

September 29, 2016

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of a Memo of Understanding and Term Sheet between the Housing Authority of Clackamas County (HACC) and Pedcor Investments, LLC for the Development of a Multifamily Housing Project

<b>Purpose/Outcomes</b>	Construction of a 212 unit affordable housing project on Otty Road
<b>Dollar Amount and Fiscal Impact</b>	\$29,5014,141
<b>Funding Source(s)</b>	Private Activity Bond \$27,501,141 HACC Disposition Funds Loan \$ 1,100,000 HOME Loan \$ 900,000
<b>Duration</b>	9-29-2016 through 8-15-2017
<b>Previous Board Action</b>	The Board reviewed and approved the concept of the MOU on July 5 <sup>th</sup> , 2016
<b>Strategic Plan Alignment</b>	Ensure safe, healthy and secure communities Sustainable and Affordable Housing
<b>Contact Person</b>	Chuck Robbins, HACC Executive Director (503) 650-5666
<b>Contract Number</b>	N/A

**BACKGROUND:**

The Clackamas County Housing Authority (HACC) a Division of the Health, Housing & Human Services Department requests the approval of a Memo of Understanding (MOU) and associated Terms Sheet with Pedcor Investments, LLC. This MOU defines the preliminary deal points and provisions requested in order to move forward in the process of developing a multifamily affordable housing complex at 8810 & 8850 Otty Road in Happy Valley.

There are two important aspects for this stage of the process:

- The MOU as structured is not binding.
- The Terms, as discussed in the attached term sheet, would be the terms used if the County, through HACC, agrees to a binding relationship with Pedcor regarding the proposed project.
- If HACC and Pedcor do not arrive at a mutually accepted, binding agreement the terms are not in effect.

## The Project

The project will consist of six structures. Each is four stories and wood framed with an elevator servicing each building. The project is centrally located with easy access to services and within short walking distance of the MAX Green Line as well as several TriMet bus stops.

The project will contain 212 new units of affordable housing which includes:

New Units of Affordable Housing	
Size	Number of Units
1 Bedroom/1 Bath	104
2 Bedroom/2 Bath	100
3 Bedroom/2 Bath	8

## Project Rents

The project holds rents to 60% of the Area Median Income (AMI) for all units. Current median income is \$58,800 for a household of two. A couple that currently makes \$30,900 will be able to afford a one bedroom unit or a two bedroom if they have children. The chart below compares current market rents to project rents.

Household Size	AMI Household Income	Current market rent	Income at 60% AMI	Project Rent with Utilities
1	\$51,500	\$1,063	\$30,900	\$760
2	\$58,800	\$1,242	\$35,280	\$909
3	\$66,200	\$1,371	\$39,720	\$1,044

These units are required to remain affordable for a period of 60 years

## Project Risk

The financing structure of this project imposes minimal risk to the County and HACC because the developer is responsible for:

- Guaranteeing completion of construction and achieving stabilization (e.g. lease up, minimum revenue targets and debt coverage ratio); and
- Bond financing will be insured by a HUD's 221(d) loan guarantee program therefore in the event of a default debt service payments will be made by HUD. Because these are revenue bonds there is no recourse to the County in the event of a default.

## Partnership

PEDCOR is proposing to partner with HACC in this development. The attached Memorandum of Understanding (MOU) lays the groundwork for this partnership. While there are no binding contractual obligations it does provide a scope of work for each party and provides PEDCOR with the assurance that HACC intends to work with PEDCOR on the next steps in predevelopment. This includes:

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- HACC’s willingness to be designated as a General Partner member allowing the property to qualify for property tax exemption. In return, PEDCOR would compensate HACC with 25% of the project developer fee and annual cash flow (upfront = \$258,000 & annual cash flow = \$86,000). In addition HACC acting as the general manager is responsible for filing the annual tax exemption status and would receive an annual fee of \$5,000 for this purpose. The County’s support of PEDCOR’s application for 4% Low-Income Housing Tax Credits
- The County’s consideration of PEDCOR’s application for a reservation of tax-exempt Private Activity Bonds to be issued by HACC.
- The County’s consideration of a PEDCOR application for HOME Funds and HACC Disposition funds.

**Financial Impacts**

The total amount of this Project is \$60,457,401. The financial impacts to HACC include:

- \$30,000,000 in Private Activity Bonds - this is an approximation and includes HACC’s costs for issuing the bond and a fee for acting as the issuer.
- \$ 1,100,000 in HACC Disposition Funds
- \$ 900,000 in Federal HOME Funds

The balance of the funding will come from these sources:

4% Low Income Housing Tax Credit	\$23,375,000
Deferred Developers Fee	\$4,813,432
Rental Income	\$2,767,828

This MOU has been reviewed and approved by Clackamas County Counsel.

**RECOMMENDATION:**

Staff recommends the Board approve the attached MOU and Terms Sheet. Additionally, staff recommends the Board authorizes Richard Swift, H3S Director to sign on behalf of the Housing Authority of Clackamas County

Respectfully submitted,

Richard Swift, Director  
Health, Housing and Human Services

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
HOUSING AUTHORITY OF CLACKAMAS COUNTY, OREGON  
AND  
PEDCOR INVESTMENTS, A LIMITED LIABILITY COMPANY  
  
(ROSEWOOD TERRACE APARTMENTS)**

This Memorandum of Understanding (the "**MOU**") is a non-binding statement of intentions between the Housing Authority of Clackamas County, Oregon, a public corporation created pursuant to the Housing Authorities Law of ORS 456 ("**HACC**"), Clackamas County, a subdivision of the State of Oregon ("**County**"), and Pedcor Investments, A Limited Liability Company, a Wyoming limited liability company ("**Developer**"), and is dated effective as of September 29, 2016.

**Developer** is a developer of affordable housing in the State of Oregon. **HACC** is a public housing authority whose mission is to provide safe, decent and sanitary housing for low and moderate income persons in Clackamas County, Oregon. **County** is the responsible local government concerned with the health and welfare of its citizens. **HACC**, **County** and **Developer** hereby agree to work cooperatively to acquire, finance, construct and operate affordable housing at the following location, in accordance with the terms of this **MOU**:

Rosewood Terrace Apartments (the "**Property**")  
8810 & 8850 SE Otty Road  
Happy Valley, OR 97086

The Property shall contain approximately 212 multifamily units. Of such units, all shall be reserved for residents with incomes at or below 60% Area Median Income (AMI). The transaction contemplated by this **MOU** is contingent upon underwriting of the lender and overall acceptance of the bond deal structure by Developer, County, HACC and all other applicable entities and/or governmental authorities having jurisdiction over such transaction. The parties each acknowledge and agree that the financial terms outlined below are preliminary in nature and each party will be continuing due diligence and valuation work. While continued discussions will occur in order to revise, update and finalize such items, the parties hereto are willing to commit to those certain terms reflected in the approved term sheet attached hereto as Exhibit A (the "**Term Sheet**").

Except as provided in the Term Sheet, nothing stated in this **MOU** shall be construed to bind either party to any business structure, term, or course of action. This **MOU** is intended to grant sufficient certainty to Developer to allow for the further exploration of possible development of the Property, and, except for those items detailed in the Term Sheet, no reliance may be placed on the conditional terms discussed herein. To the extent there is a difference between the terms contained in this **MOU** and the terms of the Term Sheet, the terms of the Term Sheet shall control. To the extent terms are discussed herein the **MOU** but not in the Term Sheet, such terms shall continue to be considered statements of possible

terms and shall not have any binding force in either this MOU or as the basis of further documentation or agreements.

In order to accomplish this purpose, the parties currently intend as follows:

## **AGREEMENTS:**

### **A. Conceptual Ownership Structure.**

1. **Developer** has organized a separate Oregon limited partnership, to be registered in Oregon, known as Pedcor Investments-2017-LCV, Limited Partnership ("**Partnership**") to own the **Property** pursuant to an agreement of limited partnership ("**Partnership Agreement**"). Rosewood Housing Company, LLC, an affiliate of the **Developer**, will serve as the sole general partner of the Partnership ("**General Partner**"). The **General Partner** shall have primary responsibility for the management of the **Partnership** and will own a 0.005% general partnership interest in the **Partnership**. In addition, **HACC** will own a 0.005% special limited partnership interest in the **Partnership** ("**Limited Partner**"), with certain oversight and approval rights, for which it will receive an annual fee in an amount to be negotiated (the "**Limited Partner Fee**"). Any such rights must be agreed to by the **General Partner** and may not, in the opinion of the **General Partner's** counsel, result in the **Limited Partner** being deemed a general partner for exercising its rights under the **Partnership Agreement**. Lastly, a to-be-determined tax credit investor will own a 99.99% limited partnership interest in the **Partnership**.

The **General Partner** will consist of six members: (1) the **Developer**, (2) a to-be-formed, wholly owned corporate subsidiary of HACC ("**HACC GP Member**"), (3) 2017 Housing Participants, LLC, and (4) 3 private investors. The ownership percentage of each such member shall be detailed within an Operating Agreement of the General Partner and the terms and conditions thereof shall be subject to the approval of all members.

2. The **General Partner** and **Limited Partner** will amend the existing **Partnership Agreement** in order to admit the **Limited Partner** into the **Partnership** and to reflect the ownership structure described in Section A(1) above at or prior to closing any financing with respect to the acquisition and construction of the **Property**. Admittance of the **Limited Partner** into the **Partnership** shall be subject to: (i) satisfaction by **HACC** and/or a HACC designated representative that the business terms comprising the transaction are substantially similar to those detailed herein and within the HACC approved Term Sheet; (ii) satisfaction that the Property will meet HACC objectives; and (iii) the satisfactory negotiation and finalization of a Partnership Agreement containing those terms and conditions expressly provided in the HACC approved Term Sheet and other such terms as may be mutually agreed by the parties.

**B. Financing Concept.**

1. On behalf of the **Partnership**, **Developer** will apply for a reservation of approximately \$30,000,000 in tax-exempt multifamily housing revenue bonds ("**Bonds**") to be issued by **HACC**, the Oregon Housing and Community Services ("OHCS") or another qualified issuer. If the **Partnership** receives a reservation of **Bonds**, **Developer** shall be primarily responsible for selecting the manner in which the **Bonds** will be sold to facilitate debt financing for the **Property** and negotiating the **Bond** financing terms on behalf of the **Partnership**, provided that **HACC** reserves the right to direct, comment, or otherwise control the Bond issuance in its name, including making the final decision regarding all issues concerning the Bonds. Further, the **Limited Partner** may reserve the right to review and approve the financing arrangements and the terms and conditions of any Bond or loan documents. It is currently anticipated that the **Bonds** will be purchased by United Fidelity Bank (and/or an affiliate of United Fidelity Bank), either or both being an affiliate of the **Developer**, and such bonds will be insured by a GNMA/FHA security.

2. On behalf of the **Partnership**, **Developer** will apply to OHCS for a commitment of 4% low-income housing tax credits ("**Tax Credits**"). If the **Partnership** receives a commitment of **Tax Credits**, the **Developer** shall be responsible for selecting the manner in which the **Tax Credits** will be sold to facilitate equity financing ("**Equity**") for the **Property**, and negotiating the equity financing terms on behalf of the **Partnership**, provided that the **Limited Partner** shall have the right to review and comment on the financing arrangements and the terms and conditions of any **Equity** financing documents. The **Equity** financing documents are expected to include an Amended and Restated Agreement of Limited Partnership ("**Amended Partnership Agreement**"). The **Partnership** has not determined the entity that will provide the Equity financing, however, such entity will be admitted as an investor limited partner ("**Investor LP**") of the **Partnership**.

3. **Developer** shall pay all costs and fees associated with applying for the **Bonds** and **Tax Credits**, which along with all other pre-development costs incurred by **Developer** and **HACC** and their affiliates in connection with the **Property**, shall be reimbursed with the proceeds of pre-development financing or at closing with proceeds of the **Bonds** and **Equity** for the **Property** ("**Closing**"). **HACC's** third party predevelopment expenses for financial advisory and legal services shall be reimbursed at closing. In the event this **MOU** is terminated or the transaction fails to close as contemplated herein, **Developer** shall be solely responsible for all costs described above and **HACC** and its affiliates shall have no responsibility for payment or reimbursement of such costs, unless **HACC** defaults on its obligations herein, in which case **HACC** shall bear its own expenses and **Developer** will not be obligated to pay or reimburse **HACC** or its affiliate's expenses.

4. **Developer** shall negotiate and be solely responsible for providing guarantees that may be required in conjunction with the **Bond** financing or the **Equity** financing, including but not limited to: construction completion and development cost overrun guaranty, lease up and breakeven guaranty, operating deficit guaranty, **Tax Credit** compliance and recapture guaranty and repurchase guaranty for such period as may be

required by the **Investor LP**. All such **Developer** guarantees shall be in effect until stabilization of the **Property**, or as required by the **Investor LP** and/or any lender.

5. The **Limited Partner** acknowledges that it has been provided with preliminary financial information, which it understands may materially change for a variety of reasons, including but not limited to, various bond and tax credit underwriting considerations, future mortgage interest rates, varying debt and equity executions, future construction costs and recognition that fully engineered architectural and civil engineering plans are not available. The parties affirm that the business terms discussed herein are preliminary, and that further negotiations will be necessary in order to finalize and approve all subsequent documents except for the Term Sheet. Developer agrees to promptly provide updates of the above referenced financial information and all requested and/or reasonably required information necessary for HACC to make an informed decision regarding the proposed transaction.

6. The **Developer** anticipates applying to County and **HACC** for \$900,000 in HOME funds and \$1,100,000 in disposition funds (the "**GAP Funding**") respectively. In sum, the Developer anticipates \$2,000,000 in Gap Funding to assist the financial feasibility of the **Property**. Developer understands that County and HACC will evaluate the application and make a determination on the reasonableness of the request and the return on investment of such commitment.

### **C. Design and Construction Concept.**

1. **Developer** (such term herein to include an affiliate of the **Developer**) shall provide comprehensive development services to the **Partnership** pursuant to a Development Agreement to be entered into between the **Partnership** and **Developer**.

2. **Developer** will prepare a detailed development budget for the **Property** and will provide the **Limited Partner** a copy thereof and with updates thereto.

3. **Developer** shall be responsible for obtaining the services of design professionals. The work product of such professionals shall be subject to the reasonable review, and comment of the **Limited Partner**. The **Limited Partner** shall have the right to review and comment upon the final plans and specifications for the construction of the **Property**, and such plans must be approved by the **Limited Partner** prior to the **Partnership** entering into a construction contract.

4. **Developer** shall be responsible for negotiating one or more construction contracts for the construction of the **Property**, including but not limited to, contracts between the **Partnership** and the **Developer** affiliated general contractor and construction manager. Such construction contracts shall be on terms that are consistent with or more favorable to the **Partnership** than prevailing market terms. The **Limited Partner** shall have the right to review and approve any construction contract prior to the execution thereof,.

5. **Developer** shall be responsible for obtaining all governmental approvals and permits needed in order to construct and operate the **Property**. Nothing in this MOU shall suggest that Developer and/or its affiliates will not have to comply with all applicable requirements, charges and fees, whether levied by Clackamas County or otherwise.

6. The **Limited Partner** shall have the right to review and comment on all change orders or any changes in the scope of work or plans and specifications during construction, (the **Limited Partner** shall have three (3) days following its receipt of copies of such proposed changes to deliver its disapproval, or such proposed changes shall be deemed approved).

7. Upon completion of construction, the **Developer** will ensure that the **Property** complies with ADA requirements and all applicable federal, state and local laws and building codes.

**D. Management and Operation Concept.**

The **General Partner** shall be responsible for negotiating the terms of a property management contract on behalf of the **Partnership**. So long as the **General Partner** or one of its affiliates is obligated under the various financing guarantees, the property manager will be an affiliate of the **General Partner**. The **Limited Partner** shall have the right to review and approve the property management agreement prior to execution thereof, . Additionally, each year the **General Partner** or its affiliated property manager will submit its budget to the **Limited Partner** for review and approval, and during such year report to the **Limited Partner** any material deviations from the approved budget or any material operational issues. The **General Partner** or its affiliated property manager will also submit an annual audit, quarterly financial reports and weekly occupancy reports to the **Limited Partner** for review and comment.

**E. Community Support Concept.**

The **Limited Partner** and **Developer** shall be jointly responsible for interfacing with the community and attempting to obtain community support for the construction of the **Property**. The parties will consult with each other and coordinate the response to any media inquiries and/or public opposition that may arise.

**F. Fees and Expenses; Sharing Ratios.**

1. **Developer** or its affiliate shall be entitled to receive a developer's fee for its development of the **Property** in an amount calculated pursuant to OHCS guidelines (the "**Development Fee**"). The parties agree that a percentage of the **Development Fee** shall be paid to **HACC** (the "**HACC Sharing Percentage**") and a percentage of the **Development Fee** shall be paid to **Developer** (the "**Developer Sharing Percentage**"), pro rata, as the **Development Fee** is paid by the **Partnership**. The **Development Fee** includes the fee paid

at **Closing** and earned on a deferred basis. The exact HACC Sharing Percentage, along with the Developer Sharing Percentage shall be fully negotiated and formalized within the Term Sheet.

2. Any other items of net cash flow that are payable to the **General Partner** under the **Partnership Agreement** shall be split between the members of the **General Partner** in accordance with their respective sharing percentages. The **Limited Partner Fee**, as negotiated and detailed within the Term Sheet, shall represent priority payment that will be paid to the **Limited Partner** prior to payment of deferred developer fee or other fees paid to the **General Partner**, including but not limited to the incentive management fee. Affiliates of the **General Partner** will be paid fees out of the capital budget for providing the **Partnership** with certain construction management, general contracting, construction guaranty, architectural supervisory, construction and permanent loan financing, and legal services pursuant to an executed agreement between the **Partnership** and such affiliated service providers ("**Affiliated Fees**"). The **Developer** shall disclose **Affiliated Fees** to the **Limited Partner** who shall have a right to review and approve such fees, which approval shall not be unreasonably withheld.

3. All reasonable out-of-pocket expenses incurred after execution of this document by the **Limited Partner** in connection with the **Property** (the "**Costs**"), shall be paid by **Developer** and be included in the applicable **Property's** development budget for either payment or reimbursement to **Developer** concurrently with **Closing**. To the extent the **Limited Partner** and its affiliates anticipate incurring **Costs** in excess of \$15,000.00, the **Limited Partner** will disclose such matter to **Developer**, and **Developer** will have the opportunity to approve such **Costs** before they are incurred, with such approval not to be unreasonably withheld.

#### **G. Indemnification.**

**Developer** will indemnify, defend and hold harmless the **Limited Partner**, its affiliates and their agents, elected officials, employees, and officers, from any claim, liability, loss or damage, including attorneys' fees and costs actually and reasonably incurred, arising out of the acquisition, financing, and construction of the Property other than acts or omissions of the **Limited Partner** or its affiliates which involve intentional misconduct, a knowing violation of the law, or which constitute gross negligence.

#### **H. Miscellaneous.**

1. This **MOU** reflects the current intent of the parties and may only be amended in writing, signed by both parties. The parties affirm that it is not a binding agreement except with respect to the Term Sheet.

2. This **MOU** may be executed in several counterparts, each of which shall be deemed to be an original and all of which together shall constitute one contract binding on all parties hereto, notwithstanding that all the parties shall not have signed the same

counterpart.

3. Neither party shall enter into any contractual relationship or agreement relating to the **Property** that would cause either financial or legal liability to the other, without the other party's prior written consent, and in the case of **HACC**, the approval of its Board where required.

4. This **MOU** shall be governed and construed in accordance with the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.

5. In case any one or more of the provisions contained in this **MOU** for any reason are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision hereof, and this **MOU** will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

6. The parties hereto submit exclusively to the jurisdiction of the state and federal courts of Clackamas County, Oregon and venue for any cause of action arising hereunder shall lie exclusively in the state and federal courts of Clackamas County, OR.

7. The subject headings contained in this **MOU** are for reference purposes only and do not affect in any way the meaning or interpretation hereof.

*[Signature Page Follows]*

EXECUTED to be effective as of the date above shown.

**HOUSING AUTHORITY OF CLACKAMAS  
COUNTY**

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

**CLACKAMAS COUNTY**

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

**PEDCOR INVESTMENTS, A LIMITED  
LIABILITY COMPANY**

By: \_\_\_\_\_  
Thomas G. Crowe, Executive Vice President