

PROMISSORY NOTE
(UDAG Funds)

Total Principal Amount
Not to Exceed \$3,000,000.00

_____, 2016

For value received, the undersigned, TACOMA COMMUNITY REDEVELOPMENT AUTHORITY, a Washington public development authority (“Borrower”), whose principal address is set forth herein below, promises to pay to the order of THE CITY OF TACOMA, a municipal corporation of the State of Washington) (the “CITY”) at 747 Market Street, Room 900, Tacoma, Washington 98402 (or to such designee and/or at such other address as the CITY may from time to time designate in writing), the principal sum not to exceed tTHREE MILLION AND NO/100 DOLLARS (\$3,000,000.00) with interest to accrue from and after the date of each such disbursement (the “Loan”), or such amount as may be advanced hereunder, plus accrued and unpaid interest as provided herein below, and all other charges due hereunder, in accordance with the terms and conditions of that certain Redevelopment and Permanent Financing Loan Agreement dated as of _____, 2016 entered into between Borrower and the CITY (the “Agreement”), and the terms and conditions of this Promissory Note (this “Note”). As set forth in greater detail in the Agreement, the purpose of the Loan is to provide Borrower with permanent financing in connection with the acquisition and rehabilitation of an affordable housing project (“Project”) on a site more particularly described in the Agreement (“Eligible Property”).

1. Interest.

1.1 Basic Interest. Except as provided in Section 1.4 below, the disbursed and unpaid principal balance of the Loan shall bear interest commencing on the date on which the Loan proceeds are first disbursed for the account of Borrower, and ending on the date paid, at the rate of zero percent (0%) per annum, simple interest (“Basic Rate”). Interest shall be computed on the basis of actual number of days elapsed and a 365-day year.

1.2 Payment Dates and Amounts. Except as otherwise provided in this Note, Borrower shall repay the Loan, together with accrued interest at the Basic Rate in arrears, in annual installments commencing one year after the issuance of the Certificate of Occupancy. Absent prepayment or acceleration, each of the annual payments shall be due on September 30th thereafter through and including September 30, 2046 (“Maturity Date”). Notwithstanding any other provision of this Note, unless due sooner, the entire outstanding principal balance of the Loan together with any outstanding interest and any other sums payable under this Note shall be due and payable in full on the Maturity Date.

1.3 Default Rate. Any amounts (including but not limited to amounts of principal and interest on the Loan) which Borrower does not pay when due under the terms of this Note shall bear interest at the rate of twelve percent (12%) per annum, simple interest (“Default Rate”), from the date due until the date paid.

2. Acceleration.

Notwithstanding the payment terms set forth in Section 1 above, upon the occurrence of any “Event of Default” as set forth in Section 9 below, the entire outstanding principal balance of this Note, together with any outstanding interest and other amounts payable hereunder, shall, at the election of the City and upon notice to Borrower thereof become immediately due and payable without presentment, demand, protest or other notices of any kind, all of which are hereby waived by Borrower.

3. Prepayment; Application of Payments.

At any time after the disbursement of the Loan proceeds, Borrower may prepay all or a portion of the unpaid principal amount of the Loan and accrued interest and any other sums outstanding without penalty. All payments, including any prepayments or funds received upon acceleration pursuant to Section 2 above, shall be applied first toward any outstanding costs of collection or other amounts (excluding Loan principal or interest thereon) due under this Note or the Agreement, then toward outstanding interest accrued at the Default Rate, if any, then toward outstanding interest accrued at the Basic Rate, if any, and finally toward the remaining principal balance under the Note.

4. Security and Source of Payment.

Borrower’s obligations under this Note and the Agreement shall, at all times during which any amount remains outstanding, be secured by the deed of trust (“Deed of Trust”) of even date herewith, and of which the CITY is the beneficiary, recorded against Borrower’s interest in the Eligible Property and the Project (collectively, the “Property”). The security interest in the Property granted to the CITY pursuant to the Deed of Trust shall be subordinate only to the exceptions to title shown in the title report for the Property which are approved in writing by the CITY. Except to the extent any Event of Default hereunder results directly or indirectly from any willful misconduct, fraud or intentional and material misrepresentation by Borrower in connection with this Note, the Agreement, or the Loan, the Loan is a nonrecourse obligation of Borrower and, in the event of the occurrence of an Event of Default, the CITY’s only recourse under the Loan Documents shall be against the Property, the proceeds thereof, the rents and other income arising from its use and occupancy as provided in the Deed of Trust, and any other collateral given to the CITY as security for repayment of the Loan.

5. Obligation of Borrower Unconditional.

The obligation of Borrower to repay the Loan and all accrued interest thereon and all other sums due thereunder shall be absolute and unconditional, and until such time as all of the outstanding principal of, interest on and all other sums due under, this Note shall have been fully paid, Borrower agrees that it: (a) will use the funds solely for the purposes set forth herein; and (b) will not terminate or suspend any payment or obligations under this Note, the Agreement, or any other document executed hereunder or in connection herewith for any cause, including without limitation, any acts or circumstances that may constitute failure of consideration, commercial frustration of purpose, or any duty, liability or obligation arising out of or in connection with this Note, the Agreement or any document executed hereunder or in connection herewith.

6. Purpose of Loan.

The Loan proceeds shall be used by Borrower only to provide permanent financing for soft costs and construction of the housing development described in the Agreement. In no event shall Borrower use or otherwise invest the proceeds of the Loan except as expressly provided in this Note.

7. Covenants of Borrower.

As additional consideration for the making of the Loan by the CITY, Borrower covenants as follows:

7.1 Compliance with the Agreement and the Deed of Trust. Borrower shall comply with all of its obligations under the Agreement and the Deed of Trust or Loan Documents. Any amounts payable by Borrower under the Deed of Trust (other than amounts also payable hereunder) shall be deemed added to the principal amount of the Loan payable hereunder.

7.2 Other Loans. Borrower shall comply with all monetary and nonmonetary covenants associated with any loan secured by an interest in the Eligible Property or the Project. Borrower shall provide to the CITY a copy of any notice of default within five business days after receiving any notice of a default or alleged default of such covenants by Borrower, and Borrower shall promptly cure any such default and cooperate in permitting the CITY, to the extent the CITY in its sole discretion elects to do so, to cure or assist in curing the default. Any cost or expenditure incurred by the CITY in providing or assisting in such a cure shall be added to the outstanding principal amount of the Loan.

8. Assignment of this Note.

This Note shall be assignable by Borrower only if Borrower obtains the prior express written consent of the CITY, which consent may be withheld by the CITY in its sole discretion. Notwithstanding anything to the contrary in this Note, no purported assignment of this Note and the Loan shall be effective if such assignment would violate the terms, conditions and restrictions of any Applicable Governmental Restrictions. The CITY's consent to such assignment shall be expressly conditioned upon (i) the assignee's execution of such documents as required by the CITY in its sole discretion, including, without limitation, any and all documents deemed necessary by the CITY to provide for said assignee's assumption of all of the obligations of Borrower hereunder and under Loan Documents, and (ii) TCRA's approval of the financial and credit worthiness of such proposed assignee and the assignee's ability to perform all of the Borrower's covenants under this Note and any of the other Loan Documents.

9. Events of Default and Remedies.

A. Borrower Events of Default. The occurrence of any of the following shall, after the giving of any notice and the expiration of any applicable cure period described therein, constitute an event of default by Borrower hereunder ("Event of Default"):

(1) The failure of Borrower to pay or perform any monetary covenant or obligation hereunder or under the terms of this Note or the Deed of Trust or the Agreement, without curing such failure within ten (10) calendar days after the date such payment is due. Notwithstanding anything herein to the contrary, the herein described cure period shall not apply to a failure by Borrower to timely repay the CITY Loan at the Maturity Date of this Note;

(2) The failure of Borrower to perform any nonmonetary covenant or obligation hereunder or under the terms of this Note, the Deed of Trust or the Agreement, without curing such failure within thirty (30) calendar days after receipt of written notice of such default from the CITY (or from any party authorized by the CITY to deliver such notice as identified by the CITY in writing to Borrower) specifying the nature of the event or deficiency giving rise to the default and the action required to cure such deficiency; provided, however, that if any default with respect to a nonmonetary obligation is such that it cannot be cured within a thirty day period, it shall be deemed cured if Borrower commences the cure within said thirty day period and diligently prosecutes such cure to completion thereafter with the cure completed in any event within 180 calendar days after the notice. Notwithstanding anything herein to the contrary, the herein described notice cure periods shall not apply to any Event of Default described in Sections 9(A)(3) through 9(A)(8) below;

(3) The material falsity of any representation or breach of any warranty or covenant made by Borrower under the terms of this Note, the Agreement or the Deed of Trust;

(4) Borrower shall (a) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian or the like of its property, (b) fail to pay or admit in writing its inability to pay its debts generally as they become due, (c) make a general assignment for the
Promissory Note

benefit of creditors, (d) be adjudicated a bankrupt or insolvent or (e) commence a voluntary case under the Federal bankruptcy laws of the United States of America or file a voluntary petition that is not withdrawn within ten (10) calendar days after the filing thereof or answer seeking an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law or file an answer admitting the material allegations of a petition filed against it in any bankruptcy or insolvency proceeding;

(5) If without the application, approval or consent of Borrower, a proceeding shall be instituted in any court of competent jurisdiction, under any law relating to bankruptcy, in respect of Borrower or any constituent member or partner or majority shareholder of Borrower, for an order for relief or an adjudication in bankruptcy, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator or custodian or the like of Borrower or of all or any substantial part of Borrower's assets, or other like relief in respect thereof under any bankruptcy or insolvency law, and, if such proceeding is being contested by Borrower, in good faith, the same shall (a) result in the entry of an order for relief or any such adjudication or appointment, or (b) continue undismissed, or pending and unstayed, for any period of ninety (90) consecutive calendar days;

(6) Following completion of the rehabilitation of the Project, voluntary cessation of the operation of the Project for a continuous period of more than thirty (30) calendar days or the involuntary cessation of the operation of the Project in accordance with this Note for a continuous period of more than sixty (60) calendar days;

(7) Borrower shall suffer or attempt to effect a Transfer (as defined below), in violation of Section 14; or

(8) Borrower shall be in default under the Regulatory Agreement, the Loan, the Loan Documents, the Deed of Trust, Senior Financing, Junior Financing, Other Financing or any other secured or unsecured obligation relating to the Project, unless the default is cured within the cure period, if any, applicable thereto under the terms of the obligation which is in default.

B. CITY Remedies. Upon the occurrence of an Event of Default hereunder, the CITY may, in its sole discretion, take any one or more of the following actions:

(1) By notice to Borrower, declare the entire then unpaid principal balance of the Loan immediately due and payable, and the same shall become due and payable without further demand, protest or further notice of any kind, all of which are hereby expressly waived by Borrower. Upon such declaration, outstanding principal and (to the extent permitted by law) interest and any other sums outstanding in connection with the Loan shall thereafter bear interest at the Default Rate, payable from the date of such declaration until paid in full;

(2) Subject to the nonrecourse provisions of Section 4 above, take any and all actions and do any and all things which are allowed, permitted or provided by law, in equity or by statute, in the sole discretion of the CITY, to collect the amounts then due and thereafter to

Promissory Note

become due hereunder, to exercise its rights under the Deed of Trust, and to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Note or under any other document executed in connection herewith;

(3) Subject to the nonrecourse provisions of Section 4 above, upon the occurrence of an Event of Default, which is occasioned by Borrower's failure to pay money, whether under this Note or the Agreement, the CITY may, but shall not be obligated to, make such payment. If such payment is made by the CITY, Borrower shall deposit with the CITY, upon written demand therefor, such sum plus interest at the Default Rate. The Event of Default with respect to which any such payment has been made by the CITY shall not be deemed cured until such repayment has been made by Borrower. Until repaid, such amounts shall have the security afforded disbursements under this Note;

(4) Subject to the nonrecourse provisions of Section 3 above, upon the occurrence of an Event of Default described in Section 9(A)(3) or 9(A)(4) hereof, the CITY shall be entitled and empowered by intervention in such proceedings or otherwise to file and prove a claim for the whole amount owing and unpaid on the Loan and, in the case of commencement of any judicial proceedings, to file such proof of claim and other papers or documents as may be necessary or advisable in the judgment of the CITY and its counsel to protect the interests of the CITY and to collect and receive any monies or other property in satisfaction of its claim.

C. No Remedy Exclusive. No remedy herein conferred upon or reserved to the CITY is intended to be exclusive of any other available remedy or remedies, but each such remedy shall be cumulative and shall be in addition to every other remedy given under this Note or now or hereafter existing at law or in equity or by statute; and may be exercised in such number, at such times and in such order as the CITY may determine in its sole discretion. No delay or omission to exercise any right or power upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient by the CITY. In order to entitle the CITY to exercise any right or remedy reserved to it under this Note, no notice shall be required except as expressly provided herein.

D. The CITY Default and Borrower Remedies. Upon fault or failure of the CITY to meet any of its obligations under this Note without curing such failure within thirty (30) calendar days after receipt of written notice of such failure from Borrower specifying the nature of the event or deficiency giving rise to the default and the action required to cure such deficiency, Borrower may, as its sole and exclusive remedies:

(1) Demand and obtain payment from the CITY of any sums due to or for the benefit of Borrower pursuant to the express terms of this Note;

(2) Bring an action in equitable relief seeking the specific performance by the CITY of the terms and conditions of this Note or seeking to enjoin any act by the CITY which is prohibited hereunder; or

Promissory Note

(3) Bring an action for declaratory relief seeking judicial determination of the meaning of any provision of this Note.

10. Agreement to Pay Attorneys' Fees and Expenses.

In the event that either party hereto brings any action or files any proceeding in connection with the enforcement of its respective rights under this Note or any of the other Loan Documents as a consequence of any breach by the other party of its obligations hereunder or thereunder, the prevailing party in such action or proceeding shall be entitled to have its reasonable attorneys' fees and out-of-pocket expenditures paid by the losing party. The attorneys' fees so recovered shall include fees for prosecuting or defending any appeal and shall be awarded for any supplemental proceedings until the final judgment is satisfied in full. In addition to the foregoing award of attorneys' fees, the prevailing party in any lawsuit on this Note or any other Loan Document shall also be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. In addition to the foregoing, Borrower agrees to pay or reimburse the CITY, upon demand by the CITY, for all costs incurred by the CITY in connection with the enforcement of this Note, and any other Set-Aside Loan Document, including without limitation, reasonable attorneys' fees and costs, if there shall be filed by or against Borrower any proceedings under any federal or state bankruptcy or insolvency laws, whether the CITY is a creditor in such proceeding or otherwise.

11. Conflict of Interest; No Individual Liability.

No official or employee of the CITY shall have any personal interest, direct or indirect, in this Note, nor shall any official or employee of the CITY participate in any decision relating to this Note which affects such official's or employee's pecuniary interest in any corporation, partnership or association in which such official or employee is directly or indirectly interested. No official or employee of the CITY or the Agency shall be personally liable in the event of a breach of this Note by the CITY or the Agency.

12. Amendments, Changes and Modifications.

This Note may not be amended, changed, modified, or altered without the prior written consent of the parties hereto.

13. Notices.

All notices, demands, requests, elections, approvals, disapprovals, consents or other communications given under this Note shall be in writing and shall be given by personal delivery, facsimile, certified mail (return receipt requested), or overnight guaranteed delivery service and faxed or addressed as follows:

If to the CITY: The City of Tacoma
Promissory Note

747 Market Street, Room 900
Tacoma, Washington 98402
Attn: Director
Fax No. (253) 591-5180

If to Borrower: Tacoma Community Redevelopment Authority
747 Market Street, Room 808
Tacoma, Washington 98402
Attn: Housing Division Manager
Fax No. (253) 591-5180

Notices shall be effective upon receipt, if given by personal delivery; upon receipt, if faxed, provided there is written confirmation of receipt (except that if received after 5 p.m., notice shall be deemed received on the next business day); the earlier of (i) three (3) business days after deposit with United States Mail, or (ii) the date of actual receipt as evidenced by the return receipt, if delivered by certified mail; or (iii) one (1) day after deposit with the delivery service, if delivered by overnight guaranteed delivery service. Each party shall promptly notify the other party of any change(s) of address to which notice shall be sent pursuant to this Note.

14. Severability.

The invalidity or unenforceability of any one or more provisions of this Note will in no way affect any other provision.

15. Interpretation.

Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the paragraphs of this Note are for convenience only and do not define or limit any terms or provisions. Time is of the essence in the performance of this Note by Borrower. Each Party has been represented by counsel in the negotiation of this Note, and it shall not be interpreted in favor of or against any Party on account of relative responsibilities in drafting. Notwithstanding any other provision of this Note, nothing herein or in this Note shall be deemed to require Borrower to pay interest in the amount of any applicable usury law or other legal limitation on interest, and the terms hereof and of this Note shall be interpreted to require in each instance the lesser of (i) the amount stated in this Note; and (ii) the maximum applicable legal limit. Defined terms not otherwise defined herein shall have the meaning assigned to them by the Agreement.

16. No Waiver; Consents.

Any waiver by the CITY must be in writing and will not be construed as a continuing waiver. No waiver will be implied from any delay or failure by the CITY to take action on account of any default of Borrower. Consent by the CITY to any act or omission by Borrower will not be construed as consent to any other or subsequent act or omission or to waive the requirement for the CITY's consent to be obtained in any future or other instance.

17. Governing Law.

This Note shall be governed by the laws of the State of Washington.

18. Representations, Warranties and Additional Covenants of Borrower.

Borrower hereby represents, warrants and covenants to the CITY that:

A. Organization and Standing. Borrower is a Washington legal entity as described in the Agreement, duly formed, qualified to operate in Washington and validly existing and in good standing under all applicable laws, and has all requisite power and authority to enter into and perform its obligations under this Note, the Agreement, Deed of Trust, the Regulatory Covenant and all other documents executed in connection herewith.

B. Enforceability. This Note and all other instruments to be executed by Borrower in connection with the Loan constitute the legal, valid and binding obligation of Borrower, without joinder of any other party.

C. Authorization and Consents. The execution, delivery and performance of this Note and all other instruments to be executed in connection herewith is consistent with the operating agreement, partnership agreement or articles and bylaws governing Borrower and have been duly authorized by all necessary action of Borrower's members, partners, directors, officers and shareholders.

D. Due and Valid Execution. This Note and all other instruments to be executed in connection herewith, will, as of the date of their execution, have been duly and validly executed by Borrower.

E. Licenses. Borrower will obtain and maintain all material licenses, permits, consents and approvals required by all applicable governmental authorities to own and operate the Project.

F. Litigation and Compliance. There are no suits, other proceedings or investigations pending or threatened against, or affecting the business or the properties of Borrower (other than those as have been previously disclosed in writing to the CITY) which could impair its ability to perform its obligations under this Note, nor is Borrower in violation of

any laws or ordinances which could materially impair Borrower's ability to perform its obligations under this Note.

G. Default. There are no facts now in existence which would, with the giving of notice or the lapse of time, or both, constitute an "Event of Default" hereunder, as described in Section 9.

H. No Violations. The execution and delivery of this Note and all other documents executed or given thereunder, and the performances hereunder and thereunder by Borrower, as applicable, will not constitute a breach of or default under any instrument or agreement to which Borrower may be a party nor will the same constitute a breach of or violate any law or governmental regulation.

19. Approvals.

Except with respect to those matters set forth hereinabove providing for The CITY's approval, consent or determination to be at the CITY's "sole discretion" or "sole and absolute discretion," the CITY hereby agrees to act reasonably with regard to any approval, consent, or other determination given by the CITY hereunder. The CITY agrees to give Borrower written notice of its approval or disapproval following submission of items to the CITY for approval, including, in the case of any disapproved item, the reasons for such disapproval.

Any review or approval of any matter by the CITY or any CITY official or employee under this Note shall be solely for the benefit of the CITY, and neither Borrower nor any other person shall rely upon such review or approval as an indication of the wisdom, soundness, safety, appropriateness, or presence or absence of any matter. Without limiting the generality of the foregoing, Borrower and not the CITY shall be solely responsible for assuring compliance with laws, the suitability of the Eligible Property for the Project, the adequacy of the plans, and the safety of the Project construction site, the completed Project, and the operation thereof.

Any consent to a Transfer given by the CITY under this Note, the Deed of Trust, the Agreement, or any of the other documents executed in connection therewith, may not be given without action by the CITY's governing board.

20. Good Faith and Fair Dealing.

The CITY and Borrower agree to perform all of their obligations and the actions required of each hereunder in good faith and in accordance with fair dealing.

21. Waiver.

Borrower agrees that it will still be liable for repayment of this Note, subject to the nonrecourse provision of Section 4 above, even if the holder hereof does not follow the procedures of presentment, protest, demand, diligence, notice of dishonor and of nonpayment, which requirements are hereby waived. Failure of the CITY or other holder hereof to exercise

any right or remedy hereunder shall not constitute a waiver of any future or other default. No acceptance of a past due installment or indulgence granted from time to time shall be construed to be a waiver of, or to preclude the exercise of, the right to insist upon prompt payment thereafter or to impose late charges retroactively or prospectively, or to waive or preclude the exercise of any other rights which the CITY may have.

**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.**

IN WITNESS WHEREOF, Borrower has executed this Note as of the date and year first above written

BORROWER:

TACOMA COMMUNITY REDEVELOPMENT
AUTHORITY, a Washington public development
authority

By: _____
Its Administrator