

April 14, 2016

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of HOME Loan Agreement with
Fenton Rondel Court LP for the Rondel Court Apartments Project

Purpose/Outcomes	HOME Program funds will assist in the acquisition, renovation and development of the 47 unit Rondel Court Apartments affordable housing project in Molalla.
Dollar Amount and Fiscal Impact	Total HOME funds is \$925,000: <ul style="list-style-type: none"> • \$925,000 long-term loan, 0.0% interest, 30-year term. No County General Funds are involved.
Funding Source	The fund source is the Pre-FY15 and FY15 HOME Investment Partnerships Program allocations which the County receives annually from the US Department of Housing and Urban Development (HUD). No County General Funds are involved.
Duration	The term of the loan is 30 years, beginning at closing in April 2016 and ending April 2046.
Previous Board Action/Review	April 30, 2015 – H3S, Approval of Housing and Community Development 2015 Action Plan, Board Order #043015-A1
Strategic Plan Alignment	Provide sustainable and affordable housing. Ensure safe, healthy and secure communities.
Contact Person	Kevin Ko, Manager, Housing & Community Development Division, 655-8359.
Contract No.	H3S 7616

BACKGROUND:

The Housing and Community Development Division of the Health, Housing and Human Services Department requests the approval of a HOME Agreement with Fenton Rondel Court Limited Partnership for the Rondel Court Apartments project. Rondel Court is an existing 30-unit affordable housing project in Molalla and is owned by Fenton Rondel Court LP. Caritas Community Housing (CCH) is the Managing Partner in the Fenton Rondel Court LP. The Owner is planning to demolish 10 severely deteriorated units, renovate the remaining 20 existing units and build 27 new units on the current site. There will be a total of 47 units when the project is completed. The property is located at 180 Fenton Street in Molalla. The project is being designed to serve families and seniors. Priority will be given to seniors with disabilities and to survivors of domestic violence.

On April 30, 2015 the Board approved the Housing and Community Development 2015 Action Plan. The Action Plan is developed annually through a public process which identifies and prioritizes community needs, and targets HUD funds to address the highest priority needs. Included in the 2015 Action Plan is a proposal to preserve and redevelop the Rondel Court Apartments with HOME funds earmarked for multi-family affordable housing. CCH staff have been working with H3S staff to address site and funding requirements, and is prepared to move forward with project development. As a condition of receiving federal Low Income Housing Tax Credits, the Fenton Rondel Court LP was formed with CCH as its Managing Partner. The tax credits will provide \$8.535 million of development equity for

the project. The estimated total project cost is \$11 million. The balance of funds will come from other Federal, State and CCH sources.

The environmental Assessment has been completed and HUD issued the Authority to Use Grant Funds on 03/09/2016. The HOME Loan Agreement was reviewed and approved by County Counsel on 03/17/2016.

RECOMMENDATION:

Staff recommends Board approval of the HOME Loan Agreement with Fenton Rondel Court LP for the Rondel Court Apartments and authorization for Richard Swift, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,

Richard Swift, Director
Health, Housing and Human Services

LOAN AGREEMENT

CLACKAMAS COUNTY HOME PROGRAM

Name of Project: Rondel Court Apartments

This Loan Agreement ("Agreement") is entered into between Fenton Rondel Court, LP, ("Owner"), of which Caritas Community Housing Corp. (Caritas) is the sole General Partner or the sole Managing Member, and Clackamas County ("County"), a Participating Jurisdiction under the HOME investment Partnerships Program ("HOME").

This Agreement includes the following attachments:

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

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

1. **DEFINITIONS.** Capitalized terms in this Agreement and in the other Loan Documents have the following definitions:
 - a. **Annual Income.** Annual income as defined at 24 CFR 5.609.
 - b. **Affordability Requirements.** The Affordability Requirements refer to the restrictions on rents and tenant incomes set forth in Section 10 below.
 - c. **CHDO.** Community Housing Development Organization. This is a HOME specific designation. For the purposes of this Agreement, the CHDO (or a wholly owned subsidiary of the CHDO) must be the sole general partner or sole managing member of the actual ownership entity. Caritas Community Housing Corp. is the CHDO of record for this Agreement.
 - d. **HOME-Assisted Units or HOME Unit.** HOME-Assisted units ("HOME units") are those units in the Project which were partially or totally rehabilitated, constructed, or otherwise assisted with the use of HOME Funds. The HOME-Assisted units are designated in Section 4 below.
 - e. **HOME Funds.** HOME Funds means the total amount of HOME Program dollars being provided by the County to the Project under this Agreement. See Section 2 below.
 - f. **HOME Program and HOME Regulations.** The federal HOME Investment Partnership Program (HOME Program) is authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990. HUD's regulations and requirements for the HOME Program are located in 24 CFR Part 92. Should anything in this Agreement or the other Loan Documents conflict with the HOME regulations, the HOME regulations shall prevail.
 - g. **HUD.** The United States Department of Housing and Urban Development
 - h. **Loan Documents.** The Loan Documents are this Agreement, the Promissory Note, the Trust Deed, and the Declaration of Land Use Restrictive Covenants, all of which are incorporated into this Agreement by reference.
 - i. **Low-Income and Very Low-Income.** A Low-Income household is one whose total income does not exceed 80% of the County's Median Income. A Very Low-Income household is one whose total income does not exceed 50% of the County's Median Income.
 - j. **Median Income.** Median Income means the median income for Clackamas County, adjusted for family size, as published by HUD, from time to time.
 - k. **Owner.** The initial Owner and any subsequent Project owner, subject to the County consenting to any transfer under Section 29 below.
 - l. **Period of Affordability.** See Section 9 below.

- m. **Project.** The project involves the acquisition of an existing 30-unit development located at 180 Fenton Street, in Molalla, Oregon. Additionally, the project involves the demolition of 10 deteriorated units and the new construction of 27 housing units. The legal description of the property is set forth in **Attachment A**.
- n. **Project Completion Date.** The later of the date when (a) the construction is completed, (b) the final HOME drawdown has been disbursed to the Project, and (c) the County has entered the project completion information into HUD's disbursement and information system. County must enter the project completion information into the HUD system, or otherwise provide it to HUD, within 120 days following the final project drawdown. **Addendum 1** to this Loan Agreement will be completed to recognize the actual project completion date. This date will start the HOME Period of Affordability (see Section 9 below).

2. HOME FUNDS; LOAN TERMS

- a. **Amount and Purpose:** County shall loan HOME funds in the amount of **\$925,000** to the **Owner** for the Project. The HOME funds will be used for the redevelopment of the Rondel Court Apartments. Eligible activities include acquisition, demolition, construction, engineering and architectural services and other related activities. Use of the HOME funds for any other purpose, without the expressed written consent of the County is prohibited and may constitute a breach of this agreement.
- b. **Loan Terms:**
 - i. The HOME Funds will be provided as a **0.0% interest deferred payment loan, with a maturity date of December 31, 2044**. Loan repayment, satisfaction or reconveyance shall not relieve Borrower of any performance, affordability or programmatic obligations and requirements of the HOME program.
 - ii. Notwithstanding the loan terms described above, the entire amount of the loan (\$925,000) together with any accrued interest or fees, shall be paid in full upon the sale, assignment or other transfer of title to the Property without the County's consent; or the date Owner or its agents or subcontractors is otherwise in default under any of the prior written Loan Documents (including but not limited to the failure to meet the Affordability Requirements of Section 10 below). Exceptions: Neither a transfer nor assignment of a limited partner's interest in Owner nor the removal of a general partner for cause, shall cause the Loan to be due and payable.
- c. **Loan Documents:** The loan shall be evidenced by this Agreement, a Promissory Note, and a Declaration of Land Use Restrictive Covenants. The loan shall be secured by an Assignment of Beneficiary's Interest in Trust Deed executed by Caritas in favor of the County, substantially in the form of the attached Exhibit B (the "General Partner Assignment"), pursuant to which Caritas will assign to the County its beneficiary's interest in and to that certain Trust Deed to be executed by Partnership in favor of Caritas, all of which together are incorporated by reference into this Agreement and are referred to collectively as the "**Loan Documents**."
- d. **Recording Requirement:** The Owner agrees to record, or cause to be recorded the Trust Deed, the General Partner Assignment, and the Declaration of Land Use Restrictive Covenants, promptly after signing and acquisition of the real property.

3. PAYMENT OF OBLIGATION.

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

4. HOME-ASSISTED UNITS

- a. Six (6) units in the project are HOME-Assisted Units. The total number of HOME-Assisted units has been calculated on the total amount of HOME funds invested in the project, including, but not limited to, this loan. The HOME units are as follows:

Bedroom Size	TOTAL UNITS	Low-Home Units	High Home Units	Total HOME-Assisted
1-bedroom (tenant) unit:	27	1	2	3
2-bedroom (tenant) unit:	12	1	1	2
3-bedroom (tenant) unit:	8	0	1	1
TOTALS	47	2	4	6

- b. Fixed/Floating: The HOME-Assisted units are designated as **FLOATING HOME** units as defined at 24 CFR 92.252.
- c. See Section 10 below and Attachment E for rent and income limits for the HOME-Assisted Units.
- d. Special Needs Set-aside. No less than five units will be made available for persons with special needs to comply with the County's requirement.

5. SOURCES AND USES OF FUNDS; SCHEDULE OF TASKS

- a. All sources and uses of funds for the acquisition phase of the Project are set forth in **Attachment B**. The Uses Statement shall specify by line item the source of funds for each such line item. Owner certifies that (i) it has, or will obtain, commitments of the funds from each of the sources identified, (ii) the sources of funds are sufficient to fund the project in full, and (iii) HOME funds shall only be used for HOME-eligible costs (see 24 CFR 92.206 and 92.214).
- b. The Schedule of Tasks to be undertaken in order to complete the Project is set forth in **Attachment C**.

6. MATCH REQUIREMENT

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

7. HOME REGULATIONS

The Owner agrees to comply with the HOME Regulations and with the other requirements of the Loan Documents. Specifically, the Owner agrees that Caritas will remain as the sole General Partner or sole Managing Member of Fenton Rondel Court, LP for the full duration of the initial period of affordability. If Caritas is unable to re-qualify as a CHDO at any time during the initial period of affordability, Owner agrees to replace Caritas with another CHDO recognized by County, as the sole general partner or the sole managing member of Fenton Rondel Court, LP.

8. ENVIRONMENTAL REVIEW

- a. The environmental effects of each activity carried out with HOME funds must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) and the related authorities in 24 CFR Parts 50 and 58.
- b. The County is responsible for environmental review, decision-making, and action for each activity that it carries out with HOME funds, in accordance with 24 CFR part 58. The County will not commit any HOME funds toward construction of the Project before completion of the environmental review and approval of the request for release of funds and related certification, except as authorized by 24 CFR Part 58.
- c. HOME Funds cannot be used for acquisition or construction in identified special flood hazard areas unless the Project is subject to the mandatory purchase of flood insurance as required by Section 102(a) of the Flood Disaster Protection Act of 1973, as amended from time to time.
- d. In the event that changes or modifications to the approved HOME activities are necessary, the Owner must, prior to any additional commitment or expenditure of funds, submit all necessary supplemental environmental review information and data to the County for the purpose of updating the environmental review record.

9. PERIOD OF AFFORDABILITY

- a. **The Initial Period of Affordability is the HUD-required Period of Affordability. This shall be 20 years for all new HOME units and 15 years for existing HOME units**, without regard to the term of the loan or the transfer of ownership, except as noted in subsection d below. The Initial Period of Affordability begins on the Project Completion Date.
- b. The **Extended Period of Affordability, if any** begins at the end of the INITIAL Period of Affordability and continues until such time as the loan is deemed paid in full.

- c. Unless specified otherwise, the Period of Affordability includes both the Initial and the Extended Periods of Affordability.
- d. **Termination of Period of Affordability.** In accordance with 24 CFR 92.252(e), the Period of Affordability shall be terminated upon foreclosure or transfer in lieu of foreclosure, but shall be revived according to the original terms if during the original Period of Affordability, the Owner of record before the foreclosure or deed in lieu of foreclosure, or any entity that includes the former Owner or any partner or those with whom the former Owner has or had family or business ties, obtains an ownership interest in the project or property.

10. AFFORDABILITY REQUIREMENTS (RENTS AND TENANT INCOMES)

- a. To ensure compliance with the HOME "Program Rule", at initial occupancy all of the HOME-Assisted Units must be rented to tenants whose incomes at the time of the tenant's initial occupancy, are less than or equal to 60% of the Median Income.
- b. **Low-HOME Units.** If the number of HOME-Assisted Units is 5 or more, at least 20% of the HOME-assisted units must be occupied initially and throughout the Period of Affordability by tenants, who at the time of their initial occupancy are very-low-income tenants and the initial rents for those units must not exceed the Low HOME rents shown in **Attachment E**. These rents are subject to periodic adjustment by HUD. If the unit receives federal or state project-based rental assistance, the Low-HOME rent shall not exceed the allowable rent under the rental assistance program.
- c. **High-HOME Units.** After initial occupancy as indicated in paragraph (a) above, the remaining HOME-Assisted Units must be rented during the Period of Affordability to tenants, who at the time of their initial occupancy are low-income tenants and the initial rents for these units must not exceed the High HOME rents shown in **Attachment E**. These rents are subject to periodic adjustments by HUD.
- d. Increases in Tenant's Income:
 - i. Low-HOME rent units
 - 1. If the income of a tenant in a Low-HOME rent unit rises above 50% of Median Income, but does not exceed 80% of Median Income, then the next available HOME-Assisted Unit (for fixed-unit projects) or the next available comparable unit (for floating-unit projects) must be rented to a very-low-income tenant. The unit occupied by the tenant whose income so increased becomes a High-HOME unit and the High-HOME rent must be charged, provided that in no event shall the rent of a tenant of a HOME-assisted unit that has been allocated federal low-income housing tax credits ("LIHTC") increase beyond the maximum applicable LIHTC rent for such unit.
 - 2. The rent for the unit occupied by the tenant whose income has increased above 80% of Median Income will be set in accordance with subparagraph iii below.
 - ii. High-HOME rent units
 - 1. The income of a tenant in a High-HOME rent unit can increase to 80% of Median Income with no change in the status as a HOME-Assisted Unit or in the tenant's rent.
 - 2. If the income of a tenant in a High-HOME rent unit rises above 80% of Median Income, then the next available HOME-Assisted Unit (for fixed-unit projects) or the next available comparable unit (for floating-unit projects) must be rented to a tenant whose income does not exceed 80% of Median Income.
 - 3. The rent for the unit occupied by the tenant whose income has increased above 80% of Median Income will be set in accordance with subparagraph iii below.
 - iii. Project-based rent subsidy: In accordance with 24 CFR 92.252(b)(2), if the unit receives federal or state project-based rental subsidy, the maximum rent is the rent allowable under the federal or state project-based rental subsidy program.
 - iv. Over-income Tenants: In accordance with 24 CFR 92.252(i), a tenant who no longer qualifies as a low-income household must pay as rent 30 percent of the household's adjusted gross income, except that:
 - 1. In no event shall the tenant of a HOME-assisted unit that has been allocated federal low-income housing tax credits ("LIHTC") be charged rent in excess of the maximum applicable LIHTC rent for such unit.
 - 2. If the HOME-assisted unit is a floating unit, a tenant who no longer qualifies as a low-income household is not required to pay as rent an amount that exceeds the market rent for a comparable unassisted unit in the neighborhood.

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

11. TENANT SELECTION CRITERIA; LEASE REQUIREMENTS

- a. Owner shall adopt written tenant selection policies and criteria, which must be pre-approved by the County. The criteria must: (i) be consistent with the purpose of providing housing for very-low-income and low-income households, (ii) be reasonably related to program eligibility and the applicant's ability to perform the lease obligations, (iii) provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as practicable, and (iv) give prompt written notification to any rejected applicant of the grounds for any rejection.
- b. Tenants must be offered renewable lease agreements with an initial duration of at least one year, unless a shorter time period is mutually agreed upon by the tenant and the landlord.
- c. In compliance with 24 CFR 92.252(d), neither the Owner nor Recipient may discriminate against rental assistance subsidy holders.
- d. Tenant leases may not contain any of the following provisions:
 - i. Agreement by the tenant to be sued or to have a judgment entered in favor of Owner;
 - ii. Except as allowed by Oregon law, agreement by the tenant to allow Owner to take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties;
 - iii. Agreement by the tenant not to hold Owner liable for any action or failure to act;
 - iv. Agreement by the tenant that Owner may institute a lawsuit without notice to the tenant;
 - v. Agreement by the tenant that Owner may evict tenant without instituting court proceedings in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
 - vi. Agreement by the tenant to waive any right to a trial by jury, to waive the tenant's right to appeal, or otherwise challenge in court, a court decision in connection with the lease; or
 - vii. Agreement by the tenant to pay attorney fees or costs even if the tenant wins in a court proceeding against the Owner. The tenant may, however, be obligated to pay costs and attorney fees if the tenant loses.
- e. The Owner may not terminate the tenancy or refuse to renew the tenant's lease except for serious or repeated violation of the terms of the lease, for violation of law, for completion of the tenancy period for transitional housing, or for other good cause. To terminate or refuse to renew tenancy, Owner must serve written notice on the tenant specifying the grounds for the action at least 30 days before the termination of the tenancy.

12. PROPERTY STANDARDS

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

13. INDEMNIFICATION AND INSURANCE

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

Owner shall maintain all-risk property insurance in the amount of the full replacement value of the property, commercial general liability insurance in the minimum amount of \$ 1,000,000 per occurrence, \$2,000,000 aggregate, and Rent Loss insurance in an amount equal to 12 months rental income. Owner shall provide County proof of insurance in the required amounts upon execution of this Agreement, and again upon request of the

County. Owner shall give county no less than 30 days' notice if there is a cancellation, nonrenewal or material change of Owner's insurance. See paragraph 1.12 of the Trust Deed for additional insurance requirements.

14. EVENTS OF DEFAULT

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

- a. Securing all Funding. The Owner must secure all fund sources identified in Attachment B within 12 months from the Effective Date identified in Section 31.
- b. Full Occupancy requirement. Within 18 months from the date of project completion, the project must achieve full occupancy. HOME assisted units must be occupied by HOME eligible households.
- c. Noncompliance with the Affordability Requirements at any time during the term of this Loan.
- d. Default under other secured loans, foreclosure, bankruptcy, receivership and non-payment.

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

15. REMEDIES FOR DEFAULT

- a. In the event of default, either party may pursue any legal or equitable remedy available to it. Without limiting the foregoing, County may (i) declare the entire amount of the Loan due and payable at once, or (ii) extend the Period of Affordability for a period equal to the length of the period during which noncompliance with the Affordability Requirements existed.
- b. The County and any tenant or applicant who meets the income limitation applicable under 24 CFR 92 (whether prospective, present or former occupant) shall be entitled, for any breach of the provisions hereof, and in addition to all other remedies provided by law or in equity, to enforce specific performance by the Owner and/or Recipient of its obligations under this Agreement in state court.

16. AFFIRMATIVE MARKETING

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

17. MINORITY/WOMEN'S BUSINESS

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

18. NON-DISCRIMINATION

- a. The Owner must comply with all applicable federal, state, and local laws prohibiting discrimination on the basis of age, sex, marital status, familial status, religion, race, creed, color, sexual orientation, nationality, the presence of any sensory, mental or physical handicap, or other protected class. These requirements apply to both employment opportunities and the provision of housing and are specified in
 - i. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 200d et seq.);
 - ii. Title VI; Civil Rights Act of 1968, Title VIII, as amended;
 - iii. Equal Employment Opportunity, Executive Order 11246, as amended;
 - iv. Section 3 of the Housing and Urban Development Act of 1968 as may be amended;
 - v. Section 504 of the Rehabilitation Act of 1973 as may be amended;
 - vi. The Fair Housing Act of 1988 as may be amended (42 U.S.C. 3601-3620);
 - vii. Equal Opportunity in Housing (Executive Order 11063, as amended by Executive Order 12259);

- viii. Age Discrimination Act of 1975, as amended (42 U.S.C. 6101); and
 - ix. Americans with Disabilities Act of 1990 as may be amended (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225).
- b. Owner shall maintain data on the extent to which each racial and ethnic group and single-headed household (by gender of head of household) have applied for and rented units in the Project.

19. DISBURSEMENT OF FUNDS

- a. Owner agrees to request funds under this Agreement only when they are needed for payment by Owner of specific allowable costs and only in amounts needed to pay such costs. The payment request must be accompanied by source documentation for actual expenses.
- b. The County shall verify requested amounts for satisfactory completion prior to payment. Payments shall be based upon work completed and approved by the County.
- c. County will not disburse any HOME funds until all the Loan Documents are signed and the following documents are received:
 - i. Copy of the Management Agreement;
 - ii. Affirmative Marketing Plan;
 - iii. Proof of Insurance;
 - iv. Copy of HOME tenant lease; and
 - v. Copy of the written tenant selection criteria.
- d. Five percent (5%) of HOME funds will be withheld until the Owner provides the County with the documentation outlined in **Attachment G**.
- e. The Owner must submit Form HUD-40097 (Project Completion Report - Part C, household characteristics for each HOME-assisted unit) within 120 days of the request for final disbursement.

20. CONTRACTOR DEBARMENT AND SUSPENSION

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

21. SECTION 3 REQUIREMENTS

Section 3 of the Housing and Urban Development Act of 1968, as amended, applies to:

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

Section 3 requires that to the greatest extent feasible opportunities for training and employment in connection with planning and carrying out the Project be given to low-income residents of the Project area, and contracts for work in connection with the Project be awarded to business concerns, including but not limited to individuals for firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the Project area.

22. LEAD BASED PAINT

For all units in the Project (not just HOME-Assisted Units) and for common areas, the Owner shall comply with the HUD Lead-Based Paint Regulations (24 CFR Part 35 and 24 CFR 982.401(j)) issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 USC Sections 4831 et. seq.) as amended requiring prohibition of the use of lead-based paint whenever HOME Funds are used directly or indirectly for construction, rehabilitation, or modernization of residential structures; elimination of immediate lead-based paint hazards in residential structures; and notification of the hazards of lead-based paint poisoning to purchasers and tenants of residential structures constructed prior to 1978. *This part is not applicable to new construction.*

23. DISPLACEMENT, RELOCATION, ACQUISITION, AND REPLACEMENT

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

24. CONFLICT OF INTEREST

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

25. FAITH BASED ACTIVITIES

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

26. RECORDS

- a. Owner must keep such records as are necessary to demonstrate compliance with all parts of this Agreement, including but not limited to the affordability requirements, tenant lease provisions, property standards, affirmative marketing, anti-discrimination, Section 3, MBE/WBE, environmental review, relocation/displacement/property acquisition, labor requirements, lead-based paint, conflict of interest, debarment and suspension and intergovernmental review.
- b. Owner must annually provide tenant eligibility records to the County.
- c. Record Retention Periods
 - i. Except as stated in this subparagraph, records must be retained for five years following the Project Completion Date.
 - ii. Owner shall maintain records pertaining to each tenant's income verifications, project rents and project inspections for at least the most recent five year period, until five years after the Period of Affordability has expired.
 - iii. Written agreements must be retained for five years after the Agreement terminates.
 - iv. Records covering displacement and acquisition must be retained for five years after the date by which all persons displaced from the Property and all persons whose property is acquired for the Project have received the final payment to which they are entitled under 24 CFR 92.353.
 - v. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.
- d. Access to Records. HUD, the Comptroller General of the U.S., the County, and any of their representatives, have the right of access to any pertinent books, documents, papers or other records, in order to make audits, examinations, excerpts or transcripts, or otherwise determine compliance with HOME regulations.
- e. Any duly authorized representative of the Secretary of HUD, the Comptroller General of the United States, or the County shall at all reasonable times have access to and the right to inspect, copy audit, and examine all books, records and other documents relating directly to the Recipient's and/or Owner's receipt and disbursement of the HOME Funds, as well as access to the Project. Upon request, the Recipient

must assist, or must cause Owner to assist, the County by serving notice to affected tenants, as required under Oregon Law.

27. MONITORING

- a. Within 60 days of acquisition, the county staff will make an on-site visit to monitor compliance with the HOME rent and occupancy standards.
- b. The County will monitor the performance of the Caritas and Owner to ensure compliance with the requirements of this Agreement. During the initial Period of Affordability, the monitoring will be conducted in accordance with 24 CFR 92.504)c)(5)(d) and will include on-site inspections and a review of all records required in Section 26 above.

28. WAIVER

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

29. SUCCESSORS AND ASSIGNS

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

30. AUTHORITY TO SIGN

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

31. EFFECTIVE DATE

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

PROJECT OWNER:

Fenton Rondel Court, LP

Trell Anderson, Housing Development Director
Address: 2740 SE Powell Blvd.
Portland, OR 97202

CLACKAMAS COUNTY

Chair: John Ludlow
Commissioner: Jim Bernard
Commissioner: Paul Savas
Commissioner: Martha Schrader
Commissioner: Tootie Smith

By:

Signing on Behalf of BCC:

(signature)

Printed Name: Trell Anderson
Title: Housing Development Director
Phone: (503) 231-4866
Fax: (503) 231-4327
DUNS# 130387637

(signature)

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

Date

Date