

**REDEVELOPMENT AND PERMANENT FINANCING  
LOAN AGREEMENT**

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by and between

**CITY OF TACOMA**

**a municipal corporation of the State of Washington**

and

**TACOMA COMMUNITY REDEVELOPMENT AUTHORITY**

a Washington public development authority

For a loan in the principal amounts of :

not to exceed **\$3,000,000**

\_\_\_\_\_, 2016

THIS REDEVELOPMENT AND PERMENANT LOAN AGREEMENT (this “Agreement”) is dated as of \_\_\_\_\_, 2016, by and between The City of Tacoma, a municipal corporation of the State of Washington (the “CITY”) and Tacoma Community Redevelopment Authority, a Washington public development authority, (“Borrower”). The CITY and Borrower are sometimes referred to as collectively herein as the “Parties” and each individually as a “Party.” This Agreement is entered into with respect to the facts presented in the following Recitals:

## RECITALS

A. WHEREAS, Borrower desires to borrow the principal amount not to exceed THREE MILLION AND NO /100 Dollars (\$3,000,000) (the “ Loan”) from The CITY for the purpose of redeveloping an existing, vacant commercial building into a twenty-six (26) unit multi-family housing project, also known as Valhalla Hall Project. Unit mix will consist of two (2) work/live lofts, thirteen (13) studios, two (2) one-bedroom and nine (9) one-bedroom lofts. Said project will consist of nine (9) units reserved for Very-Low income households enforced under a long-term Regulatory Agreement and five (5) additional units reserved for Moderate-Income households at the time of their Intial Occupancy. The aforementioned housing project (“Project”) is described in this Agreement in Attachment “E”, the “Project Description”.

B. WHEREAS, the Redevelopment Project will be on a site (“Site”) commonly known as 1216 S Martin Luther King Jr Way, Tacoma, WA and legally described on Attachment “A” to this Agreement previously acquired by Borrower (as Purchaser). A detailed Project description is attached hereto as Attachment “E”.

C. WHEREAS, as more particularly provided below, Borrower will deliver to The CITY, among other items, the “ Deed of Trust”, the “ Promissory Note” and the “ Regulatory Agreement” (as those terms are defined below) to, respectively, secure repayment of the Loan by Borrower as provided herein and to ensure that the affordability and habitability of the Project is maintained in accordance with the terms of these instruments and this Agreement.

D. WHEREAS, The CITY desires to make the Loan to Borrower, on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the above recitals, the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt, legal sufficiency and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

## AGREEMENT

### **SECTION 1.1. Integration of Understanding**

This Agreement constitutes the entire agreement of the Borrower and The CITY with respect to the subject matter covered herein. The Borrower and The CITY agree that there are no other agreements or understandings between The CITY and the Borrower except as set forth in

this Agreement. The Borrower and The CITY further agree that no representation has been made by either party to the other as an inducement to enter into this Agreement.

### **SECTION 1.2. Purpose of Agreement.**

The purpose of this Agreement is to effectuate the redevelopment of one currently vacant building located at 1216 S Martin Luther King Jr Way, Tacoma, WA, by providing affordable rental housing loan assistance to the Borrower to: (i) redevelop the Site, for use as multi-family rental housing; (ii) place the Project in use and occupancy, (iii) limit the initial occupancy of five (5) units to households whose income does not exceed eighty percent (80%) of the Area Median Income (AMI) as established by the U.S. Department of Housing and Urban Development ; and (iv) limit the occupancy of an additional nine (9) units to households whose income does not exceed fifty percent (50%) of the Area Median Income (AMI) adjusted by household size as established by the U.S. Department of Housing and Urban Development (HUD) adjusted for family size. The 9 units ('Assisted Units') limitation will be in effect for the term of the Regulatory Agreement. The acquisition of the Project on the Site and the fulfillment generally of this Agreement are in the best interests of the City and the welfare of its residents and are in accordance with the public purposes and provisions of applicable federal, state, and local laws and regulations under which the Project has been undertaken and is being assisted.

### **SECTION 1.3. Definitions.**

In addition to the meaning ascribed to certain words and phrases as set forth in the Recitals of this Agreement or in other sections of this Agreement including any of the Attachments to this Agreement, other words and phrases shall have the meaning described below:

- **Affordable Housing Cost.** The words "Affordable Housing Cost" shall have the meaning as set forth in Rent Limits as this term is defined in 24 CFR Part 92.2 of the Investment Partnerships Program Final Rule by HUD.
- **Approved Project Pro Forma.** The words "Approved Project Pro Forma" mean and refer to the document dated \_\_\_\_\_, 2016 prepared by the Borrower and approved by the CITY on the date of approval of this Agreement, in support of the Borrower's request for the CITY to consider the approval of this Agreement. The Borrower Project Pro Forma, includes the Project Construction Budget. The Approved Project Pro Forma is included as part of Attachment "F" of this Agreement.
- **Area Median Income.** The words "Area Median Income" shall mean the median income for the Tacoma/Pierce County Metropolitan Statistical Area, adjusted for family size as periodically adjusted by U.S. Department of Housing and Urban Development.
- **Assisted Units.** The words "Assisted Units" mean and refer to the multi-family rental housing dwelling units to be acquired by the Borrower as part of the Project. Each of the

Assisted Units shall be rented only at an Affordable Housing Cost to “ Low -Income Households” as hereinafter defined (persons within this group occasionally referred to as “Eligible Persons”).

- **Borrower.** The words Borrower means the Tacoma Community Redevelopment Authority, a Washington public development authority.
- **Borrower Investigations.** The words “Borrower Investigations” means and refers to the Borrower’s due diligence investigations of the Site to determine the suitability of the Site for the Project. The scope of the Borrower Investigation shall include all matters relevant to the Project as determined at the discretion of the Borrower.
- **City.** The term “City” means and refers to the City of Tacoma.
- **Construction Phase Documents.** The words “Construction Phase Documents” mean and refer to the various documents and instruments by and between the Borrower and the CITY which evidence the funds made available by the CITY for the improvement of the Project.
- **Days.** The word day or days shall mean calendar days in all instances unless modified specifically to mean business days to thus exclude weekends and holidays from the calculation of the number of days.
- **Development Project Permit.** The words “Development Project Permit(s)” means and refers to all of the regulatory and building permits which the Borrower shall hereafter apply for and obtain from the City (and each of the other agencies with regulatory jurisdictions over the improvement of each element of the Project).
- **Effective Date.** The words “Effective Date” mean and refer to the date this Agreement has been fully executed by the Borrower and the CITY.
- **Initial Occupancy.** The words “Initial Occupancy” mean and refer to the first household to occupy a unit after a Certificate of Occpancy has been issued for the Project.
- **Hazardous Substances.** The term “Hazardous Substances” means and refers to (i) any hazardous or toxic substance or material including petroleum, petroleum-based products, asbestos and asbestos containing materials (“ACM”) and lead-based paint (“LBP”), or waste which is or becomes regulated by any local governmental authority, the State of Washington or the United States Government and/or (ii) any substance or material identified by the United States Government, the State of Washington or any local governmental authority as hazardous or toxic and which is included on any list of such substances published by any such governmental entity, provided, however that any such substance or material which is authorized by the United States Government or the State of Washington for use as a consumer product or in connection with the development, operation or maintenance of the Project when used in accordance with applicable law, shall

not be deemed to be a Hazardous Substance for the purpose of subphase (ii) of this definition of Hazardous Substance.

- **Loan.** The words “Loan” means and refer to the loan to be originated by the CITY in favor of the Borrower in a principal amount not to exceed Three Million and No/100 Dollars (\$3,000,000.00). The provisions of the Loan are set forth in Section 2.1. The Loan shall be evidenced by the Note (Attachment “B”) and shall be secured by the Deed of Trust (Attachment “C”) and the other Loan Documents.
- **Deed of Trust.** The words “Deed of Trust” mean and refer to the Subordinate Deed of Trust, Assignment of Leases and Rents, Fixture Filing and Security Agreement, which encumbers the Site and the Project as security for the repayment of the Loan. The general form of the Deed of Trust is Attachment “C” of this Agreement.
- **Loan Documents.** The words “Loan Documents” means and refers to collectively, all of the documents executed by the Borrower in favor of the CITY which either evidence the Loan or provide the CITY with security for the repayment of the Loan. The Loan Documents include without limitation the Note, the Deed of Trust and the Regulatory Agreement.
- **Low-Income Households.** The words “Low Income Households” shall mean and refer to persons and households whose income does not exceed 80% percent of area median income, adjusted for household size, as set forth in 24 CFR Part 92.2 of the HOME Investment Partnerships Program Final Rule. In the case where the provisions of 24 CFR Part 92.2 are discontinued, then the words “Low-Income Households” shall mean and refer to persons and households whose income does not exceed 80% percent of area median income, adjusted for household size, as set forth annually by HUD’s Office of Affordable Housing.
- **Note.** The words “Note” mean and refer to the promissory Note by Borrower in favor of the CITY, as lender, which evidences the Loan in the principal amount not to exceed Three Million and No/100 Dollars (\$3,000,000.00). The form of the Note is Attachment “B” of this Agreement.
- **Regulatory Agreement.** The term “Regulatory Agreement” means and refers to that certain Program Regulatory Agreement and declaration of covenants and restrictions by and between the Borrower and the CITY affecting the repayment provisions and other terms and conditions affecting the Loan. The form of the Regulatory Agreement is Attachment “D” of this Agreement.

**Very Low-Income Households.** The words “Very Low-Income Households” shall mean and refer to persons and households whose income does not exceed 50% percent of area median income, adjusted for household size, as set forth in 24 CFR Part 92.2 of the HOME Investment Partnerships Program Final Rule. In the case where the provisions of 24 CFR Part 92.2 are discontinued, then the words “Very Low-Income Households” shall mean and

refer to persons and households whose income does not exceed 50% percent of area median income, adjusted for household size, as set forth annually by HUD's Office of Affordable Housing.

- **Permanent Loan.** The words "Permanent Loan" mean and refer to the permanent mortgage loan which the Borrower shall hereafter obtain in an amount presently estimated not to exceed the amount on the Approved Project Pro Forma in order to provide for the long term financing for the capital costs associated with the redevelopment of the Project.
- **Permanent Loan Documents.** The words "Permanent Loan Documents" mean and refer to the various documents and instruments by and between the Borrower and the Permanent Lender which evidence the Permanent Loan for the redevelopment and financing of the Project.
- **Project.** The term "Project" shall mean all of the work of investigation, design, construction, improvement, modification, and financing necessary in order for the Borrower to redevelop the Site and place in service thereon the affordable multi-family rental housing project consisting of not more than nine (9) units reserved for Very Low Income households enforced under a long-term Regulatory Agreement. In addition to these nine (9) units there shall be not less than five (5) units reserved for Low-Income households established at the time of their Initial Occupancy. The Project also includes all related landscaping, driveways, utilities, and any improvements which may be required by the City on the Site or within the public rights-of-way adjacent to the Site.
- **Project Redevelopment Budget.** The words "Project Redevelopment Budget" means and refers to the budget of acquisition, hard and soft costs for the Project as prepared by the Borrower. The Project Redevelopment Budget includes a reasonable course of construction contingency reserve and reserves for marketing and leasing the completed rental units in the Project for initial occupancy by Very Low-Income Households. The Project Redevelopment Budget is included in the Approved Project Pro Forma.
- **Schedule of Performance.** The term "Schedule of Performance" shall mean that certain schedule of Project development performance milestones set forth in Attachment "G" of this Agreement, and as the same may hereafter be amended by the mutual written agreement of the parties.
- **Tacoma Community Redevelopment Authority ("TCRA").** A Washington public development authority that acquires properties for the purposes of redevelopment and urban renewal on behalf of the CITY.
- **Title Company.** The term "Title Company" shall mean Pugst Sound Title Insurance Company or such other title company mutually agreeable to the CITY and the Borrower.

**SECTION 1.4. Parties to the Agreement.**

- (a) The parties to this Agreement are the Borrower and the CITY.
- (b) The Borrower is as identified above. The principal office of the Borrower for purposes of this Agreement is currently located at 747 Market Street, RM 808, Tacoma WA 98402.
- (c) Prior to the Effective Date, the Borrower has provided the CITY with satisfactory evidence of the legal formation and existence of the Borrower and the good standing of the Borrower to transact business within the State, and to accept transfer of the Site from the CITY.

**SECTION 1.5. Change in Borrower Ownership Management and Control of the Borrower--Assignment and Transfer.**

- (a) The word “Transfer” as used in this Section 1.5, and elsewhere in this Agreement means:

- (1) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form or series of such sales, assignments or contracts or agreements to do any of the foregoing or the like which results in a change in: (i) more than twenty five percent (25%) of the shareholders of the Borrower; (ii) if all of the interest of the Borrower in this Agreement has been transferred to a partnership in which the Borrower is the sole general partner and thereafter, there is a change of more than twenty five percent (25%) of the interests of the shareholder in the Borrower; or (iii) if none of the foregoing subphrases applies to a particular Transfer, more than fifty percent (50%) of the ownership or equity interest of the Borrower’s interest in this Agreement is sold assigned, conveyed or the like, (each of the events described in subphrases (i), (ii) and (iii), above being referred as “Change of Control”); or

- (2) Any total or partial sale, assignment, conveyance, or transfer by the Borrower of the Project and/or the Agreement in any other mode or form, of or with respect to any ownership interest in Borrower which results in a Change of Control; or

- (3) Any merger, consolidation, sale or lease of all or substantially all of the assets of the Borrower in the Agreement, any Borrower Land, the Site or any part thereof or any interest therein or the improvements construction thereon (or series of such sales, assignments and the like) which results in Change in Control; or

- (4) Any total or partial sale, assignment or conveyance or any trust or power, or any transfer in any other mode or form (or series of such sales, assignments or other transfers) which results in any reduction of the ownership interest of the Borrower, having less than one-hundred percent (100%) ownership interest in the Project; or

- (5) Any sale, assignment or conveyance or any trust or power, or any transfer in any mode or form which results in a disposition or transfer by the Borrower of any

interest in the Site, except that Changes in Control of the Borrower shall not be deemed a disposition or transfer of the Site for these purposes; or

(6) The leasing, licensing or grant of any concession of or relating to part or all of the Project or any part thereof or any interest therein, except for Project purposes of this Agreement.

(b) For the purposes of this Section 1.5, the following Transfers shall not be deemed to result in a Change of Control: Any CITY approved transfer of the interests of the Borrower in this Agreement, and the Site, if then applicable, when said written approval by the CITY's City Manager has been obtained at the request of the Borrower to a limited liability company in which the Borrower is the sole member. Authority to change ownership structure must be submitted to the CITY in writing. No request will be unreasonably withheld.

(c) This Agreement is entered into solely for the purpose of the redevelopment of the Project. The Borrower recognizes that the qualifications and identity of Borrower are of particular concern to the CITY, in view of:

(1) The importance of the redevelopment of the Site to the general welfare of the community; and

(2) The fact that a Transfer by the Borrower of this Agreement or the Site is for all practical purposes a transfer or disposition of the responsibilities of the Borrower, with respect to the Project.

(d) The following types of a Transfer shall be permitted and approved by the CITY and are referred to herein as a "Permitted Transfer":

(1) Any Transfer by the Borrower creating a permitted "Security Financing Interest" which conforms to the provisions of Section 3.19, including, but not limited to, any limited liability company in which the Borrower is the sole member thereof without the ability to admit additional members to any such limited liability company;

(2) Any Transfer directly resulting from the foreclosure of a Security Financing Interest created by the Borrower in the Project; or the granting of a deed in lieu of foreclosure of a Security Financing Interest in the Project;

(3) A Transfer under (1) or (2) above, which includes a collateral assignment to the beneficiary of the Security Financing of the Borrower's beneficial interest in the Project;

(4) Any Transfer of any interest in Borrower to any affiliate of or other entity related to the Borrower which does not result in a Change of Control under Section 1.5(a) or as otherwise contemplated by Section 1.5(b);



(5) Any Transfer of any interest the Borrower which does not result in a change of Control in the Borrower under Section 1.5(a);

(6) Any Transfer which is a lease of either an Assisted Unit (dwelling) from the Borrower to the tenant, which is consistent with the Regulatory Agreement;

(7) Any Transfer which is a sale, lease, exchange, or other conveyance of the Site, or any portion thereof, by the Borrower to the City or to an entity which is controlled by the City, including a joint powers authority or a non-profit corporation in which a majority of the directors are appointed by the City;

(8) Any Transfer which grants a construction-related or public utility easement on the Site or which establishes a reciprocal easement for ingress, egress and maintenance affecting lands adjacent to the Site.

(e) No Permitted Transfer of this Agreement, the Project or the Site by the Borrower (other than a Permitted Transfer created pursuant to a Security Financing Interest under Section 3.9 and Section 1.5(d)(6) and (8)) shall be effective unless, at the time of the Permitted Transfer, the person or entity to which such Transfer is made, shall expressly assume the obligations of Borrower under this Agreement (or to the extent that the Permitted Transfer arises under Section 1.5(d)(4) or (5), such person shall assume the obligations of the Borrower with respect to the Project) and such person or entity also agrees to be subject to the conditions and restrictions to which Borrower is subject under this Agreement. Such an assumption of obligation shall be evidenced by a written instrument delivered to the CITY in a recordable form which is reasonably satisfactory to the CITY not less than sixty (60) days prior to the date on which such Permitted Transfer is proposed to occur.

(f) Provided the particular transaction is a Permitted Transfer, the Borrower is not required to give the CITY more than sixty (60) days advance notice of such a Permitted Transfer. Concurrently with the delivery of notice of the Permitted Transfer, the Borrower shall also provide the CITY with a suitably detailed written description of the proposed Permitted Transfer. If the Borrower desires to effect a Transfer for which the CITY prior approval is required, the Borrower shall submit to the CITY as part of its request for consent from the CITY, the form of an assignment and assumption agreement which shall set forth the terms and conditions of the proposed Transfer and the transferee's assumption of the Borrower's obligations under this Agreement which are assigned to such transferee. the CITY' approval of any Transfer requiring the CITY approval shall be evidenced in writing and the CITY agrees not to unreasonably withhold delay or condition its approval of any such Transfer, provided such proposed transferee can demonstrate successful and satisfactory experience in the redevelopment, ownership, operation, and management of a facility comparable in size and quality to the Project, or portion thereof, as proposed for Transfer. Any such transferee for itself and its successors and assigns, and for the benefit of the CITY shall expressly assume all of the obligations of the Borrower to the CITY under this Agreement with respect to the interest to be transferred. The the CITY agrees that it shall be unreasonable for the CITY to: (i) require the Borrower or the proposed transferee to pay any fee or charge to the CITY in consideration for the CITY's approval of such

a Transfer, except for reimbursement of reasonable the CITY overhead costs, allocated on an hourly basis for the CITY employees and consultants who are engaged in the documentation of such a Transfer; or (ii) require the Borrower or the proposed transferee to consent to the approval of any material change requested by the CITY in any prior condition of approval affecting the Project; except as may be reasonably required in connection with the CITY's approval of such a transfer to offset a specific cost or expense of the CITY or to compensate the CITY for a material adverse financial impact upon the CITY in connection with such a Transfer. There shall be submitted to the CITY for review all instruments and other legal documents proposed to effect any such Transfer; and the approval or disapproval of the CITY shall be provided to the Borrower in writing setting forth the grounds for the CITY' disapproval of a transfer, if applicable, within thirty (30) days of receipt by the CITY of Borrower's request and the form of assignment and assumption agreement proposed to be used in the transaction.

**SECTION 1.6. List of Attachments to Agreement.**

Each of the following items or documents are hereby deemed to be approved by the parties as of the date of approval of this Agreement by the CITY and each such item or document is incorporated into the text of this Agreement by this reference:

|                |                               |
|----------------|-------------------------------|
| Attachment "A" | Legal Description of the Site |
| Attachment "B" | Note                          |
| Attachment "C" | Deed of Trust                 |
| Attachment "D" | Regulatory Agreement          |
| Attachment "E" | Project Description           |
| Attachment "F" | Approved Project Pro Forma    |
| Attachment "G" | Schedule of Performance       |

**ARTICLE II**

**SECTION 2.1 The CITY Loans and Other Financing.**

**A. Loan**

(1) Subject to the terms and conditions of this Agreement and the provision of funds from the CITY, the CITY shall make a special affordable housing development loan for the purpose of paying for Project redevelopment and permanent financing costs involved in the redevelopment of the Project (the "Loan") to the Borrower in the principal amount not to exceed

Three Million and No/100 Dollars (\$3,000,000.00). Proceeds from the Loan shall be used for redevelopment and soft costs approved by the CITY. The outstanding principal balance of the Loan shall bear a rate of interest of zero percent (0%) per annum on the outstanding principal balance until all principal and accrued and unpaid interest is paid in full:

(2) The Loan shall be for a term of thirty (30) years from the date of the execution of this Agreement and disbursement of proceeds from the Loan.

(3) The Loan shall be evidenced by the Note to be executed by the Borrower in favor of the CITY concurrently with this Agreement, and shall be secured by a deed of trust on the Site substantially in the form of the Deed of Trust and the other Loan Documents.

(4) The Note shall be fully executed and delivered no later than the date of this Agreement. The Deed of Trust and the other Loan Documents shall be executed by the Borrower prior to the distribution of Loan proceeds.

(5) The Borrower shall, prior to the maturity date of the Note, repay the Loan plus interest in installments as set forth in the Note.

(6) The Note shall be secured by the Deed of Trust, pursuant to which the Borrower grants to the CITY a lien on the Site and the Project for the purpose of providing financing for the redevelopment of the Project.

(7) The Borrower must not be in default under this Agreement or under any of the Loan Documents.

(8) Notwithstanding any other provision of the Note to the contrary, on the “maturity date” of the Note the outstanding principal balance and all accrued and unpaid interest thereunder shall be due and payable.

(9) the CITY hereby acknowledges that the Note is a non-recourse obligation of the Borrower and shall contain substantially the following text:

“The sole recourse of the Holder to recover any sum under the Note shall be to the Property subject to the Deed of Trust, except in the event of: (A) fraud by the Borrower (or its assignee), (B) any material misrepresentation made by the Borrower to the CITY under the Agreement, (C) misappropriation by the Borrower (or its assignee) of any rents, security deposits, tax collection amounts, security deposits, or insurance or condemnation awards of the Project, (D) commission of bad faith waste by the Borrower (or its assignee) or (E) the presence of “Hazardous Substances” on the Site, as this term is defined in the Deed of Trust.”

**B. Other Financing Sources**

Other sources of financing may include, but not be limited to (i) senior lien financing (“Senior Financing”), to which the CITY shall expressly subordinate the lien of the Deed of Trust; (ii) financing junior in priority to the lien of the Deed of Trust (“Junior Financing”); and (iii) other financing sources listed in the Financing Summary below (“Other Financing”).

Project Financing Sources / Priority :

*Note: Final funding amounts are subject to modification.*

- (1) Permenant Bank Loan \$1,997,000 senior junior parity/NA
- (2) The CITY Loan \$3,000,000 senior junior parity/NA
- (3) TCRA Funds \$2,143,552 (TCRA contibution) senior junior parity/NA

*The foregoing Financing Summary is provided for the convenience of the parties. In case of any conflict, the detailed terms below and/or in the attachments to this Loan Agreement shall control.*

**SECTION 2.2 Disbursement of Loan Proceeds**

(a) Disbursements. The Borrower may request funds under this Agreement only when they are needed for payment of specific allowable costs described herein, and only in amounts needed to pay such costs. The Borrower shall be reimbursed for eligible project costs after review and approval by the CITY of invoices, statements, and other billings, and property inspection if applicable. Upon prior approval of the CITY a vendor, contractor or escrow office may be paid directly on behalf of the Borrower.

Each request for a disbursement of funds shall be deemed a certification of the Borrower that as of the date of such request, all representations and warranties contained in this agreement and any applicable project loan documents have been satisfied. The obligation of the CITY to make any disbursement shall also be subject to the following : (a) availability of the funds from the grant (Urban Development Action Grant (UDAG) program income, (b) satisfaction by The City of all other conditions under this Agreement.

(b) The obligation of the CITY to make disbursements of the Loan proceeds under this Agreement shall be expressly subject to satisfaction of all of the following conditions (collectively, the “Closing Conditions”) :

(i) The execution of this Agreement by the CITY and Borrower, and delivery of a fully-executed copy to the Parties to this Agreement;

(ii) Borrower’s due execution of a certified copy of the Note;

(iii) Borrower’s due execution (with notary acknowledgment) of the Regulatory Agreement in the form attached hereto as Attachment “D”, recorded against the fee title interest of the Borrower;

(iv) Borrower's due execution (with notary acknowledgment) and recordation of the Deed of Trust;

(v) Receipt by the CITY from Borrower of such other documents, certifications and authorizations as are reasonably required by the CITY, in form and substance satisfactory to the CITY, evidencing that (1) this Agreement, the Note, the Deed of Trust, the Regulatory Agreement, and all other documents given or executed in connection with the Loan, herewith (collectively with this Agreement, the Note, the Deed of Trust and the Regulatory Agreement, the "Loan Documents") are duly and validly executed by Borrower and constitute the valid and enforceable obligation of Borrower pursuant to the respective terms, and (2) the execution and delivery of the Loan Documents, and the performances thereunder by Borrower, will not breach or violate any law applicable or governmental regulation to which Borrower is subject nor constitute a breach of or default under any instrument or agreement to which Borrower may be a party;

(vi) Puget Sound Title Company or another title company approved by the CITY ("Title Company") shall have assured the CITY in writing that upon recordation of the Deed of Trust there will be provided to the CITY, at Borrower's sole expense, a lender's policy of title insurance (with customary endorsements, including but not limited to Nos. 100, 103.7, 116 and 122 and such other endorsements as the CITY shall reasonably require) (the "x Title Policy") issued by the Title Insurance Company in the amount of the Loan, insuring the CITY's interest in the Site as beneficiary under the Deed of Trust, and specifically insuring that the lien of the Deed of Trust and the Regulatory Agreement against the Property are subject only to the Senior Financing, if any, and any exceptions to title applicable to the Property which were expressly approved in writing by the CITY (collectively with the Senior Financing, "Permitted Senior Encumbrances"). Standard lender's title insurance coverage (without the need for a survey) will be accepted by the CITY.

(vii) No Event of Default shall exist under this Agreement or under any agreement or instrument relating to the Senior Financing, Other Financing, or Junior Financing, if any, and Borrower has demonstrated to the satisfaction of the City Manager (or his designee) that all financing sources for redevelopment and operation of the Project, including but not limited to Borrower's equity, are or will be available in sufficient amounts to provide for full and timely completion and ongoing operation of the Project;

(viii) At least thirty (30) days prior to the commencement of Project redevelopment or the disbursement of any CITY funds to be used to pay for Project related costs, Borrower shall have furnished the CITY with copies of :

(A) a contract for the Project development ("**Construction Contract**") entered into with a general contractor ("**General Contractor**") previously approved by the TCRA Board ; (B) a payment bond with respect to the Project posted by the General Contractor which is in an amount equal to the amount of the contract price identified in the Construction Contract, is issued by a surety reasonably acceptable to the CITY, and is in form and content reasonably approved by the CITY, and names the CITY as an additional insured; and (C) a performance bond for 100 percent (100%) of the contract price, guaranteeing the completion of the Project

development which is in form and content reasonably approved by the CITY, is issued by a surety reasonably acceptable to the CITY, and names the CITY as additional insured

(ix) Borrower shall have provided to the CITY, in form satisfactory to the CITY, the Owner's Tenant Rules and Regulations, including tenant selection policies and procedures, as specified in Section 6 of the Regulatory Agreement, in addition to any addendums used in common practice by the applicable Property Management Company.

(x) At least 30 days prior to the commencement of tenant selection for the Project, Borrower shall have furnished with an operating budget and a Management Plan for the Project. In the event the preliminary Operating Budget is proposed for revision at the time the Certificate of Occupancy is issued, any such revision must be approved by the CITY at its sole discretion;

(xi) Borrower shall have furnished the CITY with evidence satisfactory to the CITY evidencing the insurance coverages required by Section 3.22 below;

(xii) Borrower shall cause the the Deed of Trust and the Regulatory Agreement to be recorded in the Official Records of Pierce County, Washington;

(xiii) Borrower shall deliver the executed original Note to the CITY;

(xiv) Borrower shall cause the Title Policy to be issued to the CITY in the form and amount specified above; and

(xv) promptly following recordation, Borrower shall deliver conformed copies of the recorded documents to the CITY.

### **SECTION 2.3. Approved Project Pro Forma.**

(a) As of the Effective Date, the Borrower has prepared and presented the CITY with a final Project Pro Forma for the Project. The Approved Project Pro Forma for the Project is on file with the CITY. Upon the completion of the improvement of the Project, the Borrower shall provide an accounting to the CITY for the actual cost incurred by the Borrower in connection with the construction of the Project as set forth in Section 2.4.

(b) At all times following the Effective Date, the Borrower shall keep and maintain and make available for review and inspection by the CITY and its auditors accounting books and records for Project development costs incurred in connection with the Project in accordance with generally accepted principles of business accounting for at least three (3) years after all pending matters are closed and payments are made. The CITY and its accountants and auditors shall have the right upon reasonable prior notice to conduct inspections and reviews of the accounting books and records of the Borrower relating to the Project, at the business offices of the Borrower. The Borrower shall cooperate with the CITY in the production of its accounting books and

records for the Project, as reasonably required by the CITY and its auditors to conduct an audit or review of actual Project development costs at any time during the course of improvement of the Project.

(c) The written accounting described in this Section 2.3 shall be subject to review by the CITY under Section 2.4. In the event that such written accounting for the costs incurred and paid by the Borrower during course of construction of the Project indicates that the total estimated costs incurred and paid by the Borrower for the development and construction of the improvement of the Project as defined in the Project Description, Attachment “E”, at the time of completion is then determined to be less than the anticipated Project costs as presented in the Borrower Project Pro Forma by an amount that is equal to or greater than One Hundred Thousand Dollars (\$100,000), a “Substantial Deviation” shall be deemed to have occurred for the Project. The parties shall meet and confer with respect to the occurrence of a Substantial Deviation, and the Borrower shall provide the CITY with such additional documentation regarding the occurrence of a Substantial Deviation as the CITY may reasonably request.

#### **SECTION 2.4. Project Audit and Accounting.**

(a) The Borrower (including for purposes hereof any Borrower affiliate that owns or has any interest in the Project) shall provide the CITY with annual financing statements of its operations with respect to its ownership and operation of the Project no later than one hundred eighty (180) days after the conclusion of each Project Accounting Year, beginning for calendar year 2014 through the end of the regulatory period under the Regulatory Agreement. Upon reasonable notice from the CITY, Borrower shall make available for inspection at the office of the CITY all updated financial information of the Borrower for the confidential inspection by either a financial consultant to the CITY or a certified public accountant retained by the CITY to review such information. Such financial information shall be made available on a confidential basis. No financial information of the Borrower shall be disclosed by the CITY or its consultants to third persons, other than such consultants of the CITY shall be permitted to comment to the CITY regarding the financial condition of the Borrower as it relates to the ability of the Borrower to continue with the Project consistent with this Agreement. The CITY shall use all reasonable efforts to protect the confidentiality of the Borrower’s financial information, subject to disclosures required by applicable law.

(b) The CITY shall have the right at reasonable times to conduct its independent audit of the financial statements, or any component thereof, of the Borrower as to those matters set forth in Section 2.4(a) above at its sole cost and expense. Each party shall reasonably cooperate with the other party during the conduct of any such audit. Notwithstanding the foregoing, the CITY shall have any right to inspect books and/or records of the Borrower as to which the Borrower reasonably asserts a claim of attorney/client communications or other attorney work product under applicable law. Borrower shall be responsible for retaining and storing all tenant records and any other records that Borrower may need to execute its responsibilities set forth in Section 2.4(a) and 2.4(b), herein, for a period of at least five (5) years beyond the term of the the Regulatory Agreement, whichever is in effect for the longest term.

## **ARTICLE III**

### **REDEVELOPMENT OF THE PROJECT, AND EACH ELEMENT THEREOF**

#### **SECTION 3.1.        Construction Requirements.**

The CITY shall entrust the Borrower to cause the Project construction work to commence promptly, proceed diligently, and achieve “Completion of the Project” no later than twelve (12) months following the effective date of this Agreement, subject to extension for up to an additional six (6) months to the extent of force majeure delays beyond Borrower’s reasonable control. “Completion of the Project” shall be deemed to have occurred when the CITY has received satisfactory evidence that the Project has been completed in compliance with this Agreement and as represented in Borrower’s approved funding application to the CITY, and that all final permits and certificates necessary to the operation of the Project as contemplated herein have been obtained, including, without limitation, the following, each of which is subject to the CITY’ review and approval: (1) a signed certificate from the general contractor, in a form reasonably acceptable to the CITY, certifying to the CITY that the Development Improvements were completed substantially in accordance with the requirements of the plans and this Agreement, and all other related on-site and off-site improvements have been completed; (2) a certificate of occupancy and other final permits and licenses necessary to permit the use and occupancy of the Project for its intended purposes, which have been issued by proper governmental agencies; and (3) evidence satisfactory to the CITY that the statutory period for the filing of mechanics’ liens (60 days following filing of the statutory notice of completion) has expired and the Property is free from such liens. Construction shall proceed in accordance with construction plans approved in writing by the CITY prior to the commencement of any construction work and in accordance with the Schedule of Performance, Attachment “H”, and shall conform to the layout and design represented in Borrower’s approved application submitted to the CITY. Borrower shall comply with any SEPA and NEPA mitigation measures, or other environmental conditions imposed by the CITY or any other applicable governmental authority in connection with the Project.

#### **SECTION 3.2.        Construction Contract**

The CITY shall entrust the Borrower to ensure the following items occur during the Project’s construction.

- (a) The Borrower agrees to deliver to the CITY, for its review, the form construction contract(s) (collectively, the “Construction Contract”) for the improvement of the Project.
- (i) The Construction Contract shall obligate one or more general contractors (collectively, the “General Contractor”), who is (a) capable of obtaining proper bonding of their performance, (b) licensed in Washington, and (c) has substantial experience in completing the type of improvements contemplated by this



Agreement, to commence and complete the construction of the improvements for the Project in accordance with this Agreement.

- (ii) The word “bonded” as is used in the preceding subsection, shall mean that the General Contractor shall provide the Borrower with a construction payment and completion surety or construction performance letter of credit or other security in a form and amount satisfactory to the CITY in the exercise of its sole discretion, which names the Borrower and the CITY as beneficiary of such payment and completion security.
- (iii) No contractor or subcontractor who is ineligible to perform work on a public works project pursuant to Labor Code section 1771, et seq. (debarment or suspension for failure to honor prevailing wage requirements) may bid, be awarded or work on the Project. (See Public Contracts Code section 6109).
- (iv) All contractors and subcontractors shall fully comply with Executive Order 11246 of September 24, 1965 (“Equal Employment Opportunity”), as amended by Executive Order 11375 OF October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).
- (v) All contractors and subcontractors shall fully comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).
- (vi) The CITY assumes no liability for damages for personal injury, illness, disability or death to any contractors or subcontractors, or employees, agents, or invitees of any contractors or subcontractors, or to any other person, including members of the general public, arising from or incident to any activity causing or leading to contact of any kind whatsoever with lead-based paint on the Site, whether the CITY has properly warned, or failed to properly warn, any persons injured.

All contractors and subcontractors agree to cause all removal, transportation and disposal of the lead-based paint removed pursuant to this Agreement without any cost or liability to the CITY whatsoever. All contractors and subcontractors shall execute all required documents and pay such fees, taxes and other charges and assessments as may be charged, levied or assessed as to the removal, transportation and disposal of the lead-based paint pursuant to this Agreement. The Borrower represents and warrants that all such additional fees, taxes and other charges and assessments are included within the Purchase Price set forth in Section 1.3 hereof.

- (viii) The Borrower shall comply with the requirements of Section 3.4 and Section 3.5 prior to the commencement of any work constituting the construction of the Project.

- (ix) Subject to the requirements of all applicable law, the Construction Contract for any of the improvement of the Project shall provide for retention, until the final payment is due to the General Contractor of reasonable retentions from each progress payment for construction work performed. Such retention shall be retained by the Borrower until the occurrence of both of the following events:
    - A. the expiration of thirty-five (35) days from the date of recording by the Borrower as owner of a notice of completion for the Development Improvements, which the Borrower agrees to record promptly within the times specified by law for the recording of such Notice; and
    - B. the settlement and discharge of all liens and charges claimed by persons who supplied either labor or materials for the construction of the applicable improvements.
  - (x) Each Construction Contract shall give the CITY the right, but not the obligation, to cure defaults thereunder provided that such right to cure shall be subordinate to and subject to the rights, if any, of the Borrower's Construction Lender with respect to such Construction Contract.
  - (xi) The Construction Contract shall include a construction schedule (which shall be consistent with the Schedule of Performance attached as Attachment "G") and a schedule of values ("Construction Budget").
  - (xii) The Construction Contract shall be a guaranteed maximum cost contract assuring completion of the Development Improvements for a fixed price, subject to such reasonable adjustments as are customarily allowed with respect to such contracts for authorized change orders or other like matters (it being further provided in the Construction Contract that all change orders other than Minor Field Changes, as defined in Section 3.6, shall require the written approval of the CITY.)
  - (xiii) The fixed price for the Construction Contract shall be in an amount that, when added to all consultant and loan fees, "points," commissions, charges, developer's fees, fixtures, taxes, interest, start-up and any other costs and expenses of developing and completing the Development Improvements and Site work (the aggregate of these costs is sometimes referred to collectively as "Development Cost"), does not exceed the aggregate amount of (1) the Loan and (2) all other funding sources demonstrated to be available to the Borrower to finance the cost of constructing the Development Improvements.
- (b) Prior to the commencement of construction of the Project, the General Contractor shall furnish the Borrower with a contractor's performance bond in an amount not less than one hundred percent (100%) of the costs for the Development Improvements and a payment bond guaranteeing contractor's completion of those improvements free from liens of materialmen,

contractors, subcontractors, mechanics, laborers, and other similar liens. Such contractor's performance bonds shall be issued by a responsible surety company, licensed to do business in Washington, and with a financial strength and credit rating acceptable to the CITY by an insurance company or companies that have an AM Best Rating of A - V or better and shall remain in effect until the entire costs for such improvements shall have been paid in full. Any such contractor's performance bonds shall be in a form reasonably satisfactory to the CITY and its legal counsel. Such contractor's performance bonds may be the bonds obtained by the Borrower which name the CITY as a beneficiary or co-beneficiary.

(c) Parties shall at all times comply with, and shall make any and all contractors and subcontractors working on the Project comply with, any and all of the provisions of the Copeland Anti-Kickback Act (18 U.S.C. 874), as supplemented by Department of Labor regulations 29 CFR Part 3 ; the Davis Bacon Act (40 U.S.C. 276a to 276a-7), as supplemented by Department of Labor regulations 29 CFR Part 5; and sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330), as supplemented by Department of Labor regulations 29 CFR Part 5.

### **SECTION 3.3            Scope of Development - Development Improvements**

The Site shall be developed as a multi-family housing project comprised of twenty-six (26) units of which: nine (9) units will be reserved on a long-term basis for rental to households earning fifty percent (50%) or less of the Area Median Income and five (5) units reserved at the time of initial occupancy to households earning eighty percent (80%) or less of Area Median Income. The redevelopment shall be subject to all applicable Governmental Restrictions, and containing all necessary parking areas, walkways, streets, driveways, landscaping, and other improvements associated with the redevelopment of the Site, as depicted on the Plans approved by the CITY in accordance with this Section 3.3. The redevelopment of the Project on the Site in accordance with this Agreement is sometimes referred to as the "Redevelopment Improvements." Borrower shall cause the construction of the Redevelopment Improvements to be done in a good and workmanlike manner substantially according to the Plans and this Agreement.

### **SECTION 3.4            Concept Drawings**

The Borrower has submitted to the City and the City has approved certain basic concept drawings and related documents containing the overall plan for redevelopment of the Site (collectively, "Basic Concept Drawings"). The Site shall be developed as generally established in the Basic Concept Drawings, which shall include any changes that are mutually agreed upon between the Borrower and the City.

### **SECTION 3.5            Construction Plans, Drawings, and Related Documents**

In addition to the Basic Concept Drawings, the Borrower will prepare and submit construction plans, drawings, specifications, including construction and equipment specifications, and related documents (sometimes collectively referred to as the "Plans") to the

City for architectural and site planning review and written approval. The Plans are to be in conformance with the requirements set forth in this Agreement, consistent with the Basic Concept Drawings and conform to the 2008 Uniform Building Code, as amended from time to time, and other applicable Governmental Restrictions. The Plans are to be submitted in two stages: preliminary and final working drawings and specifications. Final working drawings and specifications are hereby defined as those in sufficient detail that shall obtain a building permit.

The Plans include preliminary and final finish grading and landscaping plans, and public improvement and street plans and specifications for the Site. All Plans shall be prepared and submitted within the times established in the Schedule of Performance, subject to extensions as are authorized herein or as mutually agreed to by the Parties.

**SECTION 3.6            Approval of Plans**

Subject to the terms of this Agreement, the CITY entrusts the Borrower to make all decisions related to the architectural and site planning review and approval of all documents, including any changes therein. In addition, the Borrower shall also obtain any architectural and site planning review required by any agency, department or board of the City within the times required for review of such Plans and other submissions and changes therein by the Borrower. The Borrower shall also submit any Plans and other submissions required for development permits or building permits to be issued by City departments or other public agencies.

**SECTION 3.7            Cost of Construction**

The cost of developing the Site and constructing all the Redevelopment Improvements thereon shall be borne solely by the Borrower. The CITY and the Borrower shall otherwise each pay the costs necessary to administer and carry out their respective responsibilities and obligations under this Agreement.

**SECTION 3.8            Schedule of Performance**

The CITY entrusts the Borrower to promptly begin and thereafter diligently prosecute to complete the construction of the Redevelopment Improvements and the redevelopment of the Site. The Borrower shall begin and complete all construction and redevelopment within the times specified in the Schedule of Performance or reasonable extension of said dates as may be granted by the CITY pursuant to Section 6.6 of this Agreement. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between the Borrower and the CITY.

During the period of construction, but not more frequently than once a month, the Borrower shall submit to the CITY a written progress report of the construction when and as requested in writing by the CITY. The report shall be in such form and detail as may reasonably be required by the CITY and shall include a reasonable number of construction photographs taken since the last report submitted by the Borrower.

**SECTION 3.9            City and Other Governmental Agency Permits**

Before commencement of construction or rehabilitation of any buildings, structures, or other work of improvement upon the Site, the Borrower shall, at its own expense, unless herein agreed, determine and secure or cause to be secured any and all permits which may be required by the City or any other governmental agency affected by or with jurisdiction over such construction, rehabilitation, or work. The CITY may provide all assistance, including agreed upon financial assistance, deemed appropriate by the CITY. The Borrower shall secure all building permit(s) for the Redevelopment Improvements no later than the date set forth in the Schedule of Performance.

**SECTION 3.10      Rights of Access**

For the purposes of assuring compliance with this Agreement (including this Section 3.10), the CITY/City Representatives shall have the reasonable right of access to the Site without charges or fees and at normal business hours.

**SECTION 3.11      Anti-discrimination During Construction**

The Borrower covenants for itself and its successors and assigns that with respect to the construction of the Redevelopment Improvements, the Borrower and its contractors and suppliers will abide by the anti-discrimination provisions set forth in Section 4.3 of this Agreement.

**SECTION 3.12      Disbursements During Construction**

The CITY funding under the the Loans shall be disbursed on a reimbursement basis for completed work only. Disbursements associated with General Contractor Profit and Overhead shall be paid commensurate with the percentage of completion of the Redevelopment Improvements.

**SECTION 3.13.      Schedule of Performance**

The Borrower shall comply with and meet the deadlines listed in Attachment “G” to this Agreement, the Schedule of Performance.

**SECTION 3.14.      Maintenance of the Site**

The Borrower covenants and agrees for itself, its successors, and assigns to maintain the Site, in a good condition free from any accumulation of debris or waste material. In the event that at any time during the Redevelopment of the Project the Borrower, or its successors or assigns, fails to perform the maintenance as required herein, the CITY shall have the right, but not the obligation, to enter the Site and undertake maintenance activities upon thirty (30) days prior written notice to the Borrower. In such event, and cumulative with all of the other rights and remedies of the CITY, including the separate and cumulative remedies of the CITY as arise under the Regulatory Agreement, the Borrower shall reimburse the CITY for all reasonable sums incurred by it for such maintenance activities. The obligation of the Borrower under this Section

3.14 with respect to the Site shall be discharged on the date when the CITY has issued its Certificate of Completion for the redevelopment of the Project.

**SECTION 3.15. Relocation Requirements.**

If applicable, Borrower shall be responsible for assuring compliance with all relocation requirements as governed by federal relocation laws and regulations for projects funded in whole or in part with federal funds, including the Federal Uniform Relocation Assistance and Real Property Policies Act (42 U.S.A. 4601 et seq., as amended), and the Federal Relocation Regulations (49 CFR Part 24), HUD Relocation Handbook 1378. Any relocation assistance shall be provided through and in the manner directed by the CITY, provided, however, that Borrower shall indemnify, defend and hold harmless the CITY, and the City for relocation payments, consulting fees and expenses incurred in connection with the Project. At the CITY's election in the CITY's sole discretion, the CITY may hire a relocation consultant to coordinate the relocation. The fees and costs of the consultant shall be paid or reimbursed by Borrower.

**SECTION 3.16. Environmental Conditions.**

Borrower shall comply with any National Environmental Policy Act of 1969 (NEPA) and Washington State Environmental Protection Act (SEPA) mitigation measures, the standards and requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368) and the Energy Policy and Conservation Act, the Environmental Protection Agency regulations (40 CFR part 15) and any other environmental conditions imposed by the CITY or any other applicable governmental authority in connection with the Project.

**SECTION 3.17. Section 3 of the Housing and Community Development Act of 1968, as Amended.**

(a) The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(b) The parties to this Agreement agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this Agreement, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(c) The Borrower agrees to send to each labor organization or representative of workers with which the Borrower has a collective bargaining Agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Borrower's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment

positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(d) The Borrower agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The Borrower will not subcontract with any subcontractor where the Borrower has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

(e) The Borrower will certify that any vacant employment positions, including training positions, that are filled (1) after the Borrower is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Borrower's obligations under 24 CFR Part 135.

(f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.

(g) With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

**SECTION 3.18. Construction Job Outreach Efforts of the Borrower.**

(a) The Borrower hereby agrees to use good faith efforts to recruit Tacoma residents, for any new job or entry level employment positions, and to the extent of all other factors being equal and consistent with other applicable law, the Borrower covenants on a best efforts basis to give Tacoma residents preference for hiring for such new entry level job or employment positions and to the maximum reasonable and feasible extent, use the services of businesses which are located in the City of Tacoma which result from the performance of this Agreement and which are performed within the City.

(b) "Good faith efforts" of the Borrower for the purposes of this Section 3.18 include, but are not limited to, the following factors:

- (1) advertisement in local media concerning employment, contracting and subcontracting opportunities;
- (2) providing written notice to a reasonable number of local business enterprises soliciting their interest in contracting or subcontracting in sufficient time to allow them to participate effectively;
- (3) establishing an applicant pool of eligible persons who have responded to such entry level employment outreach efforts of the Borrower;
- (4) attendance at pre-solicitation or pre-bid meetings that were scheduled by the City to inform contractors or subcontractors of contracting and subcontracting opportunities for local business enterprises;
- (5) following up initial solicitation of interest by contacting local business enterprises by telephone to determine with certainty whether they are interested in participating;
- (6) selecting portions of the work to be performed by local business enterprises;
- (7) providing interested local business enterprises and other enterprises with adequate information about the plans, specifications and requirements of contracts and subcontracts;
- (8) negotiating in good faith with interested local business enterprises to perform work; and
- (9) making reasonable efforts to assist interested local business enterprises in obtaining necessary sources of supply, lines of credit or insurance in order to participate in such work associated with the Project.

(c) If requested to do so by the CITY, the Borrower shall provide the CITY with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.

(d) Nothing contained in this contract shall be construed in any manner so as to require or permit any act which is prohibited by law.

**SECTION 3.19. Security Financing Interests.**

(a) The holder of any Security Financing Interest authorized by this Agreement (“Holder”) is not obligated to construct or complete any improvement of the Project. However,



nothing in this Agreement shall be deemed to permit or authorize any such Holder to devote the Site, or any portion thereof, to any use, or to construct any improvements thereon, other than those uses of improvements provided for or authorized by this Agreement.

(b) Whenever the CITY, pursuant to its rights set forth in this Agreement, delivers any notice or demand to the Borrower to cure or correct a default or breach with respect to the Redevelopment of the Project, the CITY shall at the same time deliver to each Holder of record any Security Financing Interest creating a lien upon the Site, a copy of such notice or demand of the CITY. Each such Holder shall (insofar as the rights of the CITY are concerned) have the right, but not the obligation, at its option, within thirty (30) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default or breach affecting the Site which is subject to the lien of the Security Financing Interest held by such Holder and to all the costs thereof to the security interest debt and the lien on the security interest.

(c) In any case where within one hundred eighty (180) days after the occurrence of a default or breach by the Borrower for which the CITY has given notice to the holder of any Security Financing Interest under Section 3.19(b), and such holder has exercised its option to construct the improvement of the Project, but such holder has not proceeded diligently with construction, the CITY shall thereupon be afforded the same rights and remedies against such holder of a Security Financing Interest for such default or breach of the Borrower as the CITY would otherwise originally have had against Borrower under this Agreement.

(d) In the event of a default or breach by the Borrower under a Security Financing Interest prior to the completion of redevelopment of the Project or portion thereof, and the holder has not exercised its option to complete the improvement of the Project (or such portion thereof encumbered by the Security Financing Interest), the CITY, at its sole option and election, but without any obligation to do so, may cure the default or breach of the Borrower to such holder, prior to the completion of any foreclosure under such holder's Security Financing Interest. In such event the CITY shall be entitled to reimbursement from the Borrower of the principal amount paid by the CITY to cure or satisfy the defaults plus interest, at the penalty rate set forth in the Note and all reasonable other costs and expenses incurred by the CITY in curing the default of the Borrower. The Borrower hereby agrees that the CITY shall also be entitled to a lien upon the Project, or any portion thereof to secure the repayment of such amount to the CITY. The CITY agrees that in the event that the such a lien in favor of the CITY may arise under this Section 3.19(d), that the lien of the CITY shall be subordinate to any other Security Financing Interest approved or deemed approved by the CITY prior to the date of such advance by the CITY. The CITY shall execute from time to time any and all documentation reasonably requested by Borrower to effect such subordination of the lien right of the CITY as may arise under this Section 3.19(d) with respect to the Project.

(e) In addition to the optional right of the CITY to cure a default or breach of the Borrower under a Security Financing Interest as set forth in Section 3.19(d), the CITY, at its sole option and election, shall have the right to satisfy any other lien or encumbrance affecting the Project after the Borrower has received a thirty (30) day notice of intention of the CITY to pay such lien or encumbrance. The CITY shall not pay or satisfy such a lien or encumbrance until

the Borrower has been accorded a reasonable period of time to challenge, cure or satisfy such a lien or encumbrance; provided, however, that nothing in this Agreement shall require the Borrower to pay or make provisions for the payment of any lien or charge (except a lien or charge for ad valorem property taxes) so long as the Borrower in good faith shall contest the validity or amount therein and so long as such delay in payment by the Borrower shall not subject the Project or any portion thereof to forfeiture or security lien sale. In the event that the CITY may satisfy any such lien or encumbrance the CITY shall be entitled to reimbursement from the Borrower of the principal amount paid by the CITY to cure or satisfy the lien or encumbrance plus interest at the penalty rate set forth in the Set-Aside Note or the Note, and all reasonable costs and expenses incurred by the CITY in satisfying the lien or encumbrance. The Borrower hereby agrees that the CITY shall also be entitled to a lien upon the Project, or any portion thereof, to secure such repayment to the CITY. Any such lien of the CITY under this Section 3.19(e) shall be subordinate to each Security Financing Interest approved or deemed approved by the CITY.

(f) The Borrower, for itself, its successors and assignees hereby warrants and agrees that the Borrower shall give to any Holder notice of the terms and conditions contained in this Section 3.19 and shall use commercially reasonable efforts to cause each provision contained in this Section 3.19 dealing with Security Financing Interests and rights of holders of such interests, either to be inserted into the relevant deed of trust or mortgage or to be acknowledged by the Holder prior to its perfection of any such Security Financing Interest right or interest in the Site or the Project.

### **SECTION 3.20. Estoppel Statement.**

Upon the request of the Borrower, a proposed Permitted Transferee under Section 1.5 of the Borrower, or any Holder, the CITY shall issue a signed estoppel statement stating that this Agreement is in full force and effect and that no default hereunder exists on the part of the Borrower or any successor, or if such default is claimed by the CITY to then exist, such estoppel statement shall identify the nature of such default. Such estoppel statement shall be delivered by the CITY to the Borrower within thirty (30) days following receipt of written request therefore. The CITY may charge the Borrower for the reasonable cost incurred by the CITY for consultation with its attorney in connection with such request for an estoppels statement in an amount not to exceed \$1,500.

### **SECTION 3.21. Certificate of Completion**

Intentionally Omitted.

### **SECTION 3.22. Insurance of the Borrower.**

(a) In order to protect the CITY, its governing board, commissions, agents, officers, employees and authorized representatives against all claims and liability for death, injury, loss and damage as a result of Borrower's actions in connection with the Loan, the assistance

provided by the CITY under this Agreement and the design, construction, operation and financing of the Project, the Borrower shall secure and maintain insurance as described in this Section 3.22. Such insurance shall be in full force and effect as of the Effective Date, and thereafter the Borrower shall continuously maintain such insurance for the term of the Regulatory Agreement. Borrower shall pay any deductibles under all required insurance policies.

(b) Borrower shall submit written proof to the CITY that Borrower is insured against liability for workers' compensation in accordance with the provisions of section 3700 of the Labor Code. In signing the Agreement, Borrower makes the following certification, required by section 1861 of the Labor Code:

“I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of the Agreement.”

Borrower shall require each contractor and sub-contractor engaged to perform any work on the Project to provide workers' compensation for all of such contractors' or sub-contractors' employees, unless the contractors' or sub-contractors' employees are covered by worker's compensation insurance afforded by the Borrower. If any class of employees engaged in work or services performed in connection with the Project is not covered by Labor Code Section 3700, the Borrower shall provide and/or require each contractor or sub-contractor to provide adequate insurance for the coverage of employees not otherwise covered.

(c) The Borrower shall maintain in full force and effect, at all times during the term of the Agreement, the following insurance:

(i) Commercial General Liability Insurance coverage, including, but not limited to, premises-operations, contractual liability insurance (specifically concerning the indemnity provisions of the Agreement and the Deed of Trust and the Regulatory Agreement), products-completed operations hazards, personal injury (including bodily injury and death), and property damage for liability arising out of the construction of the Project and/or Borrower's operation of the Site pending commencement of construction of the Project. Said insurance coverage shall have minimum limits for bodily injury and property damage liability of One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) aggregate.

(ii) Automobile liability insurance against claims of personal injury (including bodily injury and death) and property damage covering all owned, leased, hired and non-owned vehicles used by Borrower with minimum limits for bodily injury and property damage of One Million Dollars (\$1,000,000) each

occurrence and Two Million Dollars (\$2,000,000) aggregate. Such insurance shall be provided by a business or commercial vehicle policy.

(iii) If the Borrower hires one or more consultants to provide design services, such as architectural or engineering services in connection with the Project, the Borrower shall require such consultant to provide professional liability (errors and omissions) insurance, for liability arising out of, or in connection with, the performance of such design services, with limits of not less than One Million Dollars (\$1,000,000).

(iv) Upon acceptance of the Project construction items by the Borrower, or any portion thereof, from each contractor, the Borrower shall maintain fire and extended coverage insurance on the Project on a blanket basis or with an agreed amount clause in amount not less than 100% of the Project's replacement value.

(d) During the course of construction of the Project, Borrower shall require that all contractors performing work on the Project to maintain the following insurance coverages at all times during the performance of said work:

(i) builder's risk insurance to be written on an all risk completed value form, in an aggregate amount equal to 100% of the completed insurable value of the building(s).

(ii) Commercial general liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate to protect the borrower during the construction phase from claims involving bodily injury and/or death and damage to the property of others. Said insurance shall include an endorsement to include owners' and contractors' protective coverage.

(iii) Automobile liability insurance against claims of personal injury (including bodily injury and death) and property damage covering all owned, leased, hired and non-owned vehicles used in the performance of a contractor's obligations to the Borrower with minimum limits for bodily injury and property damage of One Million Dollars (\$1,000,000) each occurrence and One Million Dollars (\$1,000,000) aggregate. Such insurance shall be provided by a business or commercial vehicle policy.

(e) The commercial general liability insurance required in Section 3.22(c) and (d), above shall include an endorsement naming the CITY and their officials, officers, agents, and employees as additional insureds for liability arising out of the Agreement and any operation related thereto.

(f) If any of the insurance coverages required under Section 3.22(d) of the Agreement is written on a claims-made basis, such insurance policy shall provide an extended

reporting period continuing through the fifth (5<sup>th</sup>) anniversary following the date of acceptance of the improvements by Borrower.

(g) As of the Effective Date, evidence of insurance in compliance with the requirements of Section 3.22(b) shall be furnished to the CITY by the Borrower, as evidenced by endorsements to such policies or contracts of insurance issued by the insurer in favor of the CITY and/or by one or more “certificate of insurance” issued by the authorized agents or attorneys-in-fact of such insurers in a form acceptable to the CITY Counsel. Receipt of evidence of insurance that does not comply with the above requirements shall not constitute a waiver of the insurance requirements set forth above.

(h) The insurance coverages required to be maintained and/or provided by the Borrower under this Agreement shall be maintained until the completion of all of Borrower’s obligations under the Agreement, and shall not be reduced, modified, or canceled without thirty (30) days prior written notice to the CITY. Also, phrases such as “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company” shall not be included in the cancellation wording of all certificates of insurance or any coverage for the CITY. The Borrower shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

(i) All insurance shall be issued by an insurance company or companies that have an AM Best Rating of A - V or better and listed in the current “Best’s Insurance Guide” publication and be a Washington admitted insurance company.

(j) All insurance afforded by the Borrower pursuant to the Agreement shall be primary to and not contributing to any other insurance maintained by the CITY. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Borrower for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude the CITY from taking such other actions as are available to it under any other provision of the Agreement or otherwise in law. Failure by the Borrower to maintain all such insurance in effect at all times required by the Agreement shall be an event of default by Borrower. The CITY, at its sole option, may exercise any remedy available to it in connection with such an event of default. Alternatively, the CITY may purchase such required insurance coverage, and without further notice to Borrower, the CITY shall invoice any sums due from Borrower any premiums and associated costs advanced or paid by the CITY for such insurance or the CITY may demand that additional sums be paid to the CITY by the Borrower. Any failure by the CITY to take this alternative action shall not relieve the Borrower of its obligation to obtain and maintain the insurance coverages required by the Agreement.

(k) During the term of the Deed of Trust any inconsistency or conflict between the insurance coverage provisions of this Section 3.22 and the Deed of Trust, the insurance coverage provisions of the Deed of Trust shall prevail and be applicable to the Borrower

**SECTION 3.23. Taxes, Assessments, Encumbrances and Liens.**

(a) Intentionally omitted.

(b) The Borrower shall not place and shall not allow to be placed on the Site any mortgage, trust deed, deed of trust, encumbrance or lien not otherwise authorized by this Agreement. The Borrower shall remove, or shall have removed, any levy or attachment made on the Site, or shall assure the satisfaction thereof. Nothing herein contained shall be deemed to prohibit the Borrower from contesting the validity or amounts of any tax assessment, encumbrance or lien, nor to limit the remedies available to the Borrower in respect thereto.

**ARTICLE IV**

**USE OF THE SITE AND THE PROJECT**

**SECTION 4.1. Use of the Site.**

(a) Borrower hereby covenants and agrees, for itself and its successors and assigns, that the Site and the Project shall be developed, used and maintained as a mixed use building, with 26 units of multi-family rental housing, of which two units will serve as work-live units, for occupancy by households.

(b) As of the Effective Date of the Agreement, the Borrower has warranted to the CITY that the Assisted Units in the Project shall be reserved for use and occupancy by Households whose annual income level at the time of initial occupancy by each such Household of its Assisted Unit in the Project shall be generally as follows:

|    | Percentage AMI | No. of Zero Bedroom Units (studio) | No. of One Bedroom Units | No. of One Bedroom Loft Units | No. of Work-Live Loft Units | Total No. of Units |
|----|----------------|------------------------------------|--------------------------|-------------------------------|-----------------------------|--------------------|
| 1. | 50%*           | 6                                  | 0                        | 3                             | 0                           | 9                  |
| 2. | 80%**          | 2                                  | 1                        | 2                             | 0                           | 5                  |
| 3. | Unrestricted   | 5                                  | 1                        | 4                             | 2                           | 12                 |
|    | Total          | 13                                 | 2                        | 9                             | 2                           | 26                 |

\* These units will be income restricted under a long-term Regulatory Agreement.

\*\*After initial occupancy, these units are unrestricted.

**SECTION 4.2. No Inconsistent Use.**

Borrower covenants and agrees that it shall not devote the Site to uses inconsistent with either this Agreement or the Regulatory Agreement.

**SECTION 4.3. Discrimination Prohibited.**

Except as provided in the Regulatory Agreement, with respect to the reservation of each of the rental units in the Project for occupancy by Eligible Persons, there shall be no discrimination against, or segregation of, any persons, or group of persons, on account of race, color, religion, sex, marital status, familial status, disability, ancestry, national origin, age, sexual orientation, gender identity or veteran/military status in the rental, sale, lease, sublease, transfer, use, occupancy, or enjoyment of the Project or the Site, or any portion thereof, nor shall the Borrower, or any person claiming under or through Borrower, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Project or the Site or any portion thereof. The nondiscrimination and nonsegregation covenants contained in the the Regulatory Agreement shall remain in effect in perpetuity.

**SECTION 4.4. Effect of Covenants.**

The CITY is the beneficiary of the terms and provisions of this Agreement and of the restrictions and community redevelopment and affordable rental housing covenants running with the land, whether or not appearing in the Regulatory Agreement for and in its own right and for the purposes of protecting the interests of the community in whose favor and for whose benefit the covenants running with the land have been provided. The affordable rental housing covenants in favor of the CITY shall run without regard to whether the CITY has been remains or is an owner of any interest in the Site, and shall be effective as both covenants and equitable servitudes against the Site. If any of the affordable rental housing covenants set forth in this Agreement are breached, the CITY shall have the right to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it may be entitled. No other person or entity shall have any right to enforce the terms of this Agreement under a theory of third-party beneficiary or otherwise, unless stated herein; except the City as the successor in regulatory function of the CITY and residents of the Project and applicants to become residents of the Project,. Nevertheless, the Parties hereby agree that the City shall be entitled to enforce any of the provisions and/or covenants hereunder and shall sign hereunder acknowledging receipt.

**SECTION 4.5. Listing of Provisions of this Agreement which Shall Remain In Full Effect Following the Issuance of a Certificate of Occupancy.**

In addition to the provisions of this Article IV, Article V and Article VI of this Agreement which shall remain in full force and effect following the issuance of the Certificate of Occupancy each of the following shall remain in full force and effect following the issuance of the Certificate of Occupancy for the Project:

- (i) Loan Documents;
- (ii) the covenants of the Borrower under the Regulatory Agreement;

- (iii) the provisions of Section 5.9 of this Agreement.

## **ARTICLE V**

### **DEFAULTS**

#### **SECTION 5.1. Events of Default.**

(a) The occurrence of any of the following is a default and shall constitute a material breach of this Agreement and, if not corrected, cured or remedied in the time period set forth in Section 5.1(b), shall constitute an “Event of Default” hereunder:

- (i) failure of the Borrower or any person under its direction or control to comply with or perform when due any material term, obligation, covenant or condition contained in this Agreement;
- (ii) failure of the Borrower to make any Residual Receipts payment when due;
- (iii) failure by the Borrower or any person under its direction or control to comply with or perform when due any material term, obligation, covenant or condition contained in the Note or Deed of Trust or the Loan Documents;
- (iv) any warranty, representation or statement made or furnished to the CITY by the Borrower under this Agreement is false or misleading in any material respect either now or at the time made or furnished;
- (v) the dissolution or termination of the existence of the Borrower as an ongoing business, insolvency, appointment of a receiver for any part of the property of the Borrower, any assignment for the benefit of creditors, any type of creditor workout or the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Borrower.

(b) Upon the determination by the CITY that a default has occurred, the Borrower shall cause such default to be cured within the following periods of time:

- (i) if a monetary Event of Default occurs under the terms of the Note, the Deed of Trust or other Construction Loan Documents or the Permanent Loan Documents, prior to exercising any remedies under this Agreement the CITY shall give the Borrower written notice of such default. The Borrower shall have a period of seven (7) days after such notice is given within which to cure the default prior to exercise of remedies by the CITY, or such longer period of time as may be specified in the Loan Documents.



- (ii) If a non-monetary event of default occurs under the terms of the Note, the Deed of Trust or the Permanent Loan Documents, prior to exercising any remedies under this Agreement the CITY shall give the Borrower written notice of such default. If the default is reasonably capable of being cured within thirty (30) days, as determined by the CITY in its sole discretion, the Borrower shall have such period to effect a cure prior to exercise of remedies by the CITY under this Agreement, the Loan Documents, or such longer period of time as may be specified in this Agreement and the Loan Documents. If the default is such that it is not reasonably capable of being cured within thirty (30) days, as determined by the CITY in its sole discretion, or such longer period if so specified, and if the Borrower (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then the Borrower shall have such additional time as is determined by the CITY, in its sole discretion, to be reasonably necessary to cure the default prior to exercise of any remedies by the CITY. If the Borrower or its successor in interest is a limited partnership, if the Borrower fails to take corrective action or to cure the default within such a specified time, the CITY shall give the Borrower written notice thereof, whereupon the limited partner may remove and replace the general partner with a substitute general partner who shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions. In no event shall the CITY be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by a failure to cure a default or the default is not cured within ninety (90) days after the first notice of default is given.

**SECTION 5.2.            Notice of Other Defaults.**

Subject to and except as set out in and except as set out in the provisions of Section 5.1 hereof, the non-defaulting party shall give written notice of default to the party in default in accordance with Section 6.3, stating that such notice is a “Notice of Default”, specifying the default complained of by the injured party and requiring the default to be remedied within thirty (30) days of the date of the Notice of Default. Except as required to protect against further material damage, the injured party may not institute legal proceedings against the party in default until thirty (30) days after giving notice. Failure or delay in giving notice shall not constitute a waiver of any default, nor shall it change the time of occurrence of the default.

If the default specified in the Notice of Default is such that it is not reasonably capable of being cured within thirty (30) days, and if the party to whom the notice is addressed initiates corrective action within said thirty(30) day period and diligently works to effect a cure as soon as possible, then such party may have such additional time as authorized in writing by the other party as reasonably necessary to complete the cure of the breach prior to exercise of any other remedy for the occurrence of an Event of Default. Such authorization for additional time to cure shall not be unreasonably withheld. If a party fails to take corrective action relating to a default

within thirty (30) days following the date of notice (or to complete the cure within the additional as may be authorized by the other party), an Event of Default shall be deemed to have occurred.

**SECTION 5.3. Inaction Not a Waiver of Default.**

Any failure or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

**SECTION 5.4. Remedies; Enforcement of Agreement; Termination.**

(a) The non-defaulting party at its discretion shall have the right to terminate this Agreement upon an Event of Default and the end of the applicable cure period without cure.

(b) In addition to pursuing the rights and remedies available to the CITY under this Agreement, the CITY may foreclose on the Deed of Trust and exercise its other remedies under any of the Loan Documents and/or the Regulatory Agreement.

(c) In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purposes of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Pierce, State of Washington, in any other appropriate court in that County or in the Federal District Court in the State of Washington. In the event that any legal action is commenced by the Borrower against the CITY, service of process on the CITY shall be made by personal service upon the agent for service of process or Chairman of the Board of the CITY, or in such other manner as may be provided by law. In the event that any legal action is commenced by the CITY against the Borrower, service of process on the Borrower shall be made by personal service on the Borrower's agent for service of process, or in such other manner as may be provided by law, and shall be valid whether made within or without the State of Washington.

(d) Either party may terminate this Agreement without cause upon 60 days prior written notice of the effective termination date. Should Borrower initiate termination of the agreement without cause, the principal amounts of the Loan and any interest thereon shall become immediately due and payable.

**SECTION 5.5. Rights and Remedies are Cumulative.**

Except with respect to any rights and remedies expressly declared to be exclusive in this Agreement as relates to a failure of conditions precedent occurring before the Close of the Acquisition Escrow, the rights and remedies of the parties as set forth in this Article V are cumulative and the exercise by either party of one or more of such rights or remedies shall not

preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

**SECTION 5.6. No Consequential Damages.**

Notwithstanding any other term of this Agreement, neither the CITY or its officers, officials, employees and agents shall be liable to the Borrower or to any third party for any loss of use of the Site or the Project, loss of goodwill relating to the Borrower, the Site, the Project, interruption of business, or for indirect, incidental or special or consequential damages (including without limitation, lost revenues or profits of the Borrower) or similar damages, whether based on tort, contract or other legal or equitable grounds.

**SECTION 5.7. Additional Borrower Indemnification**

(a) Each party agrees and shall indemnify and hold each other, its directors, officers, elected officials, employees, agents, authorized volunteers, or representatives, free and harmless from all claims, demands, actions, damages and liabilities of any kind and nature arising from bodily injury, including death, violations of right to privacy, or property damage, based or asserted upon any actual or alleged act or omission of its employees, agents, or subcontractors, relating to or in any way connected with the performance of or failure to perform the terms of this Agreement, unless the bodily injury, property damage or other claimed injury was actually caused by the willful misconduct, or sole negligence of the party, its directors, officers, elected officials, employees, agents, authorized volunteers, or representatives. As part of the foregoing indemnity, each party agrees to protect and defend at its expense, including attorney's fees, each the other, its directors, officers, elected officials, employees, agents, authorized volunteers, or representatives, from any and all administrative or other legal actions based upon such actual or alleged acts or omissions. Each party hereby waives any and all rights it may have to any types of express or implied indemnity against the other, their directors, officers, elected officials, employees, agents, authorized volunteers, or representatives, with respect to third party claims relating to or in any way connected with the performance of the terms of this Agreement.

(b) In addition Borrower shall indemnify and hold the Agency (if applicable), the City and their directors, officers, elected officials, employees, agents, authorized volunteers, or representatives, free and harmless from all claims, demands, actions, damages and liabilities of any kind and nature arising from bodily injury, including death, violations of right to privacy, or property damage, based or asserted upon any actual or alleged act or omission of its employees, agents, or subcontractors, relating to or in any way connected with the performance of or failure to perform the terms of this Agreement, unless the bodily injury, property damage or other claimed injury was actually caused by the willful misconduct or sole negligence of the Borrower, its directors, officers, elected officials, employees, agents, authorized volunteers, or representatives. As part of the foregoing indemnity, Borrower agrees to protect and defend at its expense, including attorney's fees, the Agency the City, their directors, officers, elected officials, employees, agents, authorized volunteers, or representatives, from any and all administrative or other legal actions based upon such actual or alleged acts or omissions.

**SECTION 5.8. Attorneys' Fees.**

Except as otherwise required by Section 5.7 hereof, in the event of litigation between the parties arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs and expenses incurred, including such fees and costs incurred on appeal, in addition to whatever other relief the prevailing party may be entitled to. As used in the preceding sentence, the words "reasonable attorney's fees" in the case of the CITY, shall also include the salary and benefits payable to lawyers employed in the Office of the City Attorney of the City, who provide legal counsel to the CITY in such litigation as allocated on an hourly basis in addition to such other counsel as may be selected by the CITY under such circumstances.

**SECTION 5.9. Survival of Provisions.**

The provisions of the following sections of this Agreement shall survive the termination of this Agreement:

In the event that a termination of this Agreement may occur after the Close of the Acquisition Escrow, the following provisions of this Agreement shall serve such termination:

- (2) all of the Loan Documents;
- (4) all of the instruments executed the CITY and the Borrower as recorded, including without limitation the Regulatory Agreement;
- (5) all of the provisions of Article IV of this Agreement, "Use of the Site and the Project", Section 5.4, "Remedies; Enforcement of Agreement", Section 5.5, "Rights and Remedies are Cumulative", Section 5.6, "No Consequential Damages"; Section 5.7, "Additional Borrower Indemnification", Section 5.8, "Attorney's Fees", Section 6.5, "Nonliability of the CITY Officials and Employees" and Section 6.8, "Representations and Warranties of Borrower".

**ARTICLE VI**

**MISCELLANEOUS**

**SECTION 6.1. Governing Law.**

The laws of the State of Washington shall govern the interpretation and enforcement of this Agreement.

**SECTION 6.2.           No Joint Venture.**

Nothing in this Agreement shall be construed to constitute the creation of a partnership or joint venture between the CITY and the Borrower or any contractor or other person relating to the Project or the Site. The CITY is not an agent or representative of the Borrower but is an independent contractor. This Agreement does not create a contractual relationship between the CITY and any such third-person and shall not be construed to benefit or bind the CITY in any way with or create any contractual duties by the CITY to any contractor, subcontractor, materialman, laborer, or any other person.

**SECTION 6.3.           Notices.**

Notices, demands, and communications between the CITY and Borrower shall be sufficiently given if personally delivered or delivered by a nationally-recognized courier service or sent by registered or certified mail, postage prepaid, return receipt requested, to the following addresses:

If to CITY:                   Attention: Ricardo Noguera, CED Director  
747 Market Street, Room 900  
Tacoma WA 98402

If to Borrower:           Tacoma Community Redevelopment Authority  
Attention: Carey K. Jenkins, Housing Division Manager  
747 Market Street, Room 808  
Tacoma, WA98402

Any notice shall be deemed to have been received as of the earlier time of actual receipt by the addressee thereof or the expiration of forty-eight (48) hours after depositing of such notice in the United States Postal System in the manner described in this Section. Such written notices, demands, and communications may be sent in the same manner to such other addresses as a party may from time to time designate in writing.

**SECTION 6.4.           Conflicts of Interest.**

No member, official, or employee of the CITY shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested.

**SECTION 6.5. Nonliability of CITY Officials and Employees.**

No member, official, employee, or consultant of , the CITY shall be personally liable to Borrower, or any successor in interest of Borrower, in the event of any default or breach by the CITY or for any amount which may become due to Borrower or to its successor, or on any obligations under the terms of this Agreement nor shall any such member, official, employee, or consultant of the CITY, the City have personal liability for payment of any amounts that may become due and payable by the CITY to Borrower under this Agreement.

**SECTION 6.6. Enforced Delay: Extension of Time of Performance.**

(a) In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default, or considered to be a default, where delays or defaults are due to force majeure events beyond the control of such party, including, without limitation, war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, government imposed moratorium legislation, freight embargoes, lack of transportation, weather-caused delays, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or supplier, that are not attributable to the fault of the party claiming an extension of time, that suspends the comment of construction of the Project, or, if after such construction is commenced, suspends the prosecution of the work of improvement of the Project. An extension of time for any such force majeure cause shall be for the period of the enforced delay and shall commence to run from the date of occurrence of the delay; provided, however, that the party claiming the existence of the delay first provides the other party with written notice of the occurrence of the delay, within ten (10) days of the commencement of such occurrence of a force majeure event and, thereafter, takes prompt and reasonable action within its control to restore, reconstruct, or rebuild any damage to the Project caused by such force majeure event and resume regular business operation.

(b) The inability of the Borrower to obtain the Permanent Loan, or the failure of the City to provide any necessary approval relating to the redevelopment of the Project or the inability of the Borrower to satisfy any other condition of this Agreement relating to the design, financing or redevelopment of the Project on the Site, shall not be deemed to be a force majeure event or otherwise provide grounds for the assertion of the existence of a forced delay under this Section 6.6. The parties each expressly acknowledge and agree that changes in either general economic conditions or changes in the economic assumptions of either of them that provided a basis for entering into this Agreement occurring at any time after the execution of this Agreement, are not force majeure events and do not provide either party with grounds for asserting the existence of a forced delay in the performance of any covenant or undertaking arising under this Agreement. Each party expressly assumes the risk that changes in general economic conditions or changes in their economic assumptions could impose an inconvenience or hardship on the continued performance by such party under this Agreement and that such inconvenience or hardship is not a force majeure event and does not excuse the performance by such party of its obligations under this Agreement.

(c) If a third-party files a legal action regarding the CITY' approval of this Agreement or the pursuit of the activities contemplated by this Agreement, including City approval or SEPA review, the CITY may terminate this Agreement on sixty (60) days written notice to the Borrower of the CITY' intent to terminate this Agreement, referencing this Section 6.6(c), without any further obligation to perform the terms of this Agreement and without any liability to the Borrower resulting from such termination, unless the Borrower unconditionally agrees to indemnify and defend the CITY against such third-party legal action, as provided herein. Within thirty (30) days after receipt of the CITY' notice of intent to terminate this Agreement, as provided in the preceding sentence, the Borrower may offer to defend the CITY in the third-party legal action and pay all of the court costs, attorney fees, monetary awards, sanctions, attorney fee awards, expert witness and consulting fees, and the expenses of any and all financial or performance obligations resulting from the disposition of the legal action. Any such offer from the Borrower must be in writing and in a form reasonably acceptable to the CITY and must demonstrate pursuant to acceptable evidence as shall be determined by the CITY that the Borrower has the ability to perform as represented in such offer to defend.

**SECTION 6.7. Modifications.**

Any alteration, change or modification of or to this agreement, in order to become effective, shall be made by written instrument or endorsement thereon and in each such instance executed on behalf of each party hereto.

**SECTION 6.8. Representations and Warranties of Borrower.**

The Borrower hereby makes the following representations, covenants and warranties and acknowledges that the execution of this Agreement by the CITY has been made in material reliance by the CITY on such covenants, representations and warranties:

- (1) The Borrower is a duly organized and validly existing Washington limited liability company. The Borrower has the legal right, power and authority to enter into this Agreement and the instruments and documents referenced herein and to consummate the transactions contemplated hereby. The persons executing this Agreement and the instruments referenced herein on behalf of the Borrower hereby represent and warrant that such persons have the power, right and authority to bind the Borrower.
- (2) The Borrower has taken all requisite action and obtained all requisite consents in connection with entering into this Agreement and the instruments and documents referenced herein and the consummation of the transactions contemplated hereby, and no consent of any other party is required.
- (3) This Agreement is, and all agreements, instruments and documents to be executed by the Borrower pursuant to this Agreement shall be, duly executed by and are or

shall be valid and legally binding upon the Borrower and enforceable in accordance with their respective terms.

- (4) Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby shall result in a breach of or constitute a default under any other agreement, document, instrument or other obligation to which the Borrower is a party or by which the Borrower may be bound, or under law, statute, ordinance, rule, governmental regulation or any writ, injunction, order or decree of any court or governmental body applicable to the Borrower or to the Site.

All representations and warranties contained in this Section 6.8 are true and correct on the Effective Date and on the Closing of the Acquisition Escrow, and Borrower's liability for misrepresentation or breach of warranty, representation or covenant, wherever contained in this Agreement, shall survive the execution and delivery of this Agreement and the close of each such escrow as referred in the preceding sentence.

**SECTION 6.9.           Representations and Warranties of The CITY.**

The CITY hereby makes the following representations, covenants and warranties and acknowledges that the execution of this Agreement by the Borrower has been made and the acquisition by the Borrower of the Site will have been made in material reliance by the Borrower on such covenants, representations and warranties:

- (1) Each and every undertaking and obligation of the CITY under this Agreement shall be performed by the CITY timely when due; and that all representations and warranties of the CITY under this Agreement and its attachments shall be true in all material respects as of the Effective Date.
- (2) As a municipal corporation operating under the laws of Washington the CITY has the legal power, right and authority to enter into this Agreement and to execute the instruments and documents referenced herein, and to consummate the transactions contemplated hereby.
- (3) The CITY has taken official action to approve this Agreement and the instruments and documents referenced herein and the consummation of the transactions contemplated hereby.
- (4) The persons executing any instruments for or on behalf of the CITY have been authorized to act on behalf of the CITY and that the Agreement is valid and enforceable against the CITY in accordance with its terms and each instrument to be executed by the CITY pursuant hereto or in connection therewith will, when executed, be valid and enforceable against the CITY in accordance with its terms. No approval, consent, order or authorization of, or designation or declaration of any other person, is required in connection with the valid execution and delivery of and compliance with this Agreement by the CITY.



If the CITY becomes aware of any act or circumstance which would change or render incorrect, in whole or in part, any representation or warranty made by the CITY under this Agreement, whether as of the date given or any time thereafter through the Closing and whether or not such representation or warranty was based upon the CITY' knowledge and/or belief as of a certain date, the CITY will give immediate written notice of such changed fact or circumstance to the Borrower, but such notice shall not release the CITY of its liabilities or obligations with respect thereto. All representations and warranties contained in this Section 6.9 are true and correct on the date hereof and on the Closing Date and the CITY liability for misrepresentation or breach of warranty, representation or covenant, wherever contained in this Agreement, shall survive the execution and delivery of this Agreement and the Close of Escrow.

**SECTION 6.10. Binding Effect of Agreement.**

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their legal representatives, successors, and assigns.

**SECTION 6.11. Assurances to Act in Good Faith.**

The CITY and Borrower agree to execute all documents and instruments and to take all action and shall use their best efforts to accomplish the purposes of this Agreement. The CITY and Borrower shall each diligently and in good faith pursue the satisfaction of any conditions or contingencies subject to their approval.

**SECTION 6.12. Severability.**

Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

IN WITNESS WHEREOF the CITY and Borrower have each executed this Agreement as of the date first written above.

**ORAL AGREEMENTS OR ORAL COMMITMENTS TO LEND MONEY, EXTEND CREDIT OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

**THE CITY**

**City of Tacoma**

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

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

City Manager

**BORROWER**

**Tacoma Community Redevelopment Authority**

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

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

Its Administrator

**Attachment "A"**

**Legal Description of the Site**

Lot 8 and 9, Block 1222, MAP OF NEW TACOMA, WASHINGTON TERRITORY, according to the Plat filed for record February 3, 1875, in the Office of the County Auditor, in Tacoma, Pierce County, Washington ;

TOGETHER WITH the Easterly 10 feet of the vacated alley abutting and adjoining said lots, vacated by Ordinance No. 2070 of the City of Tacoma, which upon vacation attached to said premises by Operation of Law ;

Situate in the County of Pierce, State of Washington.

**Attachment “B”**

**Promissory Note**

**Attachment “C”**

**Deed of Trust**

**Attachment “D”**  
**Regulatory Agreement**

## **Attachment “E”**

### **Project Description**

The project consists of the acquisition, Redevelopment and operation of a multi-family building located at 1216-1218 Martin Luther King, Jr. Way, Tacoma, Washington. Said project shall provide twenty six (26) rental units with two (2) of the units designated as work-live units.

The unit mix is as follows: thirteen (13) will be studios; two (2) will be one-bedroom; nine (9) will be one-bedroom lofts; and two (2) will be work live lofts.

Six (6) of the studio units and three (3) of the one-bedroom lofts will be affordable to households earning no more than fifty percent (50%) of the Area Median Income (AMI) for the Tacoma/Pierce County Metropolitan Statistical Area (MSA) adjusted for household size, as periodically modified by the U.S. Department of Housing and Urban Development (“HUD”). At initial occupancy, an additional five (5) units will be affordable to households earning no more than eighty percent (80%) of the AMI. Following initial occupancy, these units become unrestricted.

The developer shall utilize funding from federal programs to assist in the acquisition and redevelopment of the building.

**Attachment “F”**

**Approved Project Pro Forma**



**Attachment “G”**  
**Schedule of Performance**