5/15/2024

	PROPOSED DATE (month/year)*	REVISED DATE (month/year)*	COMPLETED DATE (month/year)*
SITE			
Option/Contract executed	9/12/2022		
Site Acquisition	N/A		
Zoning Approval	11/16/2021		
Site Analysis	12/6/2023		
Building Permits & Fees	7/1/2024		
Off-site Improvements	9/12/2022		
PRE-DEVELOPMENT			
Plans Completed (permit)	12/6/2023		
Final Bids	4/5/2024		
Contractor Selected	5/1/2022		
FINANCING			
CONSTRUCTION LOAN:			
Proposal	11/15/2023		
Firm Commitment (submittal)	3/1/2024		
Closing/Funding of Loan	6/25/2024		
PERMANENT LOAN			
Proposal	11/15/2023		
Firm Commitment	3/1/2024		
Closing/funding of Loan	6/25/2024		
DEVELOPMENT			
Syndication Agreement	6/25/2024		
Construction Begins	6/26/2024		
Construction Completed	3/1/2026		
Certificate Of Occupancy	3/1/2026		
MARKETING			
Lease up begins	12/1/2025		
Lease up completed	11/1/2026		
Absorption (units per month)	15		

Attachment D. Home Match Contribution Form

PROJECT: Hillside Park Phase 1 Building C

Total number of units in project: 100
Number of HOME-assisted units: 18
Applicable match credit percentage*: 18%

MATCH SOURCE*	ELIGIBLE MATCH TYPE	ELIGIBLE MATCH AMOUNT	MATCH CREDIT
METRO Affordable Housing Bond	5	\$14,545,455	363%
OHCS 4% LIHTC (Equity)	1	\$22,775,955	569%
Permanent loan	1	\$18,303,080	457%
Total match:		\$55,624,490	1390%

Eligible forms of match as defined in 24 CFR 92.220(a):

- (1) Cash Contribution from Non-federal Source
- (2) Foregone Taxes, Fees and Charges
- (3) Donated Land or Other Real Property
- (4) On-site or Off-site Infrastructure
- (5) Proceeds from Affordable Housing Bonds
- (6) Donated Site Preparation and Construction Materials
- (7) Donated Site Preparation and Construction Equipment
- (8) Donated or Voluntary Labor or Professional Services
- (9) Sweat Equity (homeownership only)
- (10) Supportive Services (for rental projects only)

*24 CFR 92.219 states that 100% of the matching contribution can be recognized if "...at least 50 percent of the housing units in the project are HOME-assisted."

* MATCH REQUIREMENT THE OWNER CERTIFIES THAT IT WILL PROVIDE A MATCH FOR THE HOME FUNDS, IN AN AMOUNT EQUAL TO OR GREATER THAN 25% OF THE HOME FUNDS, FROM ELIGIBLE NON-FEDERAL SOURCES AS ALLOWED BY 24 CFR 92.218 THROUGH 92.222.

Attachment E. HOME Affordability Requirements

1. HOME Rent Schedule

US Department of Housing and Urban Development
PMSA: Portland-Vancouver-Hillsboro, OR-WA MSA
Effective: June 1, 2024

	Low HOME	High HOME
0 Bedroom	\$1,032	\$1,323
1 Bedroom	\$1,106	\$1,419
2 Bedroom	\$1,327	\$1,704
3 Bedroom	\$1,534	\$1,960

Notes:

- Utility Allowance: The gross rents must be reduced if the tenant pays for any utilities besides telephone. The utility allowances prepared by the County Housing Authority shall be used when adjusting rents. Utility adjustments may be proposed by Owner for the Project, but must be approved by the County.
- Residents will pay their own electricity. A utility allowance will cover electric heating, lighting and cooking. Water and sewer will be paid by the owner, along with garbage and natural gas to heat the hot water. The utility allowances are \$50 for a 1 bedroom; \$64 for a 2 bedroom, and \$78 for a 3 bedroom, per month.
- Throughout the Period of Affordability rents plus utility standards for the Project will not be set at amounts less than those shown in this initial table.

2. HOME Tenant Income Limits

US Department of Housing and Urban Development
Effective: May 1, 2024

HOUSEHOLD SIZE	30% OF MEDIAN	50% OF MEDIAN	60% OF MEDIAN	80% OF MEDIAN
1 Person	\$ 24,800	\$ 41,300	\$ 49,650	\$ 66,100
2 Person	\$ 28,350	\$ 47,200	\$ 56,640	\$ 75,550
3 Person	\$ 31,900	\$ 53,100	\$ 63,720	\$ 85,000
4 Person	\$ 34,500	\$ 59,000	\$ 70,800	\$ 94,400
5 Person	\$ 38,250	\$ 63,750	\$ 76,500	\$ 102,000
6 Person	\$ 41,100	\$ 68,450	\$ 82,140	\$ 109,550
7 Person	\$ 43,900	\$ 73,200	\$ 87,840	\$ 117,100
8 Person	\$ 46,750	\$ 77,900	\$ 93,480	\$ 124,650

Note: This schedule will be updated from time to time when adjustments are provided by HUD.

ATTACHMENT F.

AFFIRMATIVE MARKETING

For housing containing five or more HOME-assisted units, the HOME regulations at 24 CFR Part 92.351 require project Owner to provide information and otherwise attract eligible persons from all racial, ethnic, and gender groups in the housing market area to the available housing.

The project Owner must:

- 1) Display the Equal Housing Opportunity statement or logo on all project signs.
- 2) Use the Equal Housing Opportunity statement or logo on all advertisements and publications. Advertising media may include newspapers of general circulation, radio, television, brochures, or flyers.
- 3) Display a Fair Housing Poster in a place visible to tenants and prospective tenants and in common area(s) of housing assisted with HOME funds.
- 4) Solicit applications for vacant units from persons in the housing market who are least likely to apply for the HOME-assisted housing without the benefit of special outreach efforts.

In general, persons who are not of the race/ethnicity of the residents of the neighborhood in which the newly constructed or rehabilitated building is located shall be considered those least likely to apply.

For outreach purposes, the Owner may utilize the housing authority, community action agencies, community development corporations, other community organizations, places of worship, employment centers, fair housing groups, housing counseling agencies, Clackamas County's Social Services' Information and Referral, the Community Connections website, or medical service centers to publicize unit vacancies or otherwise provide information to potential tenants.

- 5) Maintain file records containing all marketing efforts including, but not limited to, copies of newspaper advertisements, file memorandums documenting phone inquiries, copies of inquiry letters and related responses, etc. *These records shall be made available to County for inspection during normal working hours.*

During the rent-up and initial marketing phase, County will assess the efforts of Owner through the use of certifications of compliance by the Owner or Property Manager. Thereafter, County will annually assess the efforts and the success of the affirmative marketing actions by the project Manager.

In the event the Owner fails to comply with the affirmative marketing requirements, County will require corrective actions which include, but are not limited to, requiring the Owner to conduct extensive outreach efforts on all future vacancies using appropriate contacts such as those outlined above in order to achieve occupancy goals. County may require other corrective actions as necessary.

**OUTREACH TO MINORITY-OWNED AND WOMEN-OWNED
BUSINESSES ENTERPRISES (MBE/WBE)**

Clackamas County Housing and Community Development Division (HCD) 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 project Owner.
- ◆ 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 Owners 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, HCD will:
 - ◆ Encourage project sponsors, developers and HOME Project Owners 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. HCD may inspect the project site to confirm the percentage of minority and women laborers working at the site.

Monitor project sponsors, developers and HOME Project Owners to determine their compliance efforts in promoting the use of MBE/WBE in specific procurement areas, i.e. supplies, professional services, and construction services.

ATTACHMENT G.

1. **Monthly Progress Reports.**

During the construction phase, the Owner or its representative must submit a progress report each month that describes:

- a. Work completed during the reporting period; and
- b. Any decisions that have been made in the field, including changes to the scope of work, schedule and resolution to problems or disputes.

2. **Final disbursement of HOME Funds at Project Completion.**

Five percent of HOME funds will be withheld until:

- a. The County inspects the completed project to verify that the HOME-Assisted Units meet the property standards set for at 24 CFR 92.251; and
- b. The Owner or its representative submits all of the following documentation:
 - i. Documentation that relocation (If any) was conducted in accordance with Section 24 of this Agreement;
 - ii. Certification statement that the completed project meets the accessibility requirements of 24 CFR 92.251(a)(3);
 - iii. Certificate of Occupancy;
 - iv. Final Sources and Uses or Cost Certification that identifies the actual cost and funding source of each line item on the development budget;
 - v. Documentation for each source of match;
 - vi. Contractor information:
 - (1) Copy of construction contract between Owner and General Contractor.
 - (2) Certification that neither the General Contractor nor participants in lower tier covered transactions having to do with the project are currently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in federal projects.
 - (3) Forms and Assurances from General Contractor:
 - (a) Affidavit of Payment of Debts and Claims;
 - (b) Affidavit of Release of Liens from General Contractor and all Subcontractors;
 - (c) Consent of Surety Company to Final Payment (if bonded);
 - (d) Section 3 Summary Report (form HUD-60002);
 - (e) Minority- and Woman-Owned Business Enterprise Activity (form HUD-40107); and
 - (f) Contractor/Subcontractor Activity form (form HUD-2516).
 - vii. Copy of the Management Agreement;
 - viii. Copy of HOME tenant lease;
 - ix. Copy of the written tenant selection criteria; and
 - x. Form HUD-40097 (Project Completion Report - Part C, household characteristics for each HOME-Assisted Unit) must be submitted within 120 days of the request for final disbursement.

ATTACHMENT H.

**REIMBURSEMENT FORM
HOME INVESTMENT PARTNERSHIPS
PROGRAM**

DATE:		PROJECT NAME:	
ORGANIZATION:		CONTACT:	
TELEPHONE:		E-MAIL:	

Payment Request:

Invoice # or Date	PAYABLE TO:	FOR SERVICES:	Relates to Proforma Line Item	AMOUNT:
TOTAL AMOUNT REQUESTED:				

Certification of Approval and Disbursement Authorization:

I/We hereby certify that the above information is correct and that the funds requested are for payment of actual expenditures. All contractors listed have performed work and supplied materials as stated. This certification shall not constitute an acceptance of defective work or improper materials, nor is it a waiver of the warranties or any other remedies I/we are or may be entitled to under the contract. **Invoice(s) are attached.**

Signature Title Date

County Approval:

Amount Approved: _____

Mark Sirois, CD Manager

Date

ATTACHMENT I. VAWA NOTIFICATION AND CERTIFICATION

Hillside Park Buildings C or subsequent Owner (s)

Notice of Occupancy Rights under the Violence Against Women Act¹

To all Tenants and Applicants

The Violence Against Women Act (VAWA) provides protections for victims of domestic violence, dating violence, sexual assault, or stalking. VAWA protections are not only available to women, but are available equally to all individuals regardless of sex, gender identity, or sexual orientation.² The U.S. Department of Housing and Urban Development (HUD) is the Federal agency that oversees that **the HOME Program** is in compliance with VAWA. This notice explains your rights under VAWA. A HUD-approved certification form is attached to this notice. You can fill out this form to show that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking, and that you wish to use your rights under VAWA.”

Protections for Applicants

If you otherwise qualify for assistance under **the HOME Program** you cannot be denied admission or denied assistance because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Protections for Tenants

If you are receiving assistance under **the HOME Program**, you may not be denied assistance, terminated from participation, or be evicted from your rental housing because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Also, if you or an affiliated individual of yours is or has been the victim of domestic violence, dating violence, sexual assault, or stalking by a member of your household or any guest, you may not be denied rental assistance or occupancy rights under **the HOME Program** solely on the basis of criminal activity directly relating to that domestic violence, dating violence, sexual assault, or stalking.

¹ Despite the name of this law, VAWA protection is available regardless of sex, gender identity, or sexual orientation.

² Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

Affiliated individual means your spouse, parent, brother, sister, or child, or a person to whom you stand in the place of a parent or guardian (for example, the affiliated individual is in your care, custody, or control); or any individual, tenant, or lawful occupant living in your household.

Removing the Abuser or Perpetrator from the Household

HP may divide (bifurcate) your lease in order to evict the individual or terminate the assistance of the individual who has engaged in criminal activity (the abuser or perpetrator) directly relating to domestic violence, dating violence, sexual assault, or stalking.

If HP chooses to remove the abuser or perpetrator, HP may not take away the rights of eligible tenants to the unit or otherwise punish the remaining tenants. If the evicted abuser or perpetrator was the sole tenant to have established eligibility for assistance under the program, HP must allow the tenant who is or has been a victim and other household members to remain in the unit for a period of time, in order to establish eligibility under the program or under another HUD housing program covered by VAWA, or, find alternative housing.

In removing the abuser or perpetrator from the household, HP must follow Federal, State, and local eviction procedures. In order to divide a lease, HP may, but is not required to, ask you for documentation or certification of the incidences of domestic violence, dating violence, sexual assault, or stalking.

Moving to Another Unit

Upon your request, HP may permit you to move to another unit, subject to the availability of other units, and still keep your assistance. In order to approve a request, HP may ask you to provide documentation that you are requesting to move because of an incidence of domestic violence, dating violence, sexual assault, or stalking. If the request is a request for emergency transfer, the housing provider may ask you to submit a written request or fill out a form where you certify that you meet the criteria for an emergency transfer under VAWA. The criteria are:

(1) You are a victim of domestic violence, dating violence, sexual assault, or stalking. If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation, as described in the documentation section below.

(2) You expressly request the emergency transfer. Your housing provider may choose to require that you submit a form, or may accept another written or oral request.

(3) You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit. This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

OR

You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer. If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you expressly request the transfer.

HP will keep confidential requests for emergency transfers by victims of domestic violence, dating violence, sexual assault, or stalking, and the location of any move by such victims and their families.

HP's emergency transfer plan provides further information on emergency transfers, and HP must make a copy of its emergency transfer plan available to you if you ask to see it.

Documenting You Are or Have Been a Victim of Domestic Violence, Dating Violence, Sexual Assault or Stalking

HP can, but is not required to, ask you to provide documentation to "certify" that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking. Such request from HP must be in writing, and HP must give you at least 14 business days (Saturdays, Sundays, and Federal holidays do not count) from the day you receive the request to provide the documentation. HP may, but does not have to, extend the deadline for the submission of documentation upon your request.

You can provide one of the following to HP as documentation. It is your choice which of the following to submit if HP asks you to provide documentation that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

- A complete HUD-approved certification form given to you by HP with this notice, that documents an incident of domestic violence, dating violence, sexual assault, or stalking. The form will ask for your name,

the date, time, and location of the incident of domestic violence, dating violence, sexual assault, or stalking, and a description of the incident. The certification form provides for including the name of the abuser or perpetrator if the name of the abuser or perpetrator is known and is safe to provide.

- A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency that documents the incident of domestic violence, dating violence, sexual assault, or stalking. Examples of such records include police reports, protective orders, and restraining orders, among others.
- A statement, which you must sign, along with the signature of an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional or a mental health professional (collectively, “professional”) from whom you sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse, and with the professional selected by you attesting under penalty of perjury that he or she believes that the incident or incidents of domestic violence, dating violence, sexual assault, or stalking are grounds for protection.
- Any other statement or evidence that HP has agreed to accept.

If you fail or refuse to provide one of these documents within the 14 business days, HP does not have to provide you with the protections contained in this notice.

If HP receives conflicting evidence that an incident of domestic violence, dating violence, sexual assault, or stalking has been committed (such as certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the abuser or perpetrator), HP has the right to request that you provide third-party documentation within thirty 30 calendar days in order to resolve the conflict. If you fail or refuse to provide third-party documentation where there is conflicting evidence, HP does not have to provide you with the protections contained in this notice.

Confidentiality

HP must keep confidential any information you provide related to the exercise of your rights under VAWA, including the fact that you are exercising your rights under VAWA.

HP must not allow any individual administering assistance or other services on behalf of HP (for example, employees and contractors) to have access to confidential information unless for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

HP must not enter your information into any shared database or disclose your information to any other entity or individual. HP, however, may disclose the information provided if:

- You give written permission to HP to release the information on a time limited basis.
- HP needs to use the information in an eviction or termination proceeding, such as to evict your abuser or perpetrator or terminate your abuser or perpetrator from assistance under this program.
- A law requires HP or your landlord to release the information.

VAWA does not limit HP's duty to honor court orders about access to or control of the property. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.

Reasons a Tenant Eligible for Occupancy Rights under VAWA May Be Evicted or Assistance May Be Terminated

You can be evicted and your assistance can be terminated for serious or repeated lease violations that are not related to domestic violence, dating violence, sexual assault, or stalking committed against you. However, HP cannot hold tenants who have been victims of domestic violence, dating violence, sexual assault, or stalking to a more demanding set of rules than it applies to tenants who have not been victims of domestic violence, dating violence, sexual assault, or stalking.

The protections described in this notice might not apply, and you could be evicted and your assistance terminated, if HP can demonstrate that not evicting you or terminating your assistance would present a real physical danger that:

- 1) Would occur within an immediate time frame, and
- 2) Could result in death or serious bodily harm to other tenants or those who work on the property.

If HP can demonstrate the above, HP should only terminate your assistance or evict you if there are no other actions that could be taken to reduce or eliminate the threat.

Other Laws

VAWA does not replace any Federal, State, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking. You may be entitled to additional housing protections for victims of domestic violence, dating violence, sexual assault, or stalking under other Federal laws, as well as under State and local laws.

Non-Compliance with The Requirements of This Notice

You may report a covered housing provider's violations of these rights and seek additional assistance, if needed, by contacting or filing a complaint with **[insert contact information for any intermediary, if applicable]** or **[insert HUD field office]**.

For Additional Information

You may view a copy of HUD's final VAWA rule at

https://www.hud.gov/program_offices/housing/mfh/violence_against_women_act

Additionally, HP must make a copy of HUD's VAWA regulations available to you if you ask to see them.

For questions regarding VAWA, please contact **contact information able to answer questions on VAWA]**.

For help regarding an abusive relationship, you may call the National Domestic Violence Hotline at 1-800-799-7233 or, for persons with hearing impairments, 1-800-787-3224 (TTY). You may also contact

<https://www.womenslaw.org/laws/or/housing-laws>

For tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

For help regarding sexual assault, you may contact [24-hour Crisis Line/Línea de Crisis:888-654-2288](https://www.womenslaw.org/laws/or/housing-laws)

Victims of stalking seeking help may contact [24-hour Crisis Line/Línea de Crisis:888-654-2288](https://www.womenslaw.org/laws/or/housing-laws)

Attachment: Certification form HUD-5382:

**CERTIFICATION OF
DOMESTIC VIOLENCE,
DATING VIOLENCE,
SEXUAL ASSAULT, OR STALKING,
AND ALTERNATE DOCUMENTATION**

**U.S. Department of Housing
and Urban Development**

OMB Approval No. 2577-0286
Exp. 06/30/2017

Purpose of Form: The Violence Against Women Act ("VAWA") protects applicants, tenants, and program participants in certain HUD programs from being evicted, denied housing assistance, or terminated from housing assistance based on acts of domestic violence, dating violence, sexual assault, or stalking against them. Despite the name of this law, VAWA protection is available to victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

Use of This Optional Form: If you are seeking VAWA protections from your housing provider, your housing provider may give you a written request that asks you to submit documentation about the incident or incidents of domestic violence, dating violence, sexual assault, or stalking.

In response to this request, you or someone on your behalf may complete this optional form and submit it to your housing provider, or you may submit one of the following types of third-party documentation:

- (1) A document signed by you and an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, "professional") from whom you have sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. The document must specify, under penalty of perjury, that the professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking occurred and meet the definition of "domestic violence," "dating violence," "sexual assault," or "stalking" in HUD's regulations at 24 CFR 5.2003.
- (2) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
- (3) At the discretion of the housing provider, a statement or other evidence provided by the applicant or tenant.

Submission of Documentation: The time period to submit documentation is 14 business days from the date that you receive a written request from your housing provider asking that you provide documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking. Your housing provider may, but is not required to, extend the time period to submit the documentation, if you request an extension of the time period. If the requested information is not received within 14 business days of when you received the request for the documentation, or any extension of the date provided by your housing provider, your housing provider does not need to grant you any of the VAWA protections. Distribution or issuance of this form does not serve as a written request for certification.

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking shall be kept confidential and such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections to you, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

- 1. Date the written request is received by victim: _____
- 2. Name of victim: _____
- 3. Your name (if different from victim's): _____
- 4. Name(s) of other family member(s) listed on the lease: _____

- 5. Residence of victim: _____

6. Name of the accused perpetrator (if known and can be safely disclosed): _____

7. Relationship of the accused perpetrator to the victim: _____

8. Date(s) and times(s) of incident(s) (if known): _____

10. Location of incident(s): _____

In your own words, briefly describe the incident(s):

This is to certify that the information provided on this form is true and correct to the best of my knowledge and recollection, and that the individual named above in Item 2 is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature _____ Signed on (Date) _____

Public Reporting Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information provided is to be used by the housing provider to request certification that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking. The information is subject to the confidentiality requirements of VAWA. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget control number.

PROMISSORY NOTE

CLACKAMAS COUNTY HOME PROGRAM

Name of Project: Hillside Park Phase 1 Building C

\$4,000,000.00 _____, **2024**

For value received, Hillside Park Building C Housing Partners Limited Partnership, an Oregon limited partnership (“Borrower”), promises to pay to the order of Clackamas County (“Lender”), the sum of **FOUR MILLION DOLLARS and No/100 DOLLARS (\$4,000,000.00)**, or so much thereof as may be advanced, together with interest thereon at the rate of **zero percent (0.0 %) deferred payment per year, compounded annually**. The loan is evidenced by this Promissory Note the (“Note”), a Loan Agreement, a Trust Deed, and a Declaration of Land Use Restrictive Covenants (together, the “Loan Documents”). Unless otherwise defined herein, capitalized terms have the meaning assigned to them in the Loan Agreement.

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 this Note and the Loan Agreement, the terms of the Loan Agreement shall control:

1. **Payment of Obligation**. Lender makes this loan for the development and construction of Hillside Park Phase 1 Building C (the “Project”), under Title II, Section 216 and 217 of the National Affordable Housing Act of 1990, and 24 CFR Part 92 (the “HOME” program).
 - a. The loan shall bear interest at a rate of **zero percent (0.0 %) deferred payment per year, compounded annually**.
 - b. The term of the loan is 55 years.
 - c. The Maturity Date is 55 years from the date on this Note shown above.
 - d. The loan shall be repaid in full upon the earlier of the Maturity Date, the sale, assignment or other transfer of title to the Property on which the Project will be constructed without Lender’s consent, or the date Borrower, or its agents or subcontractors, is otherwise in default under any of the Loan Documents including, but not limited to, failure to record the Trust Deed or Declaration of Restrictive Covenants within 30 days of acquiring title to the Property on which the Project will be constructed, or failure to comply with any term or condition of the Loan Documents, including but not limited to the affordability requirements in the Declaration of Land Use Restrictive Covenants.
 - e. Payments shall be made at such place as Lender may designate in writing.
 - f. The outstanding principal balance of the loan shall be repaid upon occurrence of the events described in Section 1(d), above. Payments of principal shall not be required prior to the occurrence of the events described in Section 1(d), above.
2. **Lender’s Rights and Remedies on Default**. Upon the occurrence of any event or events of default, and after the expiration of all applicable notice, grace and cure periods, Lender may exercise any one or more of the rights and remedies on default described in the Trust Deed or the Loan Agreement, which are incorporated by reference in this Note.
3. **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.
4. **Security**. This Note shall be secured by a Trust Deed from Borrower, as grantor, to Lender as beneficiary.

5. **Authority.** 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.

By signing below, Borrower accepts and agrees to the terms and covenants contained in this Promissory Note as of the date first set forth above.

BORROWER:

Hillside Park Building C
Housing Partners Limited Partnership, an Oregon
limited partnership
44 Montgomery, 13th Floor
San Francisco, CA 94104

By: Related/Hillside Park Building C
Development Co., LLC,
a California limited liability company
Title: Administrative General Partner

By: _____
Name: Ann Silverberg
Title: President

By: Housing Authority of Clackamas County,
a public body corporate and politic of the
State of Oregon
Title: Managing General Partner

By: _____
Name: Chris Aiosa
Title: Executive Director

B.O. 2003-236

AFTER RECORDING RETURN TO:
Clackamas County
Housing and Community Development Division
2051 Kaen Road, Suite 245
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: Clackamas County Community Development Division

Legal Description – Exhibit "A" Attached

**TRUST DEED, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING
CLACKAMAS COUNTY HOME PROGRAM**

Name of Project: Hillside Park Phase 1 Building C

THIS TRUST DEED, ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FIXTURE FILING (this "Trust Deed") is made as of _____, 2024 by **Hillside Park Building C, Housing Partners Limited Partnership**, an Oregon limited partnership ("**Grantor**" or "**Borrower**"), having its office at 18201 Von Karman Avenue Suite 900, Irvine, California, 92612, to Fidelity National Title Company of Oregon ("**Trustee**" or "**Title Company**"), for the benefit of Clackamas County, a political subdivision of the State of Oregon, through its Housing and Community Development Division, having its office at 2051 Kaen Road, Oregon City, OR 97045 ("**Beneficiary**" or "**County**").

County has made a **zero percent (0.0%) interest deferred payment** loan to Borrower in the sum of **FOUR MILLION DOLLARS and No/100 DOLLARS (\$4,000,000.00)**, under Title II of the National Affordable Housing Act of 1990, as amended, 42 U.S.C. 12701 et seq., and 24 CFR Part 92 (the "HOME" program). 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: (i) the Maturity Date which is exactly **fifty five (55) years from the executed date of this Trust Deed** except as otherwise provided in the Loan Agreement, (ii) the date the Trust Property, defined below, is sold, (iii) title to the Trust Property is transferred, or (iv) the Borrower defaults on any of its obligations under the Loan Documents (defined in Article 5.01 below). The Initial HUD-ARP required Period of Affordability shall be 20 years, without regard to the term of the loan or the transfer of ownership. The extended period of affordability begins at the end of the Initial Period of Affordability and continues for an additional 35 years or until such time as the loan is deemed paid in full. The total Period of Affordability for both the Initial and Extended Periods of Affordability totals 55 years.

As a condition to the making of the loan to Borrower, Borrower has agreed to sign, deliver and record or cause to be recorded this Trust Deed. This Trust Deed secures an obligation incurred for the construction of an improvement on land, and is a "construction mortgage" under ORS 79.0334(8).

For good consideration, receipt and sufficiency of which are 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 County, 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, together with all rights, titles and interests of Borrower, 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 either the "Property" or 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 re-conveyed.

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 (the "Obligations").

1.02 Property. Borrower warrants that it holds good and merchantable title to the Property, 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 County's and Title Company's rights under this Trust Deed against the

adverse claims and demands of all persons. Borrower will maintain and preserve the lien of this Trust Deed until the obligations secured hereby have been paid in full.

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 County 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 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 HOME requirements to the extent applicable including, but not limited to, the U.S. Department of Housing and Urban Development HOME-American Rescue Plan Program Notice CPD-21-10 (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 County 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 County copies of all reports, documents, and notices provided to or received from any agency administering any Environmental Laws. County 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 reasonable attorney fees in connection with such an action paid by Borrower, if County determines that such participation is reasonably necessary to protect its interest in the Trust Property.
- 7) If, at any time, County 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 County has reason to believe that a violation of an Environmental Law has occurred or may occur with respect to the Property or Improvements, County 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 County 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 County 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, County'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, County 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 8.0% per annum compounded annually until paid.
- 9) Borrower shall hold County, 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, reasonable attorney fees and costs (including but not limited to those incurred in any proceeding and in any review or appeal), fees, penalties, and fines; provided however that, notwithstanding the foregoing, Borrower shall have no obligation to indemnify or provide any contribution to any person or party for, from or against any losses, damages, liens, costs, expenses, and liabilities directly or indirectly arising out of or attributable to the negligence or willful misconduct of such person or party.
- 10) To the best of Borrower's knowledge, Borrower represents and warrants to County 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 re-conveyance of the Trust Property, or the foreclosure of this Trust Deed by any means.

1.07 Maintenance and Improvements. Borrower will protect, preserve and maintain, at Borrower's expense, all Improvements in good order and repair (ordinary wear and tear excepted) and will not permit or cause any waste of the Property, and will complete or restore promptly and in a good and workmanlike manner, all repairs necessary to the Land and Improvements that may be constructed, damaged or destroyed. Borrower will not conduct or permit any nuisance to be maintained on the Property. Borrower shall not permit all or any part of the Improvements to be removed, demolished, or materially altered without County's prior written consent which consent shall not be unreasonably conditioned, withheld or delayed; 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 if such Improvements are necessary to the operations of the Property. 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 92.251, and shall at County's election and 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 accepted.

1.08 Liens; Other Financing. 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 with notice to County, 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 County 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 County cash, corporate surety bond, or other additional security in the amount determined by County 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, non-appealable judgment.

- 3) Borrower shall furnish to County, promptly upon request, satisfactory evidence of the payment of all Impositions. County 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 County, the Secretary of HUD and the Comptroller General of the United States of America, and their respective authorized and properly identified 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, at reasonable times during normal business with prior notice of not less than 48 hours, subject to all safety and security policies uniformly employed at the Property and rights of tenants in lawful possession.

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 County.

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 County, and in no event less than \$2,000,000 per occurrence and \$4,000,000 aggregate coverage; and
 - (c) Unless County 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.
- 2) Insurance Companies and Policies. Insurer must be authorized to do business in Oregon. All insurance shall be written by a company or companies reasonably acceptable to County with a rating of A VIII or better as provided in Best's Rating Guide; shall contain a long form mortgagee clause in favor of County with loss proceeds under any policy payable to County, 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 County 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 County; 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. County shall be named as additional insured on all liability policies. Borrower shall forward to County, 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 County 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 County, specifically describing the nature and cause of such casualty and the extent of the damage or destruction to the Trust Property. County may make proof of loss if it is not made promptly and to County's satisfaction by Borrower.
- 2) Borrower assigns to County all insurance proceeds that Borrower may be entitled to receive with respect to any casualty. All insurance proceeds shall be held by County as collateral to secure performance of the Obligations secured by this Trust Deed. Provided that Borrower is not in default under this Trust Deed, County 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 County) if Borrower can demonstrate, to County'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 County toward payment of all or part of the indebtedness secured by this Trust Deed in such order as County 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, County 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 County shall first give notice to Borrower of such failure and a reasonable opportunity of not less than 30 days 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 County'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 County under this section shall impair any other right or remedy available to County 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, County may require Borrower thereafter to pay in an escrow maintained with an independent, third party escrow agent reasonably acceptable to County reserves for payment of such obligations. In that event, Borrower shall pay into such escrow each month a sum estimated by County 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 upon demand. T.

1.16 Insurance Warning. Unless Borrower provides County with evidence of the insurance coverage required by the Loan Documents, County may purchase insurance at Borrower's expense to protect County's interest.

This insurance may, but need not, also protect Borrower's interest. If the Trust Property becomes damaged, the coverage County 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 County. 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 8.0% 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 County 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 County 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.

1.18 Financial Information. Borrower shall furnish to County within (i) 90 days after the end of each of Borrower's fiscal years a complete copy of Borrower's internally-prepared financial statement for such year, and (ii) 180 days after the of each of Borrower's fiscal years a copy of Borrower's annual audited or certified public accountant reviewed financial statements (including balance sheet, income statement, and statement of changes in financial position). Borrower shall promptly furnish to County any and all such other financial information related to Borrower as County 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 County.
- 2) Subject to the rights of any superior mortgagee or trust deed beneficiary as provided in Section 6.10 below, County 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 County's election, shall become immediately due and collectible.
- 3) All condemnation proceeds shall be held by County as collateral to secure performance of the Obligations secured by this Trust Deed. Provided that Borrower is not in default under this Trust Deed, County 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 County) if Borrower can demonstrate, to County'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 County toward payment of all or part of the indebtedness secured by this Trust Deed in such order as County may determine.

ARTICLE III

Assignment of Leases, Rents, Issues, and Profits

3.01 Assignment. Borrower assigns and transfers to County (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 other than the beneficiaries under any mortgages or trust deeds identified on **Exhibit B**. This assignment is intended by Borrower and County to create a present and unconditional assignment to County subject only to the license set forth in Section 3.04 below.

3.02 Rights of County. Subject to the provisions of Section 3.04 below giving Borrower a revocable, limited license, County 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 County and that, subject to the rights of the applicable beneficiary under any superior mortgage or trust deed specifically permitted under **Exhibit B**, all Rents are to be paid directly to County, whether or not County shall have foreclosed or commenced foreclosure proceedings against the Trust Property, and whether or not County 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 County;
- 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 County, 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. County 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 County, and in collecting any Rents, including reasonable internal personnel costs; and (2) for the operation and maintenance of the Trust Property and the payment of all costs and expenses 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 County shall have set up such reserves as it shall deem necessary in its sole discretion for the proper management of the Trust Property, County shall apply all remaining Rents collected and received by it to the reduction of the Obligations in such order as County shall determine. The exercise or failure by County 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. County grants to Borrower a revocable license to collect and receive the Rents. Such license may be revoked by County, 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 and such default continues beyond any applicable notice, grace or cure period. 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 of its obligations as lessor under Leases;
- 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 County's prior written approval of the form and content of all future Leases, which approval shall not be unreasonably withheld, conditioned or delayed.

Upon request of County, 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 County's Obligations. Notwithstanding the assignment provided for in this Article III, County shall not be obligated to perform or discharge, and County 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 County, or to make County responsible for any condition of the Property. County shall be accountable to Borrower only for the sums actually collected and received by County pursuant to this assignment. Borrower shall hold County fully harmless from, indemnify County for, and defend County 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 County on account of this assignment or any obligation or undertaking alleged to arise therefrom, other than such claims resulting from the negligence or willful misconduct of County.

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 County shall cease and terminate.

3.07 Attorney-in-Fact. Borrower irrevocably constitutes and appoints County 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.

ARTICLE IV

Security Agreement and Fixture Filing

4.01 Security. To secure the Obligations, Borrower grants to County a security interest in the following: (1) the Trust Property to the extent the same is not encumbered by this Trust Deed, subordinate only to those liens previously approved by the County (including, but not limited to, those liens referenced on **Exhibit B**); (2) [Reserved]; (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 County 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. Subject to any applicable notice and opportunity to cure period provided in the Loan Documents, each of the following shall constitute an event of default under the Loan Documents:

- 1) Nonpayment. Failure to pay any amount due under the Loan Documents, before the due date.
- 2) Failure of Borrower to comply with the Affordability Requirements at any time during the Period of Affordability.
- 3) Breach of Other Covenants. Material failure to perform or abide by any other condition of the Loan Documents.
- 4) Misinformation. Falsity when made in any material respect of any representation, warranty, or information furnished in the Loan Documents or in the application for HOME funds.
- 5) Other Default. The occurrence of any other event of default under the Loan Documents after the expiration of all applicable notice, grace and cure periods.
- 6) Cross-Defaults. Borrower'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 Financing Sources and, if applicable, any lease Borrower may have entered into with respect to the Property, as set forth in Article VI, below.
- 7) Bankruptcy. The occurrence of any of the following with respect to Borrower 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.
- 8) 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 County's prior written consent, shall constitute an event of default.

5.02 Remedies in Case of Default. If an Event of Default shall occur, and subject to any applicable notice and opportunity to cure period provided for in the Loan Documents, County 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, County may extend the Period of Affordability for the period during which such failure existed.
- 2) **Acceleration.** County may declare all or any portion of the Obligations immediately due and payable.
- 3) **Receiver.** County may have a receiver appointed for the Trust Property. County 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 County shall not disqualify a person from serving as receiver. Borrower consents to the appointment of a receiver at County's option and waives any and all defenses to such an appointment.
- 4) **Possession.** County 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 County shall deem appropriate in its sole discretion. Upon request after an Event of Default, Borrower shall peacefully relinquish exclusive possession and control of the Trust Property to County or any receiver appointed under this Trust Deed.
- 5) **Rents.** County may revoke Borrower's right to collect the Rents and may, either itself or through a receiver, collect the same. County 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 County under this subsection, Borrower irrevocably appoints County 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.** County may direct Title Company, and Title Company shall be empowered, to foreclose the Property by advertisement and sale under applicable law.
- 7) **Foreclosure.** County may judicially foreclose this Trust Deed and obtain a judgment foreclosing Borrower's interest in all or any part of the Property. In any judicial foreclosure, County will be entitled to obtain a deficiency judgment for any amount by which the amount of Obligations secured hereby exceed the sale proceeds.
- 8) **Fixtures and Personal Property.** With respect to any Improvements and other personal property subject to a security interest in favor of County, County may exercise any and all of the rights and remedies of a secured party under the Uniform Commercial Code.
- 9) **Other Remedies.** County will have any other right or remedy provided in this Trust Deed, the Note, the Loan Documents, or any other instrument delivered by Borrower in connection therewith, or available at law, in equity, or otherwise in such order and manner as it may select.
- 10) **Abandonment.** County 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 County 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 County, its elected officials, officers, agents, and employees, may purchase at any such sale. County 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, County 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 County or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of County, 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. A waiver of a breach of a provision of this Trust Deed will not constitute a waiver of or prejudice the right otherwise to demand strict compliance with that provision or any other provision. An election by Beneficiary to pursue any remedy will not exclude pursuit of any other remedy, and all remedies of Beneficiary under this Trust Deed are cumulative and not exclusive. An election to make expenditures or take action to perform an obligation of Borrower will not affect Beneficiary's right to declare a default and exercise its remedies under this Trust Deed.

5.05 Receiver or Trustee-in-Possession. Upon taking possession of all or any part of the Trust Property, Title Company, County, 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, County, 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 County 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 Article 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.

ARTICLE VI
Lease Provisions

The following provisions shall apply in the event Borrower's interest in the Property arises from a leasehold interest and this Trust Deed encumbers Borrower's interest as lessee in such leasehold interest.

6.01 Lease Representations and Warranties. Borrower represents and warrants the following:

- 1) Borrower is the lessee under a certain lease ("Lease") executed by and between Borrower and the Housing Authority of Clackamas County ("HACC"), for the term of 99 years, executed on or before the effective date of this Trust Deed.
- 2) The Lease is in full force and effect and unmodified.
- 3) Borrower has and will continue to comply with all of the terms, provisions, covenants and conditions of the Lease.
- 4) There is no existing default under the Lease.
- 5) The Lease, or a Memorandum of Lease, was recorded in the real property records of Clackamas County providing notice of the Lease and Borrower's interest therein.
- 6) The Lease specifically permits encumbering Borrower's leasehold interest, and HACC has provided written approval for Borrower to issue this Trust Deed encumbering Borrower's leasehold interest.

6.02 Indemnification. If Borrower fails to comply with each and every one of the terms, provisions, covenants and conditions of the Lease, or is in default under the Lease, said failure to comply or default Borrower's Grantor's part shall constitute a default under this Trust Deed, and shall entitle County, at County's option, to exercise any and all of its rights and remedies in the event of such default as provided herein. Borrower herein agrees to indemnify, defend, and hold County harmless from any and all loss, cost or expense, including reasonable attorney's fees, which arises from or is related to Borrower's default under this Article VI, or by reason of any default under or termination of the Lease

6.03 Right to Cure Default Under Lease. In the event that any default shall occur under the Lease, County shall have the right (but without the obligation to do so) to expend such funds or take such actions as are necessary to cure such default, all without notice to Borrower, and any monies so advanced or any costs so incurred by County incident thereto shall be immediately due and payable by Borrower to County without notice or demand and shall be secured by the lien of this Deed of Trust.

6.04 Change or Modification of Lease. Borrower shall not sell, assign, modify, amend, supplement or encumber the terms, covenants and provisions of the Lease without the prior written consent of County.

6.05 Fee Title. Grantor covenants and agrees that so long as any of the indebtedness secured by this Deed of Trust remains unpaid, the leasehold estate created by said Lease shall not merge in or with the fee title or in or with any other estate or interest in the real property, but always be complete, separate and distinct notwithstanding the occurrence of any event or events by which said leasehold estate may be or become vested in or owned by the same person, firm or corporation which shall own or in whom said fee title is vested. Grantor further covenants and agrees that in case they or any future owner of the leasehold title shall acquire the fee title, or any other estate, title or interest in the premises covered by the Lease, this Deed of Trust shall attach to cover, and become a lien upon such other estate so acquired by Grantor or any future owner of the leasehold title and shall be considered as mortgaged, assigned, and conveyed to Beneficiary and the lien hereof spread to cover such estate with the same force and effect as though specifically herein mortgaged

ARTICLE VII
General Provisions

7.01 Time is of the Essence. Time is of the essence with respect to all covenants and obligations of Borrower under this Trust Deed.

7.02 Re-conveyance by Title Company. At any time upon the request of County, 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 re-convey, without warranty, all or any part of the Trust Property. The grantee in any re-conveyance 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.

7.03 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 mail, 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.

7.04 Substitute Trustee. In the event of dissolution or resignation of Title Company, County 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).

7.05 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 County. If the Trust Property or any portion thereof shall at any time be vested in any person other than Borrower, County shall have the right to deal with such successor regarding this Trust Deed, the Trust Property, and the Obligations in such manner as County deems appropriate in its sole discretion, without notice to or approval by Borrower and without impairing Borrower's liability for the Obligations.

7.06 Indemnity. Borrower shall hold County 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, arising out of or in connection with Title Company's or County's interest under this Trust Deed, except Borrower shall not be liable for acts performed by County or Title Company in violation of applicable law or resulting solely from the negligence or willful misconduct of County or Title Company.

7.07 No Attorney Fees. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Trust Deed, each party shall be responsible for its own attorneys' fees and expenses.

7.08 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.

7.09 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.

7.10 Reserved.

7.11 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.

7.12 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.

7.13 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.

7.14 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.

7.15 Standard for Discretion. In the event this Trust Deed 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.

7.16 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 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.

By signing below, Borrower accepts and agrees to the terms and covenants contained in this Trust Deed and in any Exhibits attached hereto.

Borrower:

**HILLSIDE PARK BUILDING C
HOUSING PARTNERS LIMITED PARTNERSHIP,**
an Oregon limited partnership

By: Related/Hillside Park Building C Development Co., LLC,
A California limited liability company,
its Administrative General Partner

By: CDP Oregon LLC,
an Oregon limited liability company,
its Manager

By: _____
Name: Ann Silverberg
Title: President

STATE OF CALIFORNIA

COUNTY OF

On _____, 2024, before me, _____, Notary Public, personally appeared Ann Silverberg, as President of Related/Hillside Park Building C Development Co., LLC, a California limited liability company, the Administrative General Partner of Hillside Park Building C Housing Partners Limited Partnership, an Oregon limited partnership, on behalf of such partnership, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Seal)

Signature

My Commission expires: _____

By signing below, Borrower accepts and agrees to the terms and covenants contained in this Trust Deed and in any Exhibits attached hereto.

Borrower

HILLSIDE PARK BUILDING C HOUSING PARTNERS LIMITED PARTNERSHIP

An Oregon limited partnership

By: Housing Authority of Clackamas County.
A public corporation of the State of Oregon,
Its Managing General Partner

By: _____
Name: Chris Aiosa
Title: Executive Director

STATE OF OREGON

ss.

County of Clackamas _____

The foregoing instrument is acknowledged before me on _____, 2024, by Chris Aiosa, Executive Director of Housing Authority of Clackamas County, a public body corporate and politic of the State of Oregon, the Managing General Partner of Hillside Park Building C Housing Partners Limited Partnership, an Oregon limited partnership, on behalf of such partnership.

Notary Public - State of Oregon
WITNESS my hand and official seal.

(Seal)

Signature

My Commission expires: _____

**EXHIBIT A
LEGAL DESCRIPTION**

PROPERTY DESCRIPTION – HILLSIDE PARK PHASE I

A PORTION OF PARCEL 2 OF PARTITION PLAT NO. 2020-026, CLACKAMAS COUNTY PLAT RECORDS, BEING A PORTION OF THAT TRACT OF LAND CONVEYED BY DEED TO HOUSING AUTHORITY OF CLACKAMAS COUNTY RECORDED IN BOOK 281, PAGE 156, CLACKAMAS COUNTY DEED RECORDS, SITUATED IN THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 1 SOUTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, CITY OF MILWAUKIE, COUNTY OF CLACKAMAS AND STATE OF OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID PARCEL 2, ALSO BEING A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF S.E. 32ND AVENUE (WIDTH VARIES) AND THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE ALONG THE EAST LINE OF SAID PARCEL 2 AND SAID WESTERLY RIGHT-OF-WAY LINE, THROUGH THE FOLLOWING COURSES: NORTH $01^{\circ}11'03''$ WEST, 30.00 FEET; SOUTH $87^{\circ}46'57''$ WEST, 6.00 FEET; NORTH $01^{\circ}11'03''$ WEST, 494.89 FEET TO THE INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF S.E. HILLSIDE COURT (WIDTH VARIES); THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, SOUTH $66^{\circ}48'56''$ WEST, A DISTANCE OF 465.10 FEET TO THE INTERSECTION WITH THE WESTERLY RIGHT-OF-WAY LINE OF S.E. C STREET (WIDTH VARIES); THENCE LEAVING SAID LINE, NORTH $76^{\circ}23'29''$ WEST, A DISTANCE OF 125.67 FEET TO THE SOUTHEAST CORNER OF PARCEL 1 OF SAID PARTITION PLAT NO. 2020-026 AND A POINT OF NON-TANGENT CURVE, THE RADIUS OF WHICH BEARS SOUTH $24^{\circ}15'11''$ WEST; THENCE ALONG THE ARC OF A 60.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF $93^{\circ}33'17''$ (CHORD BEARS SOUTH $67^{\circ}28'32''$ WEST, 87.44 FEET), AN ARC LENGTH OF 97.97 FEET; THENCE CONTINUING ALONG SAID SOUTH LINE OF PARCEL 1, SOUTH $66^{\circ}35'49''$ WEST, A DISTANCE OF 225.59 FEET TO THE SOUTHWEST CORNER THEREOF, ALSO BEING A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF THE SOUTHERN PACIFIC RAILROAD AND A POINT OF NON-TANGENT CURVE, THE RADIUS OF WHICH BEARS NORTH $67^{\circ}40'17''$ EAST; THENCE ALONG THE ARC OF A 2826.93 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF $06^{\circ}08'15''$ (CHORD BEARS SOUTH $25^{\circ}23'50''$ EAST, 302.67 FEET), AN ARC LENGTH OF 302.81 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL 2; THENCE ALONG THE SOUTH LINE OF SAID PARCEL 2 THROUGH THE FOLLOWING COURSES: NORTH $88^{\circ}02'48''$ EAST, 446.49 FEET; NORTH $00^{\circ}56'39''$ WEST, 3.29 FEET; NORTH $88^{\circ}33'04''$ EAST, 317.18 FEET TO THE TRUE POINT OF BEGINNING. CONTAINING 337,693 SQUARE FEET, MORE OR LESS.

THE EAST LINE OF SAID PARCEL 2, HAVING A BEARING OF NORTH $01^{\circ}11'03''$ WEST PER SAID PARTITION PLAT NO. 2020-026, WAS USED AS THE BASIS OF BEARINGS FOR THIS DESCRIPTION.

EXHIBIT B
EXCEPTIONS TO CLEAR TITLE

DRAFT

AFTER RECORDING RETURN TO:
Clackamas County
Housing and Community Development Division
2051 Kaen Road #245
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: Clackamas County Community Development Division

Legal Description – Exhibit "A" Attached

DECLARATION OF LAND USE RESTRICTIVE COVENANTS

CLACKAMAS COUNTY HOME PROGRAM

Name of Project: Hillside Park Phase 1 Building C

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS ("**Declaration**") dated _____, 2024 by Hillside Park Building C Housing Partners Limited Partnership and its successors and assigns ("**Owner**") is given as a condition to the award of HOME Investment Partnership ("**HOME**") Program funds by Clackamas County, a political subdivision of the State of Oregon ("**County**") together with any successor to its rights, duties, and obligations.

Owner has applied to the County and entered into a HOME Loan Agreement ("**Agreement**") for an award to the Project in amounts not to exceed **\$4,000,000.00**. The funds will be used by Owner to build a residential building, known as Building C (the "Project"), on real property described in Exhibit A (the "Property"), attached hereto and incorporated by reference herein. Pursuant to the terms of the Agreement, Owner has represented to the County restrictions regarding rents and tenant eligibility that Owner will maintain for the Period of Affordability specified in the Agreement. County 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 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 County 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 Part 92 ("**HUD HOME 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 County, Owner shall record this Declaration 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 County a signed original or certified copy of the recorded Declaration showing the date, deed book and page numbers of record.
- (B) During the term of this Declaration, the covenants, restrictions, and charges set forth herein will run with Owner's interest in the land and will pass to, and be binding upon, Owner's successors in title, including any purchaser, grantee, or lessee of any portion of the Property and any other person or entity having any right, title, or interest therein, and upon the respective heirs, executors, administrators, devisees, successors, and assigns of any purchaser, grantee, or lessee of any portion of the Property, and any other person or entity having any right, title, or interest therein. Each and every contract, deed, or other instrument hereafter executed that conveys the Property, or any portion thereof, or interest therein, must contain an express provision making such conveyance subject to the covenants, restrictions, charges, and easements contained herein; provided, however, that any such contract, deed, or other instrument shall conclusively be held to have been executed, delivered, and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed, or other instrument.
- (C) 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 Property. For the term of this Declaration, each and every contract, deed or other instrument hereafter signed conveying an interest in the Property, 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.
- (D) The Owner covenants to obtain the consent of any prior recorded lienholder on the Property to this Declaration.

SECTION 3 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER

During the 55-year term of this Declaration, the Owner represents, covenants, agrees, acknowledges, 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 92 and applicable regulations.
- (F) **That eighteen (18) units of the Property shall be reserved as HOME-Assisted Units.** This means that during the term of this Declaration, Owner will:
- Use the Property, and operate the Project, so as to ensure that eighteen (18) residential units of the Project are HOME-Assisted Units, as that term is defined in the Agreement.
 - Ensure all of the HOME-Assisted Units 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.
 - Ensure rents for the HOME-Assisted Units will not exceed the gross rent allowable under 24 CFR 92.252(b)(1) except that, in accordance with 24 CFR 92.252(b)(2), "If the unit receives Federal or State project-based rental subsidy and the very low-income family pays as a contribution toward the rent not more than 30 percent of the family's adjusted income, then the maximum rent (i.e. tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program." The determination of whether a tenant meets the income requirement shall be made by the Owner or its designated agent at least annually in accordance with 24 CFR 92.252(h).
 - Ensure the 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 HOME requirements to the extent applicable including, but not limited to, the U.S. Department of Housing and Urban Development HOME-American Rescue Plan Program Notice CPD-21-10 (collectively "Laws"), and all covenants, conditions, easements, and restrictions affecting the Trust Property (collectively "Covenants").
 - Otherwise comply with any term or condition set forth in the Agreement.
- (G) During the term of this Declaration, Owner will maintain the Project and each HOME-Assisted unit in accordance with the Property Standards requirements of 24 CFR 92.251.
- (H) Subject to the requirements of the Agreement, 24 CFR Part 92, and this Declaration, the Owner may not sell, transfer, or exchange the Property, or any portion thereof, without the County's prior written consent. If County agrees to the sale, transfer, or exchange of the Property, the Owner shall notify, in writing, and obtain the prior agreement of any buyer or successor or other person acquiring the Property, or any interest therein, that such acquisition is subject to the requirements of this Declaration and to the requirements of the Agreement, 24 CFR Part 92 and applicable laws and regulations. This provision shall not act to waive any other restriction on sale, transfer, or exchange of the Property or any low-income portion of the Project. The Owner agrees that the County may void any sale, transfer, or exchange of the Property 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 92.
- (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 County has given its prior written consent.
- (K) If the Property, 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 Property or 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) Owner 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 applies to the Property 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 55 years after the Project Completion Date or the date on which the loan is paid in full.
- (B) Pursuant to 24 CFR 92.252(e), this Declaration shall remain in effect for not less than the period described in section (A) above without regard to the term of the Agreement 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 – COUNTY’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 County, 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 County’s Occupancy Restrictions specified in this Declaration.
- (B) The Owner shall submit any other information, documents, or certifications requested by the County which the County shall deem reasonably necessary to substantiate the Owner’s continuing compliance with the provisions of the County’s Occupancy Restrictions specified in this Declaration.

SECTION 6 - ENFORCEMENT OF 24 CFR PART 92 AFFORDABLE HOUSING AND INCOME TARGETING REQUIREMENTS

- (A) The Owner represents, warrants, and covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of 24 CFR Part 92 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 County) 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 92 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 Part 92 and the applicable regulations, AND BY REASON THEREOF, THE OWNER, IN CONSIDERATION FOR RECEIVING HOME INVESTMENT PARTNERSHIPS PROGRAM FUNDS FOR THIS PROJECT, AGREES AND CONSENTS THAT THE COUNTY AND ANY TENANT WHO MEETS THE INCOME LIMITATION APPLICABLE UNDER 24 CFR 92 (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 County and all persons interested in Project compliance under 24 CFR Part 92 and the applicable regulations.
- (D) The Owner agrees to take any and all actions reasonably required by the County to substantiate the Owner’s compliance with occupancy restrictions of 24 CFR Part 92 as now constituted or subsequently amended and other occupancy restrictions of the County as now constituted or subsequently adopted.
- (E) This Declaration and the Agreement of which it is a part may be enforced by the County 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 County 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 – Event of Default

It will be an event of default if Owner fails to perform or abide by any covenant, condition, agreement, or obligation in this Declaration and such failure is not cured within thirty (30) days after written notice from the County.

SECTION 8 – Rights and Remedies on Default

Upon the occurrence of an event of default, and at any time thereafter, the County may, at its option, exercise any one or more of the following rights and remedies:

(A) Performance of Obligations. The County may, by mandamus or other suit, action or proceeding at law or in equity, require Owner to perform its covenants, conditions, agreements, and obligations under this Agreement; or abate, prevent, or enjoin any acts or things which may be unlawful or in violation of the rights of the County under this Agreement.

(B) Access to Records. The County will have the right to access, inspect, examine, and make copies of all the books and records of Owner pertaining to the Project.

(C) Other Rights and Remedies. The County will have any other rights or remedies provided in this Declaration, the Agreement, or any other instrument delivered by Owner in connection with the financing accommodations.

(D) Money Damages. The County may take any other action available at law or in equity as may appear necessary to enforce the covenants, conditions, agreements, and obligations of Owner provided for under this Declaration, in such order and manner as it may select, to recover monetary damages caused by such violation or attempted violation of any covenant, condition, agreement, or obligation.

(E) Receiver. The County may petition for the appointment of a receiver who will have the right to enter the Property and operate the Project. Owner hereby waives any and all defenses to such an appointment or to the rights of the receiver thereunder.

(F) Repayment. The County may require Owner to repay all or a portion of the \$4,000,000, distributed under the Agreement.

Section 9 -- 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 COUNTY: Community Development Manager
Clackamas County Housing and Community Development
2051 Kaen Road, Oregon City, OR 97045

TO THE OWNER:

Hillside Park Building C Housing Partners Limited Partnership
c/o Related/Hillside Park Building C Development Co., LLC
Attn: Ann Silverberg
44 Montgomery, 13th Floor
San Francisco, CA 94104
Email: asilverberg@related.com

Hillside Park Building C Housing Partners Limited Partnership
c/o Related NW
Attn: Ryan Hood
208 SW First Avenue, Suite 240
Portland, OR 97204
Email: rhood@related.com

Housing Authority of Clackamas County
Attn: Devin Ellin
13930 Gain Street
Oregon City, Oregon 97405
Email: dellin@clackamas.us

With copy to:

Bocarsly Emden Cowan Esmail & Arndt LLP

633 West Fifth Street, 64th Floor

Los Angeles, CA 90071

Attention: Daryll Kidd and Nicole Dedens

Email:

ekidd@bocarsly.com;

ndeddens@bocarsly.com

And to:

Stoel Rives LLP

600 University Street, Suite 3600

Seattle, WA 98101

Attention: Kate Mathews

Facsimile: (206) 386-7500

Email: kate.mathews@stoel.com

With copy to:

Elliott, Ostrander & Preston, P.C.

707 SW Washington St., Suite 1500

Portland, OR 97205

Attention: Paul Dagle

Email: paul.dagle@daglelaw.com

The County, 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 92, any and all applicable rules, regulations, policies, procedures, rulings, or other official statements pertaining to the HOME assistance. The County, 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 thereof.
- (E) Survival of Obligations. The obligations of the Owner as set forth herein and in the Application shall survive the reservation of HOME funds and shall not be deemed to terminate or merge with the awarding of the funds.

[Signature Pages to Follow]

By signing below, Owner accepts and agrees to the terms and covenants contained in this Declaration of Land Use Restrictive Covenants, and in any Exhibits attached hereto.

OWNER:

**HILLSIDE PARK BUILDING C
HOUSING PARTNERS LIMITED PARTNERSHIP,**

an Oregon limited partnership

By: Related/Hillside Park Building C Development Co., LLC,
A California limited liability company,
its Administrative General Partner

By: CDP Oregon LLC,
an Oregon limited liability company,
its Manager

By: _____

Name: Ann Silverberg

Title: President

STATE OF CALIFORNIA

COUNTY OF

On _____, 2024, before me, _____, Notary Public, personally appeared Ann Silverberg, as President of Related/Hillside Park Building C Development Co., LLC, a California limited liability company, the Administrative General Partner of Hillside Park Building C Housing Partners Limited Partnership, an Oregon limited partnership, on behalf of such partnership, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Seal)

Signature

My Commission expires: _____

By signing below, Owner accepts and agrees to the terms and covenants contained in this Declaration of Land Use Restrictive Covenants, and in any Exhibits attached hereto.

By: **OWNER:**

**HILLSIDE PARK BUILDING C HOUSING PARTNERS
LIMITED PARTNERSHIP,**
an Oregon limited partnership

By: Housing Authority of Clackamas
County,
A public corporation of the State of Oregon.
EIN: 93-6001542
Its Managing General Partner

By:

Name: Chris Aiosa
Title: Executive Director

BORROWER NOTARY - Housing Authority of Clackamas County

STATE OF OREGON

ss.

County of _____

The foregoing instrument is acknowledged before me on _____, 2024, by Chris Aiosa, Executive Director of Housing Authority of Clackamas County, a public body corporate and politic of the State of Oregon, the Managing General Partner of Hillside Park Building C Housing Partners Limited Partnership, an Oregon limited partnership, on behalf of such partnership.

Notary Public - State of Oregon

(Seal)

Signature

My Commission expires: _____

**EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY**

HILLSIDE PARK PHASE I

A PORTION OF PARCEL 2 OF PARTITION PLAT NO. 2020-026, CLACKAMAS COUNTY PLAT RECORDS, BEING A PORTION OF THAT TRACT OF LAND CONVEYED BY DEED TO HOUSING AUTHORITY OF CLACKAMAS COUNTY RECORDED IN BOOK 281, PAGE 156, CLACKAMAS COUNTY DEED RECORDS, SITUATED IN THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 1 SOUTH, RANGE 1 EAST, WILLAMETTE MERIDIAN, CITY OF MILWAUKIE, COUNTY OF CLACKAMAS AND STATE OF OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID PARCEL 2, ALSO BEING A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF S.E. 32ND AVENUE (WIDTH VARIES) AND THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE ALONG THE EAST LINE OF SAID PARCEL 2 AND SAID WESTERLY RIGHT-OF-WAY LINE, THROUGH THE FOLLOWING COURSES: NORTH 01°11'03" WEST, 30.00 FEET; SOUTH 87°46'57" WEST, 6.00 FEET; NORTH 01°11'03" WEST, 494.89 FEET TO THE INTERSECTION WITH THE SOUTHERLY RIGHT-OF-WAY LINE OF S.E. HILLSIDE COURT (WIDTH VARIES); THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, SOUTH 66°48'56" WEST, A DISTANCE OF 465.10 FEET TO THE INTERSECTION WITH THE WESTERLY RIGHT-OF-WAY LINE OF S.E. C STREET (WIDTH VARIES); THENCE LEAVING SAID LINE, NORTH 76°23'29" WEST, A DISTANCE OF 125.67 FEET TO THE SOUTHEAST CORNER OF PARCEL 1 OF SAID PARTITION PLAT NO. 2020-026 AND A POINT OF NON-TANGENT CURVE, THE RADIUS OF WHICH BEARS SOUTH 24°15'11" WEST; THENCE ALONG THE ARC OF A 60.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 93°33'17" (CHORD BEARS SOUTH 67°28'32" WEST, 87.44 FEET), AN ARC LENGTH OF 97.97 FEET; THENCE CONTINUING ALONG SAID SOUTH LINE OF PARCEL 1, SOUTH 66°35'49" WEST, A DISTANCE OF 225.59 FEET TO THE SOUTHWEST CORNER THEREOF, ALSO BEING A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF THE SOUTHERN PACIFIC RAILROAD AND A POINT OF NON-TANGENT CURVE, THE RADIUS OF WHICH BEARS NORTH 67°40'17" EAST; THENCE ALONG THE ARC OF A 2826.93 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 06°08'15" (CHORD BEARS SOUTH 25°23'50" EAST, 302.67 FEET), AN ARC LENGTH OF 302.81 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL 2; THENCE ALONG THE SOUTH LINE OF SAID PARCEL 2 THROUGH THE FOLLOWING COURSES: NORTH 88°02'48" EAST, 446.49 FEET; NORTH 00°56'39" WEST, 3.29 FEET; NORTH 88°33'04" EAST, 317.18 FEET TO THE TRUE POINT OF BEGINNING. CONTAINING 337,693 SQUARE FEET, MORE OR LESS.

THE EAST LINE OF SAID PARCEL 2, HAVING A BEARING OF NORTH 01°11'03" WEST PER SAID PARTITION PLAT NO. 2020-026, WAS USED AS THE BASIS OF BEARINGS FOR THIS DESCRIPTION.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Approving HOME
Loan for Hillside Park Phase 1
Building C



Order No. _____
Page 1 of 2

Whereas, the Clackamas County Board of County Commissioners (the “Board”) has authority to sign all contracts and any amendments or renewals of the same;

Whereas, the Housing Authority of Clackamas County (“HACC”) is currently initiating a partial redevelopment of HACC’s Hillside Park Project (the “Project”), which is expected to include redevelopment of Hillside Park Buildings A, B, and C;

Whereas, HACC has formed a limited partnership, Hillside Park Phase 1 Building C Housing Partners Limited Partnership (“Borrower”) for purposes developing the Hillside Park Building C portion of the Project;

Whereas, the Borrower has applied for a HOME Investment Partnership Program loan under 24 CFR Part 92, in the amount of \$4,000,000 (the “HOME Loan”) to be issued through the Housing and Community Development Division of the Clackamas County Department of Health, Housing, and Human Services;

Whereas, the HOME Loan will include a loan agreement, a promissory note, a trust deed, and a declaration of restrictive covenants, in substantially form attached here, together with additional documents as may be necessary to allow Borrower to obtain necessary financing for the Building C portion of the Project including, but not limited to, subordination agreements, closing documents, and other documents reasonably related to the same;

Whereas, the Board has determined it is in the best interest of Clackamas County to authorize the issuance of the HOME Loan to Borrower in the amount of \$4,000,000;

Whereas, the Board has determined it is in the best interest of the County to delegate limited signing authority to the Clackamas County Chair of the Board of Commissioners (the “Chair”), the County Administrator, and/or the Director of the Department of Health, Housing and Human Services to negotiate, approve, and execute all documents reasonably necessary to complete the HOME Loan and the Building C portion of the Project including, but not limited to, the HOME Loan documents, subordination agreements, closing documents, and other documents reasonably related to completion of the Building C portion of the Project;

In the Matter of Approving HOME
Loan for Hillside Park Phase 1
Building C



Order No. _____
Page 2 of 2

NOW, THEREFOR, the Clackamas County Board of County Commissioners orders as follows:

1. The Board hereby approves the Department of Health, Housing, and Human Services issuing the Home Loan to Borrower, in the amount of \$4,000,000; and
2. The Clackamas County Chair of the Board of Commissioners (the “Chair”), the County Administrator, and/or the Director of the Department of Health, Housing and Human Services are each hereby delegated limited signing authority to negotiate, approve, and execute all documents reasonably necessary to complete the HOME Loan and the Building C portion of the Project including, but not limited to, the HOME Loan documents, subordination agreements, closing documents, and other documents reasonably related to completion of the Building C portion of the Project.

DATED this ___ day of _____, 2024.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary