

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS
Sitting/Acting as HACC Board
Policy Session Worksheet

Presentation Date: March 28, 2017 **Approx Start Time:** 2:30pm **Approx Length:** 1 hour

Presentation Title: Disposition & HOME Loan Document Review for Rosewood Terrace Apartments

Department: H3S/Housing Authority of Clackamas County (HACC)

Presenters: Rich Swift, Chuck Robbins, Kevin Ko

Other Invitees: Angel Sully, Rich Malloy

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

1. Approval to move forward with finalizing the Disposition Loan Documents
2. Approval to move forward with finalizing the HOME Loan Documents

EXECUTIVE SUMMARY:

Background: In October 2015, PEDCOR Inc., a housing developer out of Carmel, Indiana approached HACC requesting a partnership in the development of Rosewood Terrace Apartments, a 212 unit multi-family affordable rental housing project. The project will be located at 8810 & 8850 Otty Road in Happy Valley.

The development includes (104) 1 Bedroom/1 Bath units, (100) 2 Bedroom/2 Bath units, and (8) 3 Bedroom/2 Bath Units. Currently, a similar market rate 2 BR/2 Bath unit rents for over \$1,200/month in the metro area. This tax credit project will limit rents to \$761/Mo for 1BR/ Bath, \$909/Mo for 2BR/2Bath, and \$1,044/Mo for 3 BR/2 Bath unit. The restricted rents will remain in place for a period of 60 years enabling access to households with an income of 60% or less of the Area Median Income.

Area Median Income Chart

Household Size	Median Household Income	Income at 60% Median Household Income	Current market rent	Project Rent with Utilities	# of Bedrooms
1	\$51,500	\$30,900	\$1,063	\$761	1
2	\$58,800	\$35,280	\$1,242	\$909	2
3	\$66,200	\$39,720	\$1,371	\$1,044	3

Rosewood Terrace Development Timeline:

September 29, 2016 HACC Board approved a Memorandum of Understanding and Term Sheet. Included was the authorization to prepare loan documents for the use of HACC Disposition Proceeds (funds from the sale of Public Housing units), and Federal HOME funds for the construction of the project.

October 20, 2016 HACC Board approved the award of 20 project based vouchers and \$1,100,000 in Public Housing Disposition Proceeds.

- December 19, 2016 HACC Board approved the Bond Inducement Resolution. This signified the County's intent to request the State to issue bonds in the amount of \$32,000,000.
- January 19, 2017 HACC Board held the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) hearing. The Board also approved the issuance of \$32,000,000 of revenue bonds by the Housing Authority of Clackamas County.
- January 25, 2017 The Oregon Private Activity Bond Committee unanimously approved the \$32,000,000 bond allocation request.

Expected Actions:

- April 6, 2017 Special HACC Board Business Meeting requesting approval of the HACC Disposition and HOME loan documents. These include:
- Loan Agreement
 - Trust Deed
 - Promissory Note
 - Declaration of Land Use Restrictive Covenant
- April 11, 2017 Study session to discuss the Bond Documents, Limited Partnership Agreement, and the Joint Venture Agreement.
- April 20, 2017 BCC Business Meeting requesting approval of the April 11 documents.
- May 18, 2017 HACC Board approval of 2016-2017 Budget Amendment
- June 1, 2017 Construction Begins

Loan Documents: Attached are the documents outlining the loan amounts and the performance expectations. The HOME Loan and the Disposition Loan are necessary to fill the funding gaps in the development budget.

The HOME Loan is for \$900,000 at 0% interest with a term of 30 years. The Disposition funds are in the amount of \$1,100,000 with a 3% interest rate and a 60 year term.

These funds are allocated to the project through the Loan Agreement and are secured by a Trust Deed and Promissory Note. The property is required to remain affordable for 60 years which is enforced by the Agreement and Declaration of Land Use and Restrictive Covenants.

FINANCIAL IMPLICATIONS (current year and ongoing):

Is this item in your current budget? YES NO

The HOME funds are included in the Community Development Budget for 2016-2017. The HACC disposition funds are sitting in an account identified as Restricted Fund Balance. Upon receiving Board approval, the 2016-2017 HACC budget will be amended to include the Disposition and Bond funds.

What is the cost? \$1,100,000 Disposition Funds; \$900,000 HOME Funds, \$32,000,000 in Private Activity Bonds, \$20,180,000 Low Income Housing Tax Credit (Equity Investment). No County General Funds will be used.

What is the funding source?

1. The Disposition Funds came from the sale of public housing units. They are limited to the development of affordable housing and require that the funded project also qualify for Project Based Section 8 Vouchers
2. HOME funds are allocated to the County from the U.S. Department of Housing and Urban Development (HUD) and are limited to the development of affordable housing
3. The Bonds are administered by the Oregon State Treasury through the Private Activity Bond Committee.
4. Low Income Housing Tax Credits (LIHTCs) are administered by Oregon Housing and Community Services and are allocated to a project based on a standard formula stated in the program regulations. Once LIHTC's are allocated to a project by the state housing agency, the developer sells the Tax Credits to investors who pay cash (equity) into the development in exchange for a 10 year tax credit.

STRATEGIC PLAN ALIGNMENT:

- How does this item align with your Department's Strategic Business Plan goals?
 - By 2022, two thousand (2,000) housing units, affordable to lower and moderate income households, will be built and occupied within Clackamas County
- How does this item align with the County's Performance Clackamas goals?
 - Ensure safe, healthy and secure communities

LEGAL/POLICY REQUIREMENTS:

PUBLIC/GOVERNMENTAL PARTICIPATION:

Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) hearing held by the HACC Board on January 19, 2017. This hearing is mandated by the IRS to provide a reasonable opportunity for interested individuals to express their views on the issuance of bonds and the nature of the improvements and projects for which the bond funds will be allocated.

OPTIONS:

1. Approve the placement of the Loan Documents on the April 6, 2017 special meeting of the HACC board for approval.
2. Request staff to make changes to the Loan documents.
3. Reject the Loan Documents.

RECOMMENDATION:

HACC recommends the approval of Option 1.

ATTACHMENTS:

- a. Aerial Site Map
- b. Site Plan

- c. Disposition Loan Documents
- d. Home Loan Documents

SUBMITTED BY:

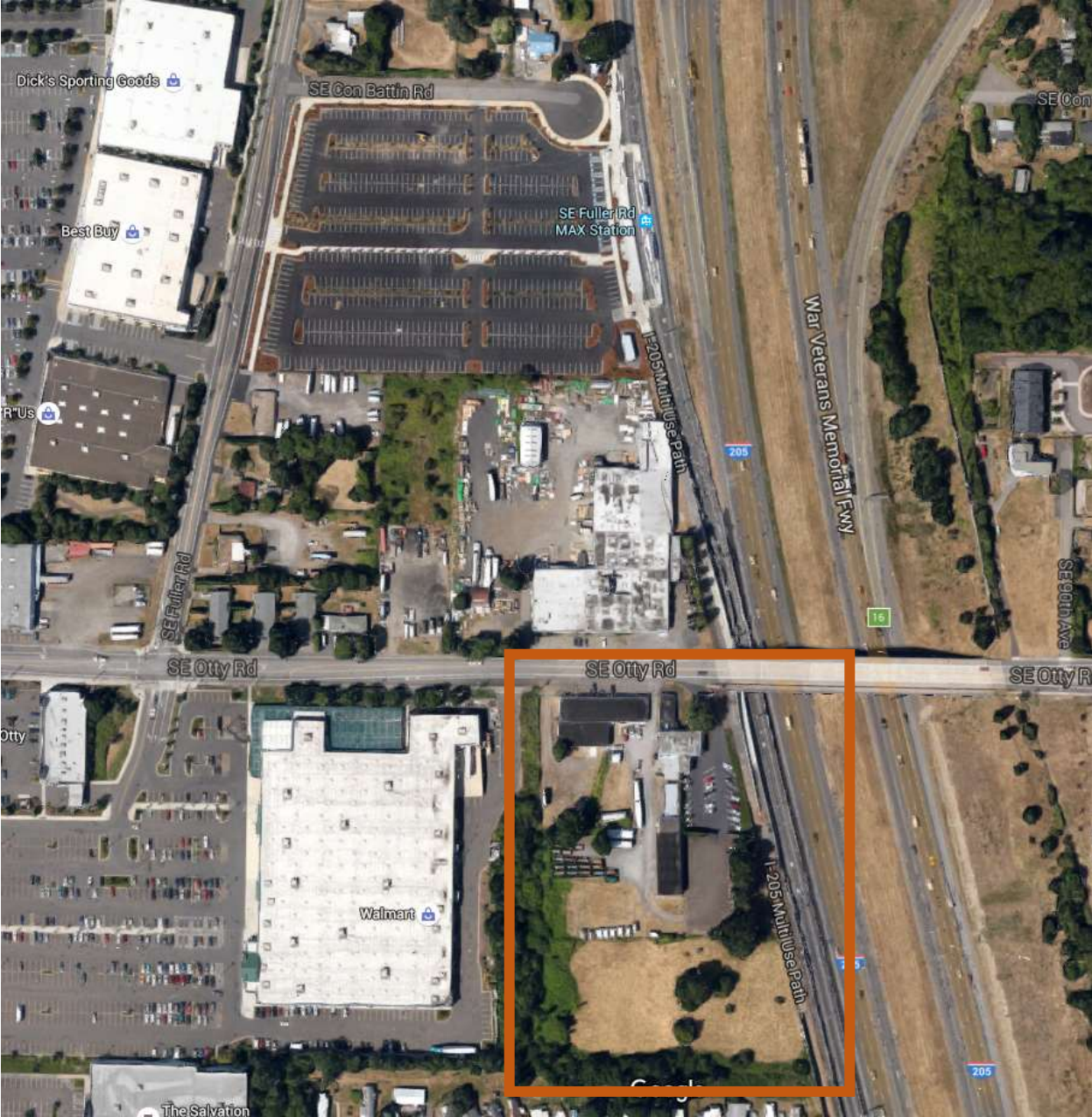
Division Director/Head Approval _____

Department Director/Head Approval _____

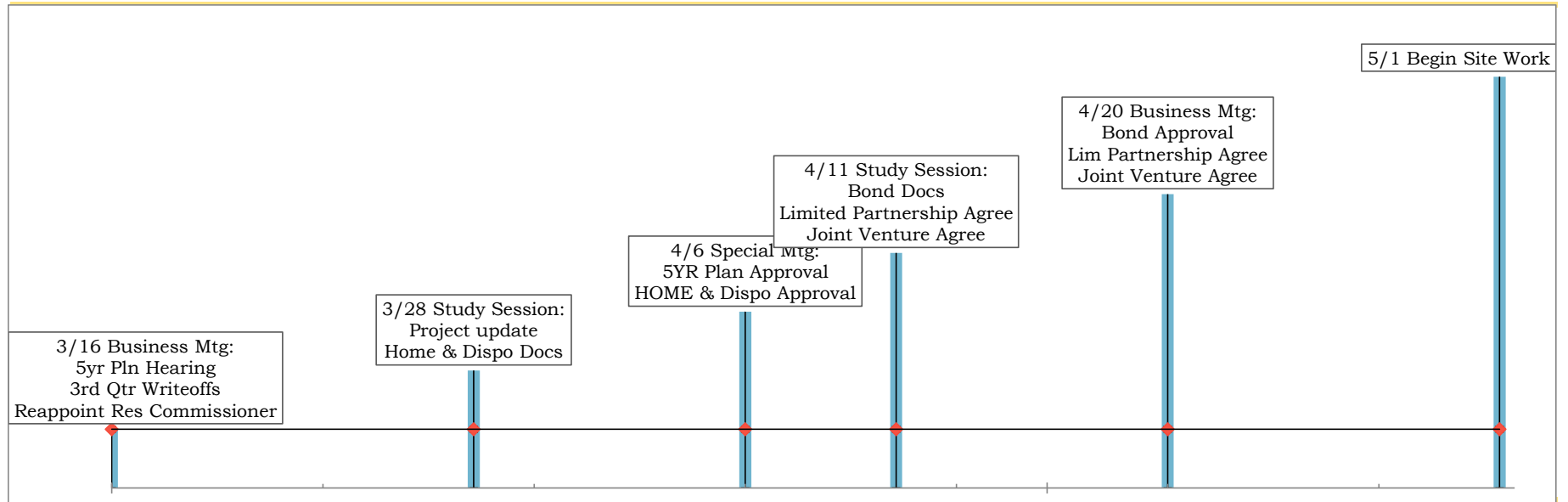
County Administrator Approval _____

For information on this issue or copies of attachments, please contact Chuck Robbins @ 503-655-8591

Rosewood Terrace – Otty Road



BCC Development Timeline





www.DELVdesign.com

PEDCOR INVESTMENTS 2016-CLV, L.P. ROSEWOOD TERRACE

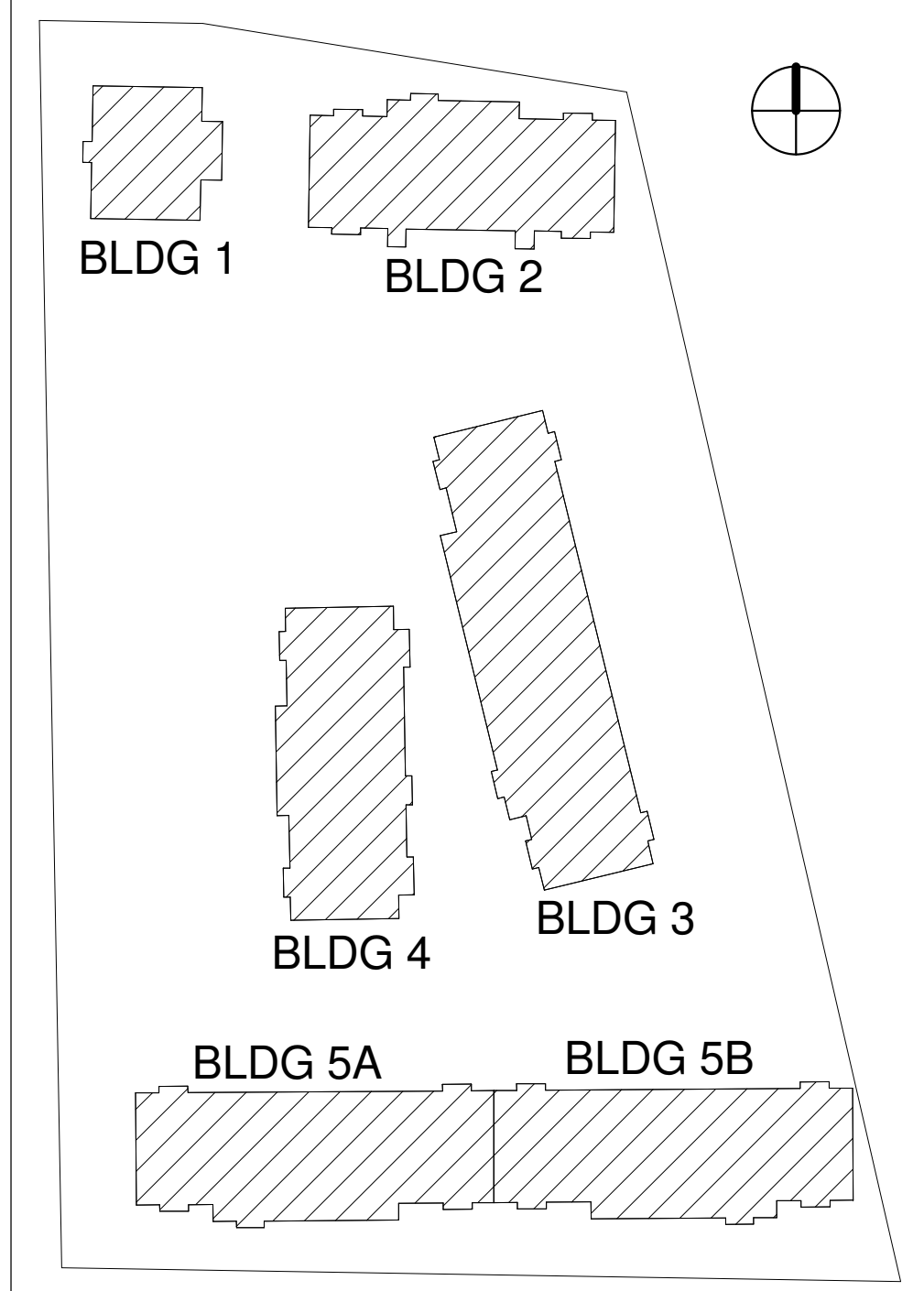
ARCHITECT
DELV Design
212 W 10th St, STE F125
Indianapolis, IN 46202
(317) 296-7400
www.DELVdesign.com

ARCHITECT
Pivot Architecture
44 West Broadway, Suite 300
Eugene, Oregon 97401
(541) 342-7291

MEP
Genesis Engineering
1203 East St. Clair St., Suite B
Indianapolis, IN 46202
(317) 927-6307

STRUCTURAL
KGA Structural Engineering
400 Columbia St, Suite 240
Vancouver, WA 98660
(360) 693-1621

80% CONSTRUCTION DOCUMENTS



NOT FOR CONSTRUCTION

No.	Description	Date

ARCHITECTURAL SITE PLAN

Project Number	2016-040
Date	27 OCT 2016
Drawn By	Author
Checked By	Checker

AS101

Scale	As indicated
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SITE LEGEND

- VERTICAL STEP IN BUILDING
- M.C.** METER CENTER, SEE ELECTRICAL
- S.C.** SPRINKLER CLOSET
- ACCESSIBLE UNIT AND PARKING
- SITE ENTRY DRIVE ARROW
- ACCESS ROUTE/ENTRY
- AV UNITS
- ACCESSIBLE ROUTE

UNIT NUMBERING LEGEND

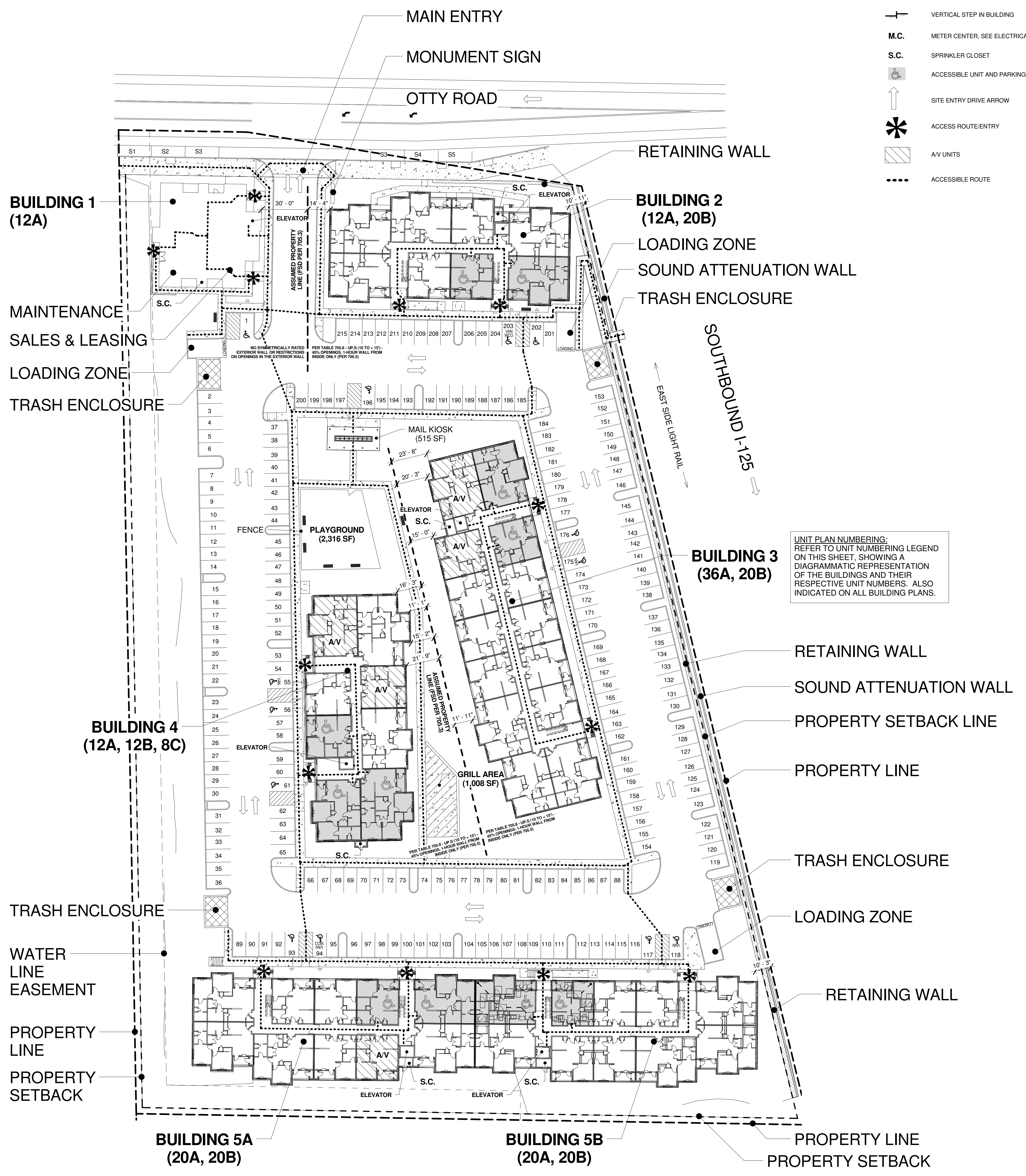
NOTE: BUILDING NUMBER SUFFIX OMITTED FOR CHART LEGIBILITY / CLARITY.
EXAMPLE: A1 - A1-7.1, A1H - A1-7.1H

BUILDING 1				BUILDING 2			
1-	1-	1-B2	1-B1	1-A1	1-B2	1-B2	1-B2
2-A1	2-A1	2-B2	2-B1	2-A1	2-B1	2-A1	2-B2
3-A1	3-A1	3-B2	3-B1	3-A1	3-B1	3-A1	3-B2
4-A1	4-A1	4-B2	4-B1	4-A1	4-B1	4-A1	4-B2
1-	1-	1-B2	1-A1	1-A1H	1-B2H	1-B2H	1-B2H
2-A1	2-A1	2-B2	2-A1	2-A1	2-A1	2-A1	2-B2
3-A1	3-A1	3-B2	3-A1	3-A1	3-A1	3-A1	3-B2
4-A1	4-A1	4-B2	4-A1	4-A1	4-A1	4-A1	4-B2
BUILDING 3				BUILDING 4			
1-B2	1-B1	1-A1	1-A1	1-A1	1-A1 (AV)	1-B2 (AV)	1-B2 (AV)
2-B2	2-B1	2-A1	2-A1	2-A1	2-A1	2-B2	2-B2
3-B2	3-B1	3-A1	3-A1	3-A1	3-A1	3-B2	3-B2
4-B2	4-B1	4-A1	4-A1	4-A1	4-A1	4-B2	4-B2
1-B2	1-A1	1-A1	1-A1	1-A1H	1-B2H	1-B2H	1-B2H
2-B2	2-A1	2-A1	2-A1	2-A1	2-B2	2-B2	2-B2
3-B2	3-A1	3-A1	3-A1	3-A1	3-B2	3-B2	3-B2
4-B2	4-A1	4-A1	4-A1	4-A1	4-B2	4-B2	4-B2
BUILDING 5A				BUILDING 5B			
1-B2	1-A1	1-A1	1-A1H	1-B2	1-B2	1-B2	1-B2
2-B2	2-A1	2-A1	2-A1	2-B2	2-B2	2-B2	2-B2
3-B2	3-A1	3-A1	3-A1	3-B2	3-B2	3-B2	3-B2
4-B2	4-B1	4-A1	4-A1	4-B1	4-B1	4-B1	4-B2
1-B2H	1-A1H	1-A1	1-A1	1-B2	1-B2	1-B2	1-B2
2-B2	2-A1	2-A1	2-A1	2-B2	2-B2	2-B2	2-B2
3-B2	3-A1	3-A1	3-A1	3-B2	3-B2	3-B2	3-B2
4-B2	4-A1	4-A1	4-A1	4-B1	4-B1	4-B1	4-B2

SITE PLAN GENERAL NOTES

- A. SEE CIVIL DRAWINGS FOR FLOOR ELEVATION BENCHMARKS.
- B. SEE OVERALL BUILDING PLANS AND CIVIL SERIES FOR EXACT BUILDING AND AMENITY ORIENTATION. SEE BUILDING PLANS AND UNIT PLANS, FOR ALL DIMENSIONS AND NOTING OF BUILDING / UNIT INTERIOR WALLS, DOORS.
- C. BUILDING STEP LOCATIONS ARE FOR COORDINATION PURPOSES. REVIEW ELEVATIONS SHOWN ON CIVIL DRAWINGS. NOTIFY ARCHITECT OF ANY DISCREPANCIES.
- D. THE INTENDED LOCATIONS FOR SPRINKLER CLOSETS ARE SHOWN ON THIS PLAN. REFER TO OVERALL FLOOR PLANS FOR CONSTRUCTION INFORMATION.
- E. DIMENSIONS SHOWN BETWEEN BUILDINGS ARE SHOWN FOR COORDINATION, CODE INFORMATION, AND PLAN REVIEW. REFER TO CIVIL DRAWINGS FOR EXACT BUILDING LOCATIONS.
- F. MECHANICAL PADS TO BE 4" ABOVE GRADE. PROVIDE SECURITY BARS / CAGE.
- G. PROPERTY LINES, EASEMENTS, SETBACKS, RETAINING WALLS, AND EXACT BUILDING LOCATIONS, WHERE INDICATED ON THIS SHEET, ARE FOR DESIGN REFERENCE ONLY AND MAY NOT BE ACCURATE. REFER TO CIVIL SERIES FOR MORE DETAILED INFORMATION FOR THESE ITEMS.

UNIT PLAN NUMBERING:
REFER TO UNIT NUMBERING LEGEND ON THIS SHEET, SHOWING A DIAGRAMMATIC REPRESENTATION OF THE BUILDINGS AND THEIR RESPECTIVE UNIT NUMBERS. ALSO INDICATED ON ALL BUILDING PLANS.



1 ARCHITECTURAL SITE PLAN
1" = 30'-0"

LOAN AGREEMENT

CLACKAMAS COUNTY HOME PROGRAM

Name of Project: Rosewood Terrace

This Loan Agreement ("Agreement") is entered into between _____, ("Owner"), of which _____ is the sole member of the 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 | |

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. For the purposes of this Agreement, the CHDO (or a wholly owned subsidiary of the CHDO) must be the sole general partner or sole managing member of the actual ownership entity. There is no CHDO designated for this project.
 - d. **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.
 - e. **HOME Funds.** HOME Funds means the total amount of HOME Program dollars being provided by the County to the Project under this Agreement. See Section 2 below.
 - f. **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. Should anything in this Agreement or the other Loan Documents conflict with the HOME regulations, the HOME regulations shall prevail.
 - g. **HUD.** The United States Department of Housing and Urban Development
 - h. **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.
 - i. **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.
 - j. **Median Income.** Median Income means the median income for Clackamas County, adjusted for family size, as published by HUD, from time to time.

- k. **Owner.** The initial Owner and any subsequent Project owner, subject to the County consenting to any transfer under Section 29 below.
- l. **Period of Affordability.** See Section 9 below.
- m. **Project.** The project will redevelop a 5.35-acre infill lot located at 8810-8850 SE Otty Road, Happy Valley, Clackamas County, OR 97086. The proposed project will demolish the existing structures and construct 212 rental apartment units dispersed amongst 6 residential structures; one of which will be mixed-use. Upon completion, the project will provide 104 one bedroom-one bath units, 100 two bedroom-two bath units and 8 three bedroom-two bath units. The purpose of the project is to provide a high-quality, transit-oriented, affordable housing option to the workforce population of Clackamas County. The legal description of the property is set forth in **Attachment A**.
- n. **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. **Addendum 1** to this Loan Agreement will be completed to recognize the actual project completion date. This date will start the HOME Period of Affordability (see Section 9 below).
- o. **Transfer.** For purposes of this Agreement, "Transfer" shall mean any sale, assignment or transfer, whether voluntary or involuntary, of (i) any rights and/or obligations under the Loan Documents and/or (ii) any interest in the Project; provided, however, that "Transfer" shall not mean (a) the leasing of one or more Units to an occupant in compliance with the Regulatory Agreement; or (b) the transfer of the Project to a limited partnership of which Owner (or a limited liability company of which Owner is the sole member) is the general partner or to a limited liability company of which Owner is the managing member. County shall approve other Transfers requested by Owner if the proposed transferee has the necessary qualifications and experience to construct the Development and/or own, operate and maintain the Project, as applicable, as contemplated by this Agreement and the Regulatory Agreement, as reasonably determined by Agency.

2. HOME FUNDS; LOAN TERMS

- a. **Amount and Purpose:** County shall loan HOME funds in the amount of **\$900,000** to the **Owner** for the Project. The HOME funds will be used for the development of the Rosewood Terrace Apartments. Eligible activities include acquisition, demolition, construction, engineering and architectural services and other related activities. 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.
- b. **Loan Terms:**
 - i. The HOME Funds will be provided as a **0.0% interest deferred payment loan, with a maturity date of 60 years**. Loan repayment, satisfaction or reconveyance shall not relieve Borrower of any performance, affordability or programmatic obligations and requirements of the HOME program.
 - ii. Notwithstanding the loan terms described above, the entire amount of the loan (\$900,000) together with any accrued interest or fees, shall be paid in full upon the sale, assignment or other transfer of title to the Property without the County's consent; or the date Owner or its agents or subcontractors is otherwise in default under any of the prior written Loan Documents (including but not limited to the failure to meet the Affordability Requirements of Section 10 below). Exceptions: Neither a transfer nor assignment of a limited partner's interest in Owner nor the removal of a general partner for cause, shall cause the Loan to be due and payable.
- 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 record, or cause to be recorded the Trust Deed and the Declaration of Land Use Restrictive Covenants, promptly after signing and acquisition of the real property.

3. PAYMENT OF OBLIGATION.

- a. Payments of principal and interest shall be made until the loan is paid in full. All payments on the loan shall be applied first to the interest due on the loan and then the remaining amount shall be applied to the principal. 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. Nine (9) 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
1-bedroom (tenant) unit:	104	1	2	3
2-bedroom (tenant) unit:	100	1	2	3
3-bedroom (tenant) unit:	8	0	0	0
TOTALS	212	2	4	6

- 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. 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

Attachment D documents the Project-related eligible sources of matching contributions as allowed by 24 CFR 92.218 through 92.222.

7. HOME REGULATIONS

The Owner agrees to comply with the HOME Regulations and with the other requirements of the Loan Documents. Specifically, the Owner agrees that _____ will remain as the sole member of the General Partner of Owner for the full duration of the initial period of affordability.

8. ENVIRONMENTAL REVIEW

- 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

- 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.
- b. The **Extended Period of Affordability, if any** begins at the end of the INITIAL Period of Affordability and continues for an additional 40 years or until such time as the loan is deemed paid in full.
- c. Unless specified otherwise, the Period of Affordability includes both the Initial and the Extended Periods of Affordability.
- 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 property.

10. AFFORDABILITY REQUIREMENTS (RENTS AND TENANT INCOMES)

- a. 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.
- b. **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.
- c. **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.
- d. 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.
- e. Certification and Recertification of Tenant Income: Caritas must certify each tenant's household income, and must recertify such income annually in accordance with HOME regulations.

11. TENANT SELECTION CRITERIA; LEASE REQUIREMENTS

- 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. In compliance with 24 CFR 92.252(d), neither the Owner nor Recipient may discriminate against rental assistance subsidy holders.
- d. 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.
- e. 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. PROPERTY STANDARDS

- 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.

13. 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 demands, except when due to the County's sole negligence or intentional misconduct, arising from performance of this Agreement.

Owner shall maintain all-risk property insurance in the amount of the full replacement value of the property, commercial general liability insurance in the minimum amount of \$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 property 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.

14. EVENTS OF DEFAULT

An event of default under the Loan Documents includes, but is not limited to, the following; provided that the party declaring a default has first provided to the other party thirty days written notice specifying the alleged default and giving such other party the opportunity to cure the alleged default during that 30 day period, or during such longer period as is agreed to by the non-defaulting party in writing:

- Bankruptcy
- Non-payment of judgments within 30 days
- Suspension of business
- Dissolution or liquidation of Owner
- Liens against the property not paid in 60 days
- Construction abandoned for more than 15 days for cause not beyond reasonable control of developer
- Construction stopped by governmental authority or entitlement withdrawn or suspended
- Prohibited transfer
- Material misrepresentation
- Noncompliance with the Affordability Requirements at any time during the term of this Loan
- Default under other secured loans, foreclosure, bankruptcy, receivership and non-payment.

- a. Securing 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 31.
- b. Full Occupancy requirement. Within 18 months from the date of project completion, the project must achieve full occupancy. HOME assisted units must be occupied by HOME eligible households.

County agrees that any cure of any default made or tendered by Investor Member shall be deemed to be a cure by Owner and shall be accepted or rejected on the same basis as if made or tendered by Owner.

15. REMEDIES FOR DEFAULT

- a. In the event of default, either party may pursue any legal or equitable remedy available to it. Without limiting the foregoing, 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.

- b. The County and any tenant or applicant 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 and/or Recipient of its obligations under this Agreement in state court.

16. AFFIRMATIVE MARKETING

If the Project contains five or more HOME-Assisted Units, the Recipient must cause the Owner to implement and follow the adopted Affirmative Marketing Plan of the County, **Attachment F** (the "Plan"). The Recipient must cause the Owner to maintain records evidencing compliance with the Plan.

17. 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**.

18. NON-DISCRIMINATION

- a. The Owner must comply with all applicable federal, state, and local laws prohibiting discrimination on the basis of age, sex, marital status, familial status, religion, race, creed, color, sexual orientation, nationality, the presence of any sensory, mental or physical handicap, or other protected class. These requirements apply to both employment opportunities and the provision of housing and are specified in
 - i. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 200d et seq.);
 - ii. Title VI; Civil Rights Act of 1968, Title VIII, as amended;
 - iii. Equal Employment Opportunity, Executive Order 11246, as amended;
 - iv. Section 3 of the Housing and Urban Development Act of 1968 as may be amended;
 - v. Section 504 of the Rehabilitation Act of 1973 as may be amended;
 - vi. The Fair Housing Act of 1988 as may be amended (42 U.S.C. 3601-3620);
 - vii. Equal Opportunity in Housing (Executive Order 11063, as amended by Executive Order 12259);
 - viii. Age Discrimination Act of 1975, as amended (42 U.S.C. 6101); and
 - ix. Americans with Disabilities Act of 1990 as may be amended (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225).
- b. Owner shall maintain data on the extent to which each racial and ethnic group and single-headed household (by gender of head of household) have applied for and rented units in the Project.

19. DISBURSEMENT OF FUNDS

- a. Owner agrees to request funds under this Agreement only when they are needed for payment by Owner of specific allowable costs and only in amounts needed to pay such costs. The payment request must be accompanied by source documentation for actual expenses.
- b. The County shall verify requested amounts for satisfactory completion prior to payment. Payments shall be based upon work completed and approved by the County.
- c. County will not disburse any HOME funds until all the Loan Documents are signed and the following documents are received:
 - i. Copy of the Management Agreement;
 - ii. Affirmative Marketing Plan;
 - iii. Proof of Insurance;
 - iv. Copy of HOME tenant lease; and
 - v. Copy of the written tenant selection criteria.
- d. 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, unless HACC approval is required in advance of any withdrawal
 - iv. Operating reserve withdrawals within 30 days of such withdrawals, unless HACC approval is required in advance of any withdrawal
 - v. Annual project financial statements/audit within 90 days of the end of the Project's fiscal year
 - vi. Pedcor financial statements/audit, within 90 days of the end of Pedcor's fiscal year
- e. Five percent (5%) of HOME funds will be withheld until the Owner provides the County with the documentation outlined in **Attachment G**.
- f. 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.

20. CONTRACTOR DEBARMENT AND SUSPENSION

In order to comply with the requirements of 24 CFR Part 24, 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.

21. 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.

22. LEAD BASED PAINT AND HAZARDOUS MATERIALS

- 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. 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.
- c. 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.

- d. 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, attorney fees and costs (including but not limited to those incurred in any proceeding and in any review or appeal), fees, penalties, and fines.
- e. To the best of Borrower's knowledge, Borrower represents and warrants to County that:
 - i. 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.
 - ii. 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.
 - iii. 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.
- f. All representations, warranties, and covenants in this Section 1.06 shall survive the satisfaction of the Obligations, the reconveyance of the Trust Property, or the foreclosure of this Trust Deed by any means.

23. DISPLACEMENT, RELOCATION, ACQUISITION, AND REPLACEMENT

Owner shall comply with all the regulations and laws regarding displacement, relocation, acquisition and replacement of housing, including those contained in 24 CFR 92.353 and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (42 USC 4601-4655).

24. CONFLICT OF INTEREST

Unless an exception is granted by the County pursuant to 24 CFR 92.356(f)(2), no developer, owner or sponsor of the Project, or officer, employee, agent or consultant of the Recipient, developer or sponsor, may occupy a HOME-Assisted Unit in the Project. This section does not apply to an employee or agent who occupies a HOME-Assisted Unit as the project manager or maintenance worker.

25. FAITH BASED ACTIVITIES

- a. Organizations that are directly funded under the HOME program 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.

26. 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 any pertinent books, documents, papers or other records, in order to make audits, examinations, excerpts or transcripts, or otherwise determine compliance with HOME regulations.
- e. Any duly authorized representative of the Secretary of HUD, the Comptroller General of the United States, or the County shall at all reasonable times have access to and the right to inspect, copy audit, and examine all books, records and other documents relating directly to the Recipient's and/or Owner's receipt and disbursement of the HOME Funds, as well as access to the Project. Upon request, the Recipient must assist, or must cause Owner to assist, the County by serving notice to affected tenants, as required under Oregon Law.

27. MONITORING

- a. Within 60 days of acquisition, 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 24 CFR 92.504)c)(5)(d) and will include on-site inspections and a review of all records required in Section 26 above.

28. 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.

29. 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.

30. 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.

31. EFFECTIVE DATE

The Effective Date of this Agreement is the date it is signed by all parties.

PROJECT OWNER:

CLACKAMAS COUNTY

Chair: Jim Bernard
Commissioner: Sonja Fischer
Commissioner: Ken Hulbertson
Commissioner: Paul Savas
Commissioner: Martha Schrader

Signing on Behalf of BCC:

(signature)

Printed Name:
Title:
DUNS#

Date

(signature)

Printed Name: Richard Swift
Title: Director, Health Housing and Human Services

Date

Attachment A. Legal Description

Attachment B. Sources and Uses of Funds

Acquisition & New Construction

Attachment C. Schedule of Tasks

	PROPOSED DATE (month/year)*	REVISED DATE (month/year)*	COMPLETED DATE (month/year)*
SITE			
Option/Contract executed			
Site Acquisition			
Zoning Approval			
Site Analysis			
Building Permits & Fees			
Off-site Improvements			
PRE-DEVELOPMENT			
Plans Completed (permit)			
Final Bids			
Contractor Selected			
FINANCING			
CONSTRUCTION LOAN:			
Proposal			
Firm Commitment (submittal)			
Closing/Funding of Loan			
PERMANENT LOAN			
Proposal			
Firm Commitment			
Closing/funding of Loan			
DEVELOPMENT			
Syndication Agreement			
Construction Begins			
Construction Completed			
Certificate Of Occupancy			
MARKETING			
Lease up begins			
Lease up completed			
Absorption (units per month)			

Attachment D.
Home Match Contribution Form

PROJECT: Rosewood Terrace Apartments

Total number of units in project: 212
Number of HOME-assisted units: 5
Applicable match credit percentage*: 2.3%

MATCH SOURCE*	ELIGIBLE MATCH TYPE	ELIGIBLE MATCH AMOUNT	MATCH CREDIT

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."

Attachment E. HOME Affordability Requirements

1. HOME Rent Schedule

US Department of Housing and Urban Development
PMSA: Portland-Vancouver, OR-WA
Effective: April, 2016

	Low HOME	High HOME
1 Bedroom	\$689	\$793
2 Bedroom	\$827	\$944
3 Bedroom	\$955	\$1208

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 Recipient for the Project, but must be approved by the County.
- 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: April, 2016

HOUSEHOLD SIZE	50% OF MEDIAN	60% OF MEDIAN	80% OF MEDIAN
1 Person	\$25700	\$30840	\$41100
2 Person	29350	35220	46950
3 Person	33000	39600	52800
4 Person	36650	43980	58650
5 Person	39600	47520	63350
6 Person	42550	51060	68050
7 Person	45450	54540	72750
8 Person	48400	58080	77450

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 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 Community Development Division (CCCDD) will take the following steps to ensure, to the maximum extent possible, that small and minority-owned business enterprises and women-owned business enterprises (MBE/WBE) are used whenever possible and economically feasible:

- ◆ Include language in all notices and advertisements related to the HOME Program which states that MBE/WBE are encouraged to apply for such funds and to participate as suppliers, contractors, professional service providers, etc. on projects assisted with HOME funds. All informational and documentary materials will also include this language.
- ◆ Include qualified MBE/WBE on any contractor or solicitation lists.
- ◆ Coordinate with the Oregon Office of Minority, Women and Emerging Small Business to maintain a list of eligible MBE/WBE. This list will be made available to HOME recipients.
- ◆ When necessary and appropriate, utilize the services and assistance of the US Department of Commerce's Small Business Administration and Minority Business Development Agency.
- ◆ Through contractual agreement, ensure that recipients of HOME program funds solicit MBE/WBE whenever they are potential sources.
- ◆ When feasible, divide total requirements into smaller tasks or quantities to permit maximum participation by MBE/WBE.
- ◆ When feasible, establish delivery schedules which will encourage participation by MBE/WBE.
- ◆ In conjunction with HOME-Assisted Projects, CCCDD will:
 - ◆ Encourage project sponsors, developers and Recipients to include, to the maximum extent feasible, the use of MBE/WBE in providing supplies, professional and construction services.
 - ◆ Request that project sponsors/developers maintain statistical data and identify jobs which have been bid by MBE/WBE. CCCDD may inspect the project site to confirm the percentage of minority and women laborers working at the site.

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

ATTACHMENT G.

REPORTING REQUIREMENTS FOR ACQUISITION AND REHABILITATION

1. **Monthly Progress Reports.**

During the rehabilitation 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.

AFTER RECORDING RETURN TO:
Clackamas County Community Development Division
2051 Kaen Road
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: Rosewood Terrace Apartments

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS ("**Declaration**") dated _____, 2017 by _____ and its successors and assigns ("**Owner**") is given as a condition precedent 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 is the owner of the Rosewood Terrace Apartments, a new-construction 212-unit affordable rental housing apartment complex located at _____ ("**Project**"). The Legal Description of the property on which the Project is located is attached as Exhibit A (the "**Property**")

Owner has applied to the County and entered into HOME Loan Agreements (plurally referred to as "**Agreement**") for an award to the Project in amounts not to exceed **\$900,000.00**. 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 Loan Agreement.

In consideration of the promises and covenants set forth below and of other valuable consideration, the receipt and sufficiency of which is acknowledged, the Owner and the 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 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 and all amendments and file in the official public land deed records of Clackamas County, and shall pay all fees and charges incurred in connection therewith. Upon recording, the Owner shall immediately transmit to the County a signed original or certified copy of the recorded Declaration showing the date, deed book and page numbers of record.
- (B) The Owner intends, declares, and covenants, on behalf of itself and all future Owners and operators of the Project during the term of this Declaration, that this Declaration, and the covenants and restrictions set forth in this Declaration regulating and restricting the use, occupancy and transfer of the Project: (1) shall be and are covenants running with the Project land, encumbering the Project for the term of this Declaration, binding upon the Owner's successors in title and all subsequent Owners and Operators of the Project; (2) are not merely personal covenants of the Owner; and (3) shall bind the Owner (and the benefits shall inure to the County and any past, present or prospective tenant of the Project) and its respective successors and assigns during the term of this Declaration. The Owner agrees that any and all requirements of the laws of the State of Oregon to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements of privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the Project. For the term of this Declaration, each and every contract, deed or other instrument hereafter signed conveying the Project or portion thereof shall expressly provide that such conveyance is subject to this Declaration, provided, however, the covenants contained herein shall survive

and be effective regardless of whether such contract, deed, or other instrument hereafter signed conveying the Project or portion thereof provides that such conveyance is subject to this Declaration.

- (C) The Owner covenants to obtain the consent of any prior recorded lienholder on the Project to this Declaration.

SECTION 3 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER

The Owner represents, covenants, and warrants as follows:

- (A) The Owner (1) is qualified to transact business under the laws of the State of Oregon, (2) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (3) has the full legal right, power and authority to sign and deliver this Declaration.
- (B) The execution and performance of this Declaration by the Owner (1) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, (2) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it or the Project is bound, and (3) will not result in the creation or imposition of any prohibited encumbrance of any nature.
- (C) The Owner will, at the time of execution and delivery of this Declaration, have good and marketable title to the Property free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Declaration, any Loan Documents relating to the Project or other permitted encumbrances).
- (D) There is no action, suit, or proceeding at law or in equity, or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Declaration) or would materially adversely affect its financial condition.
- (E) The Project constitutes or will constitute a qualified low-income building or qualified low-income project, as applicable, as defined in 24 CFR Part 92 and applicable regulations.
- (F) **Five units in the Project are HOME-Assisted Units.**

During the term of this Declaration:

- All of the HOME-Assisted Units must be leased, rented or made available to members of the general public whose incomes are less than or equal to 50% of the median income.
- Rents for the 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).

- (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 24 CFR Part 92 and this Declaration, the Owner may sell, transfer or exchange the entire Project at any time, but the Owner shall notify in writing and obtain the prior agreement of any buyer or successor or other person acquiring the Project or any interest therein that such acquisition is subject to the requirements of this Declaration and to the requirements of 24 CFR Part 92 and applicable regulations. This provision shall not act to waive any other restriction on sale, transfer, or exchange of the Project or any low-income portion of the Project. The Owner agrees that the County may void any sale, transfer, or exchange of the Project if the buyer or successor or other person fails to assume in writing the requirements of this Declaration and the requirements of 24 CFR Part 92.

Notwithstanding any other provisions herein, the sale, transfer, assignment or exchange of all or a portion of the interest of _____ (the "Investor Partner"), in Owner shall not require the County's consent and shall not constitute a sale, transfer or assignment for purposes of this Agreement.

In addition, the withdrawal, or removal of the Managing Member of the Owner for cause pursuant to the terms of the Owner's Amended and Restated Agreement of Limited Partnership shall not constitute a default hereunder or under the Agreement, provided that the substitute Managing Member is reasonably acceptable to the County and is admitted to Owner within ninety days thereafter.

- (I) The Owner will notify the County in writing prior to any sale, transfer, or exchange of the entire Project or any low-income portion of the Project.
- (J) The Owner shall not demolish any part of the Project, substantially subtract from any real or personal property of the Project, or permit the use of any residential rental unit for any purpose other than rental housing during the term of this Declaration unless required by law or unless the County has given its prior written consent.
- (K) The Owner represents, warrants, and agrees that if the Project, or any part thereof, shall be damaged, destroyed, shall be condemned, or acquired for public use, the Owner will use its best efforts, subject to the rights of any mortgagee, to repair and restore the Project to substantially the same condition as existed prior

to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Declaration.

- (L) The Owner warrants that it has not and will not sign any other Declaration with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Declaration are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

SECTION 4 - TERM OF DECLARATION

- (A) This Declaration, and the Terms of Affordability specified herein, applies to the Project immediately upon recordation, and the Owner shall comply with all restrictive covenants herein not later than the first day in the Project period on which any building which is part of the Project is placed in service. This Declaration shall terminate on the later of 20 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), as amended, this Declaration and the Terms of Affordability shall remain in effect for not less than the period described in section (A) above without regard to the term of the mortgage of other underlying security and without regard to any transfer of ownership; provided however, that the requirements herein, shall be terminated upon foreclosure or transfer in lieu of foreclosure, but shall be revived according to the original terms if during the original term, the owner of record before the foreclosure or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property.

SECTION 5 – 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 92 AFFORDABLE HOUSING AND INCOME TARGETING REQUIREMENTS

- (A) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of 24 CFR Part 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 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.

**EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY**

Insert Legal Description here

PROMISSORY NOTE

CLACKAMAS COUNTY HOME PROGRAM

Name of Project: Rosewood Terrace Apartments

\$900,000.00 _____, **2017**

For value received, _____, ("Borrower"), promises to pay to the order of Clackamas County ("Lender"), the sum of **Nine Hundred Thousand and No/100 Dollars (\$900,000.00)**, or so much thereof as may be advanced, together with interest thereon at the rate of **zero percent (0.0 %) per year, compounded annually**. The loan is evidenced by this Promissory Note the ("Note"), a Loan Agreement, as amended, 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, as amended.

This Note is subject to the terms of the Loan Agreement and the following terms and conditions. To the extent there may be a conflict between the terms of 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 the Rosewood Terrace Apartments (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 %) per year, compounded annually**.
 - b. The term of the loan is 30 years.
 - c. The Maturity Date is 30 years from the date on this Note shown above.
 - d. The loan shall begin to accrue interest on the Project Completion Date.
 - e. 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 without Lender's consent, or the date Owner or its agents or subcontractors is otherwise in default under any of the Loan Documents.
 - f. Payments shall be made at such place as Lender may designate in writing.
 - g. Payments of principal and interest shall be made until the loan is paid in full. All payments on the loan shall be applied first to the interest due on the loan and then the remaining amount shall be applied to the principal.
 - h. The Borrower will make cash flow dependent payments per its Amended and Restated Limited Partnership Agreement.
 - i. Each payment shall be due on or before June 30th of the year following the calendar year to which the payment relates and shall be based on the computation of Net Cash Flow based on an audited financial statement of Borrower. The first payment shall be due on or before June 30 of the year following the Project Completion Date.
 - j. No late fees will be charged, but interest shall continue to accrue.
2. **Governing Law**. This Note shall be governed by and construed in accordance with the laws of Oregon without giving effect to the conflict of law provisions thereof.
3. **Security**. This Note shall be secured by a trust deed from Borrower as grantor to Lender as beneficiary in the Project.
4. **Nonrecourse Obligation**. This Note and the obligations contained herein are without recourse to Borrower. The sole recourse of Lender with respect to Borrower's obligations shall be to exercise its rights under the deed of trust with respect to the Project and/or enforce the terms of the Loan Documents signed by Borrower in favor of Lender.

If the undersigned is a corporation, it has caused its name to be signed and its seal, if any, affixed by an officer or other person duly authorized to do so by order of its board of directors.

Dated _____, 2017

BORROWER: _____

By: _____, its General Partner
By: _____, its Managing Member
By: _____, its Executive Director

(Signature)

STATE OF OREGON)

County of _____) ss.

On _____, 2017, before me personally appeared _____,
who being duly sworn, stated that he/she is the _____
of _____ and acknowledged the
foregoing instrument to be the voluntary act and deed of the Borrower, signed by authority of
Borrower.

Notary Public for Oregon
My commission expires: _____

AFTER RECORDING RETURN TO:
Clackamas County 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: Rosewood Terrace Apartments

THIS TRUST DEED, ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FIXTURE FILING (this "Trust Deed") is made as of _____, 2017 by **Rosewood Terrace Limited Partnership** ("Grantor" or "Borrower"), having its office at _____, to _____ ("Trustee" or "Title Company"), for the benefit of Clackamas County, a political subdivision of the State of Oregon, through its Community Development Division, having its office at 2051 Kaen Road, Oregon City, OR 97045 ("Beneficiary" or "County").

County has offered to make a **zero percent (0.0%) interest** loan to Borrower in the sum of **Nine Hundred Thousand and no/100 dollars (\$900,000.00)** 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 **thirty years from the executed date of this Trust Deed** except as otherwise provided in the Loan Agreement, (ii) the date the property is sold, (iii) title is transferred, or (iv) the Borrower defaults on any of its obligations under the Loan Documents (see Article 5.01 below).

The Initial HUD-required Period of Affordability shall be 20 years, without regard to the term of the loan or the transfer of ownership.

As a condition to the making of the loan to Borrower, Borrower has agreed to sign, deliver and record this Trust Deed.

For good consideration, receipt of which is acknowledged, and for the purpose of securing the Obligations described in Section 1.01 below, Borrower irrevocably grants, bargains, sells, conveys, assigns, and transfers to Title Company in trust for the benefit and security of the 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, (the "Property"); together with all rights, titles and interests of Grantor, now owned or hereafter acquired, in and to any and all buildings and other improvements of every nature now or hereafter located on the Property and all fixtures now or hereafter attached to or used in connection with the Property and all appurtenances and additions to and substitutions and replacements of them (the "Improvements"). All of the above is sometimes referred to below as the "Trust Property."

PROVIDED ALWAYS, that if all the Obligations (as defined in Section 1.01 below) shall be paid, performed, and satisfied in full, then the lien and estate granted by this Trust Deed shall be reconveyed.

BORROWER COVENANTS AND AGREES AS FOLLOWS:

ARTICLE I

Particular Covenants and Warranties of Borrower

1.01 Obligations Secured. This Trust Deed secures the prompt payment of all indebtedness and other monetary obligations, including but not limited to principal and interest, and the prompt performance of all covenants and obligations of Borrower, under this Trust Deed and the other Loan Documents, whether such payment and performance is now due or becomes due in the future (the "Obligations").

1.02 Property. Borrower warrants that it holds good and merchantable title to the Property and the Improvements, free and clear of all liens, encumbrances, reservations, restrictions, easements, and adverse claims except those specifically listed in **Exhibit B**. Borrower covenants that it shall forever defend County's and Title Company's rights under this Trust Deed against the adverse claims and demands of all persons.

1.03 [Reserved]

1.04 Further Assurances; Filing; Refiling; Etc.

- 1) Borrower shall sign, acknowledge, and deliver, from time to time, such further instruments as 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 (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 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, attorney fees and costs (including but not limited to those incurred in any proceeding and in any review or appeal), fees, penalties, and fines.
- 10) To the best of Borrower's knowledge, Borrower represents and warrants to 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 reconveyance of the Trust Property, or the foreclosure of this Trust Deed by any means.

1.07 Maintenance and Improvements. Borrower shall not permit all or any part of the Improvements to be removed, demolished, or materially altered without County's prior written consent; provided, however, that Borrower may remove, demolish, or materially alter such Improvements as become obsolete in the usual conduct of Borrower's business, if the removal or material alteration does not materially detract from the operation of the Borrower's business and if all Improvements that are demolished or removed are promptly replaced with Improvements of like value and quality. Borrower shall maintain every portion of the Property and Improvements in good repair, working order, and condition, so that it continues to meet the property standards set forth in 24 CFR 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 excepted.

1.08 Liens. Subject to subparagraph 1.09(2), Borrower shall pay when due all claims for labor, materials, or supplies that if unpaid might become a lien on all or any portion of the Trust Property. Subject to subparagraph 1.09(2), Borrower shall not create, or suffer, or permit to be created, any mortgage, deed of trust, lien, security interest, charge, or encumbrance upon the Trust Property prior to, on a parity with, or subordinate to the lien of this Trust Deed, except as specifically provided in Exhibit B.

1.09 Impositions

- 1) Borrower shall pay or cause to be paid, when due and before any fine, penalty, interest, or cost attaches, all taxes, assessments, fees, levies, and all other governmental and nongovernmental charges assessed or levied against any part of the Trust Property (the "Impositions"); provided, however, that if such Imposition may be paid in installments, Borrower may pay the same in installments, together with accrued interest on the unpaid balance, as the same become due, before any fine, penalty, or cost attaches.
- 2) Borrower may, at its expense and after prior notice to 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 to the claim being contested or the loss or damage that may result from Borrower's failure to prevail in such contest in an amount sufficient to discharge the Imposition and all interest, costs, attorney fees, and other charges that may accrue in connection with the Imposition. Borrower shall promptly satisfy any final judgment.

- 3) Borrower shall furnish to 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 Title Company, County, the Secretary of HUD and the Comptroller General of the U.S., and their authorized representatives to enter and inspect the Property and the Improvements, and to examine and make copies or extracts of the records and books of account of the Borrower with respect to the Property and the Improvements, all at such reasonable times as County or Title Company may choose.

1.11 Limitations of Use. Borrower shall not initiate, join in, or consent to any rezoning of the Property or any change in any Covenant or other public or private restrictions limiting or defining the uses that may be made of all or any part of the Property and the Improvements without the prior written consent of 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. In addition, Borrower shall obtain and maintain all such other insurance coverages, which at the time are commonly carried for similar property, in such amounts as County may require.
- 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) Subject to the rights of any superior mortgagee or trust deed beneficiary as provided in Section 6.10 below, 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 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 and maintain with County reserves for payment of such obligations. In that event, Borrower shall pay to County 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 to County upon demand. The reserves may be commingled with County's other funds, and County shall not be required to pay interest to Borrower on such reserves. County shall not hold the reserve in trust for Borrower, and County shall not be the agent of Borrower for payment of the taxes and assessments required to be paid by Borrower.

1.16 Insurance Warning. Unless Borrower provides 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. If Borrower shall fail to furnish such a statement within the time allowed, County shall be authorized, as Borrower's attorney-in-fact, to sign and deliver such statement.

1.18 Financial Information. Borrower shall furnish to County within 90 days after the end of each of Borrower's fiscal years a complete copy of Borrower's financial statement for such year, audited or reviewed by a certified public accountant (including balance sheet, income statement, and statement of changes in financial position). Borrower shall promptly furnish to County any and all such other financial information 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. 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 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 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 a 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. Unless and until a license is revoked, Borrower agrees to apply the proceeds of Rents to ownership obligations, taxes, assessments, governmental charges, insurance premiums, and other obligations associated with the Trust Property, and to maintenance of the Trust Property, before using Rent proceeds for any other purpose.

Borrower agrees:

- 1) To observe and perform all Lease obligations;
- 2) To enforce, or secure the performance of, every obligation required of lessees and other parties under the Leases;
- 3) To appear in and defend any action or proceeding arising out of, or connected with, the Leases or Rents, at Borrower's sole expense; and
- 4) To obtain County's prior written approval of the form and content of all future Leases.

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 gross 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, and each of its officers and agents, as its true and lawful attorney-in-fact, with power of substitution, to undertake and sign any and all of the rights, powers, and

authorities described in this Article III with the same force and effect as if undertaken or performed by Borrower, and Borrower ratifies and confirms any and all such actions that may be taken or omitted to be taken by County, its employees, agents, and attorneys.

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 as a first priority real estate lien, subordinate only to those liens previously approved by the County; (2) all personal property that is used or will be used in the construction of any Improvements on the Trust Property; (3) all personal property that is now or will be placed on or in the Trust Property or Improvements; (4) all personal property that is derived from or used in connection with the use, occupancy, or enjoyment of the Trust Property; (5) all property defined in the Uniform Commercial Code as adopted in the state of Oregon, as accounts, equipment, fixtures, and general intangibles, to the extent the same are used at, or arise in connection with the ownership, maintenance, or operation of, the Trust Property; (6) all causes of action, claims, security deposits, advance rental payments, utility deposits, refunds of fees or deposits paid to any governmental authority, refunds of taxes, and refunds of insurance premiums relating to the Trust Property; and (7) all present and future attachments, accessions, amendments, replacements, additions, products, and proceeds of every nature of the foregoing. This Trust Deed shall constitute a security agreement and "fixture filing" under the Uniform Commercial Code Secured Transactions statutes of the State of Oregon. The mailing address of Borrower and the address of 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. Each of the following shall constitute an event of default under the Loan Documents; provided that the party declaring a default has first provided to the other party thirty days written notice specifying the alleged default and giving such other party the opportunity to cure the alleged default during that 30-day period, or during such longer period as is agreed to. Any such written notice and opportunity to cure provided to the **Borrower** must be provided to **Ikoï So Terrace GP, LLC, an Oregon limited liability company** ("Managing Member"), the general partner of the Borrower, **and Raymond James Tax Credit Fund XX L.L.C., a Delaware limited liability company** ("Investor Member"), the limited partner of the Borrower. County agrees that any cure of any default made or tendered by Investor Member shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

- 1) Nonpayment. Failure to pay any amount due under the Loan Documents, before the due date.
- 2) Failure of Owner 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.
- 6) Cross-Defaults. Owner's default, after expiration of any applicable notice and cure periods, under any other documents related to the Project, including but not limited to the documents which evidence the other sources of funds listed in the Loan Documents.
- 7) Bankruptcy. The occurrence of any of the following with respect to Owner or any guarantor of the Obligations: (a) appointment of a receiver, liquidator, or Title Company for any such party or any of its properties; (b) adjudication as a bankrupt or insolvent; (c) filing of any petition by or against any such party under any state or federal bankruptcy, reorganization, moratorium or insolvency law; (d) institution of any proceeding for dissolution or liquidation; (e) inability to pay debts when due; (f) any general assignment for the benefit of creditors; or (g) abandonment of the Trust Property.
- 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. In the case of an LIHTC project, this section shall not apply to a transfer to an affiliate of the Managing Member or the Investor Member of the Borrower, to a successor or assignee of the Managing Member or the removal of any general partner of the Borrower by Investor Member for cause in accordance with Borrower's Amended and Restated Agreement of Limited Partnership Agreement. If a general partner of Borrower is so removed, County shall not unreasonably withhold its consent to the substitute general partner, provided that County's consent shall not be required if the Investor Member or an entity which is directly or indirectly owned and/or controlled by **Raymond James Tax Credit Funds, Inc.**, is the substitute general partner.

5.02 Remedies in Case of Default. If an Event of Default shall occur, subject to the terms of Section 13 of the Loan Agreement, 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 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.
- 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) **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. An election by County to cure under Section 1.15 shall not constitute a waiver of the default or of any of the remedies provided in this Trust Deed. No delay or omission in exercising any right or remedy shall impair the full exercise of that or any other right or remedy or constitute a waiver of the default.

5.05 Receiver or Trustee-in-Possession. Upon taking possession of all or any part of the Trust Property, Title Company, 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 Section 5 shall be deemed to relieve Borrower of any of the Obligations, except to the extent that the proceeds are applied to the payment of such Obligations.

5.08 Waiver of Stay, Extension, Moratorium, and Valuation Laws. To the fullest extent permitted by law, Borrower waives the benefit of any existing or future stay, extension, or moratorium law that may affect observance or performance

of the provisions of this Trust Deed and any existing or future law providing for the valuation or appraisal of the Trust Property prior to any sale.

5.09 Continued LIHTC obligations. This Trust Deed shall to the extent provided below, be subordinate to such extended use agreements and/or land use restrictive covenants as may be recorded from time to time in favor of the State of Oregon acting by and through its Housing and Community Services Department with respect to the property. This subordination shall cease to be effective as of the earlier of (i) the date the property is acquired by foreclosure (or instrument in lieu of foreclosure), or (ii) upon the termination of the "extended use period," as defined in Section 42(h)(6)(D) of the Internal Revenue Code, as amended, or any successor provision (the "Code"), for such other reason provided in Section 42(h)(6)(E) of the Code. Provided, however, a limitation on the eviction of existing low-income tenants, for the term and to the extent provided in Section 42(h)(6)(E)(ii) of the Code, shall survive such foreclosure or other termination of the extended use period applicable to the property. This subordination shall be interpreted to constitute a subordination of this Trust Deed, but only to the extent, necessary to meet the requirements established under Section 42(h)(6)(B) of the Code.

ARTICLE VI General Provisions

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

6.02 Reconveyance by Title Company. At any time upon the request of 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 reconvey, without warranty, all or any part of the Trust Property. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any facts shall be conclusive proof of the truthfulness thereof.

6.03 Notice. Except as otherwise provided in this Trust Deed, all notices pertaining to this Trust Deed shall be in writing and may be delivered by hand, or mailed by first class, registered, or certified mail, return-receipt requested, postage prepaid, and addressed to the appropriate party at its address set forth at the outset of this Trust Deed. Any party may change its address for such notices from time to time by notice to the other parties. Notices given by mail in accordance with this paragraph shall be deemed to have been given upon the date of mailing; notices given by hand shall be deemed to have been given when actually received. Any notice to Owner shall be accompanied by a notice to the Investor Member of Owner at _____

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

6.05 Trust Deed Binding on Successors and Assigns. This Trust Deed shall be binding upon and inure to the benefit of the successors and assigns of Borrower, Title Company, and 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.

6.06 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 from the gross negligence or willful misconduct of County or Title Company.

6.07 Expenses and Attorney Fees. If County refers any of the Obligations to an attorney for collection or seeks legal advice following a default; if County is the prevailing party in any litigation instituted in connection with any of the Obligations; or if County or any other person initiates any judicial or nonjudicial action, suit, or proceeding in connection with any of the Obligations or the Trust Property (including but not limited to proceedings under federal bankruptcy law, eminent domain, under probate proceedings, or in connection with any state or federal tax lien), and an attorney is employed by County to (1) appear in any such action, suit, or proceeding, or (2) reclaim, seek relief from a judicial or statutory stay, sequester, protect, preserve, or enforce County's interests, then in any such event Borrower shall pay reasonable attorney fees, costs, and expenses incurred by County or its attorney in connection with the above-mentioned events or any appeals related to such events, including but not limited to costs incurred in searching records, the cost of title reports, and the cost of surveyors' reports. Such amounts shall be secured by this Trust Deed and, if not paid upon demand, shall bear interest at the rate specified in the Note.

6.08 Applicable Law. The Trust Deed and the validity, interpretation, performance, and enforcement of the Trust Deed shall be governed by the laws of the state of Oregon without giving effect to the conflict of law provisions thereof.

6.09 Captions. The captions to the sections and paragraphs of this Trust Deed are included only for the convenience of the parties and shall not have the effect of defining, diminishing, or enlarging the rights of the parties or affecting the construction or interpretation of any portion of this Trust Deed.

6.10 Rights of Prior Mortgagee. In the event that all or any portion of the Trust Property is subject to a superior mortgage or trust deed specifically permitted under Exhibit B, the rights of County with respect to insurance and condemnation proceeds as provided in Sections 1.14 and 2.01, and all other rights granted under this Trust Deed that have also been granted to such a superior mortgagee or trust deed, shall be subject to the rights of the superior mortgagee or trust deed beneficiary. Borrower authorizes all such superior mortgagees and beneficiaries, on satisfaction

of the indebtedness secured by their mortgage or trust deed, to remit all remaining insurance or Condemnation proceeds and all other sums held by them to County to be applied in accordance with this Trust Deed.

6.11 Person Defined. As used in this Trust Deed, the word person shall mean any natural person, partnership, trust, corporation, or other legal entity of any nature.

6.12 Severability. If any provision of this Trust Deed shall be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Trust Deed, and such other provisions shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Trust Deed.

6.13 Entire Agreement. This Trust Deed and the other Loan Documents contain the entire agreement of the parties with respect to the Trust Property. No prior agreement, statement, or promise made by any party to this Trust Deed that is not contained therein shall be binding or valid.

6.14 Commercial Property. Borrower covenants and warrants that the Property and Improvements are used by Borrower exclusively for business and commercial purposes. Borrower also covenants and warrants that the Property and Improvements are not now, and at no time in the future will be, occupied as the principal residence of Borrower, Borrower's spouse, or Borrower's minor or dependent child.

6.15 Standard for Discretion

In the event this Mortgage is silent on the standard for any consent, approval, determination, or similar discretionary action, the standard shall be sole and unfettered discretion as opposed to any standard of good faith, fairness, or reasonableness.

6.16 ORS 93.040 Warning. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92. 010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Dated: _____, 2017

BORROWER: Rosewood Terrace Limited Partnership
By: _____, its General Partner
By: _____, its Managing Member
By: _____, its Executive Director

(Signature)

STATE OF OREGON)
County of _____) ss.

On _____, 2017, before me personally appeared _____, who being duly sworn, stated that she is the Executive Director, the Managing Member Rosewood Terrace, and acknowledged the foregoing instrument to be the voluntary act and deed of the Borrower, signed by authority of Borrower.

Notary Public for Oregon
My commission expires: _____

EXHIBIT A
LEGAL DESCRIPTION

Insert Legal Description here

EXHIBIT B
EXCEPTIONS TO CLEAR TITLE

Insert any Exceptions here

LOAN AGREEMENT HACC DISPOSITION PROCEEDS

Name of Project: Rosewood Terrace

This Loan Agreement (“**Agreement**”) is entered into between Pedcor Investments Limited Partnership, (“**Owner**”) and the Housing Authority of Clackamas County (“**HACC**”) for the use Public Housing Disposition Proceeds (“**Proceeds**”) for the Rosewood Terrace

This Agreement includes the following attachments:

- | | |
|----------------------|--|
| A. Legal Description | D. HUD 52531 Housing Assistance Payment (HAP) Contract |
| B. Sources and Uses | E. PBV Affordability Requirements |
| C. Term Sheet | F. Affirmative Marketing and MBE/WBE Outreach Requirements |

The parties, in consideration of the mutual promises and obligations set forth below, agree as follows:

1. **DEFINITIONS.** Capitalized terms in this Agreement and in the other Loan Documents have the following definitions:
 - a. **Agreement to enter into a Housing Assistance Payments Contract (AHAP).** An agreement to enter into a written contract between the Owner, and HACC, approved by HUD, for the purpose of providing Project Based Voucher housing assistance payments to the Owner on behalf of Eligible Families. (HUD Form 52531A – Attachment D)
 - b. **Affordability Requirements.** The Affordability Requirements refer to the restrictions on rents and tenant incomes set forth in Section 10 below.
 - c. **Eligible Family.** The persons approved by HACC to reside in a contract unit with assistance under the Project Based Voucher program.
 - d. **Contract units.** The housing units covered by this HAP contract. The contract units are described in Exhibit A.
 - e. **Housing Choice Voucher Program (HCV).** Federal rental assistance program where tenant pays no less than 30% of income on rent plus utilities and program covers the remaining balance. Rents are limited to not exceed 120% of Fair Market Rents. Participants must be at or below 50% of Area Median Income to qualify for assistance. Two types of assistance: Tenant Based were rent is tied to family that finds private market rental unit; or Project Based were rent is tied to a particular unit.
 - f. **Public Housing Disposition Proceeds.** Funds generated from the demolition and disposition of public housing units as authorized under Section 18 of the Housing Act of 1937, as amended.
 - g. **Project Based Voucher (PBV) Unit.** Those units in the Project which have rental assistance with HUD funding that limits the tenant portion of rent paid cannot exceed 30% of income and balance remaining of rent is subsidized by HUD. The PBV unites are designated in Section 5 below.
 - h. **PBV Regulation.** HUD’s regulations and requirements for the PBV units are located at 24 CFR 983. Should anything in this Agreement or the other Loan Document conflict with the PBV regulations, the PBV regulations shall prevail.
 - i. **HAP Contract.** The Housing Assistance Payment (HAP) Contract is a written agreement between the Public Housing Authority and the owner of a unit occupied by a housing choice voucher program participant (Part 1 and Part 2 included as Attachment D).
 - j. **HUD.** The United States Department of Housing and Urban Development

- k. **Income and family payment.** See 24 CFR part 5, subpart F (especially §5.603 (definitions), §5.609 (annual income), §5.611 (adjusted income), §5.628 (total tenant payment), §5.630 (minimum rent), §5.603 (utility allowance), §5.603 (utility reimbursements), and §5.661 (section 8 project-based assistance programs: approval for police or other security personnel to live in project).
- l. **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.
- m. **Low-Income, Very Low-Income and Extremely 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. An Extremely Low-Income household is one whose total income does not exceed 30% of the County's Median Income.
- n. **Median Income.** Median Income means the median income for Clackamas County, adjusted for family size, as published by HUD, from time to time.
- o. **Owner.** The initial Owner and any subsequent Project owner, subject to HACC consenting to any transfer under Section 31 below.
- p. **Period of Affordability.** See Section 9 below.
- q. **Project.** The project is for new construction of 212 units of affordable housing to serve families at or below 60% AMI. Additionally, the project involves the demolition of existing structures located at 8810 & 8850 SE Otty Rd, Happy Valley, OR 97086. The legal description of the property is set forth in **Attachment A.**
- r. **Section 8.** See HCV.
- s. **Use Agreement.** Contract between **HACC**, the **Owner** and **HUD** that binds the **Owner** to specific requirements concerning the use of **Proceeds**.

2. USE OF PROCEEDS

- a. The approved use of **Proceeds** is limited to the development of units that will be used exclusively as units assisted with funds from Section 8 of the U.S. Housing Act of 1937 for a period of not fewer than 30 years. The units may be developed in multiple buildings or projects and other non-Section 8 units may be part of that building/project so long as the **Proceeds** are only used, on a pro rata basis, for the development of the Section 8 units in that building/project. Prior to expending any **Proceeds** **HACC** shall enter into a Use Agreement in the form acceptable to the Portland Office of Public Housing to assure the units are developed and operated as Section 8 units for a period of not less than 30 years. The required Use Agreement must be recorded in first priority position against each property where **Proceeds** are used.

3. PROCEED LOAN TERMS

- a. **Amount and Purpose:** **HACC** shall loan **Proceeds** in the amount of **\$1,100,000** to the **Owner** for the Project. The **Proceeds** will be used for the development of the Rosewood Terrace Apartments. Eligible activities include acquisition, demolition, construction, engineering and architectural services and other related activities. Use of the Proceeds for any other purpose, without the expressed written consent of **HACC** is prohibited and may constitute a breach of this agreement.
- b. **Loan Terms:**
 - i. The Proceeds will be provided as a 3.0% simple interest loan, deferred until maturity, sale or refinance subject to the conditions of the Term Sheet in Attachment C. Loan repayment, satisfaction or reconveyance shall not relieve Borrower of any performance, affordability or programmatic obligations and requirements of the PBV program.
 - ii. Notwithstanding the loan terms described above, the entire amount of the loan (\$1,100,000) together with any accrued interest or fees, shall be paid in full upon the sale, assignment or other transfer of title to the Property without **HACC's** consent; or the date **Owner** or its agents or subcontractors is otherwise in default under any of the prior written **Loan Documents**

(including but not limited to the failure to meet the Affordability Requirements of Section 10 below). Exceptions: Neither a transfer nor assignment of a limited partner's interest in **Owner** nor the removal of a general partner for cause, shall cause the Loan to be due and payable.

- 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 record, or cause to be recorded the Trust Deed and the Declaration of Land Use Restrictive Covenants, promptly after signing and acquisition of the real property.

4. PAYMENT OF OBLIGATION.

- a. Payments of principal and interest shall be made until the loan is paid in full. All payments on the loan shall be applied first to the interest due on the loan and then the remaining amount shall be applied to the principal. No late fees will be charged.
- b. Payments shall be made at such place as **HACC** may designate in writing and shall be in the manner and amount as is described in the Promissory Note between the parties relating to this project.

5. PBV UNITS

- a. 20 units in the project are PBV Units. The PBV units are as follows:

Bedroom Size	TOTAL UNITS
1-bedroom (tenant) unit:	10
2-bedroom (tenant) unit:	9
3-bedroom (tenant) unit:	1
TOTALS	20

- b. The PBV units are fixed units as defined at by the Housing Assistance Payment (HAP) Contract.
- c. See Section 10 below and Attachment E for rent and income limits for the PBV Units.
- d. Any change in units must be done through a formal amendment to the (HAP) Contract.
- e. During the term of the HAP contract, the owner must lease all contract units to eligible families selected and referred by **HACC** (24 CFR 983.251).

6. SOURCES AND USES OF FUNDS

All sources and uses of funds for the acquisition phase of the Project are set forth in Attachment B. The Uses Statement shall specify by line item the source of funds for each such line item. Owner certifies that (a) it has, or will obtain, commitments of the funds from each of the sources identified, (b) the sources of funds are sufficient to fund the project in full, and (c) **Proceeds** shall only be used for the development of units that will be used exclusively as PBV assisted units.

7. PBV REGULATIONS

The **Owner** agrees to comply with the PBV Regulations 24 CFR 983 and with the other requirements of the **Loan Documents**.

8. ENVIRONMENTAL REVIEW

- a. The environmental effects of each activity carried out with the **Proceeds** and PBV funds must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) and the related authorities in 24 CFR Parts 50 and 58.
- b. **HACC** is responsible for environmental review, decision-making, and action for each activity that it carries out with Proceeds, in accordance with 24 CFR part 58. **HACC** will not commit any **Proceeds** toward construction of the Project before completion of the environmental review and approval of the request for release of funds and related certification, except as authorized by 24 CFR Part 58.

- c. **Proceeds** cannot be used for acquisition or construction in identified special flood hazard areas unless the Project is subject to the mandatory purchase of flood insurance as required by Section 102(a) of the Flood Disaster Protection Act of 1973, as amended from time to time.
- d. In the event that changes or modifications to the approved **Proceed** activities are necessary, the **Owner** must, prior to any additional commitment or expenditure of funds, submit all necessary supplemental environmental review information and data to **HACC** for the purpose of updating the environmental review record.

9. PERIOD OF AFFORDABILITY

- a. The Period of Affordability for this Project shall be 60 years beginning on the first day after the final Certificate of Occupancy is issued for the project, without regard to the term of the loan or the transfer of ownership, except as noted in subsection b below.
- b. Termination of Period of Affordability. In accordance with the Use Agreement the Period of Affordability shall be terminated upon foreclosure or transfer in lieu of foreclosure, but shall be revived according to the original terms if during the original Period of Affordability, the owner of record before the foreclosure or deed in lieu of foreclosure, or any entity that includes the former **Owner** or any partner or those with whom the former **Owner** has or had family or business ties, obtains an ownership interest in the project or property.

10. AFFORDABILITY REQUIREMENTS (RENTS AND TENANT INCOMES)

- a. To ensure compliance with the PBV Rules all of the PBV Units must be rented to tenants whose incomes at the time of the tenant's initial occupancy, are less than or equal to fifty percent (50%) of the Median Income.
- b. Project-based rent subsidy will be in accordance with 24 CFR 983.301: At time of award, HACC determined this property is located in census tract 222.01, a qualified census tract.
- c. HACC has determined per the terms of the original RFP rent to owner including the utility allowance for PBV's with **Proceeds** must not exceed the lowest of:
 - i. **HACC** Payment standards
 - ii. The reasonable rent; or
 - iii. The rent requested by the **Owner**.
- b. Over-income Tenants: If tenant rent equals rent to the owner, the unit shall be removed from the HAP Contract 180 days following the last housing assistance payment on behalf of the family. HACC may substitute a different unit for the unit removed.
- c. If a unit is vacant for a period of 120 or more days since owner notice of vacancy (and notwithstanding the good faith efforts of the PHA to fill such vacancies) HACC may give notice to the owner to remove the unit from the HAP contract.
- d. Certification and Recertification of Tenant Income: HACC will certify tenant income annually.

11. TENANT SELECTION CRITERIA; LEASE REQUIREMENTS

- a. The **Owner** is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection [24 CFR 983.253 a)(2) and (a)(3)].
- b. The **Owner** must promptly notify **HACC** in writing (mail, fax, or e-mail) within 5 business days of learning about any vacancy or expected vacancy in a contract unit. After receiving such notice, **HACC** will make every reasonable effort to refer families to the **Owner** within 10 business days of receiving such notice from the **Owner**.
- c. Tenants must be offered renewable lease agreements with an initial duration of at least one year, unless a shorter time period is mutually agreed upon by the tenant and the landlord.

- d. **HACC** will require PBV unit leases include HACC's lease and form HUD 52530.c Tenancy Addendum for Section 8 Project Based Voucher Program and must comply with 24 CFR 983.256.
- e. During the course of the tenant's lease, the owner may not terminate the lease without good cause. "Good cause" does not include a business or economic reason or desire to use the unit for an individual, family or non-residential rental purpose. Upon expiration of the lease the owner may renew the lease; refuse to renew the lease for good cause; or refuse to renew the lease without good cause. To terminate or refuse to renew tenancy, **Owner** must serve written notice on the tenant specifying the grounds for the action at least 30 days before the termination of the tenancy.

12. Agreement to Enter into a Housing Assistance Payment Contract

In order to offer PBV assistance and **Proceeds** on new construction, **HACC** and the **Owner** must enter into an Agreement to enter into a Housing Assistance Payment (AHAP) Contract in the form required by HUD at 24 CFR 983.152 (a). The AHAP must be executed before any construction begins and after the subsidy layering review and environmental reviews are completed.

13. PROPERTY STANDARDS

- a. Upon completion, PBV units must meet all of the applicable Property Standards in 24 CFR 983.11 for new construction. **HACC** staff will periodically inspect the Project during construction and at completion per 24 CFR 983.103 to assure compliance with the Property Standards.
- b. Upon project completion and throughout the Period of Affordability, the Project must be maintained so that it continues to meet the property standards set forth in 24 CFR 92.251 and 24 CFR 983.103.

14. INDEMNIFICATION AND INSURANCE

Owner agrees to indemnify, defend and hold harmless **HACC** and its elected officials, officers, agents and employees against all liability, loss and costs arising from actions, suits, claims or demands, except when due to the **HACC's** sole negligence or intentional misconduct, arising from performance of this Agreement.

Owner shall maintain all-risk property insurance in the amount of the full replacement value of the property, commercial general liability insurance in the minimum amount of \$ 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 **HACC** proof of insurance in the required amounts upon execution of this **Agreement**, and again upon request of **HACC**. **Owner** shall give **HACC** no less than 30 days' notice if there is a cancellation, nonrenewal or material change of **Owner's** insurance. See paragraph 1.12 of the Trust Deed for additional insurance requirements.

15. EVENTS OF DEFAULT

As included in the HAB Contract any of the following is a default by the **Owner** under the **Loan Documents**:

- a. The **Owner** has violated any obligation under any other housing assistance payments contract under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).
- b. Nonpayment. Failure to pay any amount due under the **Loan Documents**, before the due date.
- c. Failure of **Owner** to comply with the Affordability Requirements at any time during the Period of Affordability.
- d. Breach of Other Covenants. Material failure to perform or abide by any other condition of the **Loan Documents**.
- e. Misinformation. Falsity when made in any material respect of any representation, warranty, or information furnished in the **Loan Documents** or in the application for Proceeds.
- f. Other Default. The occurrence of any other event of default under the **Loan Documents**.
- g. Cross-Defaults. **Owner's** default, after expiration of any applicable notice and cure periods, under any other documents related to the **Project**, including but not limited to the documents which evidence the other sources of funds listed in the **Loan Documents**.
- h. Bankruptcy. The occurrence of any of the following with respect to **Owner** or any guarantor of the Obligations: (a) appointment of a receiver, liquidator, or Title Company for any such party or any of its

- properties; (b) adjudication as a bankrupt or insolvent; (c) filing of any petition by or against any such party under any state or federal bankruptcy, reorganization, moratorium or insolvency law; (d) institution of any proceeding for dissolution or liquidation; (e) inability to pay debts when due; (f) any general assignment for the benefit of creditors; or (g) abandonment of the **Trust Property**.
- i. Transfer; Due-on-Sale. Any sale, conveyance, contract for conveyance, transfer, assignment, encumbrance, pledge, or grant of a security interest in all or any part of the Property, or any interest therein, either voluntarily, involuntarily, or by the operation of law (a "Transfer"), without **HACC's** prior written consent, shall constitute an event of default. In the case of a Low Income Housing Tax Credit (LIHTC) project, this section shall not apply to a transfer to an affiliate of the Managing Member or the Investor Member of the **Borrower**, to a successor or assignee of the Managing Member or the removal of any general partner of the **Borrower** by Investor Member for cause in accordance with **Borrower's** Amended and Restated Agreement of Limited Partnership Agreement. If a general partner of **Borrower** is so removed, **HACC** shall not unreasonably withhold its consent to the substitute general partner, provided that **HACC's** consent shall not be required if the Investor Member or an entity which is directly or indirectly owned and/or controlled by _____, is the substitute general partner.
 - j. The failure by **Owner** to (i) perform any obligation under the **Loan Documents** not involving the payment of money, or (ii) comply with any other term or condition applicable to **Owner** under any of the **Loan Documents**, and the expiration of thirty (30) days after notice of such failure from **HACC** to **Owner** and **Owner's** limited partner investor, provided that if such failure cannot reasonably be cured within such thirty (30) day period but is capable, with reasonable diligence, of being cured within a total of ninety (90) days, **Owner** shall have an additional sixty (60) days in which to effect such cure provided that **Owner** commences to cure such failure within the initial thirty (30) day period, at all times diligently pursues the cure to completion, and in fact completes such cure within the subsequent sixty (60) day period; provided, however, that the cure periods provided by this Section shall not apply to any such failures to perform or comply that are described elsewhere.
 - k. Any representation or warranty by **Owner** in any of the **Loan Documents** is materially incorrect or incomplete or otherwise misleading as of the date made or deemed made, and, if such breach is reasonably susceptible of being cured, the expiration of thirty (30) days after notice of such breach from **HACC** to **Owner** and **Owner's** limited partner investor without the same being cured.
 - l. **Owner** (i) is unable, or admits in writing its inability, to pay its monetary obligations as they become due, (ii) makes a general assignment for the benefit of creditors, or (iii) applies for, consents to or acquiesces in the appointment of a trustee, receiver or other custodian for itself or its property, or, in the absence of such application, consent or acquiescence, a trustee, receiver or other custodian is appointed for **Owner** or the property of **Owner** (including the **Project**), and such appointment is not discharged within sixty (60) days.
 - m. A final judgment or decree for monetary damages or a monetary fine or penalty (not subject to appeal or as to which the time for appeal has expired) is entered against **Owner** by any Governmental Authority, and such judgment, decree, fine or penalty is not paid and discharged or stayed within sixty (60) days after the entry thereof.
 - n. The assets of **Owner** are attached, levied on or otherwise seized by legal process, and such attachment, levy or seizure is not quashed, stayed or released within sixty (60) days of the date thereof.
 - o. **Owner** shall have voluntarily suspended or terminated its business, or otherwise dissolved or liquidated.
 - p. The commencement of any action or proceeding that seeks as one of its remedies the dissolution or liquidation of **Owner**, if such action or proceeding is not dismissed within sixty (60) days after its commencement.
 - q. There shall be filed any claim of lien (other than liens approved by **HACC**) against the **Project** or the service of any notice to withhold proceeds of the Loan and the continued maintenance of such claim of lien or notice to withhold for a period of sixty (60) days without discharge or satisfaction thereof or provision therefor (including the posting of bonds) satisfactory to **HACC**.

- r. The construction of the **Project** is abandoned or halted prior to the Completion of Construction for any period of fifteen (15) consecutive days for any cause not beyond the reasonable control of **Owner**, any contractor or any subcontractor.
- s. Any Governmental Authority with jurisdiction over the **Project** orders or requires that the construction of the **Project** be stopped, or any Entitlement that is required therefor is withdrawn or suspended, and the order, requirement, withdrawal or suspension remains in effect for a period of thirty (30) days, provided that if such order, requirement, withdrawal or suspension cannot reasonably be cured within such thirty (30) day period but is capable, with reasonable diligence, of being cured within a total of ninety (90) days, **Owner** or **Owner's** limited partner shall have an additional sixty (60) days in which to effect such cure provided that **Owner** or **Owner's** limited partner commences to cure the order, requirement, withdrawal or suspension within the initial period of thirty (30) days, at all times diligently pursues the cure to completion, and in fact completes such cure within the subsequent period of sixty (60) days.
- t. **Owner** is in material default under any material Project Agreement or Entitlement for a period of thirty (30) days, provided that if such default cannot reasonably be cured within such thirty (30) day period but is capable, with reasonable diligence, of being cured within a total of ninety (90) days, **Owner** or **Owner's** limited partner shall have an additional sixty (60) days in which to effect such cure provided that **Owner** or **Owner's** limited partner commences to cure the default within the initial period of thirty (30) days, at all times diligently pursues the cure to completion, and in fact completes such cure within the subsequent period of sixty (60) days.
- u. The occurrence of any Transfer that is prohibited under Section ___.

HACC agrees that any cure of any default made or tendered by Investor Member shall be deemed to be a cure by **Owner** and shall be accepted or rejected on the same basis as if made or tendered by **Owner**.

16. REMEDIES FOR DEFAULT

- a. In the event of default, either party may pursue any legal or equitable remedy available to it. Without limiting the foregoing, **HACC** may (i) declare the entire amount of the Loan due and payable at once, or (ii) extend the Period of Affordability for a period equal to the length of the period during which noncompliance with the Affordability Requirements existed.
- b. **HACC** and any tenant or applicant who meets the income limitation applicable under 24 CFR 983 (whether prospective, present or former occupant) shall be entitled, for any breach of the provisions hereof, and in addition to all other remedies provided by law or in equity, to enforce specific performance by the Owner and/or Recipient of its obligations under this Agreement in state court.

17. AFFIRMATIVE MARKETING

The **Owner** agrees to implement and follow the adopted Affirmative Marketing Plan of the Clackamas County, **Attachment E** (the "Plan"). The **Owner** shall maintain records evidencing compliance with the Plan.

18. MINORITY/WOMEN'S BUSINESS

In accordance with Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise), the **HACC** has adopted procedures and requirements for projects for the purpose of encouraging the use of minority and women's business enterprises. The Owner certifies that it will follow and implement the adopted procedures and requirements in **Attachment E**.

19. NON-DISCRIMINATION

- a. The **Owner** must comply with all applicable federal, state, and local laws prohibiting discrimination on the basis of age, sex, marital status, familial status, religion, race, creed, color, sexual orientation, nationality, the presence of any sensory, mental or physical handicap, or other protected class. These requirements apply to both employment opportunities and the provision of housing and are specified in
 - i. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 200d et seq.);
 - ii. Title VI; Civil Rights Act of 1968, Title VIII, as amended;
 - iii. Equal Employment Opportunity, Executive Order 11246, as amended;

- iv. Section 3 of the Housing and Urban Development Act of 1968 as may be amended;
 - v. Section 504 of the Rehabilitation Act of 1973 as may be amended;
 - vi. The Fair Housing Act of 1988 as may be amended (42 U.S.C. 3601-3620);
 - vii. Equal Opportunity in Housing (Executive Order 11063, as amended by Executive Order 12259);
 - viii. Age Discrimination Act of 1975, as amended (42 U.S.C. 6101); and
 - ix. Americans with Disabilities Act of 1990 as may be amended (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225).
- b. **Owner** shall maintain data on the extent to which each racial and ethnic group and single-headed household (by gender of head of household) have applied for and rented units in the Project.

20. DISBURSEMENT OF FUNDS

- a. **Owner** agrees to request funds under this Agreement only when they are needed for payment by **Owner** of specific allowable costs and only in amounts needed to pay such costs. The payment request must be accompanied by source documentation for actual expenses.
- b. **HACC** shall verify requested amounts for satisfactory completion prior to payment. Payments shall be based upon work completed and approved by **HACC**.
- c. **HACC** will not disburse any **Proceeds** until all the Loan Documents are signed and the following documents are received:
 - i. Copy of the Management Agreement;
 - ii. Affirmative Marketing Plan;
 - iii. Proof of Insurance;
 - iv. Copy of PBV tenant lease; and
 - v. Copy of the written tenant selection criteria.
- d. **Owner** agrees to submit the following documents to **HACC**:
 - i. cost certification audit (this item should be submitted within 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, unless HACC approval is required in advance of any withdrawal
 - iv. operating reserve withdrawals within 30 days of such withdrawals, unless HACC approval is required in advance of any withdrawal
 - v. annual project financial statements/audit within 90 days of the end of the Project's fiscal year

21. CONTRACTOR DEBARMENT AND SUSPENSION

In order to comply with the requirements of 24 CFR 983.154(d) and (e), the **Owner** must obtain a certification guaranteeing that no participants in lower tier covered transactions, having to do with the Project financed in whole or in part by **Proceeds**, are currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in federal projects.

22. SECTION 3 REQUIREMENTS

Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations of 24 CFR part 135, as amended, applies to:

- Projects for which HUD's share of the project cost exceeds \$200,000; and
- Contracts and subcontracts awarded on projects for which HUD's share of project costs exceeds \$200,000 and the contract or subcontract exceeds \$100,000.

Section 3 requires that to the greatest extent feasible opportunities for training and employment in connection with planning and carrying out the Project be given to low-income residents of the Project area, and contracts

for work in connection with the Project be awarded to business concerns, including but not limited to individuals for firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the Project area.

23. LABOR STANDARDS

Since the agreement covers the development of nine or more PBV units, the **Owner** and the **Owner's** contractors and subcontractors must comply with 24 CFR 983.154, Davis-Bacon, and the Contract Work Hours and Safety Standards Act, Department of Labor Regulations in 29 CFR part 5 and other applicable federal labor relations laws and regulations.

24. LEAD BASED PAINT

For all units in the Project (not just PBV 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. and 24 CFR 983.101) as amended requiring prohibition of the use of lead-based paint whenever HUD 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.*

25. DISPLACEMENT, RELOCATION, ACQUISITION, AND REPLACEMENT

Owner shall comply with all the regulations and laws regarding displacement, relocation, acquisition and replacement of housing, including those contained in 24 CFR 92.353 and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (42 USC 4601-4655).

26. CONFLICT OF INTEREST

Unless an exception is granted by **HACC** pursuant to 24 CFR 92.356(f)(2), no developer, owner or sponsor of the Project, or officer, employee, agent or consultant of the, developer or sponsor, may occupy a PBV Unit in the Project.

27. FAITH BASED ACTIVITIES

- a. Organizations that are directly funded under with **Proceeds** may not engage in inherently religious activities, such as worship, religious instruction, or proselytizing as part of the assistance funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the assistance funded under this part, and participation must be voluntary for the beneficiaries of the assistance provided.
- b. An organization that participates in a **Proceeds** funded program shall not, in providing program assistance, discriminate against a program beneficiary, or prospective program beneficiary, on the basis of religion or religious belief.
- c. **Proceeds** may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. **Proceeds** may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part.

28. RECORDS

- a. **Owner** 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 **HACC**.
- c. Record Retention Periods
 - i. Except as stated in this subparagraph, records must be retained for five years following the Date of the Certification of Occupancy.

- ii. **Owner** shall maintain records pertaining to each tenant's income verifications, project rents and project inspections for at least the most recent five year period, until five years after the Period of Affordability has expired.
 - iii. Written agreements must be retained for five years after the **Agreement** terminates.
 - iv. Records covering displacement and acquisition must be retained for five years after the date by which all persons displaced from the Property and all persons whose property is acquired for the Project have received the final payment to which they are entitled under 24 CFR 990.325.
 - v. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.
- d. Access to Records. HUD, the Comptroller General of the U.S., the County, and any of their representatives, have the right of access to any pertinent books, documents, papers or other records, in order to make audits, examinations, excerpts or transcripts, or otherwise determine compliance with PBV regulations.
 - e. Any duly authorized representative of the Secretary of HUD, the Comptroller General of the United States, or the County shall at all reasonable times have access to and the right to inspect, copy audit, and examine all books, records and other documents relating directly to the Owner's receipt and disbursement of the Proceeds, as well as access to the Project. Upon request, the Recipient must assist, or must cause Owner to assist, HACC by serving notice to affected tenants, as required under Oregon Law.

29. MONITORING

- a. Within 60 days of acquisition, the HACC staff will make an on-site visit to monitor compliance with the PBV rent and occupancy standards.
- b. HACC will monitor the performance of the Owner to ensure compliance with the requirements of this Agreement. During the Period of Affordability, the monitoring will be conducted in accordance with 24 CFR 982.405 and will include on-site inspections and a review of all records required in Section 26 above
- c. Upon completion of the project, the owner shall provide evidence of completion to HACC as prescribed by 24 CFR 983.155 (b).

30. WAIVER

Failure by either party to enforce any right under this **Agreement** shall not be deemed to be a waiver of that right or of any other right.

31. SUCCESSORS AND ASSIGNS

This **Agreement** shall be binding on and inure to the benefit of the heirs, successors, and assigns of each party, provided that written consent is obtained from the other party.

32. AUTHORITY TO SIGN

Each party signing this **Agreement**, and the other **Loan Documents**, represents that it has full power and authority to enter into this **Agreement** and all other documents contemplated thereby, and the persons signing this **Agreement** for such party, if such party is not an individual, have full power and authority to sign for such party and to bind it to this **Agreement**, and to sell, transfer and convey all right, title, and interest in and to the Property in accordance with the **Loan Documents**. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority, or other party is required.

33. Restrictions on Transfers

- a. For purposes of this Agreement, "Transfer" shall mean any sale, assignment or transfer, whether voluntary or involuntary, of (i) any rights and/or obligations under the **Loan Documents** and/or (ii) any interest in the **Project**.
- b. Transfer shall not mean (i) the leasing of one or more Units to an occupant in compliance with the Regulatory Agreement; or (ii) the transfer of the **Project** to a limited partnership of which **Owner** (or a limited liability company of which **Owner** is the sole member) is the general partner or to a limited liability company of which **Owner** is the managing member.
- c. **HACC** shall approve other Transfers requested by **Owner** if the proposed transferee has the necessary qualifications and experience to construct the **Project** and/or own, operate and maintain the **Project**, as applicable, as contemplated by this Agreement and the Regulatory Agreement, as reasonably determined by HACC.

34. EFFECTIVE DATE

The Effective Date of this Agreement is the date it is signed by all parties.

**PROJECT OWNER:
Pedcor Investments-2016-CLV, Limited
Partnership**

By: Pedcor Investments, A Limited Liability
Company
By:
By: Thomas G Crowe, Executive Vice President
Address: 770 3rd Avenue S.W.
Carmel, IN 46032

**HOUSING AUTHORITY OF CLACKAMAS
COUNTY**

Chair: Jim Bernard
Commissioner: Ken Humberston
Commissioner: Paul Savas
Commissioner: Martha Schrader
Commissioner: Sonya Fischer
Resident Commissioner: Paul Reynolds?

Signing on Behalf of BCC:

(signature)

Printed Name: Thomas G Crowe
Title: Executive Vice President
Phone: (317) 587-0320
Email: tgcrowe@pedcor.net
Tax ID#

Date

(signature)

Printed Name: Richard Swift
Title: Director, Health Housing and Human Services

Date

Attachment A. Legal Description

PARCEL 1:

Part of Section 28, Township 1 South. Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows, to-wit:

Beginning 88 rods East of the Southwest corner of the Samuel W. McMahan Homestead Claim Notification No.5746, as described in Volume "S". Page 295. Deed Records, which beginning point is the Southeast corner of the Orren Battin tract described in Book 120. Page 110. Deed Records; thence East along the North line of the W.S. Buckley Donation Land Claim, a distance of 16 rods to the Southwest corner of the Shepherd tract described in Book 235, Page 235. Deed Records ; thence North along the West line of said Shepherd tract 40 rods to the North line of the Thomas E. Battin tract described in Book "H". Page 216. Deed Records; thence West along said North line 16 rods to the Northeast corner of the Orren Battin tract aforementioned; thence South 40 rods to the point of beginning.

EXCEPTING THEREFROM that portion lying within that tract described in deed to Clackamas County in Fee No. 77 17914.

ALSO EXCEPTING THEREFROM that portion conveyed to the State of Oregon, by Deed recorded under Recorder's Fee No. 71 30200.

PARCEL 2:

Part of the Southwest one-quarter of Section 28. Township 1 South. Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning 58 rods East of the Southwest corner of the Donation Land Claim No. 5746, known as the Donation Land Claim of Samuel W. McMahan; running thence North 88° 55' East, 264 feet to an iron pipe which is the true point of beginning of the tract herein described; running thence North 3° 03' West, 640.2 feet to an iron pipe; thence North 88° 57' East, 231 feet to an iron pipe; thence South 3° 03' East, 640.35 feet to an iron pipe; thence South 88° 55' West, 231 feet to the true place of beginning.

EXCEPT that portion conveyed to the State of Oregon by deed recorded under Recorder's Fee No. 72 12686.

Attachment B. Sources and Uses of Funds

Acquisition, Rehabilitation & New Construction

Attachment C. Term Sheet

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Attachment D. HUD 52531 Housing Assistance Payment (HAP) Contract

Attachment E. PBV Affordability Requirements

1. Fair Market Rents and Payment Standards

US Department of Housing and Urban Development
Portland-Vancouver, OR-WA
Effective: October 2016

	Fair Market Rent	Payment Standard Clackamas County
1 Bedroom	\$1053	\$1106
2 Bedroom	\$1242	\$1304
3 Bedroom	\$1808	\$1718

2. Utility Allowance

All Electric Only
Effective: February 2016

1 Bedroom	\$64
2 Bedroom	\$81
3 Bedroom	\$99

Notes:

- Utility Allowance: The utility allowances prepared by the County Housing Authority shall be used when adjusting rents. Engineered Utility Allowances may be proposed by Recipient for the Project, but must be approved by the State and County.
- Rents at no time can exceed 110% of the Fair Market Rents set by HUD.

3. Project Based Voucher Tenant Income Limits

US Department of Housing and Urban Development
Effective: March 2016

HOUSEHOLD SIZE	30% OF MEDIAN	50% OF MEDIAN
1 Person	\$15400	\$25700
2 Person	17600	29350
3 Person	20160	33000
4 Person	24300	36650
5 Person	28440	39600
6 Person	32580	42550
7 Person	36730	45450
8 Person	40890	48400

Note: All schedules will be updated from time to time when adjustments are required 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 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 Community Development Division (CCCDD) will take the following steps to ensure, to the maximum extent possible, that small and minority-owned business enterprises and women-owned business enterprises (MBE/WBE) are used whenever possible and economically feasible:

- ◆ Include language in all notices and advertisements related to the HOME Program which states that MBE/WBE are encouraged to apply for such funds and to participate as suppliers, contractors, professional service providers, etc. on projects assisted with HOME funds. All informational and documentary materials will also include this language.
- ◆ Include qualified MBE/WBE on any contractor or solicitation lists.
- ◆ Coordinate with the Oregon Office of Minority, Women and Emerging Small Business to maintain a list of eligible MBE/WBE. This list will be made available to HOME recipients.
- ◆ When necessary and appropriate, utilize the services and assistance of the US Department of Commerce's Small Business Administration and Minority Business Development Agency.
- ◆ Through contractual agreement, ensure that recipients of HOME program funds solicit MBE/WBE whenever they are potential sources.
- ◆ When feasible, divide total requirements into smaller tasks or quantities to permit maximum participation by MBE/WBE.
- ◆ When feasible, establish delivery schedules which will encourage participation by MBE/WBE.
- ◆ In conjunction with HOME-Assisted Projects, CCCDD will:
 - ◆ Encourage project sponsors, developers and Recipients to include, to the maximum extent feasible, the use of MBE/WBE in providing supplies, professional and construction services.
 - ◆ Request that project sponsors/developers maintain statistical data and identify jobs which have been bid by MBE/WBE. CCCDD may inspect the project site to confirm the percentage of minority and women laborers working at the site.

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

PROMISSORY NOTE
HOUSING AUTHORITY OF CLACKAMAS COUNTY
DISPOSITION PROCEEDS

Name of Project: Rosewood Terrace Apartments

\$1,100,000 _____, 2017

For value received, Pedcor Investments, ("Borrower"), promises to pay to the order of the Housing Authority of Clackamas County ("Lender"), the sum of **One Million, one-hundred thousand and no/100 Dollars (\$1,100,000.00)**, or so much thereof as may be advanced, together with interest thereon at the rate of **three percent (3.0 %) per year**. The loan is evidenced by this Promissory Note ("Note"), a Loan Agreement, a Trust Deed, and a Declaration of Land Use Restrictive Covenants (together, "Loan Documents"). Unless otherwise defined herein, capitalized terms have the meaning assigned to them in the Loan Agreement, as amended.

This Note is subject to the terms of the Loan Agreement and the following terms and conditions. To the extent there may be a conflict between the terms of the Note and the Loan Agreement, the terms of the Loan Agreement shall control.

- 1) **Payment of Obligation.** Lender makes this loan for the development of Rosewood Terrace apartments (the "Project"), from funds generated by the sale of public housing units under Section 18 of the U.S. Housing Act of 1937, and 24 CFR 970 ("Proceeds").
 - a) The loan shall bear simple interest at a rate of **three percent (3.0%)** per year.
 - b) The term of the loan is 60 years.
 - c) The Maturity Date is December 31, 2044.
 - d) The loan shall begin to accrue interest on the Project Completion Date.
 - e) 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 without Lender's consent, or the date Owner or its agents or subcontractors is otherwise in default under any of the Loan Documents.
 - f) Payments shall be made at such place as Lender may designate in writing.
 - g) Payments of principal and interest shall be made until the loan is paid in full. All payments on the loan shall be applied first to any interest due on the loan and then the remaining amount shall be applied to the principal.
 - h) No late fees will be charged, but interest shall continue to accrue.
- 2) **Governing Law.** This Note shall be governed by and construed in accordance with the laws of Oregon without giving effect to the conflict of law provisions thereof.
- 3) **Security.** This Note shall be secured by an assignment of the trust deed securing advances by Borrower to Owner.
- 4) **Nonrecourse Obligation.** This Note and the obligations contained herein are without recourse to Borrower. The sole recourse of Lender with respect to Borrower's obligations

AFTER RECORDING RETURN TO:
Housing Authority of Clackamas County
13930 S. Gain Street
Oregon City, OR 97045

STATUTORY NOTICE:
The name and address of the entity holding a lien or other interest created by this instrument are set forth below, and the tax account number of the property subject to the lien or in which the interest is created is: Housing Authority of Clackamas County

Legal Description – Exhibit "A" Attached

DECLARATION OF LAND USE RESTRICTIVE COVENANTS

HOUSING AUTHORITY OF CLACKAMAS COUNTY DISPOSITION PROCEEDS

Name of Project: Rosewood Terrace Apartments

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS ("**Declaration**") dated _____, 2017 by _____ and its successors and assigns ("**Owner**") is given as a condition precedent to the award of U.S. Department of Housing and Urban Development ("**HUD**") Disposition Proceeds ("**PROCEEDS**") by the Housing Authority of Clackamas County, a public corporation created pursuant to the Housing Authorities Law of ORS 456, having its office at 13930 S. Gain Street, Oregon City, OR 97045 ("**HACC**") together with any successor to its rights, duties, and obligations.

Owner is the owner of the Rosewood Terrace Apartments, a new-construction 212-unit affordable rental housing apartment complex located at _____ ("**Project**"). The Legal Description of the property on which the Project is located ("**Property**") is attached as **Exhibit A**.

Owner has applied to the HACC and entered into HACC Loan Agreements (plurally referred to as "**Agreement**") for an award to the Project of PROCEEDS in amounts not to exceed **\$1,100,000.00**. Pursuant to the terms of the Agreement, Owner has represented to the HACC restrictions regarding rents and tenant eligibility that Owner will maintain for the Period of Affordability specified in the Agreement. HACC has entered into agreements with Owner pursuant to which Owner assumes all responsibilities of the Project pursuant to the Agreement. This Declaration is subject to the terms and conditions of the Loan Agreement.

In consideration of the promises and covenants set forth below and of other valuable consideration, the receipt and sufficiency of which is acknowledged, the Owner and the HACC agree as follows:

SECTION 1 - DEFINITIONS

All the words and phrases used in this Declaration shall have the same meaning as when used in the Agreement and in 24 CFR 900 ("**HUD Public Housing Regulations**") unless the context requires otherwise.

SECTION 2 - RECORDING AND FILING; COVENANTS TO RUN WITH THE LAND

- (A) Promptly after this Declaration is signed by Owner and HACC, Owner shall record this Declaration and all amendments and file in the official public land deed records of Clackamas County, and shall pay all fees and charges incurred in connection therewith. Upon recording, the Owner shall immediately transmit to the HACC a signed original or certified copy of the recorded Declaration showing the date, deed book and page numbers of record.
- (B) The Owner intends, declares, and covenants, on behalf of itself and all future Owners and operators of the Project during the term of this Declaration, that this Declaration, and the covenants and restrictions set forth in this Declaration regulating and restricting the use, occupancy and transfer of the Project: (1) shall be and are covenants running with the Project land, encumbering the Project for the term of this Declaration, binding upon the Owner's successors in title and all subsequent Owners and Operators of the Project; (2) are not merely personal covenants of the Owner; and (3) shall bind the Owner (and the benefits shall inure to the HACC and any past, present or prospective tenant of the Project) and its respective successors and assigns during the term of this Declaration. The Owner agrees that any and all requirements of the laws of the State of Oregon to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements of privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the Project. For the term of this Declaration, each and every contract, deed or other instrument hereafter signed conveying the Project or portion thereof shall expressly provide that such conveyance is subject to this Declaration, provided, however, the covenants contained herein shall survive

and be effective regardless of whether such contract, deed, or other instrument hereafter signed conveying the Project or portion thereof provides that such conveyance is subject to this Declaration.

- (C) The Owner covenants to obtain the consent of any prior recorded lienholder on the Project to this Declaration.

SECTION 3 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER

The Owner represents, covenants, and warrants as follows:

- (A) The Owner (1) is qualified to transact business under the laws of the State of Oregon, (2) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (3) has the full legal right, power and authority to sign and deliver this Declaration.
- (B) The execution and performance of this Declaration by the Owner (1) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, (2) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it or the Project is bound, and (3) will not result in the creation or imposition of any prohibited encumbrance of any nature.
- (C) The Owner will, at the time of execution and delivery of this Declaration, have good and marketable title to the Property free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Declaration, any Loan Documents relating to the Project or other permitted encumbrances).
- (D) There is no action, suit, or proceeding at law or in equity, or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Declaration) or would materially adversely affect its financial condition.
- (E) The Project constitutes or will constitute a qualified low-income building or qualified low-income project, as applicable, as defined in 24 CFR Part 983 and applicable regulations.
- (F) **Twenty units in the Project are Project Based Voucher (HACC-Assisted) Units.**

During the term of this Declaration:

- All of the HACC-Assisted Units must be leased, rented or made available to members of the general public whose incomes are less than or equal to 30% of the median income.
- Rents for the HACC-Assisted Units will not exceed the gross rent allowable under 24 CFR 983.301.

The determination of whether a tenant meets the income requirement shall be made by the HACC or its designated agent at least annually in accordance with 24 CFR 983.

- (G) During the term of this Declaration, Owner will maintain the Project and each HACC-Assisted unit in accordance with the Property Standards requirements of 24 CFR 983.103.
- (H) Subject to the requirements of 24 CFR Part 983 and this Declaration, the Owner may sell, transfer or exchange the entire Project at any time, but the Owner shall notify in writing and obtain the prior agreement of any buyer or successor or other person acquiring the Project or any interest therein that such acquisition is subject to the requirements of this Declaration and to the requirements of 24 CFR Part 983 and applicable regulations. This provision shall not act to waive any other restriction on sale, transfer, or exchange of the Project or any low-income portion of the Project. The Owner agrees that the HACC may void any sale, transfer, or exchange of the Project if the buyer or successor or other person fails to assume in writing the requirements of this Declaration and the requirements of 24 CFR Part 983.

Notwithstanding any other provisions herein, the sale, transfer, assignment or exchange of all or a portion of the interest of _____ (the "Investor Partner"), in Owner shall not require the HACC's consent and shall not constitute a sale, transfer or assignment for purposes of this Agreement.

In addition, the withdrawal, or removal of the Managing Member of the Owner for cause pursuant to the terms of the Owner's Amended and Restated Agreement of Limited Partnership shall not constitute a default hereunder or under the Agreement, provided that the substitute Managing Member is reasonably acceptable to the HACC and is admitted to Owner within ninety days thereafter.

- (I) The Owner will notify the HACC in writing prior to any sale, transfer, or exchange of the entire Project or any low-income portion of the Project.
- (J) The Owner shall not demolish any part of the Project, substantially subtract from any real or personal property of the Project, or permit the use of any residential rental unit for any purpose other than rental housing during the term of this Declaration unless required by law or unless the HACC has given its prior written consent.
- (K) The Owner represents, warrants, and agrees that if the Project, or any part thereof, shall be damaged, destroyed, shall be condemned, or acquired for public use, the Owner will use its best efforts, subject to the rights of any mortgagee, to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Declaration.
- (L) The Owner warrants that it has not and will not sign any other Declaration with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Declaration are

paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

SECTION 4 - TERM OF DECLARATION

- (A) This Declaration, and the Terms of Affordability specified herein, applies to the use of PROCEEDS in the Project immediately upon recordation, and the Owner shall comply with all restrictive covenants herein not later than the first day in the Project period on which any building which is part of the Project is placed in service. This Declaration shall terminate on the later of 60 years after the Project Completion Date or the date on which the loan is paid in full.
- (B) This Declaration and the Terms of Affordability shall remain in effect for not less than the period described in section (A) above without regard to the term of the mortgage of other underlying security and without regard to any transfer of ownership; provided however, that the requirements herein, shall be terminated upon foreclosure or transfer in lieu of foreclosure, but shall be revived according to the original terms if during the original term, the owner of record before the foreclosure or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property.

SECTION 5 – HACC’S RIGHT TO INSPECT; OWNER’S OBLIGATION TO REPORT

- (A) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the HACC, to inspect any books and records of the Owner regarding the Project with respect to the incomes of Low-Income tenants which pertain to compliance with the HACC’s Occupancy Restrictions specified in this Declaration.
- (B) The Owner shall submit any other information, documents, or certifications requested by the HACC which the HACC shall deem reasonably necessary to substantiate the Owner’s continuing compliance with the provisions of the HACC’s Occupancy Restrictions specified in this Declaration.

SECTION 6 - ENFORCEMENT OF 24 CFR 983 AFFORDABLE HOUSING AND INCOME TARGETING REQUIREMENTS

- (A) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of 24 CFR Part 983 and applicable regulations of this Declaration. Moreover, Owner covenants to take any lawful action (including amendment of this Declaration as may be necessary, in the opinion of the HACC) to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed and published by HUD from time to time pertaining to Owner’s obligations under 24 CFR Part 983 and affecting the Project.
- (B) The Owner acknowledges that the primary purpose for requiring compliance by the Owner with restrictions provided in this Declaration is to assure compliance of the Project and the Owner with 24 CFR 983 and the applicable regulations, AND BY REASON THEREOF, THE OWNER, IN CONSIDERATION FOR RECEIVING HACC INVESTMENT PARTNERSHIPS PROGRAM FUNDS FOR THIS PROJECT, AGREES AND CONSENTS THAT THE HACC AND ANY TENANT WHO MEETS THE INCOME LIMITATION APPLICABLE UNDER 24 CFR 983 (WHETHER PROSPECTIVE, PRESENT OR FORMER OCCUPANT) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS DECLARATION IN A STATE COURT OF COMPETENT JURISDICTION. The Owner further specifically acknowledges that the beneficiaries of the Owner’s obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.
- (C) The Owner agrees that the representations and covenants set forth herein may be relied upon by the HACC and all persons interested in Project compliance under 24 CFR Part 983 and the applicable regulations.
- (D) The Owner agrees to take any and all actions reasonably required by the HACC to substantiate the Owner’s compliance with occupancy restrictions of 24 CFR Part 983 as now constituted or subsequently amended and other occupancy restrictions of the HACC as now constituted or subsequently adopted.
- (E) This Declaration and the Agreement of which it is a part may be enforced by the HACC or its designee in the event the Owner fails to satisfy any of the requirements herein. In addition, this Declaration shall be deemed a contract enforceable by one or more Tenants as third-party beneficiaries of the Declaration and Agreement. In the event the Owner fails to satisfy the requirements of this Declaration or the Agreement and legal costs are incurred by the HACC or one or more of the tenants or beneficiaries, such legal costs, including reasonable attorney fees and court costs (including costs of appeal), are the responsibility of, and may be recovered from, the Owner.

SECTION 7 - MISCELLANEOUS

- (A) Severability. The invalidity of any clause, part, or provision of this Declaration shall not affect the validity of the remaining portions thereof.
- (B) Notices. All notices to be given pursuant to this Declaration shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

TO THE HACC: Housing Services Manager
 Housing Authority of Clackamas County
 13930S. Gain Street, Oregon City, OR 97045

TO THE OWNER: _____

WITH A COPY TO: _____

The HACC, Owner and its Investor Partner, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

- (C) Amendment. The Owner agrees that it will take all actions necessary to effect amendment of this Declaration as may be necessary to comply with 24 CFR Part 983, any and all applicable rules, regulations, policies, procedures, rulings, or other official statements pertaining to the HACC assistance. The HACC, together with Owner, may sign and record any amendment or modification to this Declaration and such amendment or modification shall be binding on third-parties granted rights under this Declaration.
- (D) Governing Law. This Declaration shall be governed by the laws of the State of Oregon, and, where applicable, the laws of the United States of America, without giving effect to the conflict of law provisions there of.
- (E) Survival of Obligations. The obligations of the Owner as set forth herein and in the Application shall survive the reservation of HACC funds and shall not be deemed to terminate or merge with the awarding of the funds.

Owner has caused this Declaration to be signed by its duly authorized representatives, as of the day and year first written above.

Dated: _____, 2017

BORROWER: _____
 By: _____, its General Partner
 By: _____, its Managing Member
 By: _____, its Executive Director

 (Signature)

STATE OF OREGON)

HACC of _____) ss.

On _____, 2017, before me personally appeared _____, who being duly sworn, stated that he/she is the _____ of _____ and acknowledged the foregoing instrument to be the voluntary act and deed of the Borrower, signed by authority of Borrower.

 Notary Public for Oregon
 My commission expires: _____

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

PARCEL 1:

Part of Section 28, Township 1 South. Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows, to-wit:

Beginning 88 rods East of the Southwest corner of the Samuel W. McMahan Homestead Claim Notification No.5746, as described in Volume "S". Page 295. Deed Records, which beginning point is the Southeast corner of the Orren Battin tract described in Book 120. Page 110. Deed Records; thence East along the North line of the W.S. Buckley Donation Land Claim, a distance of 16 rods to the Southwest corner of the Shepherd tract described in Book 235, Page 235. Deed Records ; thence North along the West line of said Shepherd tract 40 rods to the North line of the Thomas E. Battin tract described in Book "H". Page 216. Deed Records; thence West along said North line 16 rods to the Northeast corner of the Orren Battin tract aforementioned; thence South 40 rods to the point of beginning.

EXCEPTING THEREFROM that portion lying within that tract described in deed to Clackamas County in Fee No. 77 17914.

ALSO EXCEPTING THEREFROM that portion conveyed to the State of Oregon, by Deed recorded under Recorder's Fee No. 71 30200.

PARCEL 2:

Part of the Southwest one-quarter of Section 28. Township 1 South. Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning 58 rods East of the Southwest corner of the Donation Land Claim No. 5746, known as the Donation Land Claim of Samuel W. McMahan; running thence North 88° 55' East, 264 feet to an iron pipe which is the true point of beginning of the tract herein described; running thence North 3° 03' West, 640.2 feet to an iron pipe; thence North 88° 57' East, 231 feet to an iron pipe; thence South 3° 03' East, 640.35 feet to an iron pipe; thence South 88° 55' West, 231 feet to the true place of beginning.

EXCEPT that portion conveyed to the State of Oregon by deed recorded under Recorder's Fee No. 72 12686.

AFTER RECORDING RETURN TO:
Housing Authority of Clackamas County
13930 S. Gain Street
Oregon City, OR 97045

STATUTORY NOTICE:
The name and address of the entity holding a lien or other interest created by this instrument are set forth below, and the tax account number of the property subject to the lien or in which the interest is created is: Housing Authority of Clackamas County

Legal Description – Exhibit "A" Attached

**TRUST DEED, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING
HOUSING AUTHORITY OF CLACKAMAS COUNTY DISPOSITION PROCEEDS
Name of Project: Rosewood Terrace Apartments**

THIS TRUST DEED, ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FIXTURE FILING (this "Trust Deed") is made as of _____, 2017 by **Rosewood Terrace Limited Partnership** ("Grantor" or "Borrower"), having its office at _____, to _____ ("Trustee" or "Title Company"), for the benefit of the Housing Authority of Clackamas County, a public corporation created pursuant to the Housing Authorities Law of ORS 456, having its office at 13930 S. Gain Street, Oregon City, OR 97045 ("Beneficiary" or "HACC").

HACC has offered to make a **three percent (3.0%) interest** loan to Borrower in the sum of **One Million One Hundred Thousand and no/100 dollars (\$1,100,000.00)** from funds generated by the sale of public housing units under Section 18 of the U.S. Housing Act of 1937, and 24 CFR 970 "Proceeds". The loan is evidenced by this Trust Deed, a Promissory Note, a Loan Agreement and a Declaration of Land Use Restrictive Covenants, as they may be amended or supplemented from time to time, together referred to as the "**Loan Documents**." Capitalized terms have the meaning set forth in the Loan Agreement, except as otherwise defined in this Trust Deed. The purpose(s) of the loan are set forth in the Loan Agreement entered into between the parties.

The loan is due and payable in full at the earliest of: the Maturity Date which is exactly **sixty years from the executed date of this Trust Deed** except as otherwise provided in (i) the Loan Agreement, (ii) the date the property is sold, (iii) title is transferred or (iv) the Borrower defaults on any of its obligations under the Loan Documents (see Article 5.01 below).

As a condition to the making of the loan to Borrower, Borrower has agreed to sign, deliver and record this Trust Deed.

For good consideration, receipt of which is acknowledged, and for the purpose of securing the Obligations described in Section 1.01 below, Borrower irrevocably grants, bargains, sells, conveys, assigns, and transfers to Title Company in trust for the benefit and security of the HACC, with power of sale and right of entry and possession, all of Borrower's right, title, and interest in and to the real property located in Clackamas County, Oregon, described as:

See Exhibit A attached hereto and incorporated herein,

Together with all the tenements, hereditaments and appurtenances and all other rights thereunto belonging or in any way now or hereafter appertaining, and the rents, issues and profits thereof, (the "Property"); together with all rights, titles and interests of Grantor, now owned or hereafter acquired, in and to any and all buildings and other improvements of every nature now or hereafter located on the Property and all fixtures now or hereafter attached to or used in connection with the Property and all appurtenances and additions to and substitutions and replacements of them (the "Improvements"). All of the above is sometimes referred to below as the "Trust Property."

PROVIDED ALWAYS, that if all the Obligations (as defined in Section 1.01 below) shall be paid, performed, and satisfied in full, then the lien and estate granted by this Trust Deed shall be reconveyed.

BORROWER COVENANTS AND AGREES AS FOLLOWS:

ARTICLE I

Particular Covenants and Warranties of Borrower

1.01 Obligations Secured. This Trust Deed secures the prompt payment of all indebtedness and other monetary obligations, including but not limited to principal and interest, and the prompt performance of all covenants and obligations of Borrower, under this Trust Deed and the other Loan Documents, whether such payment and performance is now due or becomes due in the future ("Obligations").

1.02 Property. Borrower warrants that it holds good and merchantable title to the Property and the Improvements, free and clear of all liens, encumbrances, reservations, restrictions, easements, and adverse claims except those specifically listed in **Exhibit B**. Borrower covenants that it shall forever defend HACC's and Title Company's rights under this Trust Deed against the adverse claims and demands of all persons.

1.03 [Reserved]

1.04 Further Assurances; Filing; Refiling; Etc.

- 1) Borrower shall sign, acknowledge, and deliver, from time to time, such further instruments as HACC or Title Company may require to accomplish the purposes of this Trust Deed.
- 2) Borrower, immediately upon the signing and delivery of this Trust Deed, and thereafter from time to time, shall cause this Trust Deed, any supplemental security agreement, mortgage, or deed of trust and each instrument of further assurance, to be recorded and re-recorded in such manner and in such places as may be required by any present or future law in order to perfect, and continue perfected, the lien and estate of this Trust Deed.
- 3) Borrower shall pay all filing and recording fees, and all expenses incident to the signing, filing, recording, and acknowledgment of this Trust Deed; any security agreement, mortgage, or deed of trust supplemental hereto and any instrument of further assurance; and all federal, state, county, and municipal taxes, assessments and charges arising out of or in connection with the signing, delivery, filing, and recording of this Trust Deed, any supplemental security agreement, mortgage, or deed of trust and any instrument of further assurance.

1.05 Compliance with Laws. Borrower represents, warrants, and covenants that:

- 1) The Trust Property has been or will be developed, and all improvements, if any, have been or will be constructed and maintained, in full compliance with all applicable laws, statutes, ordinances, regulations, and codes of all federal, state, and local governments, including the Housing Choice Voucher Program Requirements (collectively "Laws"), and all covenants, conditions, easements, and restrictions affecting the Trust Property (collectively "Covenants"); and
- 2) Borrower and its operations upon the Trust Property currently comply, and will comply in all material respects with all applicable Laws and Covenants.

1.06 Definitions; Environmental Covenants; Warranties and Compliance

- 1) For purposes of this section, "Environmental Law" means any federal, state, or local law, statute, ordinance, or regulation pertaining to Hazardous Substances, health, industrial hygiene, or environmental conditions, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 USC §9601-9675, and the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended, 42 USC §6901-6992.
- 2) For the purposes of this section, "Hazardous Substance" includes, without limitation, any material, substance, or waste that is or becomes regulated or that is or becomes classified as hazardous, dangerous, or toxic under any federal, state, or local statute, ordinance, rule, regulation, or law.
- 3) Borrower will not use, generate, manufacture, produce, store, release, discharge, or dispose of on, under or about the Property or the Property's groundwater, or transport to or from the Property, any Hazardous Substance and will not permit any other person to do so, except for such Hazardous Substances that may be used in the ordinary course of Borrower's business and in compliance with all Environmental Laws, including but not limited to those relating to licensure, notice, and record keeping.
- 4) Borrower will keep and maintain the Property in compliance with, and shall not cause or permit all or any portion of the Property, including groundwater, to be in violation of any Environmental Law.
- 5) Borrower shall give prompt written notice to HACC of:
 - (a) Any proceeding, inquiry, or notice by or from any governmental authority with respect to any alleged violation of any Environmental Law or the presence of any Hazardous Substance on the Property or the migration of any Hazardous Substance from or to other premises;
 - (b) All known claims made or threatened by any person against Borrower or with respect to the Property or Improvements relating to any loss or injury resulting from any Hazardous Substance or the violation of any Environmental Law;
 - (c) The existence of any Hazardous Substance on or about all or any portion of the Property in violation of Environmental Law; or
 - (d) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could in Borrower's judgment cause any restrictions on the ownership, occupancy, transferability, or use of the Property under any Environmental Law.
- 6) Borrower shall promptly provide to HACC copies of all reports, documents, and notices provided to or received from any agency administering any Environmental Laws. HACC shall have the right to join and participate, in its own name if it so elects, in any legal proceeding or action initiated with respect to the Property or Improvements in connection with any Environmental Law and have its attorney fees in connection with such an action paid by

Borrower, if HACC determines that such participation is reasonably necessary to protect its interest in the Trust Property.

- 7) If, at any time, HACC has reason to believe that any release, discharge, or disposal of any Hazardous Substance affecting the Property or Improvements in violation of Environmental Law has occurred or is threatened, or if HACC has reason to believe that a violation of an Environmental Law has occurred or may occur with respect to the Property or Improvements, HACC may require Borrower to obtain or may itself obtain, at Borrower's expense, an environmental assessment of such condition or threatened condition by a qualified environmental consultant. Borrower shall promptly provide to HACC a complete copy of any environmental assessment obtained by Borrower.
- 8) In the event that any investigation, site monitoring, containment, cleanup, removal, restoration, or other remedial work of any kind or nature (the "Remedial Work") is required under any applicable Environmental Law, any judicial order, or by any governmental agency or person because of, or in connection with, the current or future presence, suspected presence, release or suspected release of a Hazardous Substance on, under, or about all or any portion of the Property, or the contamination (whether presently existing or occurring after the date of this Trust Deed) of the buildings, facilities, soil, groundwater, surface water, air, or other elements on or under any other property as a result of Hazardous Substances emanating from the Property, Borrower shall, within 30 days after written demand by HACC for Borrower's performance under this provision (or such shorter period of time as may be required under any applicable law, regulation, order, or agreement), commence and thereafter diligently prosecute to completion, all such Remedial Work. All costs and expenses of such Remedial Work shall be paid by Borrower including, without limitation, HACC's reasonable professional fees and costs incurred in connection with monitoring or review of the legal aspects of such Remedial Work. In the event Borrower shall fail to timely commence, or cause to be commenced, such Remedial Work, HACC may, but shall not be required to, cause such Remedial Work to be performed. In that event, all costs and expenses incurred in connection with the Remedial Work shall become part of the Obligations secured by this Trust Deed and shall bear interest at a rate of 8% per annum, compounded annually, until paid at the rate provided in the Note.
- 9) Borrower shall hold HACC, its elected officials, directors, officers, employees, agents, successors, and assigns, harmless from, indemnify them for, and defend them against any and all losses, damages, liens, costs, expenses and liabilities directly or indirectly arising out of or attributable to any violation of any Environmental Law, any breach of Borrower's warranties in this Section 1.06, or the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under, or about the Property, including without limitation the costs of any required repair, cleanup, containment, or detoxification of the Property, the preparation and implementation of any closure, remedial or other required plans, attorney fees and costs (including but not limited to those incurred in any proceeding and in any review or appeal), fees, penalties, and fines.
- 10) To the best of Borrower's knowledge, Borrower represents and warrants to HACC that:
 - (a) Neither the Property nor Borrower is in violation of any Environmental Law or subject to any existing, pending, or threatened investigation by any governmental authority under any Environmental Law.
 - (b) Borrower has not and is not required by any Environmental Law to obtain any permit or license other than those it has obtained to construct or use the Improvements.
 - (c) To the best of Borrower's knowledge, no Hazardous Substance has ever been used, generated, manufactured, produced, stored, released, discharged, or disposed of on, under, or about the Property in violation of any Environmental Law.
- 11) All representations, warranties, and covenants in this Section 1.06 shall survive the satisfaction of the Obligations, the reconveyance of the Trust Property, or the foreclosure of this Trust Deed by any means.

1.07 Maintenance and Improvements. Borrower shall not permit all or any part of the Improvements to be removed, demolished, or materially altered without HACC's prior written consent; provided, however, that Borrower may remove, demolish, or materially alter such Improvements as become obsolete in the usual conduct of Borrower's business, if the removal or material alteration does not materially detract from the operation of the Borrower's business and if all Improvements that are demolished or removed are promptly replaced with Improvements of like value and quality. Borrower shall maintain every portion of the Property and Improvements in good repair, working order, and condition, so that it continues to meet the property standards set forth in 24 CFR 983.11 for new construction, and shall at HACC's election restore, replace, or rebuild all or any part of the Improvements now or hereafter damaged or destroyed by any casualty (whether or not insured against or insurable) or affected by any Condemnation (as defined in Section 2.01 below) pursuant to Sections 1.14 and 2.01, as applicable. Borrower shall not commit, permit, or suffer any waste, strip, or deterioration of the Trust Property, reasonable wear and tear excepted.

1.08 Liens. Subject to subparagraph 1.09(2), Borrower shall pay when due all claims for labor, materials, or supplies that if unpaid might become a lien on all or any portion of the Trust Property. Subject to subparagraph 1.09(2), Borrower shall not create, or suffer, or permit to be created, any mortgage, deed of trust, lien, security interest, charge, or encumbrance upon the Trust Property prior to, on a parity with, or subordinate to the lien of this Trust Deed, except as specifically provided in **Exhibit B**.

1.09 Impositions

- 1) Borrower shall pay or cause to be paid, when due and before any fine, penalty, interest, or cost attaches, all taxes, assessments, fees, levies, and all other governmental and nongovernmental charges assessed or levied against any part of the Trust Property (the "Impositions"); provided, however, that if such Imposition may be paid in installments, Borrower may pay the same in installments, together with accrued interest on the unpaid balance, as the same become due, before any fine, penalty, or cost attaches.
- 2) Borrower may, at its expense and after prior notice to HACC, contest by appropriate legal, administrative, or other proceedings conducted in good faith and with due diligence, the amount, validity, or application of any Imposition or lien on the Trust Property or any claim of any laborer, material man, supplier, or vendor or lien, and may

withhold payment of the same pending completion of such proceedings if permitted by law, provided that (a) such proceedings shall suspend collection from the Trust Property; (b) no part of or interest in the Trust Property will be sold, forfeited, or lost if Borrower pays the amount or satisfies the condition being contested, and Borrower would have the opportunity to do so in the event of Borrower's failure to prevail in the contest; (c) neither HACC nor Title Company shall, by virtue of such permitted contest, be exposed to any risk of liability for which Borrower has not furnished additional security as provided in clause (d) below; and (d) Borrower shall have furnished to HACC cash, corporate surety bond, or other additional security in the amount determined by HACC with respect of the claim being contested or the loss or damage that may result from Borrower's failure to prevail in such contest in an amount sufficient to discharge the Imposition and all interest, costs, attorney fees, and other charges that may accrue in connection with the Imposition. Borrower shall promptly satisfy any final judgment.

- 3) Borrower shall furnish to HACC, promptly upon request, satisfactory evidence of the payment of all Impositions. HACC is authorized to request and receive from the responsible governmental and non-governmental personnel written statements with respect to the accrual and payment of all Impositions.

1.10 Books and Records; Inspection of the Property. Borrower shall keep complete and accurate records and books of account with respect to the Trust Property and its operation in accordance with generally accepted accounting principles consistently applied, and in accordance with the record-keeping requirements of the Loan Agreement. Borrower shall permit Title Company, HACC, the Secretary of the U.S Department of Housing and Urban Development (HUD) and the Comptroller General of the U.S., and their authorized representatives to enter and inspect the Property and the Improvements, and to examine and make copies or extracts of the records and books of account of the Borrower with respect to the Property and the Improvements, all at such reasonable times as HACC or Title Company may choose.

1.11 Limitations of Use. Borrower shall not initiate, join in, or consent to any rezoning of the Property or any change in any Covenant or other public or private restrictions limiting or defining the uses that may be made of all or any part of the Property and the Improvements without the prior written consent of HACC.

1.12 Insurance

- 1) Property and Other Insurance. Borrower shall obtain and maintain in full force and effect during the term of this Trust Deed:
 - (a) Causes of Loss – Special Form property insurance together with endorsements for replacement cost, inflation adjustment, malicious mischief, and sprinkler damage coverages, all in amounts not less than the full replacement cost of all Improvements, without reduction for co-insurance;
 - (b) Commercial general liability insurance, including liabilities assumed under contract, with limits, coverages, and risks insured acceptable to HACC, and in no event less than \$2,000,000 per occurrence and \$4,000,000 aggregate coverage; and
 - (c) Unless HACC otherwise agrees in writing, rent loss or business interruption insurance in an amount no less than the total annual rents provided for in all leases for the Trust Property. In addition, Borrower shall obtain and maintain all such other insurance coverages, which at the time are commonly carried for similar property, in such amounts as HACC may require.
- 2) Insurance Companies and Policies. All insurance shall be written by a company or companies reasonably acceptable to HACC with a rating of A VIII or better as provided in Best's Rating Guide; shall contain a long form mortgagee clause in favor of HACC with loss proceeds under any policy payable to HACC, subject to the terms of this Trust Deed and the rights of any superior mortgagee or trust deed beneficiary or as provided in Section 6.10 below; shall require 30 days' prior written notice to HACC of cancellation or reduction in coverage; shall contain waivers of subrogation and endorsements that no act or negligence of Borrower or any occupant, and no occupancy or use of the Property for purposes more hazardous than permitted by the terms of the policy will affect the validity or enforceability of such insurance as against HACC; shall be in full force and effect on the date of this Trust Deed; and shall be accompanied by proof of premiums paid for the current policy year. HACC shall be named as additional insured on all liability policies. Borrower shall forward to HACC, upon request, certificates evidencing the coverages required under this Trust Deed and copies of all policies.
- 3) Blanket Policy. If a blanket policy is issued, a certified copy of such policy shall be furnished together with a certificate indicating that the Trust Property and HACC are insured under such policy in the proper designated amount.
- 4) Insurance Proceeds. All proceeds from any insurance on the Trust Property shall be used in accordance with the provisions of Section 1.14.

1.13 Assignments of Policies upon Foreclosure. In the event of foreclosure of the lien of this Trust Deed or other transfer of title, or assignment of the Trust Property in whole or in part, all right, title, and interest of Borrower in and to all policies of insurance procured under Section 1.12 shall inure to the benefit of and pass to the successors in interest of Borrower or the purchaser or grantee of all or any part of the Trust Property.

1.14 Casualty/Loss Restoration

- 1) After the occurrence of any casualty to the Property, whether or not required to be insured against as provided in this Trust Deed, Borrower shall give prompt written notice of the casualty to HACC, specifically describing the nature and cause of such casualty and the extent of the damage or destruction to the Trust Property. HACC may make proof of loss if it is not made promptly and to HACC's satisfaction by Borrower.
- 2) Subject to the rights of any superior mortgagee or trust deed beneficiary as provided in Section 6.10 below, Borrower assigns to HACC all insurance proceeds that Borrower may be entitled to receive with respect to any casualty. All insurance proceeds shall be held by HACC as collateral to secure performance of the Obligations secured by this Trust Deed. Provided that Borrower is not in default under this Trust Deed, HACC shall permit such amounts of the insurance proceeds to be used by Borrower for repair or restoration of the Improvements (subject to disbursement procedures established by HACC) if Borrower can demonstrate, to HACC's satisfaction,

that subsequent to such repair or restoration, the Trust Property shall have a value of not less than 100% of the then-outstanding balance of the indebtedness secured by this Trust Deed. Any excess insurance proceeds shall be applied by HACC toward payment of all or part of the indebtedness secured by this Trust Deed in such order as HACC may determine.

1.15 Actions to Protect Trust Property; Reserves

- 1) If Borrower shall fail to obtain the insurance required by Section 1.12, make the payments required by Section 1.09 (other than payments that Borrower is contesting in accordance with Section 1.09(2)), or perform or observe any of its other covenants or agreements under this Trust Deed, HACC may, without obligation to do so, obtain or pay the same or take other action that it deems appropriate to remedy such failure; provided that HACC shall first give notice to Borrower of such failure and a reasonable opportunity to cure such failure. All sums, including reasonable attorney fees, so expended or expended to maintain the lien or estate of this Trust Deed or its priority, or to protect or enforce any of HACC's rights, or to recover any indebtedness secured by this Trust Deed, shall be a lien on the Trust Property, shall be secured by this Trust Deed, and shall be paid by Borrower upon demand, together with interest at the rate provided in the Note. No payment or other action by HACC under this section shall impair any other right or remedy available to HACC or constitute a waiver of any default.
- 2) If Borrower fails to promptly perform any of its obligations under Section 1.09 or 1.12 of this Trust Deed, HACC may require Borrower thereafter to pay and maintain with HACC reserves for payment of such obligations. In that event, Borrower shall pay to HACC each month a sum estimated by HACC to be sufficient to produce, at least 20 days before due, an amount equal to the Impositions and/or insurance premiums. If the sums so paid are insufficient to satisfy any Imposition or insurance premium when due, Borrower shall pay any deficiency to HACC upon demand. The reserves may be commingled with HACC's other funds, and HACC shall not be required to pay interest to Borrower on such reserves. HACC shall not hold the reserve in trust for Borrower, and HACC shall not be the agent of Borrower for payment of the taxes and assessments required to be paid by Borrower.

1.16 Insurance Warning. Unless Borrower provides HACC with evidence of the insurance coverage required by the Loan Documents, HACC may purchase insurance at Borrower's expense to protect HACC's interest. This insurance may, but need not, also protect Borrower's interest. If the Trust Property becomes damaged, the coverage HACC purchases may not pay any claim Borrower makes or any claim made against Borrower. Borrower may later cancel this coverage by providing evidence that Borrower has obtained property coverage elsewhere.

Borrower is responsible for the cost of any insurance purchased by HACC. The cost of this insurance may be added to Borrower's loan balance. If the cost is added to Borrower's loan balance, the interest rate of 8% per annum compounded annually will apply to this added amount. The effective date of coverage may be the date Borrower's prior coverage lapsed or the date Borrower failed to provide proof of coverage.

The coverage HACC purchases may be considerably more expensive than insurance Borrower can obtain on its own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

1.17 Estoppel Certificates. Borrower, within five days of the request, shall furnish Title Company and HACC a written statement, duly acknowledged, of the amount of the Obligations secured by this Trust Deed and whether any offsets or defenses exist against such Obligations. If Borrower shall fail to furnish such a statement within the time allowed, HACC shall be authorized, as Borrower's attorney-in-fact, to sign and deliver such statement.

1.18 Financial Information. Borrower shall furnish to HACC within 90 days after the end of each of Borrower's fiscal years a complete copy of Borrower's financial statement for such year, audited or reviewed by a certified public accountant (including balance sheet, income statement, and statement of changes in financial position). Borrower shall promptly furnish to HACC any and all such other financial information as HACC shall reasonably request from time to time.

ARTICLE II Condemnation

2.01 Condemnation

- 1) Should any part of or interest in the Trust Property be taken or damaged by reason of any public improvement, eminent domain, condemnation proceeding, or in any similar manner (a "Condemnation"), or should Borrower receive any notice or other information regarding such action, Borrower shall give immediate notice of such action to HACC.
- 2) Subject to the rights of any superior mortgagee or trust deed beneficiary as provided in Section 6.10 below, HACC shall be entitled to all compensation, awards, and other payments or relief ("Condemnation Proceeds") up to the full amount of the Obligations, and shall be entitled, at its option, to commence, appear in, and prosecute any Condemnation proceeding in its own or Borrower's name and make any compromise or settlement in connection with such Condemnation. In the event the Trust Property is taken in its entirety by condemnation, all Obligations secured by this Trust Deed, at HACC's election, shall become immediately due and collectible.
- 3) All condemnation proceeds shall be held by HACC as collateral to secure performance of the Obligations secured by this Trust Deed. Provided that Borrower is not in default under this Trust Deed, HACC shall permit such amounts of the condemnation proceeds to be used by Borrower for repair or restoration of the Improvements (subject to reasonable disbursement procedures established by HACC) if Borrower can demonstrate, to HACC's reasonable satisfaction, that subsequent to such repair or restoration, the Trust Property shall have a value of not less than 100% of the then-outstanding balance of the indebtedness secured by this Trust Deed. Any excess condemnation proceeds shall be applied by HACC toward payment of all or part of the indebtedness secured by this Trust Deed in such order as HACC may determine.

ARTICLE III

Assignment of Leases, Rents, Issues, and Profits

3.01 Assignment. Borrower assigns and transfers to HACC (1) all leases, subleases, licenses, rental contracts, and other agreements, whether now existing or hereafter arising, and relating to the occupancy or use of all or any portion of the Trust Property, including all modifications, extensions, and renewals thereof (the "Leases"), and (2) all rents, revenues, issues, profits, income, proceeds, and benefits derived from the Trust Property and the lease, rental, or license of all or any portion thereof, including but not limited to lease and security deposits (collectively, the "Rents"). Borrower certifies that the Rents have not been currently assigned to any third party. This assignment is intended by Borrower and HACC to create a present and unconditional assignment to HACC subject only to the license set forth in Section 3.04 below.

3.02 Rights of HACC. Subject to the provisions of Section 3.04 below giving Borrower a revocable, limited license, HACC shall have the right, power, and authority to:

- 1) Notify any and all tenants, renters, licensees, and other obligors under any of the Leases that the same have been assigned to HACC and that all Rents are to be paid directly to HACC, whether or not HACC shall have foreclosed or commenced foreclosure proceedings against the Trust Property, and whether or not HACC has taken possession of the Trust Property;
- 2) Discount, settle, compromise, release, or extend the time for payment of, any amounts owing under any of the Leases and any Rents, in whole or in part, on terms acceptable to HACC;
- 3) Collect and enforce payment of Rents and all provisions of the Leases, and to prosecute any action or proceeding, in the name of Borrower or HACC, with respect to any and all Leases and Rents; and
- 4) Exercise any and all other rights and remedies of the lessor in connection with any of the Leases and Rents.

3.03 Application of Receipts. HACC shall have the right, power, and authority to use and apply any Rents received under this Trust Deed (1) for the payment of any and all costs and expenses incurred in connection with enforcing or defending the terms of this assignment or the rights of HACC, and in collecting any Rents; and (2) for the operation and maintenance of the Trust Property and the payment of all costs and expenses (including internal personnel costs) in connection therewith, including but not limited to the payment of utilities, taxes, assessments, governmental charges, and insurance. After the payment of all such costs and expenses and after HACC shall have set up such reserves as it shall deem necessary in its sole discretion for the proper management of the Trust Property, HACC shall apply all remaining Rents collected and received by it to the reduction of the Obligations in such order as HACC shall determine. The exercise or failure by HACC to exercise any of the rights or powers granted in this assignment shall not constitute a waiver of default by Borrower under this Trust Deed, the Note, or any of the other Loan Documents.

3.04 License. HACC grants to Borrower a revocable license to collect and receive the Rents. Such a license may be revoked by HACC, without further notice to Borrower, other than the notice required by Article 5.01, if Borrower defaults under Article III or any other term of the loan documents. Unless and until a license is revoked, Borrower agrees to apply the proceeds of Rents to ownership obligations, taxes, assessments, governmental charges, insurance premiums, and other obligations associated with the Trust Property, and to maintenance of the Trust Property, before using Rent proceeds for any other purpose.

Borrower agrees:

- 1) To observe and perform all Lease obligations;
- 2) To enforce, or secure the performance of, every obligation required of lessees and other parties under the Leases;
- 3) To appear in and defend any action or proceeding arising out of, or connected with, the Leases or Rents, at Borrower's sole expense; and
- 4) To obtain HACC's prior written approval of the form and content of all future Leases.

Upon request of HACC, Borrower agrees:

- 1) To collect Rents no earlier than 30 days in advance of the day when they are due: and
- 2) Not to accept any payments under the Leases other than Rent, except for bona fide security deposits up to an amount equivalent to two months' rent.

3.05 Limitation of HACC's Obligations. Notwithstanding the assignment provided for in this Article III, HACC shall not be obligated to perform or discharge, and HACC does not undertake to perform or discharge, any obligation or liability with respect to the Leases or the Rents. This assignment shall not operate to place responsibility for the control, care, maintenance, or repair of the Trust Property upon HACC, or to make HACC responsible for any condition of the Property. HACC shall be accountable to Borrower only for the sums actually collected and received by HACC pursuant to this assignment. Borrower shall hold HACC fully harmless from, indemnify HACC for, and defend HACC against any and all claims, demands, liabilities, losses, damages, and expenses, including reasonable attorney fees, arising out of any of the Leases, with respect to any of the Rents, or in connection with any claim that may be asserted against HACC on account of this assignment or any obligation or undertaking alleged to arise therefrom, other than such claims resulting from the gross negligence or willful misconduct of HACC.

3.06 Termination. The assignment provided for in this Article III shall continue in full force and effect until all the Obligations have been fully paid and satisfied. At such time, this assignment and the authority and powers herein granted by Borrower to HACC shall cease and terminate.

3.07 Attorney-in-Fact. Borrower irrevocably constitutes and appoints HACC, and each of its officers and agents, as its true and lawful attorney-in-fact, with power of substitution, to undertake and sign any and all of the rights, powers, and authorities described in this Article III with the same force and effect as if undertaken or performed by Borrower, and

Borrower ratifies and confirms any and all such actions that may be taken or omitted to be taken by HACC, its employees, agents, and attorneys.

ARTICLE IV

Security Agreement and Fixture Filing

4.01 Security. To secure the Obligations, Borrower grants to HACC a security interest in the following: (1) the Trust Property to the extent the same is not encumbered by this Trust Deed as a first priority real estate lien, subordinate only to those liens previously approved by the HACC; (2) all personal property that is used or will be used in the construction of any Improvements on the Trust Property; (3) all personal property that is now or will be placed on or in the Trust Property or Improvements; (4) all personal property that is derived from or used in connection with the use, occupancy, or enjoyment of the Trust Property; (5) all property defined in the Uniform Commercial Code as adopted in the state of Oregon, as accounts, equipment, fixtures, and general intangibles, to the extent the same are used at, or arise in connection with the ownership, maintenance, or operation of, the Trust Property; (6) all causes of action, claims, security deposits, advance rental payments, utility deposits, refunds of fees or deposits paid to any governmental authority, refunds of taxes, and refunds of insurance premiums relating to the Trust Property; and (7) all present and future attachments, accessions, amendments, replacements, additions, products, and proceeds of every nature of the foregoing. This Trust Deed shall constitute a security agreement and "fixture filing" under the Uniform Commercial Code Secured Transactions statutes of the State of Oregon. The mailing address of Borrower and the address of HACC from which information may be obtained are set forth in the introductory paragraph of this Trust Deed.

ARTICLE V

Events of Default; Remedies

5.01 Events of Default. Each of the following shall constitute an event of default under the Loan Documents; provided that the party declaring a default has first provided to the other party thirty days written notice specifying the alleged default and giving such other party the opportunity to cure the alleged default during that 30-day period, or during such longer period as is agreed to. Any such written notice and opportunity to cure provided to the **Borrower** must be provided to _____ ("Managing Member"), the general partner of the Borrower, _____ ("Investor Member"), the limited partner of the Borrower. HACC agrees that any cure of any default made or tendered by Investor Member shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

- 1) The Owner has violated any obligation under any other housing assistance payments contract under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).
- 2) Nonpayment. Failure to pay any amount due under the Loan Documents, before the due date.
- 3) Failure of Owner to comply with the Affordability Requirements at any time during the Period of Affordability.
- 4) Breach of Other Covenants. Material failure to perform or abide by any other condition of the Loan Documents.
- 5) Misinformation. Falsity when made in any material respect of any representation, warranty, or information furnished in the Loan Documents or in the application for Disposition Proceeds.
- 6) Other Default. The occurrence of any other event of default under the Loan Documents.
- 7) Cross-Defaults. Owner's default, after expiration of any applicable notice and cure periods, under any other documents related to the Project, including but not limited to the documents which evidence the other sources of funds listed in the Loan Documents.
- 8) Bankruptcy. The occurrence of any of the following with respect to Owner or any guarantor of the Obligations: (a) appointment of a receiver, liquidator, or Title Company for any such party or any of its properties; (b) adjudication as a bankrupt or insolvent; (c) filing of any petition by or against any such party under any state or federal bankruptcy, reorganization, moratorium or insolvency law; (d) institution of any proceeding for dissolution or liquidation; (e) inability to pay debts when due; (f) any general assignment for the benefit of creditors; or (g) abandonment of the Trust Property.
- 9) Transfer; Due-on-Sale. Any sale, conveyance, contract for conveyance, transfer, assignment, encumbrance, pledge, or grant of a security interest in all or any part of the Property, or any interest therein, either voluntarily, involuntarily, or by the operation of law (a "Transfer"), without HACC's prior written consent, shall constitute an event of default. In the case of an LIHTC project, this section shall not apply to a transfer to an affiliate of the Managing Member or the Investor Member of the Borrower, to a successor or assignee of the Managing Member or the removal of any general partner of the Borrower by Investor Member for cause in accordance with Borrower's Amended and Restated Agreement of Limited Partnership Agreement. If a general partner of Borrower is so removed, HACC shall not unreasonably withhold its consent to the substitute general partner, provided that HACC's consent shall not be required if the Investor Member or an entity which is directly or indirectly owned and/or controlled by _____, is the substitute general partner.
- 10) The failure by Owner to (a) perform any obligation under the Loan Documents not involving the payment of money, or (b) comply with any other term or condition applicable to Owner under any of the Loan Documents, and the expiration of thirty (30) days after notice of such failure from County to Owner and Owner's limited partner investor, provided that if such failure cannot reasonably be cured within such thirty (30) day period but is capable, with reasonable diligence, of being cured within a total of ninety (90) days, Owner shall have an additional sixty (60) days in which to effect such cure provided that Owner commences to cure such failure within the initial thirty (30) day period, at all times diligently pursues the cure to completion, and in fact completes such cure within the subsequent sixty (60) day period; provided, however, that the cure periods provided by this Section shall not apply to any such failures to perform or comply that are described elsewhere.
- 11) Any representation or warranty by Owner in any of the Loan Documents is materially incorrect or incomplete or otherwise misleading as of the date made or deemed made, and, if such breach is reasonably susceptible of being cured, the expiration of thirty (30) days after notice of such breach from County to Owner and Owner's limited partner investor without the same being cured.

- 12) Owner (a) is unable, or admits in writing its inability, to pay its monetary obligations as they become due, (b) makes a general assignment for the benefit of creditors, or (c) applies for, consents to or acquiesces in the appointment of a trustee, receiver or other custodian for itself or its property, or, in the absence of such application, consent or acquiescence, a trustee, receiver or other custodian is appointed for Owner or the property of Owner (including the Project), and such appointment is not discharged within sixty (60) days.
- 13) The commencement of any case under the Bankruptcy Code or commencement of any other bankruptcy, arrangement, reorganization, receivership, custodianship or similar proceeding under any federal, state or foreign law by or against Owner, provided that if any such case or other bankruptcy, arrangement, reorganization, receivership, custodianship or similar proceeding is commenced against Owner, such case or other bankruptcy, arrangement, reorganization, receivership, custodianship or similar proceeding is not dismissed within sixty (60) days after its commencement.
- 14) A final judgment or decree for monetary damages or a monetary fine or penalty (not subject to appeal or as to which the time for appeal has expired) is entered against Owner by any Governmental Authority, and such judgment, decree, fine or penalty is not paid and discharged or stayed within sixty (60) days after the entry thereof.
- 15) The assets of Owner are attached, levied on or otherwise seized by legal process, and such attachment, levy or seizure is not quashed, stayed or released within sixty (60) days of the date thereof.
- 16) Owner shall have voluntarily suspended or terminated its business, or otherwise dissolved or liquidated.
- 17) The commencement of any action or proceeding that seeks as one of its remedies the dissolution or liquidation of Owner, if such action or proceeding is not dismissed within sixty (60) days after its commencement.
- 18) There shall be filed any claim of lien (other than liens approved by County) against the Project or the service of any notice to withhold proceeds of the Loan and the continued maintenance of such claim of lien or notice to withhold for a period of sixty (60) days without discharge or satisfaction thereof or provision therefor (including the posting of bonds) satisfactory to County.
- 19) The construction of the Development is abandoned or halted prior to the Completion of Construction for any period of fifteen (15) consecutive days for any cause not beyond the reasonable control of Owner, any contractor or any subcontractor.
- 20) Any Governmental Authority with jurisdiction over the Project orders or requires that the construction of the Development be stopped, or any Entitlement that is required therefor is withdrawn or suspended, and the order, requirement, withdrawal or suspension remains in effect for a period of thirty (30) days, provided that if such order, requirement, withdrawal or suspension cannot reasonably be cured within such thirty (30) day period but is capable, with reasonable diligence, of being cured within a total of ninety (90) days, Owner or Owner's limited partner shall have an additional sixty (60) days in which to effect such cure provided that Owner or Owner's limited partner commences to cure the order, requirement, withdrawal or suspension within the initial period of thirty (30) days, at all times diligently pursues the cure to completion, and in fact completes such cure within the subsequent period of sixty (60) days.
- 21) Owner is in material default under any material Project Agreement or Entitlement for a period of thirty (30) days, provided that if such default cannot reasonably be cured within such thirty (30) day period but is capable, with reasonable diligence, of being cured within a total of ninety (90) days, Owner or Owner's limited partner shall have an additional sixty (60) days in which to effect such cure provided that Owner or Owner's limited partner commences to cure the default within the initial period of thirty (30) days, at all times diligently pursues the cure to completion, and in fact completes such cure within the subsequent period of sixty (60) days.
- 22) The occurrence of any Transfer that is prohibited under Section ___.

5.02 Remedies in Case of Default. If an Event of Default shall occur, subject to the terms of Section 13 of the Loan Agreement, HACC or Title Company may exercise any one or more of the following rights and remedies, in addition to any other remedies that may be available by law, in equity, or otherwise:

- 1) **Extend Period of Affordability.** If Borrower fails to provide the required rents, fails to rent to eligible tenants, or fails to maintain the units according to applicable Property Standards, HACC may extend the Period of Affordability for the period during which such failure existed.
- 2) **Acceleration.** HACC may declare all or any portion of the Obligations immediately due and payable.
- 3) **Receiver.** HACC may have a receiver appointed for the Trust Property. HACC shall be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the Trust Property exceeds the amount of the indebtedness secured by this Trust Deed. Employment by Title Company or HACC shall not disqualify a person from serving as receiver. Borrower consents to the appointment of a receiver at HACC's option and waives any and all defenses to such an appointment.
- 4) **Possession.** HACC may, either through a receiver or as lender-in-possession, enter and take possession of all or any part of the Trust Property and use, operate, manage, and control it as HACC shall deem appropriate in its sole discretion. Upon request after an Event of Default, Borrower shall peacefully relinquish possession and control of the Trust Property to HACC or any receiver appointed under this Trust Deed.
- 5) **Rents.** HACC may revoke Borrower's right to collect the Rents and may, either itself or through a receiver, collect the same. HACC shall not be deemed to be in possession of the Property solely by reason of exercise of the rights contained in this subsection (5). If Rents are collected by HACC under this subsection(), Borrower irrevocably appoints HACC as Borrower's attorney-in-fact, with power of substitution, to endorse instruments received in payment thereof in the name of Borrower and to negotiate such instruments and collect their proceeds. After payment of all Obligations, any remaining amounts shall be paid to Borrower and this power shall terminate.
- 6) **Power of Sale.** HACC may direct Title Company, and Title Company shall be empowered, to foreclose the Property by advertisement and sale under applicable law.

- 7) **Foreclosure.** HACC may judicially foreclose this Trust Deed and obtain a judgment foreclosing Borrower's interest in all or any part of the Property.
- 8) **Fixtures and Personal Property.** With respect to any Improvements and other personal property subject to a security interest in favor of HACC, HACC may exercise any and all of the rights and remedies of a secured party under the Uniform Commercial Code.
- 9) **Abandonment.** HACC may abandon all or any portion of the Trust Property by written notice to Borrower.

5.03 Sale. In any sale under this Trust Deed or pursuant to any judgment, the Trust Property, to the extent permitted by law, may be sold as an entirety or in one or more parcels and in such order as HACC may elect, without regard to the right of Borrower, any person claiming under Borrower, or any guarantor or surety to the marshalling of assets. The purchaser at any such sale shall take title to the Trust Property or the part thereof so sold, free and clear of the estate of Borrower, the purchaser being discharged from all liability to see to the application of the purchase money. Any person, including HACC, its elected officials, officers, agents, and employees, may purchase at any such sale. HACC and each of its officers are irrevocably appointed Borrower's attorney-in-fact, with power of substitution, to make all appropriate transfers and deliveries of the Trust Property or any portions thereof so sold and, for that purpose, HACC and its officers may sign all appropriate instruments of transfer. Nevertheless, Borrower shall ratify and confirm, or cause to be ratified and confirmed, any such sale or sales by executing and delivering, or by causing to be signed and delivered, to HACC or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of HACC, for such purpose.

5.04 Cumulative Remedies. All remedies under this Trust Deed are cumulative and not exclusive. Any election to pursue one remedy shall not preclude the exercise of any other remedy. An election by HACC to cure under Section 1.15 shall not constitute a waiver of the default or of any of the remedies provided in this Trust Deed. No delay or omission in exercising any right or remedy shall impair the full exercise of that or any other right or remedy or constitute a waiver of the default.

5.05 Receiver or Trustee-in-Possession. Upon taking possession of all or any part of the Trust Property, Title Company, HACC, or a receiver may:

- 1) **Management.** Use, operate, manage, control, and conduct business with the Trust Property and make expenditures for such purposes and for such maintenance and improvements as are deemed reasonably necessary.
- 2) **Rents and Revenues.** Collect all rents, revenues, income, issues, and profits from the Trust Property and apply such sums to the reasonable expenses of use, operation, management, maintenance, and improvements.
- 3) **Construction.** At its option, complete any construction in progress on the Property, and in that connection pay bills, borrow funds, employ contractors, and make any changes in plans and specifications as it deems appropriate.
- 4) **Additional Indebtedness.** If the revenues produced by the Trust Property are insufficient to pay expenses, HACC, Title Company, or the receiver may borrow or advance such sums upon such terms as it deems reasonably necessary for the purposes stated in this section. All advances shall bear interest, unless otherwise provided, at the rate set forth in the Note, and repayment of such sums shall be secured by this Trust Deed.

5.06 Application of Proceeds. All proceeds realized from the exercise of the rights and remedies under this Section 5 shall be applied as follows:

- 1) **Costs and Expenses.** To pay all costs of exercising such rights and remedies, including the costs of maintaining and preserving the Trust Property, the costs and expenses of any receiver or lender-in-possession, the costs of any sale, and the costs and expenses provided for in Section 6.07 below.
- 2) **Indebtedness.** To pay all Obligations, in such order as HACC shall determine in its sole discretion.
- 3) **Surplus.** The surplus, if any, remaining after satisfaction of all the Obligations shall be paid to the clerk of the court in the case of a judicial foreclosure proceeding, otherwise to the person or persons legally entitled to the surplus.

5.07 Deficiency. No sale or other disposition of all or any part of the Trust Property pursuant to this Section 5 shall be deemed to relieve Borrower of any of the Obligations, except to the extent that the proceeds are applied to the payment of such Obligations.

5.08 Waiver of Stay, Extension, Moratorium, and Valuation Laws. To the fullest extent permitted by law, Borrower waives the benefit of any existing or future stay, extension, or moratorium law that may affect observance or performance of the provisions of this Trust Deed and any existing or future law providing for the valuation or appraisal of the Trust Property prior to any sale.

5.09 Continued LIHTC obligations. This Trust Deed shall to the extent provided below, be subordinate to such extended use agreements and/or land use restrictive covenants as may be recorded from time to time in favor of the State of Oregon acting by and through its Housing and Community Services Department with respect to the property. This subordination shall cease to be effective as of the earlier of (i) the date the property is acquired by foreclosure (or instrument in lieu of foreclosure), or (ii) upon the termination of the "extended use period," as defined in Section 42(h)(6)(D) of the Internal Revenue Code, as amended, or any successor provision (the "Code"), for such other reason provided in Section 42(h)(6)(E) of the Code. Provided, however, a limitation on the eviction of existing low-income tenants, for the term and to the extent provided in Section 42(h)(6)(E)(ii) of the Code, shall survive such foreclosure or other termination of the extended use period applicable to the property. This subordination shall be interpreted to constitute a subordination of this Trust Deed, but only to the extent, necessary to meet the requirements established under Section 42(h)(6)(B) of the Code.

ARTICLE VI
General Provisions

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

6.02 Reconveyance by Title Company. At any time upon the request of HACC, payment of Title Company's fees, if any, and presentation of this Trust Deed, without affecting liability of any persons for the payment of the Obligations, Title Company may reconvey, without warranty, all or any part of the Trust Property. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any facts shall be conclusive proof of the truthfulness thereof.

6.03 Notice. Except as otherwise provided in this Trust Deed, all notices pertaining to this Trust Deed shall be in writing and may be delivered by hand, or mailed by first class, registered, or certified mail, return-receipt requested, postage prepaid, and addressed to the appropriate party at its address set forth at the outset of this Trust Deed. Any party may change its address for such notices from time to time by notice to the other parties. Notices given by mail in accordance with this paragraph shall be deemed to have been given upon the date of mailing; notices given by hand shall be deemed to have been given when actually received. Any notice to Owner shall be accompanied by a notice to the Investor Member of Owner at _____.

6.04 Substitute Trustee. In the event of dissolution or resignation of Title Company, HACC may substitute one or more trustees to sign the trust created, and the new trustee(s) shall succeed to all the powers and duties of the prior trustee(s).

6.05 Trust Deed Binding on Successors and Assigns. This Trust Deed shall be binding upon and inure to the benefit of the successors and assigns of Borrower, Title Company, and HACC. If the Trust Property or any portion thereof shall at any time be vested in any person other than Borrower, HACC shall have the right to deal with such successor regarding this Trust Deed, the Trust Property, and the Obligations in such manner as HACC deems appropriate in its sole discretion, without notice to or approval by Borrower and without impairing Borrower's liability for the Obligations.

6.06 Indemnity. Borrower shall hold HACC and Title Company and their respective elected officials, directors, officers, employees, and agents, harmless from and indemnify them for any and all claims, demands, damages, liabilities, and expenses, including but not limited to attorney fees and court costs, arising out of or in connection with Title Company's or HACC's interest under this Trust Deed, except Borrower shall not be liable for acts performed by HACC or Title Company in violation of applicable law or resulting from the gross negligence or willful misconduct of HACC or Title Company.

6.07 Expenses and Attorney Fees. If HACC refers any of the Obligations to an attorney for collection or seeks legal advice following a default; if HACC is the prevailing party in any litigation instituted in connection with any of the Obligations; or if HACC or any other person initiates any judicial or nonjudicial action, suit, or proceeding in connection with any of the Obligations or the Trust Property (including but not limited to proceedings under federal bankruptcy law, eminent domain, under probate proceedings, or in connection with any state or federal tax lien), and an attorney is employed by HACC to (1) appear in any such action, suit, or proceeding, or (2) reclaim, seek relief from a judicial or statutory stay, sequester, protect, preserve, or enforce HACC's interests, then in any such event Borrower shall pay reasonable attorney fees, costs, and expenses incurred by HACC or its attorney in connection with the above-mentioned events or any appeals related to such events, including but not limited to costs incurred in searching records, the cost of title reports, and the cost of surveyors' reports. Such amounts shall be secured by this Trust Deed and, if not paid upon demand, shall bear interest at the rate specified in the Note.

6.08 Applicable Law. The Trust Deed and the validity, interpretation, performance, and enforcement of the Trust Deed shall be governed by the laws of the state of Oregon without giving effect to the conflict of law provisions thereof.

6.09 Captions. The captions to the sections and paragraphs of this Trust Deed are included only for the convenience of the parties and shall not have the effect of defining, diminishing, or enlarging the rights of the parties or affecting the construction or interpretation of any portion of this Trust Deed.

6.10 Rights of Prior Mortgagee. In the event that all or any portion of the Trust Property is subject to a superior mortgage or trust deed specifically permitted under Exhibit B, the rights of HACC with respect to insurance and condemnation proceeds as provided in Sections 1.14 and 2.01, and all other rights granted under this Trust Deed that have also been granted to such a superior mortgagee or trust deed, shall be subject to the rights of the superior mortgagee or trust deed beneficiary. Borrower authorizes all such superior mortgagees and beneficiaries, on satisfaction of the indebtedness secured by their mortgage or trust deed, to remit all remaining insurance or Condemnation proceeds and all other sums held by them to HACC to be applied in accordance with this Trust Deed.

6.11 Person Defined. As used in this Trust Deed, the word person shall mean any natural person, partnership, trust, corporation, or other legal entity of any nature.

6.12 Severability. If any provision of this Trust Deed shall be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Trust Deed, and such other provisions shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Trust Deed.

6.13 Entire Agreement. This Trust Deed and the other Loan Documents contain the entire agreement of the parties with respect to the Trust Property. No prior agreement, statement, or promise made by any party to this Trust Deed that is not contained therein shall be binding or valid.

6.14 Commercial Property. Borrower covenants and warrants that the Property and Improvements are used by Borrower exclusively for business and commercial purposes. Borrower also covenants and warrants that the Property and Improvements are not now, and at no time in the future will be, occupied as the principal residence of Borrower, Borrower's spouse, or Borrower's minor or dependent child.

6.15 Standard for Discretion

In the event this Mortgage is silent on the standard for any consent, approval, determination, or similar discretionary action, the standard shall be sole and unfettered discretion as opposed to any standard of good faith, fairness, or reasonableness.

6.16 ORS 93.040 Warning. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR HACC PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Dated: _____, 2017

BORROWER: Rosewood Terrace Limited Partnership
By: _____, its General Partner
By: _____, its Managing Member
By: _____, its Executive Director

(Signature)

STATE OF OREGON)
HACC of _____) ss.

On _____, 2017, before me personally appeared _____, who being duly sworn, stated that she is the Executive Director _____, the Managing Member Rosewood Terrace, and acknowledged the foregoing instrument to be the voluntary act and deed of the Borrower, signed by authority of Borrower.

Notary Public for Oregon
My commission expires: _____

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

Part of Section 28, Township 1 South. Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows, to-wit:

Beginning 88 rods East of the Southwest corner of the Samuel W. McMahan Homestead Claim Notification No.5746, as described in Volume "S". Page 295. Deed Records, which beginning point is the Southeast corner of the Orren Battin tract described in Book 120. Page 110. Deed Records; thence East along the North line of the W.S. Buckley Donation Land Claim, a distance of 16 rods to the Southwest corner of the Shepherd tract described in Book 235, Page 235. Deed Records ; thence North along the West line of said Shepherd tract 40 rods to the North line of the Thomas E. Battin tract described in Book "H". Page 216. Deed Records; thence West along said North line 16 rods to the Northeast corner of the Orren Battin tract aforementioned; thence South 40 rods to the point of beginning.

EXCEPTING THEREFROM that portion lying within that tract described in deed to Clackamas County in Fee No. 77 17914.

ALSO EXCEPTING THEREFROM that portion conveyed to the State of Oregon, by Deed recorded under Recorder's Fee No. 71 30200.

PARCEL 2:

Part of the Southwest one-quarter of Section 28. Township 1 South. Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning 58 rods East of the Southwest corner of the Donation Land Claim No. 5746, known as the Donation Land Claim of Samuel W. McMahan; running thence North 88° 55' East, 264 feet to an iron pipe which is the true point of beginning of the tract herein described; running thence North 3° 03' West, 640.2 feet to an iron pipe; thence North 88° 57' East, 231 feet to an iron pipe; thence South 3° 03' East, 640.35 feet to an iron pipe; thence South 88° 55' West, 231 feet to the true place of beginning.

EXCEPT that portion conveyed to the State of Oregon by deed recorded under Recorder's Fee No. 72 12686.

EXHIBIT B

EXCEPTIONS TO CLEAR TITLE

Insert any Exceptions here