



# City of Tigard Tigard Business Meeting - Agenda

---

## **TIGARD CITY COUNCIL AND LOCAL CONTRACT REVIEW BOARD**

**MEETING DATE AND TIME:** March 27, 2012 - 6:30 p.m. Study Session; 7:30 p.m. Business Meeting

**MEETING LOCATION:** City of Tigard - Town Hall - 13125 SW Hall Blvd., Tigard, OR 97223

**Agenda Revised 3/21/2012 - Item No. 1D - Congressional City Conference Reports**

**Agenda Revised 3/23/2012 - Item No. 3D - Child Abuse Prevention Month Proclamation & Item 11 - Non Agenda Items - Consider Waiving Sign Permit Fees for Tigard Youth Football**

### **PUBLIC NOTICE:**

Anyone wishing to speak on an agenda item should sign on the appropriate sign-up sheet(s). If no sheet is available, ask to be recognized by the Mayor at the beginning of that agenda item. Citizen Communication items are asked to be two minutes or less. Longer matters can be set for a future Agenda by contacting either the Mayor or the City Manager.

Times noted are *estimated*; it is recommended that persons interested in testifying be present by 7:15 p.m. to sign in on the testimony sign-in sheet. *Business agenda items can be heard in any order after 7:30 p.m.*

Assistive Listening Devices are available for persons with impaired hearing and should be scheduled for Council meetings by noon on the Monday prior to the Council meeting. Please call 503-639-4171, ext. 2410 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

Upon request, the City will also endeavor to arrange for the following services:

- Qualified sign language interpreters for persons with speech or hearing impairments; and
- Qualified bilingual interpreters.

Since these services must be scheduled with outside service providers, it is important to allow as much lead time as possible. Please notify the City of your need by 5:00 p.m. on the Thursday preceding the meeting by calling: 503-639-4171, ext. 2410 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

SEE ATTACHED AGENDA

---

VIEW LIVE VIDEO STREAMING ONLINE:

<http://www.tvctv.org/government-programming/government-meetings/tigard>

CABLE VIEWERS: The regular City Council meeting is shown live on Channel 28 at 7:30 p.m. The meeting will be rebroadcast at the following times on Channel 28:

Thursday	6:00 p.m.	Sunday	11:00 a.m.
Friday	10:00 p.m.	Monday	6:00 a.m.



# City of Tigard Tigard Business Meeting - Agenda

---

## TIGARD CITY COUNCIL AND LOCAL CONTRACT REVIEW BOARD

**MEETING DATE AND TIME:** March 27, 2012 - 6:30 p.m. Study Session; 7:30 p.m. Business Meeting

**MEETING LOCATION:** City of Tigard - Town Hall - 13125 SW Hall Blvd., Tigard, OR 97223

6:30 PM

- STUDY SESSION

A. Briefing on Intergovernmental Agreement with Metro to Transfer Trail Easements to the City

- EXECUTIVE SESSION: The Tigard City Council will go into Executive Session to discuss real property transaction negotiations and for consultation with legal counsel regarding current and pending litigation under ORS 192.660(2)(e) and (h). All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(4), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

7:30 PM

1. BUSINESS MEETING - MARCH 27, 2012

**Agenda Revised 3/21/2012 - Agenda Item 1.D. - Congressional City Conference Reports  
Agenda Revised 3/23/2012 - Agenda Item 3.D. - Child Abuse Prevention Month Proclamation &  
Agenda Item 11. - Non Agenda Items - Consider Waiving Sign Permit Fees for Tigard Youth  
Football**

A. Call to Order

B. Roll Call

C. Pledge of Allegiance

D. Council Communications & Liaison Reports

- **2012 Congressional City Conference Reports**

E. Call to Council and Staff for Non-Agenda Items

2. CITIZEN COMMUNICATION (Two Minutes or Less, Please)  
7:35 p.m. - time is estimated.

A. Follow-up to Previous Citizen Communication

- B. Citizen Communication - Sign Up Sheet
3. PROCLAMATIONS:  
7:45 p.m. - time is estimated.
- A. Proclaim April 15-22, 2012 National Days of Remembrance
- B. Proclaim National Community Development Week, April 8-14, 2012
- C. Proclaim April as Arbor Month
- D. Proclaim Child Abuse Prevention Month
4. CONSENT AGENDA: (Tigard City Council and Local Contract Review Board) - These items are considered routine and may be enacted in one motion without separate discussion. Anyone may request that an item be removed by motion for discussion and separate action. Motion to:  
7:55 p.m. - time is estimated.
- A. Approve City Council Meeting Minutes for:
- February 14, 2012
  - February 21, 2012
- B. Authorize the City Manager to Enter into an Intergovernmental Agreement (IGA) with Washington County Regarding West Nile Virus
- C. Approve an Intergovernmental Agreement with Metro to Transfer Trail Easements to the City
- D. Local Contract Review Board:
1. Award Contract for 103rd/McDonald Storm Drain Improvements to HSC, LLC
- Consent Agenda - Items Removed for Separate Discussion: Any items requested to be removed from the Consent Agenda for separate discussion will be considered immediately after the Council/Local Contract Review Board has voted on those items which do not need discussion.
5. REVIEW 2012 OREGON LEGISLATIVE SESSION AS IT RELATES TO TIGARD'S LEGISLATIVE PRIORITIES  
8:00 p.m. - time is estimated.
6. GRANT EXEMPTION FROM PROPERTY TAXES AS PROVIDED UNDER TIGARD MUNICIPAL CODE SECTION 3.50 FOR FIVE NON-PROFIT LOW-INCOME HOUSING PROJECTS  
8:20 p.m.
7. APPROVE PURCHASE OF THE PAULL PROPERTIES AND AUTHORIZE THE CITY MANAGER TO COMPLETE THE PROPERTY PURCHASE  
8:30 p.m. - time is estimated.
8. ADOPT REVISED PLANNING COMMISSION BYLAWS (RESOLUTION) AND AMEND TIGARD MUNICIPAL CODE CHAPTER 2.08 (ORDINANCE)  
8:40 p.m. - time is estimated.

9. LEGISLATIVE PUBLIC HEARING: CONSIDER PARK SYSTEM DEVELOPMENT CHARGE (SDC) METHODOLOGY AND A RESOLUTION AMENDING THE CITY'S MASTER FEES AND CHARGES SCHEDULE  
8:55 - time is estimated.

**Hearing is rescheduled to June 12, 2012**

10. COUNCIL LIAISON REPORTS  
9:00 p.m. - time is estimated.
11. NON AGENDA ITEMS
  - A. Consider Waiving Sign Permit Fees for Tigard Youth Football
12. EXECUTIVE SESSION: The Tigard City Council may go into Executive Session. If an Executive Session is called to order, the appropriate ORS citation will be announced identifying the applicable statute. All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(4), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.
13. ADJOURNMENT  
9:10 p.m. - time is estimated.

**Business Meeting****Meeting Date:** 03/27/2012**Length (in minutes):** 10 Minutes**Agenda Title:** Briefing on an Intergovernmental Agreement (IGA) with Metro to Transfer Trail Easements to the City**Submitted By:** Greer Gaston, Public Works**Item Type:** Update, Discussion, Direct Staff**Meeting Type:** Council Business Mtg - Study Sess.**Information****ISSUE**

The council will be briefed on a consent item to consider an IGA with Metro to transfer trail easements to the city.

**STAFF RECOMMENDATION / ACTION REQUEST**

No action is requested during the briefing; the council will consider the IGA on the consent agenda.

**KEY FACTS AND INFORMATION SUMMARY****Background**

The City of Tigard plans to construct a segment of the Fanno Creek Trail from Grant Avenue to Woodard Park. This project is included in the Park System Master Plan adopted by council in 2009 and is listed as a high priority in the Tigard Greenways Trail System Master Plan accepted by council in 2011. The project will be included in the proposed 2012-2017 Capital Improvement Plan.

In 2006, voters passed Metro's natural areas bond measure. Metro used a portion of its bond proceeds to purchase two key easements required to construct this segment of the Fanno Creek Trail.

With these easements, the city will have all the property necessary to construct this trail segment.

**Summary of the IGA**

- Metro transfers the easements to Tigard in order for Tigard to construct, operate and maintain the Grant Avenue to Woodard Park trail segment.
- Tigard assumes sole responsibility for the easements.
- Tigard installs on-site signage acknowledging the easements were obtained using Metro's natural areas bond measure proceeds.
- Tigard is required to construct the trail segment within 10 years of the easement transfer. If the trail is not constructed, the city must convey the easement back to Metro.

**Funding Information**

If the easement is conveyed to Tigard, trail construction is eligible for certain funding opportunities, like Washington County's Major Streets Transportation Improvement Program (MSTIP). Staff has requested this project be added to the Washington County MSTIP list that is currently being developed. If the easements are owned by Metro, the trail project would not qualify for such funding.

Park system development charge (SDC) revenue and proceeds from Tigard's \$17 million park bond could also be used to fund this project.

**OTHER ALTERNATIVES**

The council could decide not to accept the easements; the city would not construct the trail segment.

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

2012 Tigard City Council Goal No. 1.c. - "Deliver on the promise of the voter-approved park bond by identifying all acquisition opportunities and completing the majority of park land acquisitions and improvements by the end of 2012."

This project is included in the Park System Master Plan adopted by council in 2009 and is listed as a high priority in the Tigard Greenways Trail System Master Plan accepted by council in 2011.

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

This is the first time this IGA has come before the council.

---

---

**Fiscal Impact**

**Fiscal Information:**

By entering into the IGA with Metro, the city agrees to construct the trail segment from Grant Avenue to Woodard Park within the next 10 years. The current estimate for construction is \$650,000. Up to 60 percent (\$390,000) of the project could be funded by park SDCs, with the remaining 40 percent (\$260,000) funded through other sources such as the city's park bond proceeds or county MSTIP funds.

---

---

**Attachments**

IGA

---

---

## INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement (“Agreement”) is by and between Metro, an Oregon municipal corporation, located at 600 Northeast Grand Avenue, Portland, Oregon, 97232-2736 (“Metro”), and the City of Tigard, located at 13125 SW Hall Blvd., Tigard, Oregon 97223 (the “City”). This Agreement shall be effective on the last date of signature indicated below.

### RECITALS

WHEREAS, Metro has acquired a trail easement across certain property located at 9744 SW Tigard Street, Tigard, Oregon 97223 (the “First Easement”).

WHEREAS, Metro has also acquired another trail easement across certain property located at 9826 and 9900 SW Tigard Street, Tigard, Oregon 97223 (the “Second Easement”).

WHEREAS, Metro purchased the First Easement and the Second Easement (referred to herein together as the “Easements”), both of which were identified as a priority in the Fanno Creek Linkages and Trail Target Area, using funds from the Natural Areas Bond Measure, 2006 Metro Ballot Measure 26-80 (“Metro Natural Areas Bond Measure”), approved by the voters on November 7, 2006.

WHEREAS, the City now wishes to develop and construct the Fanno Creek Greenway Trail and has requested that Metro assign the Easements to the City as such areas are critical to (1) completing a continuous greenway trail from the Tualatin River, through the City of Tigard, into a highly urbanized, “walker-challenged” area and (2) protecting water quality along Fanno Creek and its tributaries.

WHEREAS, in accordance with ORS 190.010, et seq, Metro and the City wish to enter into this Agreement to provide for the responsibilities and obligations of the parties with respect to the assignment of the Easements.

### AGREEMENT

Now, therefore, in consideration of the mutual agreements and promises herein, the parties agree as follows:

**Easement Holder.** Immediately following the parties execution of this IGA, Metro shall assign to the City all its right, title and interest in the Easements. The assignment to the City shall be in the form attached hereto as Exhibit A (the “Assignment”).

**Management, Maintenance, and Operation of the Easements.** Upon acceptance of the Assignment, the City shall have sole responsibility for the Easements, including without limitation the management, maintenance, development, security, and operation of any trail constructed thereon.

**Signage; Publications.** The City shall install on-site signage stating that funding for the acquisition of the Easements came from 2006 Metro Natural Areas Bond Measure proceeds. Such signage shall be installed in Woodard Park along the Fanno Creek Greenway Trail in prominent and at highly visible locations approved by Metro. Signage shall be either (a) a standard, free-standing sign provided by Metro, which Metro shall make available to the City upon request; or (b) inclusion of Metro's logo and script in other signage, with Metro's logo and script of a size equal and comparable to the size of the City's logo and script. Metro shall make its graphics available to the City upon request. The City also shall document in any publication, media presentation, or other presentations that the acquisition of the Easements of the Fanno Creek Greenway Trail was paid for in part with proceeds from the 2006 Metro

Natural Areas Bond Measure. All such signage shall comply with the City's sign ordinance and applicable regulations.

**Agreement to Re-Convey.** Metro is agreeing to assign its interest in the Easements so that Tigard will construct, operate, and maintain a trail across the Easements as part of the Fanno Creek Greenway Trail. The design and location of the trail shall be determined by the City in its sole discretion. In the event Tigard fails to (a) construct the trail across the Easements within ten (10) years of the execution of this Agreement and assignment of Metro's interest in the Easements or (b) operate and maintain a trail across the Easements for longer than one (1) year after trail construction, Tigard shall, at Metro's written request, assign, transfer and convey back to Metro all of Tigard's estate, right, title, and interest in, to, and under the Easements.

**Term.** This Agreement shall continue in effect unless modified or terminated as provided herein. The parties may, by written agreement signed by each party, terminate all or a part of this Agreement based upon a determination that such action is in the public interest.

**Oregon Constitution and Tax Exempt Bond Covenants.** Metro's source of funds for the acquisition of the Easements is from the sale of voter-approved general obligation bonds that are to be paid from ad valorem property taxes exempt from the limitations of Article XI, section 11(b), 11(c), 11(d) and 11(e) of the Oregon Constitution. The interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. The City covenants that, during the term of this Agreement, it will take no action that would cause Metro to be unable to maintain the current status of the real property taxes as exempt from Oregon's constitutional limitations or the income tax exempt status of the bond interest. In the event the City breaches this covenant, and fails to cure such breach within sixty (60) days after the date the City receives written notice of such breach from Metro, Metro shall be entitled to seek whatever remedies are available at law or in equity to either cure the default or to compensate Metro for any loss it may suffer as a result thereof.

**Mutual Indemnification.** To the maximum extent permitted by law and subject to the Oregon Constitution and the Oregon Tort Claims Act, ORS Chapter 30, the City shall defend, indemnify, and save harmless Metro and Metro's officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, arising out of or in any way connected with the performance of this Agreement by the City or the City's officers, employees, or agents. To the maximum extent permitted by law and subject to the Oregon Constitution and the Oregon Tort Claims Act, ORS Chapter 30, Metro shall defend, indemnify, and save harmless the City and the City's officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, arising out of or in any way connected with the performance of this Agreement by Metro or Metro's officers, employees, or agents.

**Oregon Law.** The laws of the State of Oregon shall govern this Agreement, and both Metro and the City hereby submit to the jurisdiction of the courts of the State of Oregon.

**Severability. Entire Agreement; Modifications.** If any covenant or provision of this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision of this Agreement which in itself is valid, if such remainder would then continue to conform with the terms and requirements of applicable law and the intent of this Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior oral or written agreements or representations relating to the Property. No waiver, consent, modification, amendment, or

other change of terms of this Agreement shall bind either party unless in writing and signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the last date of signature specified below.

CITY OF TIGARD

METRO

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

\_\_\_\_\_  
Martha Bennett

Chief Operating Officer

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

**EXHIBIT A**  
**Form of Assignment**

**Assignee's Name and Address:**

The City of Tigard  
13125 SW Hall Boulevard  
Tigard, OR 97223

**Assignor's Name and Address:**

Metro  
Office of Metro Attorney  
600 NE Grand Avenue  
Portland, OR 97232-2736

**AFTER RECORDING, RETURN TO:**

The City of Tigard  
City Engineer  
13125 SW Hall Boulevard  
Tigard, OR 97223

**ASSIGNMENT OF EASEMENT**

This ASSIGNMENT OF EASEMENT ("Assignment") is made as of the last date of signature herein (the "Effective Date") by between Metro, an Oregon municipal corporation ("Metro"), and the City of Tigard, an Oregon municipal corporation ("Tigard").

Recitals

WHEREAS, Metro is the holder of that certain Trail Easement dated \_\_\_\_\_, granted by \_\_\_\_\_, and recorded in the real property records of Washington County Oregon on \_\_\_\_\_ as Document No. \_\_\_\_\_ (the "Easement").

WHEREAS, in accordance with the Intergovernmental Agreement entered into between the parties on \_\_\_\_\_, 2012, and as permitted under Section 14 of the Easement, Metro wishes to assign all of its right, title and interest under the Easement to Tigard and Tigard wishes to accept and assume all of the right, title and interest of Metro thereunder.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Metro and Tigard agree as follows:

Agreement

1. Metro hereby assigns, transfers, conveys, and sets over to Tigard all of Metro's estate, right, title, and interest in, to, and under the Easement. Tigard hereby accepts the forgoing assignment and assumes all of the duties, obligations, and responsibilities of the holder of the Easement.
2. Metro has notified \_\_\_\_\_ that the Easement is being assigned to Tigard.

This Assignment shall be governed by and construed under the laws of the State of Oregon. In case any of the provisions of this Assignment shall at any time be held by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, such illegality, invalidity, unenforceability shall not

**EXHIBIT A**  
**Form of Assignment**

affect the remaining provisions of this Assignment, and such remaining provisions shall be construed and enforced to the fullest extent permitted by law.

CITY OF TIGARD

METRO

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

Name: \_\_\_\_\_

Martha J. Bennett  
Chief Operating Officer

Title: \_\_\_\_\_

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

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

State of OREGON

County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 201\_\_ by  
\_\_\_\_\_ as \_\_\_\_\_ of the City of Tigard, an  
Oregon municipal corporation.

\_\_\_\_\_  
Notary Public - State of Oregon

State of OREGON

County of Multnomah

This instrument was acknowledged before me on \_\_\_\_\_, 201\_\_ by  
Martha J. Bennett as Chief Operating Officer of Metro, an Oregon municipal corporation.

\_\_\_\_\_  
Notary Public - State of Oregon

AIS-785

**3. A.**

**Business Meeting**

**Meeting Date:** 03/27/2012

**Length (in minutes):** 5 Minutes

**Agenda Title:** Proclaim April 15-22, 2012 National Days of Remembrance

**Prepared For:** Joanne Bengtson

**Submitted By:**

Joanne Bengtson,  
City Management

**Item Type:** Update, Discussion, Direct Staff

**Meeting Type:**

Proclamation

---

**Information**

**ISSUE**

Should the Mayor proclaim April 15-22, 2012 as the National Days of Remembrance in memory of the victims of the Holocaust?

**STAFF RECOMMENDATION / ACTION REQUEST**

N/A

**KEY FACTS AND INFORMATION SUMMARY**

N/A

**OTHER ALTERNATIVES**

N/A

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

N/A

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

Mayor Dirksen issued this proclamation in April 2010.

---

**Attachments**

Proclamation - Days of Remembrance

---

# Proclamation

City of Tigard

## DAYS OF REMEMBRANCE WEEK

April 15 -22, 2012

**Whereas**, the Holocaust claimed the lives of millions of European peoples for religious, racial, ethnic, or national reasons between 1933 and 1945; and

**Whereas**, the history of the Holocaust offers an opportunity to reflect on the moral responsibilities of individuals, societies, and governments; and

**Whereas**, we the people of Tigard should always remain vigilant against hatred, persecution, and tyranny, and

**Whereas**, we the people of Tigard should actively rededicate ourselves to the principles of individual freedom in a just society; and

**Whereas**, the Days of Remembrance have been set aside to remember the victims of the Holocaust as well as to reflect on the need for respect of all peoples;

**NOW THEREFORE BE IT RESOLVED THAT I**, Craig E. Dirksen, Mayor of the City of Tigard, Oregon, do hereby proclaim the week of April 15-22, 2012 as

## DAYS OF REMEMBRANCE WEEK

in memory of the victims of the Holocaust, and in honor of the survivors, as well as the rescuers and liberators, and further proclaim that we, as citizens of the City of Tigard, should work to promote human dignity and confront hate whenever and wherever it occurs

Dated this \_\_\_\_ day of \_\_\_\_\_, 2012.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Seal of the City of Tigard to be affixed.

\_\_\_\_\_  
Craig E. Dirksen, Mayor  
City of Tigard

**Attest:**

\_\_\_\_\_  
City Recorder

AIS-853

3. B.

**Business Meeting**

**Meeting Date:** 03/27/2012

**Length (in minutes):** 5 Minutes

**Agenda Title:** Proclaim National Community Development Week, April 8-14, 2012

**Prepared For:** Joanne Bengtson

**Submitted By:**

Joanne Bengtson,  
City Management

**Item Type:** Update, Discussion, Direct Staff

**Meeting Type:**

Proclamation

---

**Information**

**ISSUE**

Should Mayor Dirksen proclaim April 8-14, 2012 as National Community Development Week?

**STAFF RECOMMENDATION / ACTION REQUEST**

Staff recommends issuing the proclamation.

**KEY FACTS AND INFORMATION SUMMARY**

The week of April 8 - 14, 2012 has been designated as National Community Development Week. This is the 26th year of setting aside an entire week to commemorate community development activities on the national and local levels. The continued support of municipalities and nonprofit service providers will again help to provide a focus on the Community Development Block

Grant (CDBG) program and its accomplishments over the past years.

In Tigard, the success of the CDBG program is demonstrated in the provision of vitally needed public services to economically, mentally, or physically disadvantaged residents; rehabilitation of homes; construction/renovation of community centers and sheltered workshops; completion of neighborhood improvements including major sewer, drainage and street projects; and reconstruction of city-owned infrastructure such as roads.

The observance of National Community Development Week offers Tigard the opportunity to show support for the CDBG program, which continues to face critical cuts in the federal budget and the long-term future of the program remains uncertain. In such conditions, the most effective way to transmit a message to our congressional delegation is to comment on programs that have been of value in upgrading the quality of life for Tigard residents.

**OTHER ALTERNATIVES**

n/a

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

n/a

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

This is the 38th anniversary of the CDBG program.

---

**Attachments**

Proclamation for Community Development Week

---

# Proclamation

City of Tigard

## National Community Development Week April 8 – 14, 2012

**WHEREAS**, the Community Development Block Grant (CDBG) Program was enacted into law by President Gerald Ford, as the centerpiece of the Housing and Community Development Act of 1974; and

**WHEREAS**, the CDBG has, as its primary objective “the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income;” and

**WHEREAS**, the CDBG program has considerable flexibility to allow communities to carry out activities that are tailored to their unique affordable housing and neighborhood revitalization needs; and

**WHEREAS**, throughout its 38-year history, the CDBG program has been a partnership among the federal, state and local governments, businesses and the nonprofit sector which carry out activities that improve the lives and neighborhoods of low and moderate income families; and

**WHEREAS**, since 1979, the City of Tigard has used \$3,488,055 in CDBG funds to provide housing rehabilitation; revitalization of community facilities and shelters, and physical redevelopment; and

**WHEREAS**, a reduction in funding in recent years has had an impact on the City of Tigard by eliminating available improvement funding for roads and infrastructure; and

**WHEREAS**, the City of Tigard urges Congress to provide increased formula funding for CDBG in FY 2013 and FY 2014;

**NOW THEREFORE BE IT RESOLVED THAT I**, Craig E. Dirksen, Mayor of the City of Tigard, Oregon, do hereby proclaim the week of April 8-14, 2012 as

### **NATIONAL COMMUNITY DEVELOPMENT WEEK**

in Tigard, Oregon and urge all residents to join in recognizing the important role the Community Development Block Grant Program plays in serving our community.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2012.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Seal of the City of Tigard to be affixed.

\_\_\_\_\_  
Craig E. Dirksen, Mayor  
City of Tigard

**Attest:**

\_\_\_\_\_  
City Recorder

AIS-857

3. C.

**Business Meeting**

**Meeting Date:** 03/27/2012

**Length (in minutes):** 5 Minutes

**Agenda Title:** Proclaim April as Arbor Month

**Prepared For:** Joanne Bengtson

**Submitted By:**

Joanne Bengtson,  
City Management

**Item Type:** Receive and File

**Meeting Type:**

Proclamation

---

**Information**

**ISSUE**

Should the Mayor proclaim April as Arbor Month?

**STAFF RECOMMENDATION / ACTION REQUEST**

Staff recommends the proclamation.

**KEY FACTS AND INFORMATION SUMMARY**

ARBOR DAY 2012 is a chance to celebrate our trees!

Arbor Day is America's day for honoring trees. Arbor Day is observed nationwide on the last Friday of April. In Oregon the first week in April is Oregon Arbor Week, dedicated to planting, protecting, and appreciating our trees.

Tigard usually dedicates the entire month of April to be Arbor Month, with multiple activities and events designed to bring attention to the city's urban forest. The Mayor will celebrate by planting trees with the students of Fowler Middle School on April 4, 2012.

**OTHER ALTERNATIVES**

n/a

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

n/a

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

The city has issued this proclamation for many years now and our Arbor Day/Week/Month celebrations engender a lot of community support for Tigard's urban forest.

---

**Attachments**

Arbor Month Proclamation

---

# Proclamation

City of Tigard

## ARBOR MONTH

**Whereas**, In 1872, Arbor Day, a special day set aside for the planting of trees, was first celebrated in Nebraska; and

**Whereas**, Tigard's urban forest is part of a larger ecology that spans from mountains to ocean and is integral to our region's environmental quality; and

**Whereas**, our urban forest includes a diversity of public and private trees that grace our streets, yards, parks and greenways, provide habitat for wildlife, soften hardscapes, clean the air, protect water resources, and ensure that everyone can experience natural beauty where we live, work, and recreate; and

**Whereas**, the City of Tigard recognizes that our urban forest is a necessity and is an integral part of the city's infrastructure; and

**Whereas**, we are committed to providing resources to maintain and enhance the urban forest; and

**Whereas**, people of all ages and backgrounds, including citizens, civic organizations, businesses, and government agencies, have formed partnerships to participate actively in the stewardship and caretaking of Tigard's urban forest.

**NOW THEREFORE BE IT RESOLVED** that I, Craig E. Dirksen, Mayor of the City of Tigard, Oregon, do hereby proclaim the entire month of April 2012 as

## ARBOR MONTH

in Tigard, Oregon and encourage people throughout the city to become more involved with the planting and stewardship of the urban forest throughout the year of 2012.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Seal of the City of Tigard to be affixed.

\_\_\_\_\_  
Craig E. Dirksen, Mayor  
City of Tigard

**Attest:**

\_\_\_\_\_  
City Recorder

AIS-879

**3. D.**

**Business Meeting**

**Meeting Date:** 03/27/2012

**Length (in minutes):** 5 Minutes

**Agenda Title:** Proclaim April as Child Abuse Prevention Month

**Prepared For:** Joanne Bengtson

**Submitted By:**

Joanne Bengtson,  
City Management

**Item Type:** Update, Discussion, Direct Staff

**Meeting Type:**

Proclamation

---

**Information**

**ISSUE**

Should the Mayor proclaim April as Child Abuse Prevention Month?

**STAFF RECOMMENDATION / ACTION REQUEST**

Issue the Proclamation.

**KEY FACTS AND INFORMATION SUMMARY**

In order to raise awareness about the tragedy of child deaths related to abuse and neglect, several communities within Washington County have agreed to issue proclamations to bring awareness to Child Abuse Prevention Month.

Tigard's children are our most valuable resource, and they need our support to thrive and grow into healthy, productive adults.

Every child deserves a nurturing family and a safe environment, free from fear, abuse, and neglect and combating child abuse will take a collaborative and community effort.

**OTHER ALTERNATIVES**

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

Mayor Dirksen issued this proclamation in 2011.

---

**Attachments**

[Proclaim Child Abuse Prevention Month](#)

---

# Proclamation

City of Tigard

## CHILD ABUSE PREVENTION MONTH April 2012

Tigard's children are our most valuable resource, and they need our support to thrive and grow into healthy, productive adults.

**WHEREAS**, Every child deserves a nurturing family and a safe environment, free from fear, abuse and neglect; and

**WHEREAS**, Child abuse affects every community and it will take a collaborative and community-wide effort to prevent it; and

**WHEREAS**, During National Child Abuse Prevention Month, we state our unwavering commitment to protecting children and promoting healthy families; and

**WHEREAS**, By bringing awareness to the Tigard community about child abuse and what each person can do to prevent it, we build a brighter future for all; and

**WHEREAS**, I encourage all Tigard residents to visit: [www.ChildWelfare.gov/Preventing](http://www.ChildWelfare.gov/Preventing) to learn what they can do to stop child abuse.

**NOW THEREFORE BE IT RESOLVED THAT** I, Mayor Craig Dirksen of the City of Tigard, Oregon, do hereby proclaim the month of April 2012 as

## CHILD ABUSE PREVENTION MONTH

in Tigard, Oregon and urge residents to observe this month by supporting programs and activities that help prevent child abuse and provide for children's physical, emotional, and developmental needs.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2012.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Seal of the City of Tigard to be affixed.

\_\_\_\_\_  
Craig E. Dirksen, Mayor  
City of Tigard

**Attest:**

\_\_\_\_\_  
City Recorder

AIS-837

**4. A.**

**Business Meeting**

**Meeting Date:** 03/27/2012

**Length (in minutes):** Consent Item

**Agenda Title:** Approve City Council Meeting Minutes

**Submitted By:** Cathy Wheatley, Administrative Services

**Item Type:** Motion Requested

**Meeting Type:**

Consent Agenda

---

**Information**

**ISSUE**

Approve City Council meeting minutes.

**STAFF RECOMMENDATION / ACTION REQUEST**

Approve minutes as submitted.

**KEY FACTS AND INFORMATION SUMMARY**

Attached council minutes are submitted for City Council approval. (Dates of meetings are listed under "Attachments" below.)

**OTHER ALTERNATIVES**

N/A

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

N/A

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

N/A

---

**Attachments**

[February 14, 2012 City Council Meeting Minutes](#)

[February 21, 2012 City Council Minutes](#)

---



**City of Tigard**  
**Tigard Business Meeting – Minutes**

---

**TIGARD CITY COUNCIL**

**MEETING DATE AND TIME:** February 14, 2012 6:30 p.m. Study Session; 7:30 p.m. Business Meeting  
**MEETING LOCATION:** City of Tigard - Town Hall - 13125 SW Hall Blvd., Tigard, OR 97223

Mayor Dirksen called the meeting to order at 6:30 p.m.

<u>Name</u>	<u>Present</u>	<u>Absent</u>
Mayor Dirksen	✓	
Council President Buehner	✓	
Councilor Henderson	✓	
Councilor Wilson	✓	
Councilor Woodard	✓	

Staff present: City Manager Wine, Assistant City Manager Newton, City Recorder Wheatley, Assistant Community Development Director Hartnett, Redevelopment Project Manager Farrelly, City Attorney Ramis, Associate Planner Pagenstecher, Community Development Director Bunch, Senior Management Analyst Wyatt

- **STUDY SESSION**

- > Council President Buehner recommended to Mayor Dirksen that the City Council consider getting involved in the National Conference of Mayors, which is comprised of members from cities with more than 30,000 in population. Mayor Dirksen noted he had not joined the group because of time constraints. Recently, some of the issues taken on by this organization at the national level are of concern to Tigard and the state of Oregon in general. He said he would like to explore ways to become involved with the Conference.

- A. Discuss Proposed Amendment to Resolution No. 07-13 to Renew the City’s Incentives to Annex until February 2013

---

**TIGARD CITY COUNCIL MEETING MINUTES -- FEBRUARY 14, 2012**

Associate Planner Pagenstecher presented the staff report. He distributed a copy of a proposed resolution to the City Council. The topic before the City Council is to discuss its annual review of continuing its policy for incentives for voluntary annexation. He pointed out that reevaluation of the city's annexation policy was designated as a 2012 City Council goal.

Since 2007, council has held a neutral annexation policy. Annexation has been "free" to interested parties. In the last two years, councilors have explored the questions of island annexations and how well annexation incentives have performed.

The proposed resolution shows language highlighted in yellow representing suggested changes from last year's resolution to acknowledge council's 2012 annexation goal. Associate Planner Pagenstecher said staff proposed the council consider the draft proposed resolution at its February 28 City Council business meeting to assure a timely continuation of the policy. In addition, to give context to this resolution and to further the 2012 annexation goal, this session is the opportunity to initiate a discussion on the process to achieve its goal.

In response to a question from Councilor Henderson, Associate Planner Pagenstecher said the previous resolution requires consideration of the annexation policy and the proposed resolution would act as a placeholder until the City Council can hold additional discussions. Mayor Dirksen confirmed Councilor Henderson's observation that if the City Council chose to approve the proposed resolution it would allow interested property owners to annex under the current policy.

Council President Buehner noted the city will lose 14 sets of SDC charges as there is a subdivision going in about a block and a half from the current city boundary. Mayor Dirksen agrees this is unfortunate, but pointed out the City Council has pondered this issue and there has been no mechanism identified to allow the city to annex areas such as the one cited by Council President Buehner. City Manager Wine said the purpose of tonight's resolution is to prompt the council's thinking about the proposed resolution and the potential for what can be changed.

Councilor Henderson said he would like the matter scheduled for a public hearing process so the council could hear a broader perspective.

Council President Buehner said there are two separate issues that need to be considered and discussed separately:

1. The island areas, which can be annexed at any time.
2. Areas outside the city.

In response to a question from Councilor Woodard, Council President Buehner said that not many property owners have annexed under the current policy. With regard to possible enticements to annex, Councilor Wilson commented that as a general rule, people do not want to increase their property taxes. He said he has always been of the opinion that if you

---

## **TIGARD CITY COUNCIL MEETING MINUTES -- FEBRUARY 14, 2012**

want people to join the city, why would there be any barriers whatsoever. He suggested the incentive policy be adopted as a permanent policy. While there is a small cost to the city, over the long term there is a net gain. Discussion followed on the benefits gained from joining the city, which is a complex issue when urban developed areas are adjacent to a full-service municipal infrastructure.

Councilor Woodard asked if the city could have a discussion with the county since it is likely they will not be able to continue to sustain current services to these urban developed areas. Something different needs to be done accompanied by good public relations efforts.

Council President Buehner pointed out that the unincorporated areas near Tigard are not included in the Tualatin Hills Park and Recreation District, so they do not pay for parks. The Tualatin Hills Park and Recreation District tax rate is about \$1.50. Mayor Dirksen said the district's tax rate for park services is almost the equal of Tualatin's city tax rate.

Mayor Dirksen said that, typically, when people come forward to annex voluntarily, it is because they own a piece of undeveloped property adjacent to the city and they need to receive extended services for water and sewer.

In response to a question from Councilor Woodard, Mayor Dirksen said that when someone in the Enhanced Sheriff Patrol District comes into the City of Tigard, they are removed from the district. Also if they are paying other types of fees (i.e., street lighting) those fees are not charged. For the first two years, because of the phase-in of taxes, areas on Bull Mountain that choose to annex to Tigard will likely pay less taxes. Mayor Dirksen said this information has been offered in the past, but the figures are challenged by some as to their accuracy/veracity.

Councilor Woodard noted he questions the annual review of the resolution. Mayor Dirksen responded that the resolution is written to require the annual review; however, this could be changed. Council President Buehner said she originally suggested this policy be reexamined noting that circumstances have changed over the years and suggested a determination whether outreach efforts to specific neighborhoods might be productive. Mayor Dirksen said the council might want to consider offering to neighborhoods near recently purchased parkland on Bull Mountain that if they annexed, the amount of property taxes collected from them in the first years would be used to develop the parks.

Councilor Henderson referred to the previous city effort to annex the Bull Mountain area and people in the area commented that the city offered "a little bit too little, a little bit too late." A number of resolutions were adopted and Mayor Dirksen said he believes all of those resolutions are still in effect. Mayor Dirksen outlined the process undertaken during the proposed Bull Mountain area annexation. This process included study groups that met for six months leading to the development of white papers, which were translated into the adoption of the above-cited resolutions. Councilor Henderson suggested these resolutions (Nos. 04-72 through 04-78) be reviewed or brought forward again.

---

## **TIGARD CITY COUNCIL MEETING MINUTES -- FEBRUARY 14, 2012**

Councilor Wilson said he would prefer to concentrate on Area 63 first. Eventually, area will be annexed on at least three sides of the unincorporated area on Bull Mountain. He said after Area 63 is annexed, it might be a good idea to start neighborhood groups for communication purposes for a variety of matters, not just annexation possibilities. Council President Buehner said she would like to do outreach to specific areas; i.e., an area along Barrows Road.

City Manager Wine advised that this study session topic was before the City Council tonight as a preview to its conversation on February 28 with regard to annexation strategy and timing of dialog with certain areas with regard to potential incentives.

Mayor Dirksen asked Councilor Henderson said that as part of consideration of a policy, he would like the council to entertain the action of making the proposals in Resolution Nos. 04-72 through 04-78 permanent offerings to areas that choose to annex to the City of Tigard. Councilor Henderson said it would be good to build a policy so people would know if or when they come into the City of Tigard what will be offered. Councilor Wilson said he would like to begin building relationships and discuss public services and desires. Council President Buehner commented that she did not know why the city did not annex neighborhoods that appeared to be in favor of annexing (Menlor area) at the time parkland was acquired.

Additional council discussion followed regarding communication and relationship building in the Bull Mountain area and perceptions of people in the unincorporated area on the topic of annexation.

Mayor Dirksen noted two issues appear to need further City Council discussion:

1. Review the proposed annexation resolution to continue the current annexation policy as brought forward by staff tonight.
2. Schedule an agenda topic to allow the City Council time to discuss how to address annexation policy in the future.

Councilor Wilson reiterated that he would prefer to have discussions on annexation policy after Area 63 has joined the city. Community Development Director Bunch reported that work is underway for a triple majority annexation process, which appears to be achievable. The area recently added to Area 63 requires review by the Department of Land Conservation and Development (DLCD) for findings to determine that this area is inside the Urban Growth Boundary. Mayor Dirksen called the Council's attention to a letter from DLCD on a hearing for the Metro Urban Growth Boundary Amendment. A copy of this January 25, 2012, letter was distributed to the City Council members and is in the meeting file. This letter indicated that the matter might be placed on the March commission agenda; however, Acting Director Jim Rue did not expect that would be the case. Community Development Director Bunch said he thought the hearing might occur in April or May. In response to Council President Buehner, Community Development Director Bunch agreed

---

## **TIGARD CITY COUNCIL MEETING MINUTES -- FEBRUARY 14, 2012**

that the application for annexation could be started but not finalized until the DLCD findings were issued.

Council President Buehner suggested looking at annexing the islands first. Mayor Dirksen agreed and speculated that once the islands are annexed some of the issues would no longer exist.

After discussion, City Council members requested that Associate Planner Pagenstecher bring the proposed resolution (interim, placeholder policy) to the City Council for consideration on February 28, 2012. In the future, City Council will be considering whether additional elements will be added or changed to the city's annexation policy.

## B. Administrative Items

- Senior Management Analyst Wyatt presented an update on legislative activity.
  - House Bill 4090 – focuses on timing and delivery of urban services. Senior Management Analyst Wyatt distributed a February 13, 2012, from Mayor Dirksen. Representative Dougherty entered this letter into the record for Tigard today at a committee meeting (no public comment was entertained). The legislation passed 6-1 onto the House floor, where it is expected to pass; however, it is anticipated that the bill will not pass the Senate level. Contact was made with Senator Burdick. Senior Management Analyst Wyatt reviewed the letter, which lists the concerns Tigard has with this legislation. During discussion City Attorney Ramis suggested asking the legislature to wait to for the decisions on current litigation on this subject. He advised this matter is before the Land Use Board of Appeals and Circuit Court.
  - H.R. 7 – focuses on transportation enhancements and safe routes to schools and the TIGER program for grants for multi-modal projects that have a strong economic development component. Senior Management Analyst Wyatt distributed a letter from Mayor Dirksen to Representative Bonamici that will be sent on February 15. A copy is in the meeting file. Council members agreed that Mayor Dirksen should send the letter.
- Council held discussion on grants and recent successes in obtaining them. Senior Management Analyst Wyatt, in response to a question from Councilor Woodard advised that the city's lobbyist has applied for a couple of grants; grant recipients will be announced in the spring. Mayor Dirksen noted that once the city is over 50,000 in population, we will be able to apply directly for grants – we now have to go through Washington County.
- Groundrules Feedback.
  - City Manager Wine distributed the guidelines prepared as a result of the City Council training with Joel Hertzberg. These notes are in the meeting file. She said no changes appear to be needed to the council groundrules at this time.

---

## **TIGARD CITY COUNCIL MEETING MINUTES -- FEBRUARY 14, 2012**

There was discussion about how to memorialize these guidelines with the existing groundrules; Mayor Dirksen suggested it become an addendum.

City Manager Wine reviewed the calendar items for City Council:

- Council/City Center Development Agency Calendar:
  - February
    - 21\* Tuesday - Council Workshop Meeting – 6:30 p.m., Town Hall
    - 28\* Tuesday - Council Business Meeting – 6:30 p.m., Town Hall
  - March
    - 6 Tuesday - City Center Development Agency – 6:30 p.m., Red Rock Creek Conference Room
    - 13\* Tuesday - Council Business Meeting – Canceled
    - 20\* Tuesday - Council Workshop Meeting – 6:30 p.m., Town Hall
    - 27\* Tuesday - Council Business Meeting – 6:30 p.m., Town Hall
  - April
    - 3 Tuesday - City Center Development Agency – 6:30 p.m., Red Rock Creek Conference Room
    - 10\* Tuesday - Joint Meeting with Beaverton City Council & Planning Commission/Metro, 6:30 p.m., Beaverton City Hall, 4755 SW Griffith Drive, Beaverton. Agenda topics include: Climate Smart Communities Findings, SW Corridor Briefing, Urban Growth Boundary Concept Planning
    - 17\* Tuesday - Council Workshop Meeting – 6:30 p.m., Town Hall
    - 23 Monday - Budget Committee Meeting – 6:30 p.m., Public Works Auditorium
    - 24\* Tuesday - Council Business Meeting – 6:30 p.m., Town Hall
    - 30 Monday - Budget Committee Meeting – 6:30 p.m., Public Works Auditorium
  
- EXECUTIVE SESSION: The **Tigard City Center Development Agency** went into Executive Session at 7:19 p.m. to discuss real property transaction negotiations under ORS 192.660(2)(e).

Executive Session concluded at 7:30 p.m.

1. BUSINESS MEETING -- FEBRUARY 14, 2012

A. Mayor Dirksen called the meeting to order at 7:36 p.m. 

B. Roll Call

<u>Name</u>	<u>Present</u>	<u>Absent</u>
Mayor Dirksen	✓	
Council President Buehner	✓	
Councilor Henderson	✓	
Councilor Wilson	✓	
Councilor Woodard	✓	

C. Pledge of Allegiance

D. Council Communications & Liaison Reports

 Council President Buehner advised she will report on several water-related items at the City Council workshop meeting on February 21, 2012.

E. Call to Council and Staff for Non-Agenda Items: None.



2. CITIZEN COMMUNICATION

A. Follow-up to Previous Citizen Communication: None.

B.  Tigard High School Student Envoy Courtney Bither presented a report on activities at the high school. A copy of her report is in the meeting file.

C. Tigard Area Chamber of Commerce – Chief Executive Officer Debi Mollahan will present the Chamber report on 2/28/2012.

D. Citizen Communication – None.

---

**TIGARD CITY COUNCIL MEETING MINUTES -- FEBRUARY 14, 2012**



Mayor Dirksen reviewed the Consent Agenda:

3. CONSENT AGENDA: (Tigard City Council)

A. Approve City Council Meeting Minutes for:

- 1. December 13, 2011
- 2. December 20, 2011
- 3. January 10, 2012
- 4. January 17, 2012
- 5. January 24, 2012

B. Receive and File:

- 1. Council Calendar
- 2. Tentative Agenda

C. Add the Sunrise Property Purchase to the List of 2006 Metro Bond Projects and Approve an Agreement Regarding the Property

RESOLUTION 12-03 - A RESOLUTION ADDING THE SUNRISE PROPERTY TO TIGARD'S LOCAL SHARE PROJECT LIST AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT (IGA) WHEREBY WASHINGTON COUNTY WILL MAKE A \$400,000 CONTRIBUTION TO PARTIALLY FUND THE PURCHASE OF THE SUNRISE PROPERTY

D. Add Two Trail Projects to the List of 2006 Metro Bond Projects

RESOLUTION NO. 12-04 - A RESOLUTION ADDING TWO TRAIL PROJECTS TO TIGARD'S LOCAL SHARE PROJECT LIST

E. Initiate the Transfer of Jurisdiction of a Portion of Barrows Road to the City

RESOLUTION 12-05 - A RESOLUTION INITIATING ACTION TO TRANSFER JURISDICTION OF A PORTION OF SW BARROWS ROAD (COUNTY ROAD NO. 812) WITHIN THE CITY OF TIGARD TO THE CITY OF TIGARD

F. Authorize the Submission of a Grant Application to Partially Fund the Aquifer Storage and Recovery (ASR) Improvement Project

RESOLUTION NO. 12-06 - A RESOLUTION SUPPORTING THE SUBMISSION OF A BUREAU OF RECLAMATION WATERSMART WATER AND ENERGY EFFICIENCY GRANT APPLICATION TO PARTIALLY FUND AQUIFER STORAGE AND RECOVERY (ASR) WELL HEAD IMPROVEMENTS

**TIGARD CITY COUNCIL MEETING MINUTES -- FEBRUARY 14, 2012**



Motion by Council President Buehner, seconded by Councilor Wilson to approve the Consent Agenda.

The motion was approved by a unanimous vote of City Council present.

Mayor Dirksen	Yes
Council President Buehner	Yes
Councilor Henderson	Yes
Councilor Wilson	Yes
Councilor Woodard	Yes



4. NAME THE TIGARD LIBRARY COMMUNITY ROOM THE "GEORGE AND YVONNE BURGESS COMMUNITY ROOM" - RESOLUTION

The following individuals attended the Council meeting for this item: Library Board Chair David Burke and Library Board members Cecilia Nguyen and Linda Monahan. Kathy Sleeper from the Friends of Library also attend.



Library Director Barnes introduced this agenda item.



Representatives of the Library Board and the Friends of the library reviewed their association with George and Yvonne Burgess and recalled the extent of their dedicated service to the library and the Tigard community



Council members shared their memories and contacts with the late George Burgess throughout his years of service. Councilors expressed appreciation for dedicated volunteers noting that the works of George and Yvonne Burgess made it possible for Tigard to have the beautiful library building. A ceremony to formally name the facility is being planned.



Motion by Council President Buehner, seconded by Mayor Dirksen, to adopt Resolution No. 12-07.

RESOLUTION NO. 12-07 - A RESOLUTION NAMING THE COMMUNITY ROOM WITHIN THE TIGARD PUBLIC LIBRARY TO HONOR GEORGE AND YVONNE BURGESS FOR THEIR SERVICE TO THE CITY OF TIGARD AND AS THE TIRELESS LEADERS OF THE FRIENDS OF THE TIGARD PUBLIC LIBRARY

**TIGARD CITY COUNCIL MEETING MINUTES -- FEBRUARY 14, 2012**

The motion was approved by a unanimous vote of City Council present.

Mayor Dirksen	Yes
Council President Buehner	Yes
Councilor Henderson	Yes
Councilor Wilson	Yes
Councilor Woodard	Yes



#### 5. PRESENTATION BY METRO COUNCILOR CARL HOSTICKA ON CLIMATE SMART COMMUNITIES SCENARIOS PROJECT

Kim Ellis, Metro Principal Planner was also present with Metro Councilor Carl Hosticka.

Information was distributed to the City Council, which is filed in the meeting packet:

- Article: *Climate Smart Communities Scenarios*
- Information Packet: *Understanding our Land Use and Transportation Choices, Phase 1 Findings, January 12, 2012*

Councilor Hosticka reviewed the information distributed to the City Council including history of the project and the project timeline. Adoption of a preferred strategy is scheduled for June 2014.



Councilor Hosticka reviewed the building blocks for regional scenarios testing combinations of plausible strategies to reduce greenhouse gas emissions and the findings of these tests as the project enters Phase 2.



Councilor Hosticka referred to policy questions to be addressed in Phase 2 with the following elements to be considered: fiscal, economic and equity.



Councilor Hosticka advised that Metro representatives are meeting with communities to give them an overview of the project, hear questions from communities, and identify strategies to move forward.



Council members asked questions and discussed this project with Councilor Hosticka and Metro Principal Planner Ellis.



In response to Councilor Woodard's question about benefits to the city, Planner Ellis advised that there is a lot of work to be done in the coming year to quantify cost savings at the household level.

## **TIGARD CITY COUNCIL MEETING MINUTES -- FEBRUARY 14, 2012**

 Councilor Wilson referred to the complexities in forecasting development and how communities will build out. Councilor Hosticka commented on the transportation and forecasting models being used to forecast growth. He said the forecasting will not be completely accurate, but he would prefer an overestimate rather than an underestimate in the infrastructure required to accommodate future needs.  Planner Ellis referred to work being done by the Oregon Department of Transportation (ODOT) for similar types of analyses and the innovative results.

 Councilor Wilson commented on the community design and dependency on adequate transit infrastructure. He referred to the need for suburban transit service and improvements to the Transportation Planning Rule.

 Councilor Henderson emphasized the need for sustainable programs. Planner Ellis referred to the efforts to plan to the year 2035. Councilor Hosticka commented on the issue for the future, which will be to retrofit suburbs and provide small-scale retail in a more distributed manner. Lengthy discussion followed on recent work to identify key components of current issues and efforts to address the problem areas in the urban infrastructure for improved livability as desired in a variety of neighborhoods for the present and the future.

 6. REVIEW AND DISCUSS THE PROPOSED 2012 FEDERAL LEGISLATIVE AGENDA

 Senior Management Analyst Wyatt presented the staff report and the attached draft 2012 Federal Legislative Agenda, which is in the meeting file.

 Mayor Dirksen and City Council members discussed the agenda and were in agreement that the 2012 Federal Legislative Agenda was accurate.

 Motion by Councilor Wilson, seconded by Councilor Henderson, to approve the legislative agenda as proposed.

The motion was approved by a unanimous vote of City Council present.

Mayor Dirksen	Yes
Council President Buehner	Yes
Councilor Henderson	Yes
Councilor Wilson	Yes
Councilor Woodard	Yes

---

## **TIGARD CITY COUNCIL MEETING MINUTES -- FEBRUARY 14, 2012**

7. COUNCIL LIAISON REPORTS

 Councilor Henderson advised he would give a report at a future meeting on Community Development Block Grant Proposals.

Council President Buehner advised she attended the neighborhood workshop meetings last weekend. About 65 people attended.

Councilor Woodard noted that information will soon be coming forward on social grant applications.

8. NON AGENDA ITEMS None.

9. EXECUTIVE SESSION: Not held.

10. ADJOURNMENT (8:59 p.m.)

 Motion by Councilor Wilson, seconded by Councilor Woodard to adjourn the meeting.

The motion was approved by a unanimous vote of City Council present.

Mayor Dirksen	Yes
Council President Buehner	Yes
Councilor Henderson	Yes
Councilor Wilson	Yes
Councilor Woodard	Yes

\_\_\_\_\_  
Catherine Wheatley, City Recorder

Attest:

\_\_\_\_\_  
Mayor, City of Tigard

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

I:\adm\cathy\ecm\2012\final minutes\2 february\120214 final.docx

**TIGARD CITY COUNCIL MEETING MINUTES -- FEBRUARY 14, 2012**



# City of Tigard

## Tigard Workshop Meeting - Minutes

---

### TIGARD CITY COUNCIL

**MEETING DATE/TIME:** February 21, 2011 – 6:30 p.m. – Workshop Meeting

**MEETING LOCATION:** City of Tigard – Town Hall, 13125 SW Hall Blvd., Tigard, OR 97223



### 1. WORKSHOP MEETING

A. At 6:34 p.m. Mayor Dirksen called to order the meeting of the City Council and the City Center Development Agency.

B. Deputy City Recorder Krager called the roll:

	Present	Absent
Mayor Dirksen	✓	
Councilor Henderson	✓	
Councilor Woodard	✓	
Councilor Wilson	✓	
Council President Buehner	✓	

C. Pledge of Allegiance

D. Council Communications & Liaison Reports – Mayor Dirksen noted that Council President Buehner will report on four committees at the end of the meeting.

E. Call to Council and Staff for Non-Agenda Items – None.

### 2. RECEIVE TIGARD MUNICIPAL COURT ANNUAL REPORT

Municipal Court Judge O'Brien and Administrative Services Manager Robinson were present to discuss Tigard's municipal court program and give an annual update. Judge O'Brien noted that the date for the report was moved to the beginning of the year so council could receive the calendar year summary on a more timely schedule.

---

## TIGARD CITY COUNCIL WORKSHOP MINUTES – FEBRUARY 21, 2012

Municipal Court Judge O'Brien gave a PowerPoint presentation on court program highlights. Traffic cases in 2011 were at the second highest level in court history. The fourth quarter broke the record for most violations in a single quarter. Administrative Services Manager Robinson speculated that part of this increase was due to the introduction of the electronic ticketing program, or e-cites. Judge O'Brien said the simplified process means that officers can write tickets faster and Tigard's municipal court responded to this higher caseload by streamlining case processing.



Judge O'Brien said that while the electronic citations are the cause of the increased caseload, they are also part of the solution. The data automatically transmits from the police department to court staff, resulting in time savings and efficiency because data does not have to be manually re-entered by court staff.

Judge O'Brien explained how the fine schedules were changed due to new laws from the 2011 legislative session lowering the fine amount that appears on the front of a citation, effective January 2012. Instead of costs and assessments going to separate agencies, there is one \$60 priority payment to the state which must be paid before anything is distributed to local jurisdictions. A bill was introduced in the 2012 legislative session to lower the amount of the state assessment to \$45; however, passage of the bill seems unlikely at this date. He said minor housekeeping bills may come out of the legislature yet this session due to ambiguities created by last year's House Bill 2712.

Judge O'Brien said the legislature also gave the courts more discretion in lowering fines. Courts had the discretion to lower a fine by 25 percent but now can lower a fine up to 50 percent. In response to a question from Mayor Dirksen, he said judges can also raise fines although that process is lengthy and cumbersome. Council President Buehner asked if a matrix similar to what exists in criminal courts was put into place. Judge O'Brien said it was, but the court also has discretion to increase or decrease the fine, and it is not as rigid as in the criminal courts. Councilor Woodard asked for clarification about whether it doesn't matter if a fine is increased or reduced, municipal courts still pay \$60 to the state. Judge O'Brien said that was correct.



Judge O'Brien presented slides showing traffic fine changes by violation class under House Bill 2712. He said the lower the violation class, the higher the percentage of the fine portion going to the State of Oregon. He provided an example of a Class D violation for speeding from 1-10 miles over the speed limit. This violation used to have a base fine of \$145; under the new law it is \$110. If a municipal judge reduces it by half for someone with a good driving record, the city would have to pay the entire fine to the state. This leaves very little incentive to enforce Class D violations.

The judge said Tigard's municipal court has a "fix it" program which rewards compliance for drivers with a good driving record with fine reductions, discharges or dismissals. There is an administrative fee of \$40 which is not payable to the state. This program includes tickets for not carrying insurance, expired registration, or broken tail lights. He said the court provides payment agreements for those in need. Another way the court uses technology to streamline processes is offering the option to pay fines online through CitePayUSA.



Councilor Henderson asked about cell phone violation statistics. Judge O'Brien said he was amazed there were 1,200 cell phone violations in Tigard over the past two years. He said Oregon State Police only

## **TIGARD CITY COUNCIL WORKSHOP MINUTES – FEBRUARY 21, 2012**

issued 1,000 tickets statewide in 2010 so Tigard's level is comparatively very high. He noted that state legislation negated the work-related call exemption for all drivers except safety officers. Hands-free devices are required for all other callers. Administrative Services Manager Robinson added that holding or programming a GPS while driving is also illegal.

Councilor Wilson requested a list of the top ten traffic violations. He said he has been studying ODOT safety data and noticed that rear-end accidents are the most common cause of city driving accidents. He said he discussed this with Police Chief Orr and advocated for greater enforcement priority for following too closely, aggressive driving or driving while distracted. Judge O'Brien said the court is seeing a large number of citations written for following too closely. He noted for the audience that a microchip can be inside a radar gun is used to measure the distance and time separation between cars.

Mayor Dirksen asked Judge O'Brien if the court database can produce a report on the ratio of resident to non-resident violations. Judge O'Brien said staff did this in response to a question from Councilor Wilson a few years ago and found that thirty percent of citations were written to Tigard residents and seventy percent to drivers from other communities.

Councilor Woodard asked if there was space on the ticket for the court staff to list the reasons given in court for speeding. These could help identify hot spots where accidents are more likely to occur. Administrative Services Manager Robinson said information is written on the tickets in court, but it is not entered into a database. She said she will ask the police department about using a section on the e-cites where officers could record such remarks.

Councilor Wilson said he suggested to Police Chief Orr that police officers and city engineers share information. He said accidents are one reason for traffic congestion through Tigard. Finding out what causes them can help city engineers design traffic lanes to alleviate problems. He said collecting and analyzing crash data at McDonald/Gaarde/Pacific Highway can influence the design of that new intersection, for example. Judge O'Brien commented that he has been seeing McDonald Street frequently on police car videos in court. He said staff is considering the use of GPS technology to identify exact incident locations.

 Council President Buehner pointed out a problem with a blind corner at Walnut and 135<sup>th</sup> Avenue. The intersections are close together and create traffic backups due to difficulty turning into the traffic coming from Murray Road as it is travelling too fast. She expressed interest in obtaining crash data for this location because the city and county are discussing the installation of a traffic signal there.

### 3. ANNUAL JOINT CITY CENTER DEVELOPMENT AGENCY/CITY CENTER ADVISORY COMMISSION MEETING

Redevelopment Project Manager Farrelly asked CCAC Members to introduce themselves. Present were Ralph Hughes, Jeff Mauro, Alex Craghead, Elise Shearer, Peter Louw, Tom Murphy, Deanie Bush and Phil Thornburg. Redevelopment Project Manager Farrelly noted that CCAC Members Linli Pao and Sherri Devaney were unable to attend.

## **TIGARD CITY COUNCIL WORKSHOP MINUTES – FEBRUARY 21, 2012**



CCDA Director Buehner announced for the viewing audience that the CCDA will now have dedicated meetings on the first Tuesday of each month, beginning on March 6, 2012. Redevelopment Project Manager Farrelly said the CCAC is planning to send representatives to the meetings.

CCAC Chair Craghead summarized annual report highlights and introduced the CCAC 2012 goals, which were included in the meeting packet.

2011 highlights include:

- Preparation for the Main Street Green Street Project
- The Burnham Street Project is complete!
- Planning for another entrance to the WES parking lot
- Meetings with consultant Michelle Reeves
- Completion of two façade improvement projects

CCAC Chair Craghead said the CCAC 2012 Goals are ambitious and include:

- **Main Street Green Street** - CCAC Chair Craghead said the Main Street Green Street project needs to be planned so it is not an undue burden on downtown businesses. Land is being assembled in preparation for a downtown park and plaza.
- **Façade Improvement Project** - CCAC Member Shearer said the façade improvement program has been very successful. Fifteen properties applied and four were accepted. Three more requests are pending. The CCAC will evaluate these and develop a matrix evaluating success of the program. She said facade improvements align with the City Council goal to attract new downtown tenants. CCDA Director Wilson commented that he would like to see property owners become more ambitious with their improvements.

CCAC Member Shearer said there are questions about whether expanding the program beyond Main Street is a good idea at this time and this will be an ongoing discussion topic. Chair Dirksen suggested they consider whether or not the money would stretch far enough to cover other streets. In response to CCDA Director Wilson's earlier comment, Chair Dirksen said opening the façade improvement program to include tenant improvements may encourage downtown building owners to become more ambitious. Redevelopment Project Director Farrelly said a tenant improvement program will be discussed at the CCDA meeting of March 6, 2012.

CCDA Director Buehner urged the agency to make sure there is balance because if an existing business moves downtown to receive the improvements, a vacancy is created elsewhere in Tigard.

CCDA Director Wilson said the city made improvements for a coffee shop tenant when the library was built. He said that considered within the context of the entire project; the cost was not that much. He noted the first coffee shop tenant failed but the second is successful. He said when the city pays for improvements but the first business does not succeed or move elsewhere, it does not mean that the improvements are lost.

## TIGARD CITY COUNCIL WORKSHOP MINUTES – FEBRUARY 21, 2012

- **Construction impact mitigation of Main Street Green Street** - CCAC Member Louw provided historical perspective on the Main Street Green Street project from the view of business owners. He said initial objections to another street project beginning so closely to the end of the previous one was due to disruption and impacts Burnham Street construction had on their businesses.

He said the objective is to “get in and out of there as fast as possible to avoid affecting businesses in a negative way.” He said the parking lot will be completed this year. CCDA Director Buehner clarified that this parking lot is for employees of downtown businesses so that customers can have better access. CCAC Member Louw said there is apprehension from Main Street businesses about project communication, although it was improved during the Burnham Street project. CCDA Chair Dirksen said, “We learned a lot about communicating on that project.” CCAC Chair Craghead said the methods of communicating with the Main Street businesses should not be limited to the use of electronic media.

CCDA Director Henderson acknowledged the leadership of CCAC Member Louw. City Manager Wine said a briefing on the Main Street Green Street project is scheduled for the March 20, 2012 council meeting and invited the CCAC to attend.

- **Land Use and Transportation** - CCAC Member Thornburg emphasized the CCAC goal of land development and acquisition. He noted that housing is a priority, including the consideration of the use of the city’s current public works yard space for housing. CCDA Chair Dirksen commented that the economy causes difficulties but also creates opportunities. He said he requested public works staff to examine their long-range goals and asked them, “If a development opportunity arrived tomorrow, how quickly could you move out of that area?” CCAC Chair Craghead encouraged incentives for developers and said a discussion will be scheduled.

CCDA Director Buehner cautioned that a component of land acquisition negotiations is that discussions need to happen in executive sessions and CCDA and CCAC members may not discuss what is said in executive sessions outside of them. CCDA Chair Dirksen said the upcoming CCDA meetings will include several executive sessions on land acquisitions.

CCDA Director Woodard commented that the Ash Avenue Rail Crossing is a challenge. He asked when the CCDA would receive an update. Chair Dirksen said it is part of the conversation about downtown circulation. He asked if there had been discussions on the Hunziker/Scoffins realignment. CCDA Director Buehner said the CCDA received a number of circulation plan presentations in 2010, prior to CCDA Director Woodard’s election to council. CCDA Chair Dirksen asked if there was a timeline on the latest circulation plan. Redevelopment Project Manager Farrelly said it was recently reworked, with upcoming code amendments and communication to property owners.

CCDA Director Buehner asked Redevelopment Project Manager Farrelly to follow up on questions regarding structuring the intersection with Hall and Scoffins, across from Garden Street. She indicated a response had not been received after the last meeting with CCAC. CCAC Chair Craghead clarified that there were 12 projects identified in the circulation plan and the CCAC

## **TIGARD CITY COUNCIL WORKSHOP MINUTES – FEBRUARY 21, 2012**

recommended the following as their top priorities: 1) Scoffins Street/Hunziker Street realignment, 2) Ash Avenue crossing and 3) Commercial Street/Main Street realignment.

- **Communication** - CCDA Director Henderson said he applauded CCAC for their outreach to other committees. He suggested they contact the Parks and Recreation Board (PRAB) to share information. CCAC Chair Craghead responded that a joint subcommittee with PRAB had just been formed to work on long-term park development. He noted that there were CCAC members involved with transportation committees including some that are participating in a Metro high-capacity transportation project group.

CCDA Director Buehner noted that she has been speaking with private and public banking entities regarding the development of credit lines to encourage public/private investment in development.

CCDA Chair Dirksen thanked the CCAC for their hard work that benefits the entire City of Tigard.

At 7:44 p.m. the City Center Development Agency meeting ended and the Tigard City Council reconvened.

4. COUNCIL LIAISON REPORTS - Council President Buehner reported on meetings she attended:

 **Regional Water Providers Consortium** - Council President Buehner praised Councilor Wilson for his determined support for evaluating conservation efforts year-around and not just summer. She noted that a majority of the Water Consortium members have agreed to adopt this approach due to Councilor Wilson championing this idea for many years. Council President Buehner said their executive director is retiring so they will be searching for a new executive director. She said a final draft of the Five-year Regional Water Strategic Plan will be presented to the state in June. She said the report outlines issues and challenges facing regional water providers and how to overcome them. She offered to obtain a copy for anyone interested.

**Willamette River Water Coalition (WRWC)**- Council President Buehner said one issue is a pipeline for the Tualatin valley water providers that will reach Wilsonville and is part of their long-term plan. An easement is required to build the pipeline over a wetland in Wilsonville that is owned by Metro. Metro may require them to build the pipeline section on the wetland island immediately. Council President Buehner said she has asked City Manager Wine to add this topic to a future council workshop agenda.

**Tigard-Lake Oswego Joint Water Partnership Oversight Committee** – Council President Buehner said the thirty-percent engineering plan is proceeding and is required before permits can be obtained to place the raw water pipeline under the Willamette River. Thirty-percent plans for the outtake, plant and the processed water pipeline are also proceeding. A number of discussions have been held and council will receive a presentation on costs in April or May. She said one goal of the thirty-percent study is to review a worst case cost scenario. She noted that Robinwood neighborhood meetings are continuing. She said she and Mayor Dirksen attended a West Linn city council meeting to discuss providing water to them. There remains a small group of West Linn residents who want the plant taken out of West Linn and moved to Lake Oswego.

## TIGARD CITY COUNCIL WORKSHOP MINUTES – FEBRUARY 21, 2012

Council President Buehner distributed a copy of the Lake Oswego-Tigard Water Partnership Communications Goals and Objectives. A copy is included in this meeting packet. She summarized the water partnership activities and noted that the Tigard's council will hold a joint meeting with Lake Oswego city council in late April or May. She reported that plans for the Waluga reservoir have been delayed as it is not needed until the end of the project and other steps are a higher priority now.

Mayor Dirksen said everything is moving forward and timelines appear to put the partnership on track for our needs in 2016. Council President Buehner mentioned that the Water Watch group, who opposes every water right renewal application, must file their appellate brief within ten days. She said there will then be 45 days for city attorneys to file their responding brief. Water Watch will have 21 days to submit their reply brief. Mayor Dirksen commented that this was anticipated and built into the project schedule.

Councilor Henderson asked if the agreement with Portland was finalized for emergency Bull Run water. Council President Buehner said it was in progress.

A discussion was held on the Tualatin Valley Water Providers and their drinking water options. Referring to the earlier topic of the Willamette River pipeline running on land Metro owns, Mayor Dirksen said Tigard has a right on the pipe and there are two options; water coming from it to Tigard or Tigard sending water to the pipe. He said Tigard has water rights on the Willamette but has chosen not to use them. The City Charter requires a vote on that by the citizens. If the water plant proved to supply quality water and Tigard citizens voted to use some Willamette River water, the pipe could be used to bring water from the Wilsonville treatment plant. Conversely, if additional water was needed by communities served by the Wilsonville plant, Tigard could sell them water.

5. NON AGENDA ITEMS – None.

6. EXECUTIVE SESSION – None.

7. ADJOURNMENT



At 8:06 p.m. Councilor Wilson moved for adjournment. The motion was seconded by Council President Buehner and all voted in favor.

	Yes	No
Mayor Dirksen	✓	
Councilor Henderson	✓	
Councilor Woodard	✓	
Councilor Wilson	✓	
Council President Buehner	✓	

## TIGARD CITY COUNCIL WORKSHOP MINUTES – FEBRUARY 21, 2012

---

Carol A. Krager, Deputy City Recorder

Attest:

---

Mayor, City of Tigard

---

Date

I/ADM/CATHY/CCM/Final/February/120221

**TIGARD CITY COUNCIL WORKSHOP MINUTES – FEBRUARY 21, 2012**

AIS-845

4. B.

**Business Meeting**

**Meeting Date:** 03/27/2012

**Length (in minutes):** Consent Item

**Agenda Title:** Authorize the City Manager to Renew the West Nile Virus (WNV) Intergovernmental Agreement (IGA) with Washington County

**Prepared For:** Brian Wheatley

**Submitted By:**

Greer Gaston,  
Public Works

**Item Type:** Motion Requested

**Meeting Type:**

Consent Agenda

---

**Information**

**ISSUE**

Shall the council authorize the city manager to renew the WNV IGA with Washington County?

**STAFF RECOMMENDATION / ACTION REQUEST**

Staff recommends the IGA be renewed.

**KEY FACTS AND INFORMATION SUMMARY**

**Summary of the IGA**

- This IGA will enable Tigard and Washington County to continue to work cooperatively on WNV monitoring and prevention efforts.
- The county will oversee the WNV program and furnish the city with mosquito controls free of charge, a cost savings of approximately \$8,500.
- The city will use in-house staff and equipment to apply the mosquito controls.
- The IGA will be in effect until December 2016. However, either party can terminate the agreement with 30-day's notice.
- The attached IGA and/or the attached Statement of Work refer to a 13-page Mosquito Control Management Practices document and a 134-page Pesticide Discharge Management Plan. These documents are available upon request.

**Background**

The City of Tigard and Washington County Department of Health and Human Services have been working together to implement the West Nile Virus (WNV) response plan since 2003. The plan focuses on education, sampling and treatment.

**Documented Cases of WNV**

Since the inception of the response plan, WNV has been documented in two dead crows: one found in Hillsboro in 2006, and one found in Beaverton in 2007. These birds were most likely infected by mosquitoes, the primary carrier of WNV.

In rare cases, it is possible for mosquitoes to infect humans. Such infections can result in severe health problems. Oregon has had 73 documented cases of WNV in humans and one reported death.

**Control of WNV in Catch Basins**

In urban areas, sumped catch basins provide the perfect breeding ground for the type of mosquitoes that carry WNV. These catch basins are designed with a small holding pool or sump where water collects. The sump serves to filter out silt, but the resulting stagnant water also creates a place for mosquitoes to breed.

In these catch basins, the most effective method of controlling mosquitoes is to apply a slow-release insecticide called a larvicide. Larvicide interrupts the mosquito's life cycle and prevents larvae from maturing into adults.

Based on past sampling and monitoring data and the effectiveness of the larvicide, Tigard plans to treat approximately 2,400 city and school district sumped catch basins twice a year beginning in late June or early July.

**OTHER ALTERNATIVES**

The City Council could choose not to renew this IGA.

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

None

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

The council last authorized the renewal of the WNV IGA at its December 16, 2008, meeting.

---

---

**Fiscal Impact**

**Fiscal Information:**

As part of the agreement, Washington County will continue to supply the larvicide to treat Tigard's sumped catch basins. This represents a cost savings of approximately \$8,500 per year. The City will use in-house staff and equipment to perform the work.

---

---

**Attachments**

WNV IGA

WNV IGA Attachment A - Statement of Work

---

---

## INTERGOVERNMENTAL AGREEMENT

This Agreement is entered into, by and between Washington County, a political subdivision of the State of Oregon, and \_\_\_\_\_.

WHEREAS ORS 190.010 authorizes the parties to enter into this Agreement for the performance of any or all functions and activities that a party to the Agreement has authority to perform.

Now, therefore, the parties agree as follows:

- 1) The effective date is: 04/01/2012, or upon final signature, whichever is later.  
  
The expiration date is: 12/30/2016; unless otherwise amended.
- 2) The parties agree to the terms and conditions set forth in Attachment A, which is incorporated herein, and describes the responsibilities of the parties, including compensation, if any.
- 3) Each party shall comply with all applicable federal, state and local laws; and rules and regulations on non-discrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition or handicap.
- 4) To the extent applicable, the provisions of ORS 279B.220 through ORS 279B.235 and ORS 279C.500 through 279C.870 are incorporated by this reference as though fully set forth.
- 5) Each party is an independent contractor with regard to each other party(s) and agrees that the performing party has no control over the work and the manner in which it is performed. No party is an agent or employee of any other.
- 6) No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.
- 7) This Agreement may be terminated, with or without cause and at any time, by a party by providing \_\_\_\_\_ (30 if not otherwise marked) days written notice of intent to the other party(s).
- 8) Modifications to this Agreement are valid only if made in writing and signed by all parties.
- 9) Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, and the Oregon Constitution, each party agrees to hold harmless, defend, and indemnify each other, including its officers, agents, and employees, against all claims, demands, actions and suits (including all attorney fees and costs) arising from the indemnitor's performance of this Agreement where the loss or claim is attributable to the negligent acts or omissions of that party.
- 10) Each party shall give the other immediate written notice of any action or suit filed or any claim made against that party that may result in litigation in any way related to this Agreement.

- 11) Each party agrees to maintain insurance levels or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.270.
- 12) Each party agrees to comply with all local, state and federal ordinances, statutes, laws and regulations that are applicable to the services provided under this Agreement.
- 13) This Agreement is expressly subject to the debt limitation of Oregon Counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefor.
- 14) This writing is intended both as the final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement.

WHEREAS, all the aforementioned is hereby agreed upon by the parties and executed by the duly authorized signatures below.

\_\_\_\_\_  
Jurisdiction

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Address: \_\_\_\_\_

**WASHINGTON COUNTY:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

Address:

155 N First Ave  
Mail Stop # 5  
Hillsboro, OR 97124

# **ATTACHMENT A**

## **Statement of Work /Schedule/Payment Terms**

### **The County's Responsibilities:**

1. The County shall coordinate efforts to meet the goals of the State Health Service's West Nile Virus (WNV) response plan.
2. The County shall coordinate public education related to matters of public health and human behavior related to vector-borne disease throughout Washington County.
3. The County shall work with state and local health, veterinarian, agricultural, and wildlife organizations to survey and track human, equine, and avian cases of WNV.
4. The County shall alert those subject to this Intergovernmental Agreement of confirmed WNV cases.
5. The County shall employ a Mosquito Control Coordinator to design and develop a sampling program and train City staff on mosquito sampling procedures, as needed.
6. The County shall establish a schedule for City staff to submit larval and adult mosquito samples, as needed. The County Mosquito Control Coordinator shall process and track larvae and adult mosquito samples collected by City staff.
7. The County shall provide larvicide product to the City to treat publicly owned sumped catch basins under city control.
8. The County shall maintain a database of known sumped catch basin and aquatic habitats.
9. The County shall maintain a database mapping complaints, surveillance findings and mosquito control activities.
10. The County shall maintain, design, develop and conduct a regional larval and adult mosquito program that will include representative catch basins, storm water facilities, and natural areas within the County throughout the mosquito season (typically March through October).
11. The County shall maintain registration and follow requirements as an operator for the 2300 A Pesticide General Permit through the Oregon Department of Environmental Quality.
12. The County shall establish mosquito management practices for catch basins (Attachment B)
13. The County shall maintain a Pesticide Discharge Management Plan as required for the 2300A Pesticide General Permit
14. The County shall conduct mosquito surveillance, visual assessments, mosquito control measures and efficacy checks throughout the County, as needed
15. The County shall maintain all correspondences relating to agreement

### **CITY RESPONSIBILITIES**

1. The City shall utilize and distribute public education materials provided by the County and Clean Water Services (CWS), in order to maintain a consistent regional communication strategy.

# **ATTACHMENT A**

## **Statement of Work /Schedule/Payment Terms**

2. The City shall actively educate neighborhood associations, community participation organizations, and other citizen groups, and encourage private property source reduction efforts and other personal behaviors that will reduce risk of exposure.
3. The City shall report bird and mosquito complaints that it receives to the County
4. The City shall identify, in cooperation with CWS, locations of storm water facilities and aquatic features that may produce mosquitoes and provide that information to the County to integrate with the County's complaint and surveillance information.
5. The City shall deliver larval and/or adult mosquito samples to the County Mosquito Control Coordinator for processing and tracking on the schedule established by the County, as needed.
6. The City shall allow the County to implement mosquito surveillance and control measures as needed, for sites under the control of the City.
7. The City shall maintain catch basins and storm water facilities to limit the presence of standing water and decaying organic debris (particularly dead cattails and grass clippings).
8. The City shall follow mosquito management practices for catch basins (Attachment B) developed by the County.
9. The City shall provide the County with reports of surveillance and/or pesticide applications, no later than 14 days after actions take place.
10. In the event the City is unable to implement mosquito surveillance and/or control measures in a timely manner, the City will notify the County and request assistance.
11. The City shall maintain pesticide application records in accordance with local, state and federal laws.
12. The City shall apply pesticides for mosquito control in compliance with local, state, and federal laws.
13. The City shall follow the County's Pesticide Discharge Management Plan regarding mosquito control as found in Attachment C and by this reference incorporated herein.
14. The City shall maintain all correspondences relating to agreement.

Unless otherwise specified herein, the parties agree that there will be no monetary compensation paid to the other that each shall bear their own costs and that reasonable and beneficial consideration exists to support this agreement.

AIS-829

4. C.

**Business Meeting**

**Meeting Date:** 03/27/2012

**Length (in minutes):** Consent Item

**Agenda Title:** Approve an Intergovernmental Agreement (IGA) with Metro to Transfer Trail Easements to the City

**Prepared For:** Kim McMillan

**Submitted By:**

Greer Gaston,  
Public Works

**Item Type:** Motion Requested

**Meeting Type:**

Consent Agenda

---

**Information**

**ISSUE**

Shall the council approve an IGA with Metro to transfer trail easements to the city and authorize the city manager to sign the agreement?

**STAFF RECOMMENDATION / ACTION REQUEST**

Staff recommends the council approves the IGA.

**KEY FACTS AND INFORMATION SUMMARY**

**Background**

The council was briefed on this IGA in study session.

The City of Tigard plans to construct a segment of the Fanno Creek Trail from Grant Avenue to Woodard Park. This project is included in the Park System Master Plan adopted by council in 2009 and is listed as a high priority in the Tigard Greenways Trail System Master Plan accepted by council in 2011. This project will be included in the proposed 2012-2017 Capital Improvement Plan.

In 2006, voters passed Metro's natural areas bond measure. Metro used a portion of its bond proceeds to purchase two key easements required to construct this segment of the Fanno Creek Trail.

With these easements, the city will have all the property necessary to construct this trail segment.

**Summary of the IGA**

- Metro transfers the easements to Tigard in order for Tigard to construct, operate and maintain the Grant Avenue to Woodard Park trail segment.
- Tigard assumes sole responsibility for the easements.
- Tigard installs on-site signage acknowledging the easements were obtained using Metro's natural areas bond measure proceeds.
- Tigard is required to construct the trail segment within 10 years of the easement transfer. If the trail is not constructed, the city must convey the easement back to Metro.

**Funding Information**

If the easement is conveyed to Tigard, trail construction is eligible for certain funding opportunities, like Washington County's Major Streets Transportation Improvement Program (MSTIP). Staff has requested this project be added to the Washington County MSTIP list that is currently being developed. If the easements are owned by Metro, the trail project would not qualify for such funding.

Park system development charge (SDC) revenue and proceeds from Tigard's \$17 million park bond could also be used to fund this project.

**OTHER ALTERNATIVES**

The council could decide not to accept the easements; the city would not construct the trail segment.

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

2012 Tigard City Council Goal No. 1.c. - "Deliver on the promise of the voter-approved park bond by identifying all acquisition opportunities and completing the majority of park land acquisitions and improvements by the end of 2012."

This project is included in the Park System Master Plan adopted by council in 2009 and is listed as a high priority in the Tigard Greenways Trail System Master Plan accepted by council in 2011.

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

The council was briefed on this agreement in study session.

---

---

**Fiscal Impact**

**Fiscal Information:**

By entering into the IGA with Metro, the city agrees to construct the trail segment from Grant Avenue to Woodard Park within the next 10 years. The current estimate for construction is \$650,000. Up to 60 percent (\$390,000) of the project could be funded by park SDCs, with the remaining 40 percent (\$260,000) funded through other sources such as the city's park bond proceeds or county MSTIP funds.

---

---

---

---

**Attachments**

IGA

---

---

## INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement (“Agreement”) is by and between Metro, an Oregon municipal corporation, located at 600 Northeast Grand Avenue, Portland, Oregon, 97232-2736 (“Metro”), and the City of Tigard, located at 13125 SW Hall Blvd., Tigard, Oregon 97223 (the “City”). This Agreement shall be effective on the last date of signature indicated below.

### RECITALS

WHEREAS, Metro has acquired a trail easement across certain property located at 9744 SW Tigard Street, Tigard, Oregon 97223 (the “First Easement”).

WHEREAS, Metro has also acquired another trail easement across certain property located at 9826 and 9900 SW Tigard Street, Tigard, Oregon 97223 (the “Second Easement”).

WHEREAS, Metro purchased the First Easement and the Second Easement (referred to herein together as the “Easements”), both of which were identified as a priority in the Fanno Creek Linkages and Trail Target Area, using funds from the Natural Areas Bond Measure, 2006 Metro Ballot Measure 26-80 (“Metro Natural Areas Bond Measure”), approved by the voters on November 7, 2006.

WHEREAS, the City now wishes to develop and construct the Fanno Creek Greenway Trail and has requested that Metro assign the Easements to the City as such areas are critical to (1) completing a continuous greenway trail from the Tualatin River, through the City of Tigard, into a highly urbanized, “walker-challenged” area and (2) protecting water quality along Fanno Creek and its tributaries.

WHEREAS, in accordance with ORS 190.010, et seq, Metro and the City wish to enter into this Agreement to provide for the responsibilities and obligations of the parties with respect to the assignment of the Easements.

### AGREEMENT

Now, therefore, in consideration of the mutual agreements and promises herein, the parties agree as follows:

**Easement Holder.** Immediately following the parties execution of this IGA, Metro shall assign to the City all its right, title and interest in the Easements. The assignment to the City shall be in the form attached hereto as Exhibit A (the “Assignment”).

**Management, Maintenance, and Operation of the Easements.** Upon acceptance of the Assignment, the City shall have sole responsibility for the Easements, including without limitation the management, maintenance, development, security, and operation of any trail constructed thereon.

**Signage; Publications.** The City shall install on-site signage stating that funding for the acquisition of the Easements came from 2006 Metro Natural Areas Bond Measure proceeds. Such signage shall be installed in Woodard Park along the Fanno Creek Greenway Trail in prominent and at highly visible locations approved by Metro. Signage shall be either (a) a standard, free-standing sign provided by Metro, which Metro shall make available to the City upon request; or (b) inclusion of Metro's logo and script in other signage, with Metro's logo and script of a size equal and comparable to the size of the City's logo and script. Metro shall make its graphics available to the City upon request. The City also shall document in any publication, media presentation, or other presentations that the acquisition of the Easements of the Fanno Creek Greenway Trail was paid for in part with proceeds from the 2006 Metro

Natural Areas Bond Measure. All such signage shall comply with the City's sign ordinance and applicable regulations.

**Agreement to Re-Convey.** Metro is agreeing to assign its interest in the Easements so that Tigard will construct, operate, and maintain a trail across the Easements as part of the Fanno Creek Greenway Trail. The design and location of the trail shall be determined by the City in its sole discretion. In the event Tigard fails to (a) construct the trail across the Easements within ten (10) years of the execution of this Agreement and assignment of Metro's interest in the Easements or (b) operate and maintain a trail across the Easements for longer than one (1) year after trail construction, Tigard shall, at Metro's written request, assign, transfer and convey back to Metro all of Tigard's estate, right, title, and interest in, to, and under the Easements.

**Term.** This Agreement shall continue in effect unless modified or terminated as provided herein. The parties may, by written agreement signed by each party, terminate all or a part of this Agreement based upon a determination that such action is in the public interest.

**Oregon Constitution and Tax Exempt Bond Covenants.** Metro's source of funds for the acquisition of the Easements is from the sale of voter-approved general obligation bonds that are to be paid from ad valorem property taxes exempt from the limitations of Article XI, section 11(b), 11(c), 11(d) and 11(e) of the Oregon Constitution. The interest paid by Metro to bond holders is currently exempt from federal and Oregon income taxes. The City covenants that, during the term of this Agreement, it will take no action that would cause Metro to be unable to maintain the current status of the real property taxes as exempt from Oregon's constitutional limitations or the income tax exempt status of the bond interest. In the event the City breaches this covenant, and fails to cure such breach within sixty (60) days after the date the City receives written notice of such breach from Metro, Metro shall be entitled to seek whatever remedies are available at law or in equity to either cure the default or to compensate Metro for any loss it may suffer as a result thereof.

**Mutual Indemnification.** To the maximum extent permitted by law and subject to the Oregon Constitution and the Oregon Tort Claims Act, ORS Chapter 30, the City shall defend, indemnify, and save harmless Metro and Metro's officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, arising out of or in any way connected with the performance of this Agreement by the City or the City's officers, employees, or agents. To the maximum extent permitted by law and subject to the Oregon Constitution and the Oregon Tort Claims Act, ORS Chapter 30, Metro shall defend, indemnify, and save harmless the City and the City's officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, arising out of or in any way connected with the performance of this Agreement by Metro or Metro's officers, employees, or agents.

**Oregon Law.** The laws of the State of Oregon shall govern this Agreement, and both Metro and the City hereby submit to the jurisdiction of the courts of the State of Oregon.

**Severability. Entire Agreement; Modifications.** If any covenant or provision of this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision of this Agreement which in itself is valid, if such remainder would then continue to conform with the terms and requirements of applicable law and the intent of this Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior oral or written agreements or representations relating to the Property. No waiver, consent, modification, amendment, or

other change of terms of this Agreement shall bind either party unless in writing and signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the last date of signature specified below.

CITY OF TIGARD

METRO

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

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

\_\_\_\_\_

Martha Bennett  
Chief Operating Officer

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

**EXHIBIT A**  
**Form of Assignment**

**Assignee's Name and Address:**

The City of Tigard  
13125 SW Hall Boulevard  
Tigard, OR 97223

**Assignor's Name and Address:**

Metro  
Office of Metro Attorney  
600 NE Grand Avenue  
Portland, OR 97232-2736

**AFTER RECORDING, RETURN TO:**

The City of Tigard  
City Engineer  
13125 SW Hall Boulevard  
Tigard, OR 97223

**ASSIGNMENT OF EASEMENT**

This ASSIGNMENT OF EASEMENT ("Assignment") is made as of the last date of signature herein (the "Effective Date") by between Metro, an Oregon municipal corporation ("Metro"), and the City of Tigard, an Oregon municipal corporation ("Tigard").

Recitals

WHEREAS, Metro is the holder of that certain Trail Easement dated \_\_\_\_\_, granted by \_\_\_\_\_, and recorded in the real property records of Washington County Oregon on \_\_\_\_\_ as Document No. \_\_\_\_\_ (the "Easement").

WHEREAS, in accordance with the Intergovernmental Agreement entered into between the parties on \_\_\_\_\_, 2012, and as permitted under Section 14 of the Easement, Metro wishes to assign all of its right, title and interest under the Easement to Tigard and Tigard wishes to accept and assume all of the right, title and interest of Metro thereunder.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Metro and Tigard agree as follows:

Agreement

1. Metro hereby assigns, transfers, conveys, and sets over to Tigard all of Metro's estate, right, title, and interest in, to, and under the Easement. Tigard hereby accepts the forgoing assignment and assumes all of the duties, obligations, and responsibilities of the holder of the Easement.
2. Metro has notified \_\_\_\_\_ that the Easement is being assigned to Tigard.

This Assignment shall be governed by and construed under the laws of the State of Oregon. In case any of the provisions of this Assignment shall at any time be held by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, such illegality, invalidity, unenforceability shall not

**EXHIBIT A**  
**Form of Assignment**

affect the remaining provisions of this Assignment, and such remaining provisions shall be construed and enforced to the fullest extent permitted by law.

CITY OF TIGARD

METRO

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

Name: \_\_\_\_\_

Martha J. Bennett  
Chief Operating Officer

Title: \_\_\_\_\_

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

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

State of OREGON

County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 201\_\_ by  
\_\_\_\_\_ as \_\_\_\_\_ of the City of Tigard, an  
Oregon municipal corporation.

\_\_\_\_\_  
Notary Public - State of Oregon

State of OREGON

County of Multnomah

This instrument was acknowledged before me on \_\_\_\_\_, 201\_\_ by  
Martha J. Bennett as Chief Operating Officer of Metro, an Oregon municipal corporation.

\_\_\_\_\_  
Notary Public - State of Oregon

**Business Meeting****Meeting Date:** 03/27/2012**Length (in minutes):** Consent Item**Agenda Title:** Contract Award - 103rd/McDonald Storm Drain Improvements to HSC, LLC**Prepared For:** Joseph Barrett**Submitted By:** Joseph Barrett, Financial and Information Services**Item Type:****Meeting Type:** Local Contract  
Review Board

---

**Information****ISSUE**

Shall the Local Contract Review Board award a contract for the city's 103rd and McDonald Storm Drain Improvements Project to HSC, LLC?

**STAFF RECOMMENDATION / ACTION REQUEST**

Staff recommends the Local Contract Review Board award the contract for the 103rd and McDonald Storm Drain Improvements project to HSC, LLC and authorize the city manager to take all necessary steps to execute the contract.

**KEY FACTS AND INFORMATION SUMMARY**

The storm line that runs north along 103rd Avenue and west along McDonald Street from 103rd Avenue to 104th Avenue does not have adequate capacity to accommodate the amount of water that needs to flow through it during heavy rainfall. Storm water has been observed flowing out of the catch basin at the 103rd / McDonald intersection. Storm water capacity, condition and pipe cover issues have been observed in the immediate area. These storm water issues lead to significant property damage potential. This purpose of this project is to provide adequate facilities to convey storm water through the area currently served by the existing storm drainage lines in the right of way of McDonald St and 103rd and 104th Avenues.

This project is considered a "maintenance project" and is not listed in any master plan. This project is being done to maintain the hydraulic and structural integrity of the existing storm water system. This is project #94024 in the Storm System section of the 2011-16 Capital Improvement Program.

Staff issued an Invitation to Bid for the project on March 1, 2012 and received bids from twelve firms. The bids received were as follows:

- HSC, LLC - \$123,658
- Stan Anderson Builders - \$134,773
- Braun Construction - \$137,727
- D&T Excavation - \$142,868
- Banzer Construction - \$145,523
- Jim Smith Excavating - \$146,513
- CG Contractors - \$148,685
- Subcom Excavation - \$152,350
- GT Excavating - \$156,676
- David Roberts Contracting - \$158,853
- Dunn Construction - \$160,218
- Kerr Contractors - \$170,796

Staff reviewed the submittals and found them to be responsible bids. Therefore, in accordance with the city's Public Contracting Rules, staff recommends the contract be awarded to HSC, LLC as the lowest responsible bidder.

**OTHER ALTERNATIVES**

The Local Contract Review Board may choose to decline the bids, not award the contract and direct staff to not perform the work.

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

N/A

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

This is the first time this issue has come before the Local Contract Review Board.

---

---

**Fiscal Impact**

**Cost:** \$123,658

**Budgeted (yes or no):** Yes

**Where budgeted?:** Stormwater Fund

**Additional Fiscal Notes:**

The estimated contract total for this project is \$123,658. The Stormwater Fund has \$190,500 budgeted in the 2011-2012 fiscal year for this project. Of the \$190,500 project budget, \$150,500 is for construction; \$15,000 is for design and engineering; and \$25,000 is for project and construction management. The contract amount \$123,658 within the budgeted amount for construction.

---

---

**Business Meeting****Meeting Date:** 03/27/2012**Length (in minutes):** 10 Minutes**Agenda Title:** Review 2012 Oregon Legislative Session as its Relates to Tigard's Legislative Priorities**Prepared For:** Kent Wyatt**Submitted By:** Kent Wyatt, City Management**Item Type:** Update, Discussion, Direct Staff**Meeting Type:** Council Business Meeting - Main

---

**Information****ISSUE**

To what extent, does legislation promulgated by the 2012 Oregon Legislature impact Tigard's legislative agenda and City Council goals?

**STAFF RECOMMENDATION / ACTION REQUEST**

Review and discuss promulgated legislation and its potential impact on Tigard services.

**KEY FACTS AND INFORMATION SUMMARY**

Oregon legislators considered 297 bills during the month-long 2012 legislative session. Lawmakers focused a majority of their time on balancing the budget, improving education, reforming health care and boosting the economy. State Senator Ginny Burdick and State Representative Doherty will be on hand to provide a summary of approved legislation and its impact on Tigard's legislative agenda.

**OTHER ALTERNATIVES**

N/A

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

Goal 2. Financial Sustainability

Five-Year Goal: Support the legislature to address the financial needs of Oregon state and local governments.

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

11.22.12 - Discuss the 2012 Oregon Legislative Session and Its Potential Impact on Tigard

---

**Business Meeting**

**Meeting Date:** 03/27/2012

**Length (in minutes):** 10 Minutes

**Agenda Title:** Consider a Resolution Granting Exemption from Property Taxes under Tigard Municipal Code Section 3.50 for Five Non-Profit Low-Income Housing Projects

**Prepared For:** Liz Lutz **Submitted By:** Liz Lutz, Financial and Information Services

**Item Type:** Resolution **Meeting Type:** Council Business Meeting - Main

**Information**

**ISSUE**

Shall five low-income housing projects owned and operated by Community Partners for Affordable Housing (CPAH) and one project owned by Hawthorne Urban Development LLC be exempted from City of Tigard property taxation for 2012?

**STAFF RECOMMENDATION / ACTION REQUEST**

Staff recommends approval of this resolution.

**KEY FACTS AND INFORMATION SUMMARY**

Tigard Municipal Code 3.50 allows certain organizations providing low-income housing to be exempted from Tigard property taxation upon application by March 1 of each year and a demonstration of compliance with certain criteria listed in the Code.

Community Partners for Affordable Housing owns and operates Greenburg Oaks, located at 11875 SW 91st Avenue in Tigard. They also own Village at Washington Square at 11157-11163 SW Hall Blvd in Tigard, the Knoll at Tigard, 12291 SW Knoll Drive, and a single family house located at 9330 SW Tangela Court in Tigard. Hawthorne Urban Development LLC owns and operates Hawthorne Villa at 7705 SW Pfaffle St. These projects are operated as low-income housing and meet all criteria listed in the Tigard Municipal Code. Community Partners for Affordable Housing submitted four applications for exemption from 2012 property taxes on February 28, 2012, and Hawthorne Urban Development submitted their application on February 27, 2012, which is within the March 1 deadline.

These applications were reviewed by staff in the city’s Community Development Department and staff determined that the requested tax exemptions are consistent with the applicable Tigard Municipal Code and also the adopted City Housing Policy.

The attached resolution gives consent from the City of Tigard for this tax abatement. Under State law, Community Partners for Affordable Housing must receive similar approval from jurisdictions accounting for 51% (or more) of the total property taxes to be levied on these properties. This organization will also make application to the other taxing units.

**OTHER ALTERNATIVES**

Do not approve this tax exemption.

**COUNCIL OR CCDA GOALS, POLICIES, MASTER PLANS**

NA

## DATES OF PREVIOUS CONSIDERATION

NA

---

### Fiscal Impact

**Cost:** \$42,447  
**Budgeted (yes or no):** Yes  
**Where Budgeted (department/program):** General Fund

#### Additional Fiscal Notes:

The cost of \$42,447 is the amount of Property Tax that Tigard will not collect next year by granting the exemption. Attached to the AIS is a table showing the properties and their estimated values and the impact to Tigard.

---

### Attachments

Resolution

CD Letter-Hawthorne Villa

Cd Letter-CPAH

Application-Hawthorne Villa

Application-Greenburg Oaks

Application-Tangela Home

Application-Knoll @ Tigard

Application-Village at Washington Square

Table-Fiscal Impact

---

**CITY OF TIGARD, OREGON  
TIGARD CITY COUNCIL  
RESOLUTION NO. 12-**

A RESOLUTION GRANTING AN EXEMPTION FROM PROPERTY TAXES UNDER TIGARD MUNICIPAL CODE SECTION 3.50 FOR FIVE NON-PROFIT LOW-INCOME HOUSING PROJECTS OWNED AND OPERATED BY COMMUNITY PARTNERS FOR AFFORDABLE HOUSING (CPAH) AND HAWTHORNE URBAN DEVELOPMENT LLC

---

WHEREAS, Tigard Municipal Code (TMC) section 3.50 provides procedures for application and consideration on non-profit corporation low-income housing project exemptions from property taxes; and

WHEREAS, the TMC requires application for exemption be filed with the City by March 1; and

WHEREAS, Community Partners for Affordable Housing is a qualified non-profit organization, filed a request dated February 29, 2012 for exemption from property taxes for four low-income housing projects, and Hawthorne Urban Development LLC, also a qualified non-profit organization, filed a request dated February 29, 2012 for exemption from property taxes, for one low-income housing project, both under TMC 3.50 and meets all the applicable criteria for exemption; and

WHEREAS, upon review of the application it was found granting the exemptions would be consistent with the applicable Tigard Municipal Code and also with the adopted city housing policies.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The applicants, Community Partners for Affordable Housing and Hawthorne Urban Development LLC, qualified for the exemption set forth in Tigard Municipal Code Section 3.50.

SECTION 2: The Finance and Information Services Director is directed to certify to the Assessor of Washington County that the City of Tigard agrees to the continued abatement of property taxes for the following four properties that received abatement in the prior year:

- a. Village at Washington Square, 11157-11163 SW Hall Blvd., Tigard
- b. Single-family house located at 9330 SW Tangelia Court, Tigard
- c. Greenburg Oaks, 11875 SW 91<sup>st</sup> Avenue, Tigard
- d. The Knoll @ Tigard, 12291 SW Knoll Drive, Tigard

SECTION 3: The Finance and Information Services Director is directed to certify to the Assessor of Washington County that the City of Tigard agrees to the additional abatement of property taxes for the following one property that did not receive abatement in the prior year:

- a. Hawthorne Villa, 7705 SW Pfaffle, Tigard

SECTION 4: The Finance and Information Services Director is informing the Assessor of Washington County that the City of Tigard has not dropped abatement of property taxes for the any properties that received abatement in the prior year:

SECTION 5: This resolution is effective immediately upon passage.

PASSED: This \_\_\_\_\_ day of \_\_\_\_\_ 2012.

---

Mayor - City of Tigard

ATTEST:

---

City Recorder - City of Tigard

February 3, 2012

Hawthorne Urban Development LLC and Accessible Living  
8532 SW St. Helens Dr.  
Wilsonville, Oregon 97070

RE: Hawthorne Villa

The City of Tigard offers a property tax abatement program for owners or leaseholders of property used to provide affordable housing within the City. Tigard's program, which conforms to State law, is set out in Tigard Municipal Code (TMC) 3.50. I have attached a copy of this section of the code for your information.

TMC 3.50 contains the criteria for qualification for the tax abatement, the application process and the application contents. Applications for tax abatement are due by March 1. If you wish to apply for this abatement, your application should be sent to my attention.

Please let me know if you have any questions or need any additional information. My phone number is 503-718-2406. My e-mail address is [Toby@tigard-or.gov](mailto:Toby@tigard-or.gov).

Sincerely,

Toby LaFrance  
Finance & Information Services Director

cc: Marty Wine, City Manager

February 3, 2012

Linn Brillman  
Community Partners for Affordable Housing  
PO Box 23206  
Tigard, Oregon 97281

RE: Greenburg Oaks  
Village at Washington Square  
Tangela Single Family Rental Home  
The Knoll at Tigard  
Low-Income Housing Property Tax Exemption

Dear Ms. Brillman:

The City of Tigard offers a property tax abatement program for owners or leaseholders of property used to provide affordable housing within the City. Tigard's program, which conforms to State law, is set out in Tigard Municipal Code (TMC) 3.50. I have attached a copy of this section of the code for your information.

TMC 3.50 contains the criteria for qualification for the tax abatement, the application process and the application contents. Applications for tax abatement are due by March 1. If you wish to apply for this abatement, your application should be sent to my attention.

Please let me know if you have any questions or need any additional information. My phone number is 503-718-2406. My e-mail address is [Toby@tigard-or.gov](mailto:Toby@tigard-or.gov).

Sincerely,

Toby LaFrance  
Finance & Information Services Director

cc: Marty Wine, City Manager



# Cascade MANAGEMENT, INC.

Real Estate Management Services

Phone: 503-682-7788 / TTY 711  
Fax: 503-682-5656  
8532 SW St. Helens Drive  
Suite 201  
Wilsonville, Oregon 97070

[www.cascade-management.com](http://www.cascade-management.com)

February 29, 2012

Toby LaFrance, Finance Director  
City of Tigard  
13125 SW Hall Blvd.  
Tigard, OR 97223  
SENT VIA EMAIL ELECTRONIC PDF to:  
[lizabeth@tigard-or.gov](mailto:lizabeth@tigard-or.gov)

Dear Toby LaFrance:

Please find the attached application for tax abatement for Hawthorne Villa Apartments, located at 7705 SW Pfaffle St. in Tigard. Enclosed in this packet is the application itself and attachments including ownership and lease documents, a MOU to enter into these agreements, Oregon Housing and Community Services Project Restrictions and evidence of the 501(c)3 designation for the non-profit partner Accessible Living, Inc.

Please let me know if you have any questions.

Sincerely,

Dave Bachman  
President and CEO  
Consultant and Management Agent to Hawthorne Villa

Cc: Liz Lutz at [lizabeth@tigard-or.gov](mailto:lizabeth@tigard-or.gov) – City of Tigard  
Marissa Daniels



ACCESSIBLE LIVING INC.

6160 SW Main Avenue

Beaverton Oregon, 97008

## City of Tigard

# Application for Tax Abatement

February 29, 2012

Hawthorne Villa Apartments

Address here:

A.	Property Description
B.	Projects Charitable Purpose
C.	Certification of Residents Income Levels
D.	How Tax Exemption Will Benefit Residents
E.	Tax Exempt Status
F.	Verification of Information
G.	Attachments (List)

## A. Property Description

Hawthorne Villa Apartments, (Tax account # # is R282429, is located at 7705 SW Pfaffle St, Tigard OR 97223 just off of Pacific Highway in Tigard Oregon. The site sits on 4.76 acres and provides 119 units of affordable housing for low-income residents of Tigard. The property includes 8 apartment buildings and a house that contains the manager's unit and office. The property has 30 studios, 84 - 1 bedroom and 5 - 2 bedroom units.

The project was purchased by Hawthorne Urban Development LLC in September of 2011 for the purpose of maintaining affordability of Hawthorne Villa, Improving its' accommodations to a sustainable and thriving community and re-establishing resident service activities through a non-profit partnership.

The project has received private financing totaling \$2.45 million. An additional \$1,008,300 of additional financing is secured to complete project renovations. This is based on the Owner's commitment to deliver quality affordable housing in the City of Tigard. Over \$445,000 of renovations are complete to the project exterior with another \$563,300 planned for project interiors over the next 12 months. No tenant relocation is necessary for planned improvements.

### Hawthorne Exterior Improvements (Completed) – Total \$445,000

Siding repaired all buildings  
Painting all buildings  
All Buildings Re-Roofed  
Asphalt Paving Parking Lot  
Landscape Improvements for entire site  
Deck/Railing replacements and improvements  
New Fencing  
Renovated Existing Office Building

<u>Hawthorne Interior Improvements</u>	Units - 118
Fully renovate 5 interior units (Completed)	
Interior Water Meter @ \$750 per units	\$ 88,500
Replace appliances	\$ 118,000
Interior painting @ \$600 per units	\$ 70,800

Replace interior carpet and vinyl @1200	\$ 141,600
Replace interior in exterior door \$1200 per unit	\$ 94,400
Contingency	\$ 50,000

The project is close to transportation and retail. Employment proximity is also excellent to many entry level service jobs, including many stores, banks or restaurants along Pacific Highway in Tigard. Many of the existing residents at Hawthorne Villa work within walking distance of the property.

Legal Description: See Attached as part of Oregon Affordable Housing Commitment Documents

#### GENERAL INFORMATION

Name: Hawthorne Villa Apartments  
Property Type: Multi-Family (Garden/Low Rise) LIHTC Apartments  
Address: 7705 SW Pfaffle Street  
Tigard, Oregon 97223  
Assessor's Parcel #: R282429  
Census Tract No.: 306.00

#### Site Description:

USABLE AREA	EXCESS AREA	SURPLUS AREA	GROSS AREA
SF ACRES	SF ACRES	SF ACRES	SF ACRES
207,346 4.76	0 0.00 0	0.00	207,346 4.76

Zoning: Medium-Density Residential (R-12)

#### Improvement Description:

No. of Total Buildings: 9 (8 one and two-story apartment buildings and 1 single-family home that is used as a leasing office and manager's unit).

Number of Units: 118

Amenities: Laundry rooms, storage units, and leasing office. Several landscaped courtyards on the property.

The property has 30 studios, 84 - 1 bedroom and 5 - 2 bedroom units.

## **B. Project's Charitable Purpose**

Accessible Living Inc.'s mission is to provide low- cost housing which meets the specialized needs of seniors and disabled persons and their families and to promote the public's awareness of the plight of disabled persons to obtain low-cost accessible housing.

ALI's involvement in Hawthorne Villa will be to provide support to residents in obtaining and retaining affordable housing through the delivery of resident services. ALI will work to identify the needs of Hawthorne Villa residents and work with the residents and property management to support residents in connecting with community programs and services to address those needs, including access to emergency services such as local food programs, utility assistance, eviction prevention and services for individuals and families struggling with addiction, mental health issues and other disabilities.

ALI will seek to develop partnerships with organizations such as the Oregon Food Bank, Luke- Dorf, Lifeworks NW, Community Action, Hope Spring, and other community organizations to provide resource and referral. Where appropriate ALI will develop MOU's and release of information with residents, property management and community partners to better coordinate services and housing and to avoid tenant eviction.

ALI will partner with Housing Independence, a non-profit service provider for individuals with special needs including seniors, individuals with physical and developmental disabilities, veterans and other underserved special needs populations that may need support in obtaining and retaining housing.

The project has developed a current budget and commitment of \$30,000 per year to sustain service delivery to residents. The services budget and delivery will be the sole and direct responsibility of ALI.

## **C. Certification of Resident Income Levels**

Resident income levels are verified upon application. Hawthorne Villa currently has an extended use agreement with Oregon Housing and Community Services that will restrict the property be exclusively used for low income rentals until January 1, 2025. These covenants require that all households have earnings at or

below 60% of the area median income. Currently the property income demographics demonstrate the need for continued affordability and a service commitment with the average income at 34% of AMI (see attached Household Demographics Report). We certify that all apartments in this property are currently rented to and will remain affordable to households earning at or below 60% of the area median income until January 1, 2025.

#### **D. How tax exemption will benefit residents**

100% of the property tax exemption is a direct subsidy that benefits residents. Every dollar in tax reduction is passed on in scheduled rents and in the delivery of resident services programs. Without this funding Hawthorne Villa would not be able to retain its current affordability (below the 60% restriction). The tax exemption also allows for a \$30,000 per year services budget to offer much needed services that supports residents in obtaining and retaining their housing, including connecting them with emergency services for eviction prevention. The remainder of the tax exemption savings will be applied to maintain rent levels below 60% of area median income.

It can be argued that using property tax revenues to subsidize well managed affordable housing unit's results in a net savings of public resources. Fewer and less-severe police calls, healthier residents and stably housed social service consumers, all provide a direct reduction in the demand for government funded services.

#### **E. Tax exempt status**

Hawthorne Urban Development is the Owner (Landlord) who has entered into a lease agreement with Hawthorne Villa General Partnership (Tenant). ALI is a General Partner to Hawthorne Villa General Partnership who is responsible for day to day operation of the project. Hawthorne Villa General Partnership has a leasehold interest in Hawthorne Villa through the lease (attached).

**F. Verification of Information**

I hereby certify that the information for this tax abatement application is accurate and complete to the best of my knowledge. Cascade Property Management performs the day to day management of the property and is responsible for certifying income levels of each resident for compliance with program guidelines.

Karen Voiss

2-29-2012

Karen Voiss, Executive Director  
Accessible Living, Inc.  
General Partner of Tenant (Hawthorne Villa GP)

Date

Saj Jivanjee  
Saj Jivanjee, Member  
Hawthorne Urban Development LLC  
Owner

2.29.2012

**G. Attachments**

OHCS Low Income Housing Commitments and Assignment  
Household Demographics  
Lease to Hawthorne Villa General Partnership  
Hawthorne Villa General Partnership Agreement  
Accessible Living Inc. 501c(3) evidence

# **ATTACHMENT**

## **OREGON HOUSING AND COMMUNITY SERVICES COMMITMENTS AND ASSIGNMENT TO OWNER**

Return to:  
Housing and Community Services  
Attn: Multifamily Housing Section  
725 Summer St. NE, Suite B  
Salem, Oregon 97301-1266

**COPY**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**HOUSING AND COMMUNITY SERVICES DEPARTMENT  
STATE OF OREGON**

**CONSENT TO ASSIGNMENT, TRANSFER, ASSUMPTION AND MODIFICATION AGREEMENT  
LOW-INCOME HOUSING TAX CREDIT**

THIS CONSENT TO ASSIGNMENT, TRANSFER, ASSUMPTION AND MODIFICATION AGREEMENT (this "Agreement") is entered into and made this \_\_\_\_ day of September, 2011, among:

**PARTIES:**

Recipient: **HAWTHORNE VILLA LIMITED PARTNERSHIP,**  
an Oregon limited partnership

New Obligor: **HAWTHORNE URBAN DEVELOPMENT LLC,**  
an Oregon limited liability company

Grantor (herein "Department"): **STATE OF OREGON, acting by and through its  
Housing and Community Services Department**

**RECITALS**

A. Recipient is the owner of the real property described in Exhibit A and of any improvements thereon and of any personal property related thereto (collectively hereinafter, the "Project" or "Property"). Exhibit A is attached hereto and incorporated herein by reference. Recipient received a low-income housing tax credit allocation by the Department with respect to the development and operation of the Project in a final amount not to exceed One Hundred Eighty-One Thousand One hundred Forty-Three (\$181,143) (the "Tax Credit"). The documents giving effect to the Tax Credit (the "Tax Credit Documents") are more fully described below.

B. Recipient has or will convey its interest in the Property to HAWTHORNE URBAN DEVELOPMENT LLC (the "New Obligor or Owner") pursuant to that certain \_\_\_\_\_ Deed dated as of September \_\_\_\_, 2011 (the "Deed").

C. Recipient and New Obligor are willing to document the transfer of the Project and New Obligor's assumption of Recipient's interests and obligations with respect to the Property and with respect to the Tax Credits from the Department and to commit to operate the Project in conformance with the Tax Credit Documents and this Agreement. The Department is willing to consent to the transfer in ownership of the

Property and to allow the assumption of the Tax Credit Documents consistent with the terms and conditions of this Agreement.

D. The Tax Credits are evidenced by a Reservation and Extended Use Agreement, Project No. 96046606, executed between the Recipient and the Department and dated on or about May 24, 1996, (the "Tax Credit Agreement"). Certain performance obligations with respect to the Project arising under the Tax Credits were made in a Declaration of Land Use Restrictive Covenants, executed by the Recipient in favor of the Department on or about, April 8, 1997 and recorded April 9, 1997, as Instrument No. 97032421, Records of Washington County, Oregon (the "Declaration"). The Tax Credit Agreement and the Declaration are collectively referred to herein as the "Tax Credit Documents."

### AGREEMENT

NOW, THEREFORE, for good and sufficient consideration, including the agreements and covenants herein contained, Recipient and New Obligor hereby agree with the Department as follows:

1. Incorporation of Recitals and Documents. The terms of the foregoing Recitals, Exhibit A and the Tax Credit Documents are incorporated herein by reference.
2. Conveyance to New Obligor; Assignment. Recipient has conveyed or is conveying its interests in the Property to New Obligor in the manner described in this Agreement, in the Deed and in other purchase documents. Recipient hereby assigns his interests in the Tax Credit Documents and in the Property to New Obligor.
3. Assumption. New Obligor hereby unconditionally assumes the interests of Recipient in the Project and the interests and obligations of Recipient under the Tax Credit Documents as modified herein. New Obligor also hereby unconditionally agrees, covenants and warrants that it shall perform all obligations arising under this Agreement or otherwise owed to the Department under the Tax Credit Documents. The Department shall have the right to resort to, proceed against, or otherwise exercise its rights with respect to any and all remedies, restrictive covenants or equitable servitudes with respect to the Property or the New Obligor and its assigns or successors in interest, whether such rights arise under the Tax Credit Documents, this Agreement, or are otherwise now or subsequently available at law. New Obligor will execute and deliver to the Department such other documents reasonably requested by the Department to effect, exercise or maintain its rights under the Tax Credit Documents, this Agreement or otherwise with respect to the Project.
4. Consent. The Department hereby consents to and approves of the described transfer of the Property to New Obligor. The Department also consents to and approves of New Obligor's assumption of all the rights of Recipient and all obligations owed to the Department under the Tax Credit Documents, as further modified herein, without affecting in any manner the restrictions and requirements of such Tax Credit Documents with respect to any further or additional transfer of ownership of the Project. This consent and approval by the Department is conditioned, however, upon prior execution and recording of subordination agreements acceptable to the Department by any and all current lien holders with respect to the Property.
5. Limited Release. Recipient is hereby released by the Department from any obligations arising prospectively under the Tax Credit Documents except that Recipient is not released from any liability of any

CONSENT TO TRANSFER - LIHTC  
Hawthorne Villas Apartments  
Portland, OR  
Page 2 of 12

nature arising under the Tax Credit Documents before the date of this Agreement. Recipient's remaining liability shall be joint and several with New Obligor and shall not be diminished or affected in any manner by New Obligor's assumption of the obligations and liabilities of Recipient under the Tax Credit Documents.

6. Modification of Tax Credit Documents.

6.1 The Declaration is hereby amended to include the following:

**COVENANTS TO RUN WITH THE LAND; EQUITABLE SERVITUDES.**

(a) The term "Owner" means the owner of the Project or Property and shall be construed to include the terms "Recipient" and "New Obligor" or "Owner" as appropriate.

(b) The Owner intends, declares, and covenants, on behalf of itself and all future owners and operators of the Project or Property during the term of this agreement, that the covenants, reservations, restrictions and equitable servitudes set forth in this agreement regulating and restricting the use, occupancy and transfer of the Project (1) shall be and are, until January 1, 2025, covenants running with the real property of the Project and do further constitute equitable servitudes with respect to the real property in favor of the Department and any tenant of this Project or Property, do encumber the Project until January 1, 2025, are binding upon the Owner's successors in title and all subsequent owners and operators of the Project, (2) are not merely personal covenants of the Owner, (3) shall bind the Owner and the Owner's successors and assigns until January 1, 2025, and (4) shall inure to the benefit of the Department and any tenant of the Project. The Owner hereby agrees that any and all Oregon state law requirements for the provisions of this agreement to constitute covenants running with the land or real property or to constitute equitable servitudes with respect to the real property in favor of the Department and any tenant of this Project or Property, shall be deemed satisfied in full. No transfer of any interest in the Project or Property shall be valid without the prior written consent of the Department. Until January 1, 2025, each and every contract, deed or other instrument hereafter executed conveying the Project or a portion thereof shall expressly provide that such conveyance is subject to this agreement, provided, however, the covenants contained herein shall survive and be effective regardless of whether such contract, deed, or other instrument hereafter executed conveying the Project or portion thereof provides that such conveyance is subject to this agreement.

(c) The Owner covenants that the consent of any recorded prior lien holder on the Project or Property is not required in connection with recording this agreement, or if required, such consent has been or will be obtained by the Owner.

**BURDEN AND BENEFIT.**

The Owner hereby declares its understanding and intent that the burdens of the covenants, reservations, restrictions and equitable servitudes set forth herein touch and concern the land of the Project or Property in that the Owner's legal interest in the Project or Property is rendered less valuable thereby. The Owner hereby further declares its understanding and intent that the benefits of such covenants, reservations, restrictions and equitable servitudes touch and concern the land by enhancing and increasing the enjoyment and use of the Project or Property by tenants therein, the intended beneficiaries of such covenants, reservations, restrictions or equitable servitudes, and by furthering the public purposes for which tax credit assistance was provided by the Department for the Project or Property.

6.3 The Declaration is further amended by replacing Section 9 thereof with the following language:

SECTION 9 - FUTURE TRANSFER OF OWNERSHIP, QUALIFIED CONTRACT

This Section (choose one of the below)

Will apply to the Project described herein:

Will not apply to the Project described herein:

- a) For the purpose of ensuring the Project will continue to be used as affordable housing, Owner hereby agrees to transfer the Project to a "qualified nonprofit organization" [as defined in IRC 42(h)(5)(C)] acceptable to the Owner, Department and the mortgage lender after the end of the calendar year falling 15 years after the issuance of the Forms 8609 for the Project, or as soon thereafter as the transfer can be consummated, on the following terms:
- 1) The consideration for the transfer shall be in accordance with the formula in IRC Section 42(h)(6)(F) in an amount equal to the sum of (a) the principal amount of outstanding indebtedness secured by the Project, (b) the adjusted investor equity in the building, and (c) other capital contributions not reflected in the amounts described above, reduced by cash distributions from (or available for distribution from) the project.
  - 2) Owner shall be under no obligation to transfer the project to a qualified organization in the event that no acceptable qualified organization agrees in writing to accept title and assume Owner's obligations before the end of the calendar year falling 15 years after the issuance of the Forms 8609 for the project.
  - 3) In making the determination of the transferee qualified nonprofit organization, first right of refusal shall be given to N/A.
- b) Owner further covenants to use its reasonable best efforts to assure, at the time of the transfer: (i) the Project is generating sufficient cash flow to service Project debt and pay Project operating expenses; and (ii) the Project is in reasonably good physical condition (for a multi-family apartment project of its age and quality).
- c) No provision of this section shall prevent any lender loaning funds secured by the Project from foreclosing on the property or otherwise exercising its full rights as a lender. In the event of a bonafide foreclosure or transfer of the Project to a lender by a deed in lieu of foreclosure, the foreclosing lender shall take the project free and clear of any obligation to transfer the Project to a nonprofit organization or to operate the project as affordable housing except as provided for in IRC Section 42. Department or its assigns shall have the right to cure any default to avoid foreclosure and assure transfer as stated above.

7. Governing Law; Venue; Consent to Jurisdiction. Recipient, New Obligor and each person now or at any time hereafter liable, whether primarily or secondarily, hereby agree that this Agreement and each of the Tax Credit Documents shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or other proceeding (collectively "Claim") arising out of or related in any way to this Agreement shall be brought and conducted solely and

exclusively within an appropriate Circuit Court for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. The Recipient and the New Obligor hereby consent to the *in personam* jurisdiction of said courts. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court.

8. Notice to the Department. New Obligor shall promptly notify the Department in writing of (i) any material adverse change in the financial condition of New Obligor, or (ii) any suit, governmental action, claim or other proceeding pending or threatened in writing which may have a material adverse effect on New Obligor or their business operations, condition (financial or otherwise) or involving the Project. New Obligor shall promptly provide to the Department on request such credit reports, current financial statements and information, prepared by certified public accountant and certified by New Obligor, and other documents and information pertaining to the financial condition and obligations of New Obligor, in reasonable detail and certified where appropriate, as the Department may reasonably require from time to time, including a detailed statement of income and expenditures (including debt service obligations) and supporting schedules, and updated financial statements.

9. Further Documentation and Assurance. New Obligor shall execute upon request of the Department such additional instruments and provide such further assurances as the Department may consider reasonably desirable or necessary to evidence or carry out the parties' intent and agreement under this Agreement or to complete, perfect, continue and preserve the obligations, restrictive covenants and equitable servitudes created under the Tax Credit Documents and/or this Agreement. New Obligor shall be responsible for all costs incurred in this transaction, including the cost of obtaining a title insurance endorsement acceptable to the Department, if requested, insuring that the restrictive covenants and equitable servitudes arising under the Tax Credit Documents and this Agreement continue as valid encumbrances, in their original priority, against the Property and are not impaired by execution of this Agreement.

#### 10 General Provisions.

10.1 Representations of New Obligor. New Obligor hereby ratifies, affirms, reaffirms, acknowledges, confirms and agrees that: (i) the Tax Credit Documents (as modified by this Agreement) represent the legal, valid, binding and enforceable obligations of New Obligor; (ii) there are no existing claims, defenses, personal or otherwise, or right of set-off whatsoever available to New Obligor with respect to any of such Tax Credit Documents; and (iii) no event has occurred and no condition exists which would constitute a default under such Tax Credit Documents or this Agreement, either with or without notice or lapse of time, or both.

10.2 Survival; Ratification. Except as specifically modified pursuant to this Agreement, all the terms and provisions of the Tax Credit Documents remain in full force and effect. As modified by this Agreement, the Tax Credit Documents are approved and hereby ratified and reaffirmed.

10.3 No Relinquishment of Covenants. This Agreement shall in no way act as a release or relinquishment of the restrictive covenants, equitable servitudes and encumbrances (collectively called the "Covenants") recorded with respect to the Property protecting the Department's ability to enforce operation of the Project consistent

with the terms of the Tax Credit Documents except as expressly released or modified in this Agreement. The Covenants, as modified, are hereby ratified, and confirmed in all respects.

10.4 Full Force and Effect. This Agreement, and the Tax Credit Documents are in full force and effect and nothing contained in this Agreement shall be construed as modifying such documents, except as specifically provided pursuant to this Agreement.

10.5 Defined Terms. Capitalized terms shall have the defined meanings provided in this Agreement or in the Tax Credit Documents.

10.6 Severability. A determination that any term or provision of this Agreement is invalid or otherwise not enforceable shall not affect the validity of the remaining terms and provisions of this Agreement which shall remain in full force and effect.

10.7 Time of the Essence. Time is of the essence in the performance of any and all obligations under this Agreement.

10.8 Attorney Fees. In the event a lawsuit is instituted regarding this Agreement, the prevailing party in any dispute arising under this Agreement shall, to the extent permitted by law, be entitled to recover from the other its reasonable attorney fees and all costs and disbursements incurred at trial and on appeal. Notwithstanding any other provision in this Agreement or incorporated documents, reasonable fees shall not exceed the rate charged the Department by its attorneys.

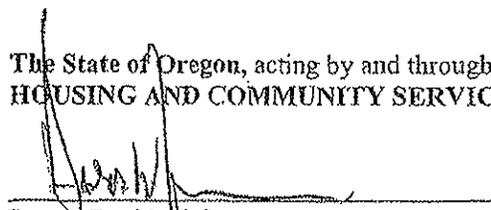
10.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute but one agreement. Any party may execute this Agreement by signing any such counterpart.

*[The balance of this page is intentionally left blank.]*

IN WITNESS WHEREOF, this instrument has been duly executed as of the date and year first above written.

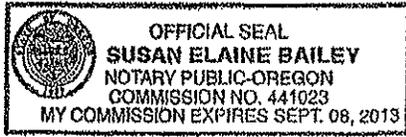
DEPARTMENT:

The State of Oregon, acting by and through its  
HOUSING AND COMMUNITY SERVICES DEPARTMENT

  
By: David W. Summers, Manager  
Multifamily Housing Section

STATE OF OREGON )  
                          : ss  
County of Marion  )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of September, 2011, by David W. Summers, Manager, Multifamily Housing Section, Housing and Community Services Department, on behalf of the Department.



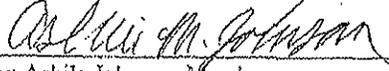
  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 9/8/13

*[The balance of this page is intentionally left blank]*

RECIPIENT:

HAWTHORNE VILLA LIMITED PARTNERSHIP,  
an Oregon limited partnership

By: Hawthorne Villa GP, Inc.,  
an Oregon corporation

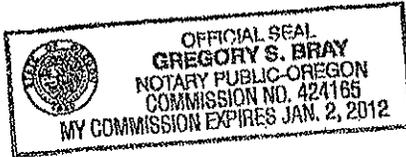


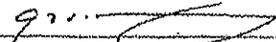
By: Ashile Johnson, Member

STATE OF OREGON )

: ss  
County of Washington )  
*multnomah*

The foregoing instrument was acknowledged before me this 29 day of September, 2011, by Ashile Johnson, Member, general partner of Hawthorne Villa Limited Partnership, on behalf of said limited partnership of Hawthorne Villa GP, Inc. an Oregon general partnership.



  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 1.2.12

*[The balance of this page is intentionally left blank]*

NEW OBLIGOR:

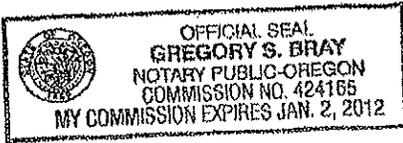
HAWTHORNE URBAN DEVELOPMENT LLC,  
an Oregon limited liability company

By: Saj Jivanjee, Member

STATE OF OREGON )

County of Washington )  
: ss

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of September, 2011, by Saj Jivanjee, Member of Hawthorne Urban Development LLC, on behalf of said limited liability company.



9222  
NOTARY PUBLIC FOR OREGON

My Commission Expires: 1-2-12

NEW OBLIGOR:

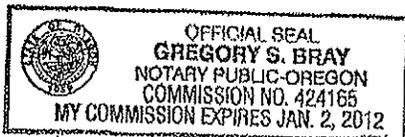
HAWTHORNE URBAN DEVELOPMENT LLC,  
an Oregon limited liability company

By: Richard Krueger, Member

STATE OF OREGON )

County of Washington )  
: ss

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of September, 2011, by Richard Krueger, Member of Hawthorne Urban Development LLC, on behalf of said limited liability company.



9222  
NOTARY PUBLIC FOR OREGON

My Commission Expires: 1-2-12

[The balance of this page is intentionally left blank]

CONSENT TO TRANSFER - LIHTC  
Hawthorne Villas Apartments  
Portland, OR  
Page 9 of 12

OHCS #5000

## EXHIBIT A

Real property in the County of Washington, State of Oregon, described as follows:

### PARCEL I:

A part of the George Richardson Donation Land Claim in the Northeast quarter of the Southwest quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, described as follows:

BEGINNING at the Northwest corner of the George Richardson Donation Land Claim, situated in Section 36, Township 1 South, Range 1 West, Willamette Meridian; thence South 89°00' East, 1887.60 feet to a point in the Northerly boundary line of said Donation Land Claim; thence South 0°11' West, 1204.0 feet to an iron pipe, said iron pipe marking the Northwest corner of that tract conveyed in Deed Book 279, Page 648; thence South 89°49' East, 85.0 feet along the North line of that tract conveyed in Deed Book 279, Page 648 to the Northeast corner of said tract and true point of beginning of tract herein described; thence South 89°49' East, 25.0 feet; thence North 0°11' East parallel with the East line of that tract described in deed to Leonard E. Cason, et al, recorded January 16, 1968 in Book 677, Page 139, Washington County Records, 173.66 feet; thence South 88°17' East, 96 feet to the East line of said Cason tract; thence South 0°11' West along the East line of said Cason tract, 315.0 feet to the Southeast corner thereof; thence North 88°17' West along the South line of said Cason tract, 121.8 feet to the Southeast corner of that tract conveyed in Deed Book 279, Page 648; thence North 0°11' East along the East line of that tract conveyed in Deed Book 279, Page 648, 141.34 feet, more or less to the true point of beginning, all situated in Washington County, Oregon.

### PARCEL II:

A part of the George Richardson Donation Land Claim in the Northeast quarter of the Southwest quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, described as follows:

BEGINNING at the Northwest corner of the George Richardson Donation Land Claim, situated in Section 36, Township 1 South, Range 1 West, Willamette Meridian; thence South 89°00' East, 1887.60 feet to a point in the Northerly boundary line of said Donation Land Claim; thence South 0°11' West, 1204.0 feet to an iron pipe, said iron pipe marking the Northwest corner of that tract conveyed in Deed Book 279, Page 648, and the true point of beginning herein described; thence South 89°49' East, 110.0 feet to a point; thence North 0°11' East, parallel with the East line of that tract described in deed to Leonard E. Cason, et al, recorded January 16, 1968 in Book 677, Page 139, Washington County Records, 173.66 feet to a point; thence North 88°37' West, 110.0 feet to a point on the West line of said Cason tract; thence South 0°11' West along said West line, 173.66 feet to the true point of beginning.

### PARCEL III:

A part of the George Richardson Donation Land Claim in the Northeast quarter of the Southwest quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, described as follows:

BEGINNING at the Northwest corner of the George Richardson Donation Land Claim, situated in Section 36, Township 1 South, Range 1 West, Willamette Meridian; thence South 89°00' East, 1887.60 feet to a point in the Northerly boundary line of said Donation Land Claim; thence South 0°11' West, 1204.0 feet to an iron pipe, said iron pipe marking the Northwest corner of that tract conveyed in Deed Book 279, Page 648; thence South 89°49' East, 85.0 feet along the North line of that tract conveyed in Deed Book 279, Page 648 to the Northeast corner thereof; thence South 89°49' East, 25.0 feet; thence North 0°11' East parallel with the East line of that tract described in deed to Leonard E. Cason, et al, recorded January 16, 1968 in Book 677, Page 139, Washington County Records, 173.66 feet; thence South 88°17' East, 51.0 feet to the true point of beginning of the herein described premises; thence continuing South 88°17' East, 45.0 feet to a point on the East line of said Cason tract; thence North 0°11' East along said East line, 90.0 feet; thence North 88°17' West, 45.0 feet; thence South 0°11' West, 90.0 feet to the true point of beginning.

CONSENT TO TRANSFER - LIHTC  
Hawthorne Villas Apartments  
Portland, OR  
Page 10 of 12

OHCS #5000

PARCEL IV:

A part of the George Richardson Donation Land Claim in the Northeast quarter of the Southwest quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, described as follows:

BEGINNING at the Northwest corner of the George Richardson Donation Land Claim, situated in Section 36, Township 1 South, Range 1 West, Willamette Meridian; thence South 89°00' East, 1887.60 feet to a point in the Northerly boundary line of said Donation Land Claim; thence South 0°11' West, 1030.34 feet to a point on the West line of that tract described in deed to Leonard E. Cason, et al, recorded January 16, 1968 in Book 677, Page 139, Records of Washington County, being the Westerly Northwest corner of that tract described in Mortgage recorded October 29, 1968 in Book 722, Page 520, Records of Washington County and the true point of beginning of the herein described premises; thence South 88°17' East, 161.6 feet; thence North 0°11' East, 90.0 feet; thence South 88°17' East, 45.0 feet to a point on the East line of said Cason tract; thence North 0°11' East along said East line, 171.34 feet to a point; thence North 88°17' West, 66.00 feet to a point; thence South 0°11' West, 75.0 feet to a point; thence North 88°17' West, 141.6 feet to a point on the West line of said Cason tract; thence South 0°11' West along said West line, 186.34 feet to the true point of beginning.

PARCEL V:

A part of the George Richardson Donation Land Claim in the Northeast quarter of the Southwest quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, described as follows:

BEGINNING at the Northwest corner of the George Richardson Donation Land Claim, situated in Section 36, Township 1 South, Range 1 West, Willamette Meridian; thence South 89°00' East, 1887.60 feet to a point in the Northerly boundary line of said Donation Land Claim; thence South 0°11' West, 844.0 feet to a point on the West line of that tract described in deed to Leonard E. Cason, et al, recorded January 16, 1968 in Book 677, Page 139, Records of Washington County, being the Westerly Northwest corner of the first tract described in Mortgage recorded February 4, 1969 in Book 732, Page 58, Records of Washington County and the true point of beginning of the herein described property; thence South 88°17' East, 141.6 feet to a point; thence North 0°11' East, 75.0 feet to a point; thence South 88°17' East, 66.0 feet to a point on the East line of said Cason tract; thence North 0°11' East along said East line, 113.66 feet to a point; thence North 88°17' West, 206 feet to a point on the West line of said Cason tract; thence South 0°11' West along said West line, 190 feet to the true point of beginning.

PARCEL VI:

A part of the George Richardson Donation Land Claim in the Northeast quarter of the Southwest quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, described as follows:

BEGINNING at the Northwest corner of the George Richardson Donation Land Claim, situated in Section 36, Township 1 South, Range 1 West, Willamette Meridian; thence South 89°00' East, 1887.60 feet to a point in the Northerly boundary line of said Donation Land Claim; thence South 0°11' West, 654.0 feet to a point on the West line of that tract described in deed to Leonard E. Cason, et al, recorded January 16, 1968 in Book 677, Page 139, Records of Washington County, being the Northwest corner of the first tract described in Mortgage recorded in Book 745, Page 285, Records of Washington County and the true point of beginning of the herein described property; thence South 88°17' East, 206 feet to a point on the East line of said Cason tract; thence North 0°11' East along said East line, 186.0 feet to a point; thence North 88°17' East, 206 feet to a point on the West line of said Cason tract; thence South 0°11' West along said West line, 186.0 feet to the true point of beginning.

PARCEL VII:

A part of the George Richardson Donation Land Claim in the Northeast quarter of the Southwest quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, described as follows:

BEGINNING at the Northwest corner of the George Richardson Donation Land Claim, situated in Section 36, Township 1 South, Range 1 West, Willamette Meridian; thence South 89°00' East, 1887.60 feet to a point in the Northerly boundary

line of said Donation Land Claim; thence South 0°11' West, 290 feet to a point, said point being the Southwest corner of a tract conveyed to Oscar Sidler and Grace Sidler by deed recorded November 28, 1911 in Deed Book 90, Page 45, and the true point of beginning; thence South 0°11' West, 178 feet to a point on the West line of that tract described in a deed to Leonard E. Cason, et al, recorded January 16, 1968 in Book 677, Page 139, Records of Washington County, being the Northwest corner of the first tract described in Mortgage recorded May 19, 1971 in Book 818, Page 167, Records of Washington County; thence South 88°17' East, 206 feet to a point on the East line of said Cason tract; thence North 0°11' East along said East line, 178 feet to the South line of said Sidler tract; thence North 89° West along the West line of said Sidler tract, 206.0 feet to the true point of beginning.

*[The balance of this page is intentionally left blank]*

RECORDING REQUESTED BY  
AND WHEN RECORDED, MAIL  
TO:

5  
4  
✓ Oregon Housing and Community  
Services Department  
1600 State Street  
Salem, Oregon 97310  
Attn: Komi P. Kalevor

SPACE ABOVE FOR RECORDER'S USE

OREGON HOUSING AND COMMUNITY SERVICES DEPARTMENT  
LOW-INCOME HOUSING TAX CREDIT  
DECLARATION OF LAND USE RESTRICTIVE COVENANTS

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS, (this "Declaration"), dated as of April 8, 1997, by HAWTHORNE VILLA LIMITED PARTNERSHIP, and its successors and assigns (the "Owner") is given as a condition precedent to the allocation of low-income housing credits by the Oregon Housing and Community Services Department, a governmental agency of the State of Oregon, together with any successor to its rights, duties, and obligations, (the "Department").

WITNESSETH: \*(includes 117 tax credit units and two common-area managers' units)

HEREAS, the Owner is or shall be the owner of a(n) 119 unit<sup>\*</sup> rental housing development, ~~one manager's unit~~ located on lands in the City of Tigard, County of Washington, State of Oregon, more particularly described in Exhibit A hereto, known as or to be known as HAWTHORNE VILLA APARTMENTS (the "Project"); and

HEREAS, the Department has been designated by the Governor of the State of Oregon as the housing credit agency for the State of Oregon for the allocation of low-income housing tax credit dollars (the "Credit"); and

WHEREAS, the Owner has applied to the Department and entered into a Determination Letter and Agreement for an allocation of Credit to the Project in an amount not to exceed One hundred eighty one thousand one forty three dollars (\$181,143) of tax exempt bond financed 4% low-income housing credit allocation; and

WHEREAS, the Department has agreed to issue a Form 8609 to the Owner upon the execution and recording of this Declaration which constitutes part of the Determination Letter and Agreement; and

WHEREAS, the Owner has represented to the Department in Owner's Low-Income Housing Tax Credit Application (the "Application") dated March 24, 1997, that Owner shall lease/rent 100 percent of the units in the Project to individuals or families whose income is 60 percent or less of the area family adjusted median gross income ("Low-Income Tenants") as determined in accordance with Section 42 of the Internal Revenue Code (the "IRC"); and

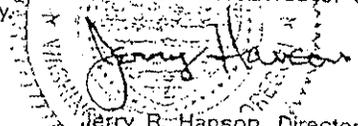
WHEREAS, the Department has determined the Project would require a Credit allocation in the amount of \$181,143 ~~tax exempt bond financed 4%~~ tax credit allocation to be financially feasible; and

WHEREAS, the Owner has represented to the Department rent restrictions it will maintain for the period of time as specified in the Determination Letter and Agreement; and

DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
LIHTC PROJECT NUMBER OR96-4-002  
PAGE 1 OF 10

2

I, Jerry R. Hanson, Director of Assessment and Taxation and Ex-Officio County Clerk for said county, do hereby certify that the within instrument of writing was received and recorded in book of records of said county.



Jerry R. Hanson, Director of Assessment and Taxation, Ex-Officio County Clerk

Doc : 97032421

Rect: 184112

83.00

04/09/1997 04:02:29pm

this Declaration, provided, however, the covenants contained herein shall survive and be effective regardless of whether such contract, deed, or other instrument hereafter executed conveying the Project or portion thereof provides that such conveyance is subject to this Declaration.

- (c) The Owner covenants to obtain the consent of any prior recorded lienholder on the Project to this Declaration and such consent shall be a condition precedent to the issuance of Internal Revenue Service Form 8609 constituting final allocation of the Credit.

### SECTION 3 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER

The Owner hereby represents, covenants, and warrants as follows:

- (a) The Owner (I) is a limited partnership duly organized under the laws of the State of Oregon, and is qualified to transact business under the laws of the State of Oregon, (II) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (III) has the full legal right, power and authority to execute and deliver this Declaration.
- (b) The execution and performance of this Declaration by the Owner (I) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, (II) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it or the Project is bound, and (III) will not result in the creation or imposition of any prohibited encumbrance of any nature.
- (c) The Owner will, at the time of execution and delivery of this Declaration, have good and marketable title to the premises constituting the Project free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Declaration, any Loan Documents relating to the Project or other permitted encumbrances).
- (d) There is no action, suit, or proceeding at law or in equity, or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Declaration) or would materially adversely affect its financial condition.
- (e) The Project constitutes or will constitute a qualified low-income building or qualified low-income project, as applicable, as defined in IRC Section 42 and applicable regulations.
- (f) Each unit in the Project contains complete facilities for living, sleeping, eating, cooking and sanitation (unless the Project qualifies as a single-room occupancy project or transitional housing for the homeless) which are to be used on other than a transient basis.
- (g) During the Term of this Declaration, all units subject to the Credit shall be leased, rented or made available to members of the general public who qualify as Low-Income Tenants (or otherwise qualify for occupancy of the low-income units) under the applicable election specified in Section 42(g) of the IRC.
- (h) The Owner agrees that tenant and third parties will be eligible to enforce IRC Section 42 entitlements as

DECLARATION OF LAND USE RESTRICTIVE COVENANTS

LIHTC PROJECT NUMBER OR96-4-002

PAGE 3 OF 10

4

provided by the Fair Housing Act, as amended.

- (i) During the term of this Declaration, the Owner covenants, agrees and warrants that each low-income unit is and will remain habitable.
- (j) Subject to the requirements of IRC Section 42 and this Declaration, the Owner may sell, transfer, or exchange the entire Project at any time, but the Owner shall notify in writing and obtain the agreement of any buyer or successor or other person acquiring the Project or any interest therein that such acquisition is subject to the requirements of this Declaration and to the requirements of IRC Section 42 and applicable regulations. This provision shall not act to waive any other restriction on sale, transfer, or exchange of the project or any low-income portion of the Project. The Owner agrees that the Department may void any sale, transfer, or exchange of the Project if the buyer or successor or other person fails to assume in writing the requirements of this Declaration and the requirements of IRC Section 42. Notwithstanding the foregoing, the owner shall not dispose of any portion of a building which constitutes a portion of the Project and to which this Declaration applies unless the entire building is disposed of to such person.
- (k) The Owner agrees to notify the Department in writing prior to any sale, transfer, or exchange of the entire Project or any low-income portion of the Project.
- (l) The Owner will provide certified financial documentation acceptable to the Department to satisfy the calculation of a qualified contract and to begin the one year period for finding a buyer in accordance with IRC Section 42(h)(6) if desired.
- (m) The Owner shall not demolish any part of the Project, substantially subtract from any real or personal property of the Project, or permit the use of any residential rental unit for any purpose other than rental housing during the term of this Declaration unless required by law or unless the Department has given its prior written consent.
- (n) The Owner represents, warrants, and agrees that if the Project, or any part thereof, shall be damaged, destroyed, shall be condemned, or acquired for public use, the Owner will use its best efforts, subject to the rights of any mortgagee, to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Declaration.
- (o) The Owner warrants that it has not and will not execute any other Declaration with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Declaration are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.
- (p) The applicable fraction for each building of the Project during the term of this Agreement shall not be less than the applicable fraction specified in the Low-Income Housing Tax Credit Determination Letter and Agreement (the "Agreement") executed by the Owner as 100 percent. [See IRC Section 42(h)(6)(B)]
- (r) The Department may require the Owner to reduce rents charged for low-income units if property taxes imposed upon the Project are reduced because of a change in Oregon law. Any reduction in rent required by the Department shall not exceed the reduction in property taxes, taking into account any replacement taxes or equivalent charges, and shall further take into account prevailing operating expenses or debt coverage requirements of the Project's lender(s).

DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
LIHTC PROJECT NUMBER OR96-4-002

5

DS

- (r) If the Section 8 Income Limits used to determine rent limits are reduced to account for a reduction in property taxes imposed on the Project because of a change in Oregon law or if rents are otherwise reduced by federally subsidized housing assistance programs or comparable program to account for a reduction in property taxes imposed on the Project because of a change in Oregon law and the Department determines that the reduced rent charged for low-income units in the Project appropriately reflects the reduction in property taxes, then Section 3(q) of this Declaration shall not apply.
- (s) The owner will not refuse to lease to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder.
- (t) The owner agrees to fill out and sign Part II of the Form 8609 required to be completed by the building owner for the first year of the credit period and return a copy (without Schedules and other supporting documents) to the Department for the purposes of compliance monitoring.
- (u) The Department may charge a reasonable fee comparable to fees charged by the Department for monitoring activities in accordance with Section 8(d) of this Declaration for rent reviews and determinations made pursuant to Sections 3(q) and 3(r) of this Declaration.

#### SECTION 4 - INCOME RESTRICTIONS; RENTAL RESTRICTIONS

The Owner represents, warrants, and covenants that from and after initial occupancy and throughout the remaining term of this Declaration and in order to satisfy the requirements of IRC Section 42 ("Section 42 Occupancy Restrictions") that;

**(Check applicable percentage election)**

- (1)  At least 20 percent or more of the residential units in the Project will be both rent-restricted and occupied by individuals whose income is 50 percent or less of family adjusted area median income.
  - (2)  At least 40 percent or more of the residential units in the Project will be both rent-restricted and occupied by individuals whose income is 60 percent or less of family adjusted area median income.
- (b) The Department may require that the determination of whether a tenant meets the low-income requirement be made by the Owner or his designated agent at least annually on the basis of the current income of such Low-Income Tenant.

#### SECTION 5 - DEPARTMENT'S OCCUPANCY RESTRICTIONS

The Owner represents, warrants and covenants throughout the term of this Declaration that:

- (a) Project rents will not exceed the gross rent allowable under IRC Section 42.

(Check b through e, if applicable)

- (b)  The Owner will extend the income and rental restrictions of IRC Section 42 for 15 years after the close of the compliance period.

(c) ~~△~~ Regardless of any provision in this Declaration to the contrary, the Department's Occupancy Restrictions provided by this Section shall remain in place for a period of 30 years or until January 1, 2025 except in the case of foreclosure or deed in lieu of foreclosure of a prior recorded lien to this Declaration as provided in Section 6(b)(1) but subject to Section 6(c) of this Declaration.

(Check applicable election)

(d) (1) X The Owner will SET the earliest date upon which the Owner may request the Department to assist in procuring a qualified contract for the acquisition of the low-income portion which is a part of the Project to after year 14, from the year the project was placed in service.

(2)     ~~The Owner will POSTPONE the earliest date upon which the Owner may request the Department to assist in procuring a qualified contract for the acquisition of the low-income portion which is a part of the Project from after year 14 to year , from the year the project was placed in service.~~

(e)     Operating reserves when released from restricted use shall be wholly used to subsidize tenant rents consistent with guidelines prescribed by the Department.

## SECTION 6 - TERM OF DECLARATION

(a) Except as hereinafter provided, this Declaration and the IRC Section 42 Occupancy Restrictions specified herein shall commence with the first day in the Project period on which any building which is part of the Project is placed in service and shall end on the date which is 15 years after the close of the compliance period.

(b) The Owner shall comply with the requirements of IRC Section 42 relating to the extended use period, provided, however, this Declaration and the extended use period for any building which is part of this Project shall terminate:

(1) On the date the building is acquired by foreclosure or instrument in lieu of foreclosure; or

(2) On the last day of the one-year period specified in IRC Section 42(h)(6)(I), if the Owner has properly requested in accordance with IRC Section 42 that the Department assist in procuring a qualified contract for the acquisition of the low-income portion of any building which is a part of the Project, the Department and the Owner have agreed upon the terms of sale as specified in Section 3(I) of this Declaration, and the Department is unable to present a qualified contract within one year of reaching written agreement regarding the terms of sale.

(c) Notwithstanding subsection (b) above, IRC Section 42 rent requirements shall continue for a period of three years following the termination of the extended use requirement pursuant to the procedures specified in subsection (b) above for those tenants existing as of the date of termination. During such three-year period, the Owner shall not evict or terminate the tenancy of an existing tenant of any low-income unit other than for good cause and shall not increase the gross rent above the maximum allowed under the IRC with respect to such low-income unit.

(c) If the Owner has agreed to optional Department's Occupancy Restrictions as reflected in Section 5 of this Declaration, neither this Declaration nor the extended use period shall terminate until the time period for compliance with such Department's Occupancy Restrictions has expired subject to earlier termination under Section 6(b)(1) above.

## SECTION 7 - ENFORCEMENT OF DEPARTMENT'S OCCUPANCY RESTRICTIONS

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

## SECTION 8 - ENFORCEMENT OF SECTION 42 OCCUPANCY RESTRICTIONS

- (a) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of IRC Section 42 and applicable regulations of this Declaration. Moreover, Owner covenants to take any lawful action (including amendment of this Declaration as may be necessary, in the opinion of the Department) to comply fully with the IRC and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed and published by the United States Department of the Treasury, the Internal Revenue Service, or HUD from time to time pertaining to Owner's obligations under IRC Section 42 and affecting the Project.
- (b) The Owner acknowledges that the primary purpose for requiring compliance by the Owner with restrictions provided in this Declaration is to assure compliance of the Project and the Owner with IRC Section 42 and the applicable regulations, AND BY REASON THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING LOW-INCOME HOUSING TAX CREDITS FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT THE DEPARTMENT AND ANY INDIVIDUAL WHO MEETS THE INCOME LIMITATION APPLICABLE UNDER SECTION 42 (WHETHER PROSPECTIVE, PRESENT OR FORMER OCCUPANT) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS DECLARATION IN A STATE COURT OF COMPETENT JURISDICTION. The Owner hereby further specifically acknowledges that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.
- (c) The Owner hereby agrees that the representations and covenants set forth herein may be relied upon by the Department and all persons interested in Project compliance under IRC Section 42 and the applicable regulations.
- (d) The Owner agrees to take any and all actions reasonably required by the Department to substantiate the Owner's compliance with occupancy restrictions of IRC Section 42 as now constituted or subsequently amended and other occupancy restrictions of the Department as now constituted or subsequently adopted and will pay a reasonable fee to the Department for the Department's monitoring of the Owners compliance based upon the Department's monitoring costs.
- (e) This Declaration and the Determination Letter and Agreement of which it is a part may be enforced by the Department or its designee in the event the Owner fails to satisfy any of the requirements herein. In addition,

this Declaration shall be deemed a contract enforceable by one or more Tenants as third-party beneficiaries of the Declaration and Determination Letter and Agreement. In the event the Owner fails to satisfy the requirements of this Declaration or the Determination Letter and Agreement and legal costs are incurred by the Department or one or more of the tenants or beneficiaries, such legal costs, including attorney fees and court costs (including costs of appeal), are the responsibility of, and may be recovered from, the Owner.

**SECTION 9 - EXTENDED LOW-INCOME HOUSING COMMITMENT** <sup>4/10</sup> ~~\*\*\*NOT APPLICABLE\*\*\*~~ An Option and Right of First Refusal Agreement has been entered into with Tualatin Valley Housing Partners, the Project's co-General Partner.

~~For the purpose of ensuring that the Project will continue to be used as affordable housing indefinitely, Owner hereby agrees to transfer the Project to a "qualified nonprofit organization" [as defined in IRC 42(h)(5)(C)] acceptable to the Owner, the Department and the mortgage lender after the end of the calendar year falling 15 years after the issuance of the Forms 8609 for the Project, or as soon thereafter as the transfer can be consummated, on the following terms:~~

- ~~(1) The consideration for the transfer shall be in accordance with the formula in IRC Section 42(h)(6)(F) in an amount equal to the sum of (a) the principal amount of outstanding indebtedness secured by the Project, (b) the adjusted investor equity in the Project, and (c) other capital contributions not reflected in the amounts described above, reduced by cash distributions from (or available for distribution from) the Project.~~
  - ~~(2) Owner shall be under no obligation to transfer the Project to a qualified organization in the event that no acceptable qualified organization accepts title and assumes Owner's obligations before the end of the calendar year falling 15 years after the issuance of the Forms 8609 for the Project.~~
  - ~~(3) In making the determination of the transferee qualified nonprofit organization, first right of refusal shall be given to \_\_\_\_\_.~~
  - ~~(4) Any controversy related to the selection of the transferee qualified organization shall be settled by arbitration pursuant to the rules of the American Arbitration Association.~~
- ~~(b) Owner further covenants to use its reasonable best efforts to assure that, at the time of the transfer: (i) the Project is generating sufficient cash flow to service Project debt and pay Project operating expenses; and (ii) the Project is in reasonably good physical condition (for a multi-family apartment project of its age and quality).~~
- ~~(c) No provision of this section shall prevent any lender loaning funds secured by the Project from foreclosing on the property or otherwise exercising its full right as a lender. In the event of a bonafide foreclosure or transfer of the Project to a lender by a deed in lieu of foreclosure, the foreclosing lender shall take the Project free and clear of any obligation to transfer the Project to a nonprofit organization or to operate the Project as affordable housing except as provided for in IRC Section 42. The Department or its assigns shall have the right to cure any default to avoid foreclosure and assure transfer as stated above.~~

**SECTION 10 - MISCELLANEOUS**

- (a) Severability. The invalidity of any clause, part, or provision of this Declaration shall not affect the validity of the remaining portions thereof.

9

- (b) Notices. All notices to be given pursuant to this Declaration shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

To the Department:

Oregon Housing and Community Services Department  
ATTN: LIHTC PROGRAM  
1600 State Street  
Salem, Oregon 97310-0161

To the Owner:

HAWTHORNE VILLA LIMITED PARTNERSHIP  
ATTN: CHAD RENNAKER  
16101 SW 72ND AVENUE SUITE 200  
PORTLAND OR 97224

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

- (c) Amendment. The Owner agrees that it will take all actions necessary to effect amendment of this Declaration as may be necessary to comply with the IRC, any and all applicable rules, regulations, policies, procedures, rulings, or other official statements pertaining to the Credit. The Department, together with Owner, may execute and record any amendment or modification to this Declaration and such amendment or modification shall be binding on third-parties granted rights under this Declaration.

Subordination of Declaration. This Declaration and the restrictions hereunder are subordinate to the permanent loan and loan documents on the Project in an original principal amount not to exceed \$4,000,000, except insofar as IRC Section 42 (h)(6)(E) otherwise requires. The Department may subordinate this Declaration to other Financing, in its sole discretion and such subordination shall be binding on all third-parties granted rights under this Declaration.

- (e) Governing Law. This Declaration shall be governed by the laws of the State of Oregon and, where applicable, the laws of the United States of America.
- (f) Survival of Obligations. The obligations of the Owner as set forth herein and in the Application shall survive the allocation of the Credit and shall not be deemed to terminate or merge with the awarding of the allocation.

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

OWNER

Hawthorne Villa Limited Partnership

By: [Signature]

Name: G. David Sebastian

Title: President, Hawthorne Villa GP, Inc.,  
General Partner of Hawthorne Associates Limited Partnership,  
a General Partner

STATE OF OREGON )

County of Washington )

This instrument was acknowledged before me this 8th day of April, 1997, by G. David Sebastian, President

[Signature]

NOTARY PUBLIC FOR OREGON  
My Commission Expires: Nov. 12, 2000



This document prepared this March 27, 1997, by: Komi P. Kalevor  
Print Name: Komi P. Kalevor  
Title: Tax Credit Program Representative

h:\v\sl\lhtc\letters\i  
Revised 3/97

EXHIBIT "A"

PARCEL I:

A part of the George Richardson Donation Land Claim in the Northeast quarter of the Southwest quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, described as follows:

BEGINNING at the Northwest corner of the George Richardson Donation Land Claim, situated in Section 36, Township 1 South, Range 1 West, Willamette Meridian; thence South  $89^{\circ}00'$  East, 1887.60 feet to a point in the Northerly boundary line of said Donation Land Claim; thence South  $0^{\circ}11'$  West, 1204.0 feet to an iron pipe, said iron pipe marking the Northwest corner of that tract conveyed in Deed Book 279, Page 648; thence South  $89^{\circ}49'$  East, 85.0 feet along the North line of that tract conveyed in Deed Book 279, Page 648 to the Northeast corner of said tract and true point of beginning of the tract herein described; thence South  $89^{\circ}49'$  East, 25.0 feet; thence North  $0^{\circ}11'$  East parallel with the East line of that tract described in deed to Leonard E. Cason, et al, recorded January 16, 1968, in Book 677, Page 139, Washington County Records, 173.66 feet; thence South  $88^{\circ}17'$  East, 96 feet to the East line of said Cason tract; thence South  $0^{\circ}11'$  West along the East line of said Cason tract, 315.0 feet to the Southeast corner thereof; thence North  $88^{\circ}17'$  West along the South line of said Cason tract, 121.6 feet to the Southeast corner of that tract conveyed in Deed Book 279, Page 648; thence North  $0^{\circ}11'$  East along the East line of that tract conveyed in Deed Book 279, Page 648, 141.34 feet, more or less, to the true point of beginning, all situated in Washington County, Oregon.

PARCEL II:

A part of the George Richardson Donation Land Claim in the Northeast quarter of the Southwest quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, described as follows:

BEGINNING at the Northwest corner of the George Richardson Donation Land Claim, situated in Section 36, Township 1 South, Range 1 West, Willamette Meridian; thence South  $89^{\circ}00'$  East, 1887.60 feet to a point in the Northerly boundary line of said Donation Land Claim; thence South  $0^{\circ}11'$  West, 1204.0 feet to an iron pipe, said iron pipe marking the Northwest corner of that tract conveyed in Deed Book 279, Page 648, and the true point of beginning herein described; thence South  $89^{\circ}49'$  East, 110.0 feet to a point; thence North  $0^{\circ}11'$  East parallel with the East line of that tract described in deed to Leonard E. Cason, et al, recorded January 16, 1968, in Book 677, Page 139, Washington County Records, 173.66 feet to a point; thence North  $88^{\circ}37'$  West, 110.0 feet to a point on the West line of said Cason tract; thence South  $0^{\circ}11'$  West along said West line, 173.66 feet to the true point of beginning.

PARCEL III:

A part of the George Richardson Donation Land Claim in the Northeast quarter of the Southwest quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, described as follows:

BEGINNING at the Northwest corner of the George Richardson Donation Land Claim, situated in Section 36, Township 1 South, Range 1 West, Willamette Meridian and running thence South 89°00' East, 1887.60 feet to a point in the Northerly boundary line of said Donation Land Claim; thence South 0°11' West, 1204.0 feet to an iron pipe, said iron pipe marking the Northwest corner of that tract conveyed in Deed Book 279, Page 648; thence South 89°49' East, 85.0 feet along the North line of that tract conveyed in Deed Book 279, Page 648 to the Northeast corner of thereof; thence South 89°49' East, 25.0 feet; thence North 0°11' East parallel with the East line of that tract described in deed to Leonard E. Cason; et al, recorded January 16, 1968, in Book 677, Page 139, Washington County Records, 173.66 feet; thence South 88°17' East, 51.0 feet to the true point of beginning of the herein described premises; thence continuing South 88°17' East, 45.0 feet to a point on the East line of said Cason tract; thence North 0°11' East along said East line, 90.0 feet; thence North 88°17' West, 45.0 feet; thence South 0°11' West, 90.0 feet to the true point of beginning.

PARCEL IV:

A part of the George Richardson Donation Land Claim in the Northeast quarter of the Southwest quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, described as follows:

BEGINNING at the Northwest corner of the George Richardson Donation Land Claim in Section 36, Township 1 South, Range 1 West, Willamette Meridian in the County of Washington and State of Oregon, and running thence South 89°00' East, 1887.60 feet to a point on the Northerly boundary line of said Donation Land Claim; thence South 0°11' West, 1030.34 feet to a point on the West line of that tract described in deed to Leonard E. Cason, et al, recorded January 16, 1968, in Book 677, Page 139, records of Washington County, being the Westerly Northwest corner of that tract described in Mortgage recorded October 29, 1968, in Book 722, Page 520, records of Washington County and the true point of beginning of the herein described premises; thence South 88°17' East 161.6 feet; thence North 0°11' East, 90.0 feet; thence South 88°17' East, 45.0 feet to a point on the East line of said Cason tract; thence North 0°11' East along said East line, 171.34 feet to a point; thence North 88°17' West, 65.0 feet to a point; thence South 0°11' West, 75.0 feet to a point; thence North 88°17' West, 141.6 feet to a point on the West line of said Cason tract; thence South 0°11' West along said West line, 186.34 feet to the true point of beginning.

PARCEL V:

A part of the George Richardson Donation Land Claim in the Northeast quarter of the Southwest quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, described as follows:

BEGINNING at the Northwest corner of the George Richardson Donation Land Claim, in Section 36, Township 1 South, Range 1 West of the Willamette Meridian and running thence South  $89^{\circ}00'$  East, 1887.60 feet to a point on the Northerly boundary line of said Donation Land Claim; thence South  $0^{\circ}11'$  West, 844.0 feet to a point on the West line of that tract described in deed to Leonard E. Cason et al, recorded January 16, 1968, in Book 577, Page 139, records of Washington County, being the Westarly Northwest corner of the first tract described in Mortgage recorded February 4, 1969, in Book 732, Page 58, records of Washington County and the true point of beginning of the herein described property; thence South  $88^{\circ}17'$  East, 141.6 feet to a point; thence North  $0^{\circ}11'$  East, 75.0 feet to point; thence South  $88^{\circ}17'$  East, 65.0 feet to a point on the East line of said Cason tract; thence North  $0^{\circ}11'$  East along said East line, 113.66 feet to a point; thence North  $88^{\circ}17'$  West, 206 feet to a point on the West line of said Cason tract; thence South  $0^{\circ}11'$  West along said West line, 190 feet to the true point of beginning.

PARCEL VI:

A part of the George Richardson Donation Land Claim in the Northeast quarter of the Southwest quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, described as follows:

BEGINNING at the Northwest corner of the George Richardson Donation Land Claim in Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the County of Washington and State of Oregon and running thence South  $89^{\circ}00'$  East, 1887.60 feet to a point on the Northerly boundary line of said Donation Land Claim; thence South  $0^{\circ}11'$  West, 654.0 feet to a point on the West line of that tract described in deed to Leonard E. Cason et al, recorded January 16, 1968, in Book 677, Page 139, records of Washington County, being the Northwest corner of the first tract described in Mortgage recorded in Book 745, Page 285, records of Washington County and the true point of beginning of the herein described property; thence South  $88^{\circ}17'$  East, 206 feet to a point on the East line of said Cason tract; thence North  $0^{\circ}11'$  East along said East line, 186.0 feet to a point; thence North  $88^{\circ}17'$  East, 206 feet to a point on the West line of said Cason tract; thence South  $0^{\circ}11'$  West along said West line, 186.0 feet to the true point of beginning.

PARCEL VII:

A part of the George Richardson Donation Land Claim in the Northeast quarter of the Southwest quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, described as follows:

BEGINNING at the Northwest corner of the George Richardson Donation Land Claim in Section 36; thence South  $89^{\circ}00'$  East, 1887.00 feet to a point on the Northerly boundary of said Donation Land Claim; thence South  $0^{\circ}11'$ , 290 feet to a point, said point being the Southwest corner of a tract conveyed to Oscar Sidler and Grace Sidler by deed recorded November 28, 1911 in Deed Book 90, Page 45, and the true point of beginning; thence South  $0^{\circ}11'$  West, 178 feet to a point on the West line of that tract described in a deed to Leonard E. Cason et al, recorded January 16, 1968 in Book 677, Page 139, records of Washington County, being the Northwest corner of the first tract described in Mortgage recorded May 19, 1971, in Book 818, Page 157, records of Washington County; thence South  $88^{\circ}17'$  East, 206 feet to a point on the East line of said Cason tract; thence North  $0^{\circ}11'$  East along said East line, 178 feet to the South line of said Sidler tract; thence North  $89^{\circ}$  West along the South line of said Sidler tract, 206.0 feet to the true point of beginning.

**COLUMBIA PORTFOLIO SERVICES**

LIMITED PARTNERSHIP

1810 SW 2ND AVENUE, SUITE 200  
PORTLAND, OREGON 97227-7893

UNION BANK OF CALIFORNIA

300 TANKERSHIP DRIVE  
PORTLAND, OREGON 97208

PAY TO THE ORDER OF:

Oregon Housing & Community Services

Nine Thousand Fifty-Seven and 15/100\*\*\*\*\*

Oregon Housing & Community Services

1600 State St.  
Salem, OR 97310

MEMO

Tax credit reservation fee

⑈002447⑈ ⑆123000058⑆ 0032959447⑈

\$\*\*9,057.15

DOLLARS

2447

Security features included. Details on back.

**COLUMBIA PORTFOLIO SERVICES**

Oregon Housing & Community Services

04/08/97

Bill #040897

4/9/97

9,057.15

2447

Cash - Union Bank of Cal. Tax credit reservation fee

9,057.15

03

Execution Copy

WHEN RECORDED RETURN TO:

First Interstate Bank of Oregon, N.A.  
2701 NW Vaughn, 2nd Floor  
Portland, OR 97210  
Attention: Corporate Trust

**CORRECTED**  
**REGULATORY AGREEMENT**  
**AND**  
**DECLARATION OF**  
**RESTRICTIVE COVENANTS**

BY AND AMONG THE

**STATE TREASURER**  
OF THE STATE OF OREGON

ACTING ON BEHALF OF THE STATE OF OREGON  
AND ON BEHALF OF THE STATE OF OREGON  
HEALTH, HOUSING, EDUCATIONAL AND  
CULTURAL FACILITIES AUTHORITY,

**FIRST INTERSTATE BANK OF OREGON, N.A.**  
AS TRUSTEE

AND

**HAWTHORNE VILLA LIMITED PARTNERSHIP**

RELATING TO  
\$3,952,000  
STATE OF OREGON  
HEALTH, HOUSING, EDUCATIONAL  
AND CULTURAL FACILITIES AUTHORITY  
REVENUE BONDS  
(HAWTHORNE VILLA PROJECT),  
1996 SERIES A

DATED AS OF MAY 1, 1996

I hereby certify that this is a TRUE and  
EXACT copy of the original document.

PRIMEITY NATIONAL TITLE  
*[Signature]*  
Recorded 5-24-96  
9100461010

# REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (this "Regulatory Agreement"), relating to the Project as hereinafter defined, is made and entered into as of May 1, 1996, by and among the STATE TREASURER OF THE STATE OF OREGON, acting on behalf of the State of Oregon and on behalf of the State of Oregon Health, Housing, Educational and Cultural Facilities Authority (the State Treasurer when acting in such capacities referred to herein as the "Issuer"), FIRST INTERSTATE BANK OF OREGON, N.A., as trustee (the "Trustee") under that certain Trust Indenture of even date herewith (the "Indenture") by and between it and the Issuer, and HAWTHORNE VILLA LIMITED PARTNERSHIP, a limited partnership organized under the laws of the State of Oregon (the "Borrower").

## PREMISES

WHEREAS, the Issuer proposes to issue its State of Oregon Health, Housing, Educational and Cultural Facilities Authority Revenue Bonds (Hawthorne Villa Project), 1996 Series A (the "Bonds"), the proceeds of which will be utilized to fund a loan to the Borrower to be made by Washington Capital DUS, Inc. (the "Lender"), a Delaware corporation, in accordance with the Financing Agreement of even date herewith (the "Financing Agreement") by and among the Issuer, the Borrower and the Trustee, in order to enable the Borrower to finance the acquisition, rehabilitation and development of the Project; and

WHEREAS, in order to assure the Issuer and the owners of the Bonds that interest on the Bonds will be excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the "Code") and to satisfy the purposes of the Issuer in determining to issue the Bonds, certain limits on the occupancy of units in the Project need to be established and certain other requirements need to be met.

NOW, THEREFORE, in consideration of the issuance of the Bonds by the Issuer and the use of the proceeds thereof to finance the Project, the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Issuer, the Trustee and the Borrower agree as follows:

SECTION L. DEFINITIONS. Unless the context otherwise requires, the capitalized terms used herein shall have the respective meanings assigned to them in the recitals hereto, in this Section l or in the Indenture or the Financing Agreement.

"ADJUSTED INCOME" means the adjusted income of a person (together with the adjusted income of all other persons who intend to reside with such person in one residential unit) as

calculated in the manner prescribed in Regulations Section 1.167(k)-3(b)(3) in effect as of the Closing Date.

"AREA" means the Portland Primary Metropolitan Statistical Area.

"CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE" means the Certificate to be filed by the Borrower with the Issuer, the Lender and the Trustee pursuant to Section 4(e) hereof, which shall be substantially in the form attached as Exhibit C hereto, or in such other form as maybe provided by the Issuer to the Borrower.

"COUNTY" means Washington County, Oregon.

"HOUSING ACT" means the United States Housing Act of 1937, as amended, or its successor.

"INCOME CERTIFICATION" means a Verification of Income and an Occupancy Certificate in the form attached as Exhibit B hereto, or in such other form as may be provided by the Issuer to the Borrower.

"LOW INCOME TENANT" means any tenant whose Adjusted Income does not exceed sixty percent (60%) of Median Gross Income for the Area with adjustments for family size. If all the occupants of a unit are students (as defined under Section 151(e)(4) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code, such occupants shall not qualify as Low Income Tenants. The determination of a tenant's status as a Low Income Tenant shall be made by the Borrower upon initial occupancy of a unit in the Project by such tenant, on the basis of an Income Certification executed by the tenant.

"LOW INCOME UNITS" means the units in the Project required to be rented, or held available for occupancy by, Low Income Tenants pursuant to Sections 4(a) and 6(b) hereof.

"MEDIAN GROSS INCOME FOR THE AREA" means the area median income as determined in accordance with Section 142(d)(2)(B) of the Code, that is, by the Secretary of Housing and Urban Development in a manner consistent with determinations of area median gross income under Section 8 of the Housing Act (or if programs under Section 8 are terminated under the method used by said Secretary prior to such termination).

"QUALIFIED PROJECT PERIOD" means the period beginning on the later of (i) the Closing Date or (ii) the first day on which at least 10% of the units in the Project are first occupied, and ending on the later of the following:

- (A) the date which is fifteen (15) years after the Closing Date (being May 24, 2011); or

(B) the first date on which no tax-exempt private activity bonds with respect to the Project are outstanding; or

(C) the date on which any assistance provided with respect to the Project under Section 8 of the Housing Act terminates.

"REGULATIONS" means the Income Tax Regulations of the Department of the Treasury applicable under the Code from time to time.

"REGULATORY AGREEMENT" means this Regulatory Agreement and Declaration of Restrictive Covenants, together with any and all amendments and supplements hereto.

"TAX-EXEMPT" means, with respect to interest on any obligations of a state or local government, including the Bonds, that such interest is excluded from gross income for federal income tax purposes; *provided, however*, that such interest may be includable as an item of tax preference or otherwise includable directly or indirectly for purposes of calculating other tax liabilities, including any alternative minimum tax or environmental tax, under the Code.

"UNITS" or "DWELLING UNITS" means all residential units in the Project except not more than two units set aside for resident manager or other administrative use.

"VERIFICATION OF INCOME" means a Verification of Income in the form attached as Exhibit B to this Regulatory Agreement, or in such other form as may be provided by the Issuer to the Borrower.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement, words of any gender shall be construed to include each other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate.

This Regulatory Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

The titles and headings of the sections of this Regulatory Agreement have been inserted for convenience of reference only, and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Regulatory Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

**SECTION 2. REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE BORROWER.** The Borrower hereby incorporates herein, as if set forth in full herein, each of the representations, covenants and warranties of the Borrower contained in the Tax Certificate and in the Financing Agreement relating to the Project.

The Borrower acknowledges, represents and warrants that it understands the nature and structure of the transactions contemplated by this Regulatory Agreement; that it is familiar with the provisions of all of the documents and instruments to which it is a party or of which it is a beneficiary; that it understands the financial and legal risks inherent in such transactions; and that it has not relied on the Issuer for any guidance or expertise in analyzing the financial or other consequences of such financing transactions or otherwise relied on the Issuer in any manner except to issue the Bonds in order to provide funds to assist the Borrower in financing the Project.

**SECTION 3. QUALIFIED RESIDENTIAL RENTAL PROJECT.** The Borrower hereby acknowledges and agrees that the Project is to be owned, managed and operated in the same manner as a "qualified residential rental project" (within the meaning of Section 142(d) of the Code) for a term equal to the Qualified Project Period. To that end, and for the term of this Regulatory Agreement, the Borrower hereby represents, covenants, warrants and agrees as follows:

(a) The Borrower will own, manage and operate the Project as a multifamily residential rental property consisting of a building or structure or several interrelated buildings or structures, together with any functionally related and subordinate facilities, and no other facilities, in accordance with Section 142(d) of the Code, Section 1.103-8(b) of the Regulations and the provisions of the Housing Act, and in accordance with such requirements as may be imposed thereby on the Project from time to time.

(b) All of the dwelling units in the Project will be similarly constructed units, and each dwelling unit in the Project will contain complete separate and distinct facilities for living, sleeping, eating, cooking and sanitation for a single person or a family, including a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range, refrigerator and sink.

(c) None of the dwelling units in the Project will at any time be utilized on a transient basis, or will ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, rest home or trailer court or park.

(d) No part of the Project will at any time during the Qualified Project Period be owned by a cooperative housing corporation, nor shall the Borrower take any steps in connection with a conversion to such ownership or use, and the Borrower will not take any steps in connection with a conversion of the Project to condominium ownership during the Qualified Project Period.

(e) All of the dwelling units in the Project will be available for rental during the Qualified Project Period on a continuous basis to members of the general public, on a "first-come first-served" basis, and the Borrower will not give preference to any particular class or group in renting the dwelling units in the Project, except to the extent that dwelling units are required to be leased or rented to Low Income Tenants.

(f) The Project consists of a parcel or parcels that are contiguous except for the interposition of a road, street or stream, and all of the facilities of the Project comprise a single geographically and functionally integrated project for residential rental property, as evidenced by the ownership, management, accounting and operation of the Project.

(g) At the closing for the Bonds, the Borrower shall give the Issuer, the Trustee, the Lender and Fannie Mae notice of whether or not the Project is then in compliance with the provisions of this Regulatory Agreement.

**SECTION 4. LOW INCOME TENANTS; REPORTING REQUIREMENTS.** Pursuant to the requirements of the Code, the Borrower hereby represents, warrants and covenants as follows:

(a) Commencing on the Closing Date, Low Income Tenants shall occupy at least forty percent (40%) of all completed and occupied units in the Project before any vacant units are occupied by persons who are not Low Income Tenants; and for the Qualified Project Period no less than 40% of the total number of completed units of the Project shall at all times be rented to and occupied by Low Income Tenants. For the purposes of this paragraph (a), a vacant unit which was most recently occupied by a Low Income Tenant is treated as rented and occupied by a Low Income Tenant until reoccupied, other than for a temporary period of not more than 31 days, at which time the character of such unit shall be redetermined.

(b) No tenant qualifying as a Low Income Tenant shall be denied continued occupancy of a unit in the Project because, after admission, such tenant's Adjusted Income increases to exceed the qualifying limit for Low Income Tenants. However, should a Low Income Tenant's Adjusted Income, as of the most recent determination thereof, exceed one hundred forty percent (140%) of the applicable income limit for a Low Income Tenant of the same family size, the next available unit of comparable or smaller size must be rented to (or held vacant and available for immediate occupancy by) a Low Income Tenant. Until such next available unit is rented, the former Low Income Tenant who has ceased to qualify as such shall be deemed to continue to be a Low Income Tenant for purposes of the forty percent (40%) requirement of Section 4(a) hereof.

(c) For the Qualified Project Period, the Borrower will obtain, complete, and maintain on file Income Certifications for each Low Income Tenant, including an Income Certification dated (i) immediately prior to the initial occupancy by such Low Income Tenant in the Project, and (ii) annually thereafter, within thirty days before or after the anniversary of such Low Income Tenant's initial occupancy of a unit in the Project. The Borrower will provide such additional information as may be required in the future by the Issuer and by the Code, as the same may be amended from time to time, in such form and manner as may be required by applicable rules, rulings, policies, procedures, Regulations or other official statements now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service with respect to Tax-Exempt obligations, all as and to the extent required to maintain the Tax-Exempt status of the Bonds or to comply with the laws of the State. A copy of the most recent Income Certifications for Low Income Tenants commencing or continuing occupation of a Low Income Unit shall be

attached to each report to be filed with the Issuer and the Trustee pursuant to paragraph (e) of this Section 4. The Borrower shall make a good faith effort to verify that the income information provided by an applicant in a Verification of Income is accurate by taking one or more of the following steps as a part of the verification process: (1) obtain a pay stub for the most recent pay period, (2) obtain an income tax return for the most recent tax year, (3) conduct a search with a credit reporting company, (4) obtain an income verification from the applicant's current employer, (5) obtain an income verification from the Social Security Administration and/or the State of Oregon if the applicant receives assistance from either of such entities, or (6) if the applicant is unemployed and does not have an income tax return, obtain another form of independent verification.

(d) The Borrower will maintain complete and accurate records pertaining to the Low Income Units, and will permit any duly authorized representative of the Issuer, the Trustee, the Lender, Fannie Mae, the Department of the Treasury or the Internal Revenue Service to inspect the books and records of the Borrower pertaining to the Project, including those records pertaining to the occupancy of the Low Income Units.

(e) The Borrower will prepare and submit to the Issuer and the Trustee (and to the Lender upon the Lender's written request), no later than the fifteenth day of the first month of each calendar quarter until the end of the Qualified Project Period, a Certificate of Continuing Program Compliance executed by the Borrower stating (i) the percentage of the Dwelling Units of the Project which were occupied or deemed occupied, pursuant to subsection (a) hereof, by Low Income Tenants during the preceding calendar quarter; and (ii) that either (A) no unremedied default has occurred under this Regulatory Agreement or the Financing Agreement, or (B) a default has occurred, in which event the certificate shall describe the nature of the default in detail and set forth the measures being taken by the Borrower to remedy such default.

(f) For the Qualified Project Period, all tenant leases or rental agreements shall be subordinate to this Regulatory Agreement, the Indenture and the Mortgage and shall contain clauses, among others, wherein each tenant who occupies a Low Income Unit: (i) certifies the accuracy of the statements made in the Verification of Income and (ii) agrees that the family income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy of such tenant, that such tenant will comply promptly with all requests for information with respect thereto from the Borrower, the Trustee, the Lender or the Issuer, and that the failure or refusal to comply with a request for information with respect thereto shall be deemed a material breach of such tenant's lease, permitting immediate termination of such lease or rental agreement.

(g) Each lease or rental agreement pertaining to a Low Income Unit also shall contain a provision to the effect that the Borrower has relied on the Verification of Income and supporting information supplied by the Low Income Tenant in determining qualification for occupancy of the Low Income Unit, and that any failure to provide accurate information in the Verification of Income or supporting information or material misstatement in the Verification of Income or supporting information (whether or not intentional) will be cause for immediate termination of such lease or rental agreement. Each such lease or rental agreement shall also provide

that the tenant's income is subject to annual certification in accordance with Section 4(c) hereof and that if upon any such certification such tenant's Adjusted Income exceeds the income limit applicable to Low Income Tenants, such tenant may cease to qualify as a Low Income Tenant.

(h) In addition to any and all other reports or information required to be provided or filed hereunder by the Borrower, during the Qualified Project Period, the Borrower shall annually file with the Internal Revenue Service an "Annual Certification of a Residential Rental Project" (currently IRS Form 8703) by March 31 after the close of the calendar year for which certification is made, and/or such other certification, filing or report, with such frequency and by such date, as the Internal Revenue Service may in the future require in connection with the operation of the Project in manner necessary to ensure the Tax-Exempt status of the Bonds. Concurrently with such filing, the Borrower shall deliver to the Trustee and the Issuer copies of each IRS Form 8703 or other certification, filing or report filed with the Internal Revenue Service pursuant to this subsection (h).

SECTION 5. TAX-EXEMPT STATUS OF THE BONDS. The Borrower hereby represents, warrants and agrees as follows:

(a) The Borrower will not knowingly take or permit, or omit to take or cause to be taken, as is appropriate, any action that would adversely affect the Tax-Exempt status of the interest on the Bonds and, if the Borrower should take or permit, or omit to take or cause to be taken, any such action, it will take all lawful actions necessary to rescind or correct such actions or omissions promptly upon obtaining knowledge thereof.

(b) The Borrower will, at its own expense, file of record such documents and take such other steps as are necessary, in the written opinion of Bond Counsel filed with the Issuer and the Trustee, with copies to the Lender and Fannie Mae, in order to ensure that the requirements and restrictions of this Regulatory Agreement will, subject to the *proviso* in Section 12 regarding termination of this Regulatory Agreement, be binding upon all owners (including subsequent owners, if any) of the Project, including, but not limited to, the execution and recordation of this Regulatory Agreement in the real property records of the County.

(c) The Borrower hereby covenants to include or reference the requirements and restrictions contained in this Regulatory Agreement in any documents transferring any interest in the Project to another person to the end that such transferee has notice of, and is bound by, such restrictions, and, except in the case of a foreclosure or deed in lieu of foreclosure or comparable conversion of the Mortgage Loan by Fannie Mae or its nominee, whereby Fannie Mae or its nominee becomes the owner of the Project, to obtain the agreement from any transferee to abide by all requirements and restrictions of this Regulatory Agreement, it being understood that no such agreement shall be required of Fannie Mae or its nominee.

SECTION 6. MODIFICATION OF COVENANTS. The Borrower, the Trustee and the Issuer hereby agree as follows:

(a) To the extent any amendments to the Regulations or the Code shall, in the written opinion of Bond Counsel filed with the Issuer, the Trustee and the Borrower (with a copy to the Lender and Fannie Mae), impose requirements upon the ownership or operation of the Project more restrictive than those imposed by this Regulatory Agreement, and if such requirements are applicable to the Project, this Regulatory Agreement shall be amended in accordance with the procedures set forth in Section 6(c) hereof to impose such additional or more restrictive requirements.

(b) To the extent that the Regulations or the Code, or any amendments thereto, shall, in the written opinion of Bond Counsel filed with the Issuer, the Trustee and the Borrower (with a copy to the Lender and Fannie Mae), impose requirements upon the ownership or operation of the Project less restrictive than imposed by this Regulatory Agreement, this Regulatory Agreement may be amended or modified to provide such less restrictive requirements, but only (i) by written amendment signed by the Issuer, the Trustee and the Borrower, (ii) with the written consent of Fannie Mae, and (iii) upon receipt by the Issuer, the Trustee, the Lender and Fannie Mae of the written opinion of Bond Counsel to the effect that such amendment will not affect the Tax-Exempt status of interest on the Bonds.

(c) The Borrower, the Issuer and, if applicable, the Trustee, shall execute, deliver and, if applicable, file of record any and all documents and instruments reasonably necessary to effectuate the intent of this Section 6, and each of the Borrower and the Issuer hereby appoints the Trustee as its true and lawful attorney-in-fact to execute, deliver and, if applicable, file of record on behalf of the Borrower or the Issuer, as is applicable, any such document or instrument (in such form as may be approved in writing by Bond Counsel) if either the Borrower or the Issuer defaults in the performance of its obligations under this subsection (c); *provided, however*, that unless directed in writing by the Issuer or the Borrower, the Trustee shall take no action under this subsection (c) without first notifying the Borrower, the Issuer, the Lender and Fannie Mae, and without first providing the Borrower or the Issuer, or both, as is applicable, an opportunity to comply with the requirements of this Section 6. Nothing in this subsection (c) shall be construed to allow the Trustee to execute an amendment to this Regulatory Agreement on behalf of the Issuer or the Borrower.

**SECTION 7. INDEMNIFICATION; PAYMENT OF OTHER AMOUNTS.** The Borrower hereby covenants and agrees that it shall indemnify and hold harmless and defend, the Issuer, the Lender and the Trustee and the respective officers, members, supervisors, directors, officials, employees, agents and attorneys of each of them as set forth in the Financing Agreement, subject to the terms and provisions of the Financing Agreement; *provided* that such indemnification shall remain in effect notwithstanding termination of the Financing Agreement. In addition, the Borrower hereby agrees as follows:

(a) The Borrower shall pay and discharge and shall indemnify and hold harmless the Issuer and the Trustee from (i) any lien or charge upon payments by the Borrower to the Issuer and the Trustee hereunder and (ii) any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges in respect of any portion of the Project. If

any such claim is asserted, or any such lien or charge upon payments, or any such taxes, assessments, imposition or other charges, are sought to be imposed, the Issuer or the Trustee shall give prompt notice to the Borrower and the Borrower shall have the sole right and duty to assume, and will assume, the defense thereof, with full power to litigate, compromise or settle the same in its sole discretion.

(b) The Borrower will pay upon demand all of the fees and expenses paid or incurred by the Trustee and/or the Issuer in enforcing the provisions hereof (including, but not limited to, fees and expenses of Trustee and its counsel prior to trial, at trial, and on appeal, and in any bankruptcy or arbitration proceedings).

Notwithstanding any other provision of this Regulatory Agreement to the contrary, neither Fannie Mae, its nominee nor any successor in interest thereto will assume or take subject to any liability for the indemnification obligations of the Borrower for acts or omissions of the Borrower prior to any transfer of title to Fannie Mae or its nominee, whether by foreclosure, deed in lieu of foreclosure or comparable conversion of the Mortgage Loan. Following any transfer of title to Fannie Mae or its nominee, any obligation of Fannie Mae or its nominee under this Section 7 shall be strictly limited to acts and omissions of Fannie Mae or its nominee which occur following acquisition of the Project by Fannie Mae or its nominee, whether such acquisition is by foreclosure, deed in lieu of foreclosure or comparable conversion of the Mortgage Loan, and only during the period of Fannie Mae's, or its nominee's, ownership and operation of the Project. The Borrower shall remain liable under this Section 7 for its actions and omissions prior to any transfer of title to Fannie Mae or its nominee, notwithstanding any consent given pursuant to Section 10.

The provisions of this Section 7 shall survive the term of the Bonds and this Regulatory Agreement.

**SECTION 8. CONSIDERATION.** The Issuer has issued the Bonds to provide funds to finance the Project, all for the purpose, among others, of inducing the Borrower to operate the Project as provided herein. In consideration of the issuance of the Bonds by the Issuer, the Borrower has entered into this Regulatory Agreement and has agreed to restrict the uses to which the Project may be put on the terms and conditions set forth herein.

**SECTION 9. RELIANCE.** The Borrower hereby recognizes and agrees that the representations and covenants set forth herein may be relied upon by all persons interested in the legality and validity of the Bonds and in the exemption from Oregon personal income taxation and the Tax-Exempt status of the interest on the Bonds. In performing their duties and obligations hereunder, the Issuer and the Trustee may rely upon statements and certificates of the Low Income Tenants, and upon audits of the books and records of the Borrower pertaining to the Project in compliance with Section 4 hereof. In addition, the Issuer and the Trustee may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Issuer or the Trustee hereunder in good faith and in conformity with such opinion. In determining whether any default or lack of compliance by the Borrower exists

under this Regulatory Agreement, the Trustee shall not be required to conduct any investigation into or review of the operations or records of the Borrower and may rely solely on any written notice or certificate delivered to the Trustee by the Borrower or the Issuer with respect to the occurrence or absence of a default unless it knows that the notice or certificate is erroneous or misleading.

**SECTION 10. SALE OR TRANSFER OF THE PROJECT.** Except as may be specifically permitted by the terms of the Financing Agreement, the Borrower hereby covenants and agrees not to sell, transfer or otherwise dispose of the Project or any portion thereof (other than leases for individual tenant use as contemplated hereunder and replacement of personal property and fixtures), without obtaining the prior written consent of the Issuer and Fannie Mae, which consent of the Issuer shall, except in the case of a foreclosure or deed in lieu of foreclosure or comparable conversion of the Mortgage Loan by Fannie Mae, whereby Fannie Mae or its nominee becomes the owner of the Project, be conditioned solely upon receipt by the Issuer and the Trustee of (i) evidence reasonably satisfactory to the Issuer that the Borrower's purchaser or transferee has assumed in writing and in full, and is reasonably capable of performing and complying with, the Borrower's duties and obligations under this Regulatory Agreement (subject to the limitations herein provided), (ii) a certificate of the Borrower that no default has occurred and no event which, with the passage of time or the giving of notice, or both, would constitute a default under this Regulatory Agreement has occurred, and that any fees due under this Regulatory Agreement have been paid, (iii) an opinion of counsel to the transferee that the transferee has duly assumed the obligations of the Borrower under this Regulatory Agreement and that such obligations and this Regulatory Agreement are binding on the transferee and (iv) an opinion of Bond Counsel that such sale, transfer or other disposition of the Project will not adversely affect the Tax-Exempt status of interest on the Bonds and the exemption of such interest from Oregon personal income taxes. Provided the above conditions have been satisfied, upon request, the Issuer will provide to the Borrower and the purchaser or transferee its written consent to any sale, transfer or disposition of the Project, or any portion thereof, in accordance with this Section 10 and written notice to the Trustee of the Issuer's consent. No consent by the Issuer shall be required in connection with the acquisition of title to the Project by Fannie Mae or its nominee pursuant to foreclosure of the Mortgage by Fannie Mae, or the acceptance by Fannie Mae of a deed in lieu of such foreclosure, or comparable conversion of the Mortgage Loan; *and, therefore*, in connection with such acquisition of title by Fannie Mae or its nominee, as provided above, compliance with the provisions specified in clauses (i), (ii), (iii) and (iv) above shall not be required to make effective any such title acquisition. It is hereby expressly stipulated and agreed that any other sale, transfer or other disposition of the Project in violation of this Section 10 shall be null, void and without effect and shall be ineffective to relieve the Borrower of its obligations under this Regulatory Agreement. Nothing contained in this Section 10 shall affect or limit any provision of the Mortgage or any other document or instrument to which the Borrower is a party which requires the Borrower to obtain the consent of the holder of the Mortgage Note or any other person as a precondition to sale, transfer or other disposition of the Project.

**SECTION 11. TERM.** This Regulatory Agreement and all and several of the terms hereof shall become effective upon its execution and delivery, and shall remain in full force and effect for the period provided herein and shall terminate in its entirety (except for provisions otherwise

provided with a specific termination date) at the end of the Qualified Project Period, it being expressly agreed and understood that the provisions hereof are intended to survive the retirement of the Bonds and discharge of the Indenture and the Financing Agreement if the Qualified Project Period extends beyond such retirement and discharge.

The terms of this Regulatory Agreement notwithstanding, the requirements of this Regulatory Agreement shall terminate and be of no further force and effect in the event of involuntary noncompliance caused by fire or other casualty, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in a federal law or an action of a federal agency after the Closing Date which prevents the Issuer and the Trustee from enforcing such provisions, or condemnation or a similar event, but only if, within a reasonable period, either the Bonds are retired or amounts received as a consequence of such event are used to provide a project which meets the requirements hereof; *provided, however*, that the preceding provisions of this sentence shall cease to apply and the restrictions contained herein shall be reinstated if, at any time subsequent to the termination of such provisions as the result of foreclosure of the Mortgage or the delivery of a deed in lieu of foreclosure or a similar event, the Borrower or any related person (within the meaning of Section 1.103-10(e) of the Regulations) obtains an ownership interest in the Project for federal income tax purposes. The Borrower hereby agrees that, following any foreclosure, transfer of title by deed in lieu of foreclosure or similar event, neither the Borrower nor any such related person as described above will obtain an ownership interest in the Project for federal tax purposes. Upon the termination of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver and record appropriate instruments of release and discharge of the terms hereof; *provided, however*, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms.

**SECTION 12. COVENANTS TO RUN WITH THE LAND; EQUITABLE SERVITUDES.** The Borrower hereby subjects the Project to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The Issuer and the Borrower hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land and shall be deemed equitable servitudes and shall pass to and be binding upon the Borrower's successors in title to the Project; *provided, however*, that on the termination of this Regulatory Agreement, said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments.

**SECTION 13. BURDEN AND BENEFIT.** The Borrower hereby declares its understanding and intent that the burdens of the covenants set forth herein touch and concern the land in that the Borrower's legal interest in the Project is rendered less valuable thereby. The Borrower hereby further declares its understanding and intent that the benefits of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Project by Low Income Tenants,

the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which the Bonds were issued.

**SECTION 14. COMMON PLAN.** The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project in order to establish and carry out a common plan for the use of the site on which the Project is located.

**SECTION 15. DEFAULTS; ENFORCEMENT.** If the Borrower defaults in the performance or observance of any covenant, agreement or obligation of the Borrower set forth in this Regulatory Agreement, and if such default remains uncured for a period of sixty (60) days after notice thereof shall have been given by the Issuer or the Trustee to the Borrower, or for a period of sixty (60) days from the date the Borrower should, with due diligence, have discovered such default, then the Trustee, acting on its own behalf or on behalf of the Issuer, shall declare an "Event of Default" to have occurred hereunder. Following the declaration of an Event of Default hereunder the Issuer or the Trustee may, at their respective options, take any one or more of the following steps, in addition to all other remedies provided by law or equity:

(i) by mandamus or other suit, action or proceeding at law or in equity, including injunctive relief, require the Borrower to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer or the Trustee hereunder;

(ii) have access to and inspect, examine and make copies of all of the books and records of the Borrower pertaining to the Project;

(iii) with the consent of Fannie Mae, declare a default under the Financing Agreement, accelerate the indebtedness of the Borrower under the Financing Agreement, and proceed with any remedies provided therein; and/or

(iv) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Borrower hereunder;

*provided, however,* that any claim for damages, indemnification or any other monetary obligation sought to be enforced by Issuer or the Trustee shall be subordinate to the Mortgage Loan.

For so long as the Bonds are outstanding, the rights of the Issuer in this Regulatory Agreement (except the rights of the Issuer under subdivision (a) of Section 7) will be assigned as security to the Trustee and shall be enforceable by the Trustee, upon notice to but without the consent or approval of the Issuer, in accordance with the terms hereof and the terms of the Indenture.

No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any person entitled to enforce the same to obtain relief against or

recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times.

All reasonable fees, costs and expenses of the Trustee and the Issuer incurred in taking any action pursuant to this Section 15 shall be the sole responsibility of the Borrower.

No breach or default under this Regulatory Agreement shall defeat or render invalid any mortgage or like encumbrance upon the Project or any portion thereof given in good faith and for value.

Notwithstanding anything herein to the contrary, neither the Issuer nor the Trustee, or any other person acting on behalf of either of them, shall:

(a) initiate or take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due and payable under, the Mortgage Loan;

(b) interfere with or attempt to influence the exercise by Fannie Mae of any of its rights under the Mortgage Loan, including, without limitation, Fannie Mae's remedial rights under the Mortgage Loan upon the occurrence of an event of default by the Borrower under the Mortgage Loan; or

(c) upon the occurrence of an event of default under the Mortgage Loan, take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Mortgage Loan or the Bonds;

*provided* that the foregoing prohibition shall not be construed to prevent the Issuer from consulting with Fannie Mae or to limit the rights of the Issuer and the Trustee to specifically enforce this Regulatory Agreement in order to provide for the operation of the Project in accordance with the Code and the Act; *and provided further* that this prohibition shall not be construed to limit the rights of the Issuer to enforce its rights against the Borrower under Section 7 so long as it does not cause the Borrower to file a petition seeking reorganization, arrangement, adjustment, or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law now or hereafter in effect.

The Issuer and the Trustee acknowledge that, notwithstanding the occurrence of any violation of this Regulatory Agreement, neither the Issuer nor the Trustee shall have any right to cause or direct acceleration of the Mortgage Loan, to enforce the Mortgage Note or to foreclose on the Mortgage, and that no person other than Fannie Mae shall have the right to (a) declare the principal balance of the Mortgage Note to be immediately due and payable or (b) commence foreclosure or other like action without express written authorization from Fannie Mae.

Promptly upon determining that a violation of the Regulatory Agreement has occurred, the Issuer or the Trustee shall, by notice in writing to the Lender and Fannie Mae, inform the Lender and Fannie Mae that such violation has occurred, the nature of the violation and that the violation has been cured or has not been cured, but is curable within a reasonable period of time, or is incurable.

**SECTION 16. THE TRUSTEE.** The Trustee shall act as specifically provided herein and in the Indenture. The Trustee shall have no duty to act with respect to enforcement of the Borrower's performance hereunder as described in Section 15 unless it shall have actual knowledge of any such default. The Trustee may act as the agent of and on behalf of the Issuer under this Regulatory Agreement, and any act required to be performed by the Issuer as herein provided shall be deemed taken by the Issuer if such act is performed by the Trustee. In connection with any such performance, however, the Trustee is acting solely as Trustee under the Indenture, and not in its individual capacity, and all provisions of the Indenture relating to the rights, privileges, powers and protections of the Trustee shall apply with equal force and effect to all actions taken (or omitted to be taken) by the Trustee in connection with this Regulatory Agreement. Neither the Trustee nor any of its officers, directors or employees shall be liable for any action taken or omitted to be taken by it hereunder or in connection herewith except for its or their own negligence or willful misconduct. The Trustee may consult with legal counsel selected by it (the reasonable fees of which counsel shall be paid by the Borrower) and any action taken or suffered by it reasonably and in good faith in accordance with the opinion of such counsel shall be full justification and protection to it.

After the date on which no Bonds remain outstanding as provided in the Indenture, the Trustee shall no longer have any duties or responsibilities under this Regulatory Agreement and all references to the Trustee in this Regulatory Agreement shall be deemed references to the Issuer.

**SECTION 17. RECORDING AND FILING.** The Borrower shall cause this Regulatory Agreement and all amendments and supplements hereto to be recorded and filed in the real property records of the County and in such other places as the Issuer or the Trustee may reasonably request. The Borrower shall pay all fees and charges incurred in connection with any such recording.

**SECTION 18. PAYMENT OF FEES.** Notwithstanding any prepayment of the Mortgage Loan and notwithstanding a discharge of the Indenture, the Borrower shall continue to pay to the Trustee reasonable compensation for any services rendered by it hereunder and reimbursement for all expenses reasonably incurred by it in connection herewith, and shall continue to pay (or shall prepay) the Issuer's annual administrative fee and expenses as provided in the Financing Agreement; *provided* that neither Fannie Mae, its nominee nor any purchaser from Fannie Mae or its nominee shall have any liability for the payment of any accrued and unpaid fees owed by the Borrower prior to the date of acquisition of the Project by Fannie Mae or its nominee.

**SECTION 19. GOVERNING LAW.** This Regulatory Agreement shall be governed by the laws of the State of Oregon. The Trustee's rights, duties and obligations hereunder are governed in their entirety by the terms and provisions hereof and of the Indenture.

SECTION 20. AMENDMENTS.

(a) This Regulatory Agreement may be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the County, only with the prior written consent of Fannie Mae and notice to the Lender, and only upon receipt by the Issuer of an opinion from Bond Counsel that such amendment will not adversely affect the Tax-Exempt status of the Bonds.

(b) Anything to the contrary contained herein notwithstanding, the Issuer, the Trustee and the Borrower hereby agree to amend this Regulatory Agreement to the extent required, in the opinion of Bond Counsel, in order that interest on the Bonds remains Tax-Exempt. The parties requesting such amendment shall notify the other parties to this Regulatory Agreement and Fannie Mae of the proposed amendment, with a copy of such requested amendment to Bond Counsel and a request that Bond Counsel render to the Issuer an opinion as to the effect of such proposed amendment upon the Tax-Exempt status of the Bonds. This provision shall not be subject to any provision of any other agreement requiring any party hereto to obtain the consent of any other person in order to amend this Regulatory Agreement.

SECTION 21. NOTICES. Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery or first class mail, postage prepaid, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto:

To the Issuer: State of Oregon Health, Housing, Educational  
and Cultural Facilities Authority  
Pacwest Center, Suite 1700  
1211 SW Fifth Avenue  
Portland, Oregon 97204  
Attention: Executive Director  
Telecopy Number: (503) 796-2900

With a copy to: State Treasurer  
159 Capitol Building  
Salem, Oregon 97310  
Telecopy Number: (503) 373-7051

To the Trustee: First Interstate Bank of Oregon, N.A.  
2701 NW Vaughn Street, 2nd Floor  
Portland, Oregon 97210  
Attention: Corporate Trust Department  
Telecopy Number: (503) 340-5685

To the Borrower: Hawthorne Villa Limited Partnership  
c/o Hawthorne Associates Limited Partnership  
Suite 200  
16101 SW 72nd Avenue  
Portland, Oregon 97224  
Attention: Mr. Chad Rennaker

with a copy to: Stephen M. Seidel  
Miller, Nash, Wiener, Hager & Carlsen  
111 SW Fifth Avenue, Suite 3500  
Portland, Oregon 97204

To Fannie Mae: Federal National Mortgage Association  
3900 Wisconsin Avenue, N.W.  
Washington, D.C. 20016-2899  
Attention: Senior Vice President, Multifamily

with a copy to: Federal National Mortgage Association  
3900 Wisconsin Avenue, N.W.  
Washington, D.C. 20016-2899  
Attention: Office of the General Counsel - re:  
Multifamily Matters

with a copy to: Federal National Mortgage Association  
135 North Los Robles Avenue  
Suite 300  
Pasadena, California 91101-1707  
Attention: Vice President/Multifamily

with a copy to: Arent Fox Kitner Plotkin & Kahn  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
Attention: Stephen D. Kahn

To the Lender: Washington Capital DUS, Inc.  
1616 North Fort Myer Drive, Suite 1210  
Arlington, Virginia 22209  
Attention: Robert L. Moore

with a copy to: Ballard Spahr Andrews & Ingersoll  
555 13th Street NW, #900 East  
Washington, D.C. 20004  
Attention: Mary Jo George

The Issuer, the Trustee, the Borrower, the Lender and Fannie Mae may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Notice shall be deemed given three business days after the date of mailing. A duplicate copy of each notice, certificate or other communication given hereunder by any party to another shall also be given to each of the others.

**SECTION 22. FINANCIAL OBLIGATIONS PERSONAL TO BORROWER.** The Issuer acknowledges that the Project shall be encumbered by the Mortgage and shall be subject to any and all other Mortgage Loan Documents. Notwithstanding any provisions of this Regulatory Agreement to the contrary, all obligations of the Borrower under this Regulatory Agreement for the payment of money and any claims for damages against the Borrower occasioned by breach or alleged breach by the Borrower of its obligations under this Regulatory Agreement, including indemnification obligations, shall not be secured by or in any manner constitute a lien on the Project and no Person shall have the right to enforce such obligations other than directly against the Borrower as provided in Section 15 of this Regulatory Agreement. No subsequent owner of the Project shall be liable or obligated for the breach or default of any obligation of any prior owner of the Project under this Regulatory Agreement, including but not limited to any payment or indemnification obligation. Such obligations are personal to the Person who was the Borrower at the time the default or breach was alleged to have occurred and such Person shall remain liable for any and all damages occasioned thereby even after such Person ceases to be the owner of the Project.

**SECTION 23. SEVERABILITY.** If any provision of this Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

**SECTION 24. MULTIPLE COUNTERPARTS.** This Regulatory Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

**SECTION 25. CONSTRUCTION.** The parties to this Regulatory Agreement acknowledge that each party and its counsel have participated in the drafting and revision of this Regulatory Agreement. Accordingly, the parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Regulatory Agreement or any amendment, modification, supplement or restatement of any of the foregoing or of any exhibit to this Regulatory Agreement.

*[This space intentionally left blank. The signatures of the parties appear on the following pages.]*

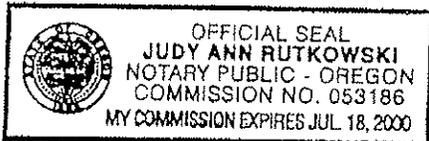
IN WITNESS WHEREOF, the Issuer, the Trustee and the Borrower have executed this Regulatory Agreement by duly authorized representatives, all as of the date first above written.

**JIM HILL, STATE TREASURER,**  
ON BEHALF OF THE ISSUER

By *Gary Bruebaker*  
Gary Bruebaker, Deputy State Treasurer

STATE OF OREGON            )  
  )ss:  
County of MARION        )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of May 1996, by Gary Bruebaker, Deputy State Treasurer, for and on behalf of Jim Hill, State Treasurer, on behalf of the Issuer.



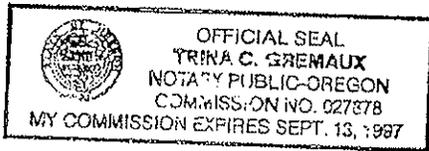
*Judy Ann Rutkowski*  
Notary Public for the State of Oregon  
My Commission Expires: 7/18/00

FIRST INTERSTATE BANK OF OREGON,  
N.A., AS TRUSTEE

By *A. Garrett*  
Authorized Officer

STATE OF OREGON            )  
  )ss:  
County of Multnomah    )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of May 1996, by A. Garrett, an Authorized Officer of First Interstate Bank of Oregon, N.A., for and on behalf of First Interstate Bank of Oregon, N.A., as Trustee.



*Trina C. Gremaux*  
Notary Public for the State of Oregon  
My Commission Expires: 9-13-97

HAWTHORNE VILLA LIMITED  
PARTNERSHIP, as Borrower

By: TUALATIN VALLEY HOUSING PARTNERS, a  
General Partner of the Borrower

By: [Signature]  
Its: Executive Director

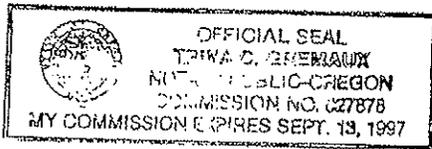
And: HAWTHORNE ASSOCIATES LIMITED  
PARTNERSHIP, a General Partner of the Borrower

By: HAWTHORNE VILLA GP, INC., a General  
Partner of the Hawthorne Associates  
Limited Partnership

By: [Signature]  
Its: Senior Vice President

STATE OF OREGON )  
 )ss:  
County of Multnomah )

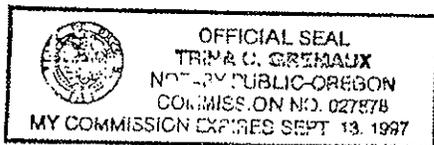
The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of  
May 1996, by Topaz Faulkner, for and on behalf of Tualatin Valley Housing  
Partners, as general partner of Hawthorne Villa Limited Partnership.



Trina C. Gremaux  
Notary Public for the State of Oregon  
My Commission Expires: 9-13-97

STATE OF OREGON )  
 )ss:  
County of Multnomah )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of  
May 1996, by Bradley J. Bullock, for and on behalf of Hawthorne Villa GP, Inc.,  
as general partner of Hawthorne Associates Limited Partnership, a general partner of Hawthorne Villa  
Limited Partnership.



Trina C. Gremaux  
Notary Public for the State of Oregon  
My Commission Expires: 9-13-97

EXHIBIT A  
DESCRIPTION

PARCEL I:

A part of the George Richardson Donation Land Claim in the Northeast quarter of the Southwest quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, described as follows:

BEGINNING at the Northwest corner of the George Richardson Donation Land Claim, situated in Section 36, Township 1 South, Range 1 West, Willamette Meridian; thence South  $89^{\circ}00'$ , East 1,887.60 feet to a point in the Northerly boundary line of said Donation Land Claim; thence South  $0^{\circ}11'$  West, 1,204.0 feet to an iron pipe, said iron pipe marking the Northwest corner of that tract conveyed in Deed Book 279, Page 648; thence South  $89^{\circ}49'$  East, 85.0 feet along the North line of that tract conveyed in Deed Book 279, Page 648 to the Northeast corner of said tract and true point of beginning of the tract herein described; thence South  $89^{\circ}49'$  East, 25.00 feet; thence North  $0^{\circ}11'$  East parallel with the East line of that tract described in deed to Leonard E. Cason, et al, recorded January 16, 1968, in Book 677, Page 139, Washington County Records, 173.66 feet; thence South  $88^{\circ}17'$  East, 96 feet to the East line of said Cason tract; thence South  $0^{\circ}11'$  West along the East line of said Cason tract, 315.0 feet to the Southeast corner thereof; thence North  $88^{\circ}17'$  West along the South line of said Cason tract, 121.6 feet to the Southeast corner of that tract conveyed in Deed Book 279, Page 648; thence North  $0^{\circ}11'$  East along the East line of that tract conveyed in Deed Book 279, Page 648, 141.34 feet, more or less, to the true point of beginning, all situated in Washington County, Oregon.

PARCEL II:

A part of the George Richardson Donation Land Claim in the Northeast quarter of the Southwest quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, described as follows:

BEGINNING at the Northwest corner of the George Richardson Donation Land Claim, situated in Section 36, Township 1 South, Range 1 West, Willamette Meridian; thence South  $89^{\circ}00'$  East, 1887.60 feet to a point in the Northerly boundary line of said Donation Land Claim; thence South  $0^{\circ}11'$  West 1204.0 feet to an iron pipe, said iron pipe marking the Northwest corner of that tract conveyed in Deed Book 279, Page 648, and the true point of beginning herein described; thence South  $89^{\circ}49'$  East, 110.0 feet to a point; thence North  $0^{\circ}11'$  East parallel with the East line of that tract described in deed to Leonard E. Cason, et al, recorded January 16, 1968, in Book 677, Page 139, Washington County Records, 173.66 feet to a point; thence North  $88^{\circ}37'$  West, 110.00 feet to a point on the West line of said

Cason tract; thence South  $0^{\circ}11'$  West along said West line, 173.66 feet to the true point of beginning.

PARCEL III:

A part of the George Richardson Donation Land Claim in the Northeast quarter of the Southwest quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, described as follows:

BEGINNING at the Northwest corner of the George Richardson Donation Land Claim, situated in Section 36, Township 1 South, Range 1 West, Willamette Meridian and running thence South  $89^{\circ}00'$  East, 1887.60 feet to a point in the Northerly boundary line of said Donation Land Claim; thence South  $0^{\circ}11'$  West, 1204.0 feet to an iron pipe, said iron pipe marking the Northwest corner of that tract conveyed in Deed Book 279, Page 648; thence South  $89^{\circ}49'$  East, 85.0 feet along the North line of that tract conveyed in Deed Book 279, Page 648 to the Northeast corner thereof; thence South  $89^{\circ}49'$  East, 25.0 feet; thence North  $0^{\circ}11'$  East parallel with the East line of that tract described in deed to Leonard E. Cason, et al, recorded January 16, 1968, in Book 677, Page 139, Washington County Records, 173.66 feet; thence South  $88^{\circ}17'$  East, 51.0 feet to the true point of beginning of the herein described premises; thence continuing South  $88^{\circ}17'$  East, 45.0 feet to a point on the East line of said Cason tract; thence North  $0^{\circ}11'$  East along said East line, 90.0 feet; thence North  $88^{\circ}17'$  West, 45.0 feet; thence South  $0^{\circ}11'$  West, 90.0 feet to the true point of beginning.

PARCEL IV:

A part of the George Richardson Donation Land Claim in the Northeast quarter of the Southwest quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, described as follows:

BEGINNING at the Northwest corner of the George Richardson Donation Land Claim in Section 36, Township 1 South, Range 1 West, Willamette Meridian in the County of Washington and State of Oregon, and running thence South  $89^{\circ}00'$  East, 1887.60 feet to a point on the Northerly boundary line of said Donation Land Claim; thence South  $0^{\circ}11'$  West, 1030.34 feet to a point on the West line of that tract described in deed to Leonard E. Cason, et al, recorded January 16, 1968, in Book 677, Page 139, records of Washington County, being the Westerly Northwest corner of that tract described in Mortgage recorded October 29, 1968, in Book 722, Page 520, records of Washington County and the true point of beginning of the herein described premises; thence South  $88^{\circ}17'$  East 161.6 feet; thence North  $0^{\circ}11'$  East, 90.0 feet; thence South  $88^{\circ}17'$  East, 45.0 feet to a point on the East line of said Cason tract; thence North  $0^{\circ}11'$  East along said East line, 171.34 feet to a point; thence North  $88^{\circ}17'$  West, 65.0 feet to a point; thence South  $0^{\circ}11'$  West, 75.0 feet to a

point; thence North 88°17' West, 141.6 feet to a point on the West line of said Cason tract; thence South 0°11' West along said West line, 186.34 feet to the true point of beginning.

PARCEL V:

A part of the George Richardson Donation Land Claim in the Northeast quarter of the Southwest quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, described as follows:

BEGINNING at the Northwest corner of the George Richardson Donation Land Claim, in Section 36, Township 1 South, Range 1 West of the Willamette Meridian and running thence South 89°00' East, 1,887.60 feet to a point on the Northerly boundary line of said Donation Land Claim; thence South 0°11' West, 844.0 feet to a point on the West line of that tract described in deed to Leonard E. Cason et al, recorded January 16, 1968, in Book 677, Page 139, records of Washington County, being the Westerly Northwest corner of the first tract described in Mortgage recorded February 4, 1969, in Book 732, Page 58, records of Washington County and the true point of beginning of the herein described property; thence South 88°17' East, 141.6 feet to a point; thence North 0°11' East, 75.0 feet to a point; thence South 88°17' East, 65.0 feet to a point on the East line of said Cason tract; thence North 0°11' East along said East line, 113.66 feet to a point; thence North 88°17' West, 206 feet to a point on the West line of said Cason tract; thence South 0°11' West along said West line, 190 feet to the true point of beginning.

PARCEL VI:

A part of the George Richardson Donation Land Claim in the Northeast quarter of the Southwest quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, described as follows:

BEGINNING at the Northwest corner of the George Richardson Donation Land Claim in said Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the County of Washington and State of Oregon and running thence South 89°00' East, 1887.60 feet to a point on the Northerly boundary line of said Donation Land Claim; thence South 0°11' West, 654.0 feet to a point on the West line of that tract described in deed to Leonard E. Cason et al, recorded January 16, 1968, in Book 677, Page 139, records of Washington County, being the Northwest corner of the first tract described in Mortgage recorded in Book 745, Page 285, records of Washington County and the true point of beginning of the herein described property; thence South 88°17' East, 206 feet to a point on the East line of said Cason tract; thence North 0°11' East along said East line, 186.0 feet to a point; thence North 88°17' East, 206 feet to a point on the West line of said Cason tract; thence South 0°11' West along said West line, 186.0 feet to the true point of beginning.

PARCEL VII:

A part of the George Richardson Donation Land Claim in the Northeast quarter of the Southwest quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, described as follows:

BEGINNING at the Northwest corner of the George Richardson Donation Land Claim in Section 36; thence South  $89^{\circ}00'$  East, 1887.60 feet to a point on the Northerly boundary line of said Donation Land Claim; thence South  $0^{\circ}11'$ , 290 feet to a point, said point being the southwest corner of a tract conveyed to Oscar Sidler and Grace Sidler by deed recorded November 28, 1911 in Deed Book 90, Page 45, and the true point of beginning; thence South  $0^{\circ}11'$  West, 178 feet to a point on the West line of that tract described in a Deed to Leonard E. Cason et al, recorded January 16, 1968, in Book 677, Page 139, records of Washington County, being the Northwest corner of the first tract described in Mortgage recorded May 19, 1971 in Book 818, Page 167, records of Washington County; thence South  $88^{\circ}17'$  East, 206 feet to a point on the East line of said Cason tract; thence North  $0^{\circ}11'$  East along said East line, 178 feet to the South line of said Sidler tract; thence North  $89^{\circ}$  West along the South line of said Sidler tract, 206.0 feet to the true point of beginning.

Exhibit B

[FORM OF INCOME CERTIFICATION]

VERIFICATION OF INCOME

RE: [name and address of Project]

Apartment Number: \_\_\_\_\_

I/We, the undersigned, being first duly sworn, state that I/we have read and answered fully, and truthfully each of the following questions for all persons who are to occupy the unit in the above apartment development for which application is made, all of whom are listed below:

1. Name of Members of the Household	2. Relationship to Head of Household	3. Age	4. Social Security Number	5. Place of Employment
_____	HEAD	_____	_____	_____
_____	SPOUSE	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

6. The anticipated income of all the above persons during the 12-month period beginning this date, including income described in (a) below, but excluding all income described in (b) below, is \$ \_\_\_\_\_.

(a) The amount set forth above includes all of the following income (unless such income is described in (b) below):

- (i) all wages and salaries, over-time pay, commissions, fees, tips and bonuses before payroll deductions;
- (ii) net income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization of capital indebtedness or any allowance for depreciation of capital assets);
- (iii) interest and dividends (include all income from assets as set forth in item 7(b) below);
- (iv) the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts;
- (v) payments in lieu of earnings, such as unemployment and disability compensation, workmen's compensation and severance pay;

- (vi) the maximum amount of public assistance available to the above persons;
- (vii) periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the dwelling;
- (viii) all regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head of the household or spouse; and
- (ix) any earned income tax credit to the extent it exceeds income tax liability.

(b) The following income is excluded from the amount set forth above:

- (i) casual, sporadic or irregular gifts;
- (ii) amounts which are specifically for or in reimbursement of medical expenses;
- (iii) lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses;
- (iv) amounts of educational scholarships paid directly to a student or an educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment, but in either case only to the extent used for such purposes;
- (v) hazardous duty to a member of the household in the armed forces who is away from home and exposed to hostile fire;
- (vi) relocation payments under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- (vii) income from employment of children (including foster children) under the age of 18 years;
- (viii) foster child care payments;
- (ix) the value of coupon allotments under the Food Stamp Act of 1977;
- (x) payments to volunteers under the Domestic Volunteer Service Act of 1973;
- (xi) payments received under the Alaska Native Claims Settlement Act;
- (xii) income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes;
- (xiii) payments on allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program;
- (xiv) payments received from the Job Partnership Training Act;
- (xv) income derived from the disposition of funds of the Grand River Band of Ottawa Indians; and

(xvi) the first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims or from funds held in trust for an Indian tribe by the Secretary of Interior.

7. If any of the persons described in column 1 above (or any person whose income or contributions were included in item 6) has any savings, stocks, bonds, equity in real property or other form of capital investment (excluding interests in Indian trust lands), provide:

- (a) the total value of all such assets owned by all such persons: \$ \_\_\_\_\_, and
- (b) the amount of income expected to be derived from such assets in the 12-month period commencing this date: \$ \_\_\_\_\_

8. (a) Will all of the persons listed in column 1 above be or have they been full-time students during five calendar months of this calendar year at an educational institution (other than a correspondence school) with regular faculty and students?

Yes \_\_\_\_\_ No \_\_\_\_\_

(b) (Complete only if the answer to Question 8(a) is "Yes"). Is any such person (other than nonresident aliens) married and eligible to file a joint federal income tax return?

Yes \_\_\_\_\_ No \_\_\_\_\_

We acknowledge that all of the above information is relevant to the status under federal income tax law of the interest on bonds issued to finance construction of the apartment building for which application is being made. We consent to the disclosure of such information to the issuer of such bonds, the holders of such bonds, any trustee acting on their behalf and any authorized agent of the Treasury Department or Internal Revenue Service.

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

\_\_\_\_\_  
Head of Household

\_\_\_\_\_  
Spouse

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_

(NOTARY SEAL)

Notary Public in and for the State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

NOTE TO BORROWER: A vacant unit previously occupied by individuals or a family of low income, may be treated as occupied by individuals or a family of low income until reoccupied, other than for a period of 31 consecutive days or less, at which time the character of the unit shall be redetermined.

FOR COMPLETION BY BORROWER ONLY:

I. Calculation of eligible income:

- (A) Enter amount entered for entire household in 6 above: \$ \_\_\_\_\_
- (B) If the amount entered in 7(a) above is greater than \$5,000, enter:
- (i) the product of the amount entered in 7(a) above multiplied by the current passbook savings rate as determined by HUD: \$ \_\_\_\_\_
  - (ii) the amount entered in 7(b) above: \$ \_\_\_\_\_
  - (iii) line (i) minus line (ii) (if less than \$0, enter \$0): \$ \_\_\_\_\_
- (C) TOTAL ELIGIBLE INCOME (Line I(A) plus line I(B)(iii)): \$ \_\_\_\_\_

II. Qualification as individuals or a family of low income:

- (A) Is the amount entered in line I(c) less than 60% of Median Gross Income for the Area\*?

Yes \_\_\_\_\_ No \_\_\_\_\_

- (B) (i) If line II(A) is "No", then the household does not qualify as individuals or a family of low income; skip to item III.
- (ii) If line II(A) above is "Yes" and 8(a) above is "No", then the household qualifies as individuals or a family of low income; skip to item III.
- (iii) If line II(A) above is "Yes" and 8(b) above is "Yes", then the household qualifies as individuals or a family of low income; skip to item III.
- (iv) If neither (ii) nor (iii) is applicable, then the household does not qualify as individuals or a family of low income.

III. (Check one)

The household does not qualify as individuals or a family of low income. \_\_\_\_\_

The household qualifies as individuals or a family of low income. \_\_\_\_\_

- IV. Number of apartment unit assigned: \_\_\_\_\_  
(enter here and on page one)

\_\_\_\_\_  
Borrower

\* "Median Gross Income for the Area" means the median income for the area where the Project is located as determined by the Secretary of Housing and Urban Development under Section 8(f)(3) of the United States Housing Act of 1937, as amended, or if programs under Section 8(f) are terminated, median income determined under the method used by the Secretary prior to the termination.

OCCUPANCY CERTIFICATE

(To be filed with the Issuer along with a Verification of  
Income upon the rental of a unit to any low Income Tenant.)

Project: \_\_\_\_\_

The tenant identified in the attached Verification of Income has entered into a lease with respect to a unit  
in the above-described Project.

Such tenant is/is not (circle one) a Low Income Tenant.

The rental of a unit to such tenant will not result in a violation of any of the requirements of the Financing  
Agreement or the Regulatory Agreement to which the Borrower is a party.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Borrower

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

Exhibit C

[FORM OF CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE]

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

Witnesseth that on this \_\_\_ day of \_\_\_\_\_, 19\_\_\_, the undersigned, having borrowed certain funds from the \_\_\_\_\_ (the "Issuer") for the purpose of constructing a multifamily rental housing development (the "Project"), does hereby certify that during the preceding quarter (i) such Project was continually in compliance with the Regulatory Agreement executed in connection with such loan from the Issuer, (ii) \_\_\_% of the units in the Project were occupied by Low Income Tenants (minimum of 40%) and does hereby further certify that the representations set forth herein are true and correct to the best of the undersigned's knowledge and belief.

Set forth below are the names of Low Income Tenants who commenced or terminated occupancy during the preceding quarter.

<u>Commenced Occupancy</u>	<u>Terminated Occupancy</u>
1.	1.
2.	2.
3.	3.

The units occupied by Low Income Tenants are of similar size and quality to other units and are dispersed throughout the Project.

Attached is a separate sheet listing the number of each unit and indicating which units are occupied by Low Income Tenants, the size, the number of bedrooms of such units and the number of Low Income Tenants who commenced occupancy of units during the preceding quarter.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Borrower

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



# **ATTACHMENT**

## **HAWTHORNE VILLA HOUSEHOLD DEMOGRAPHICS**

# Household Demographics Report

Printed on: 2/27/12 12:07 pm

Community=Hawthorne Villa (252)

Effective Date = 2/27/2012

Funding Program = Tax Credit Federal

Unit	Ethnicity	Household	Adults >= 18 yr	Children <= 5 yr	Pre-Teens 6-12 yr	Teens 13-17 yr	Move-In Date	GROSS INCOME			DEDUCTIONS				
								Move-In \$	%AMI	Certified \$	%AMI	Change \$	%	Move-In \$	Certified \$
1-001	na	1	1				08/04/00	7,642							
1-002	na	1	1				06/19/06	7,582				(7,642)	(100)		
1-003	Caucasian	2	2				03/30/10	24,544	48 %	8,341	14 %	(7,582)	(100)		
1-004	Caucasian	1	1				08/01/11	24,544	29 %	24,544	48 %	(14,713)	(100)		
1-005	Caucasian	1	1				10/29/10	14,713		11,016	21 %	11,016			
1-006	Caucasian	1	1				03/12/10	20,400	35 %	20,400	35 %	(1,271)	(15)		
1-007	Caucasian	2	2				03/21/11	8,580		7,309	14 %				
1-008	Caucasian	1	1				08/01/08								
1-009	Caucasian	1	1				02/08/99								
1-010	Caucasian	1	1				01/28/11	11,472	22 %	11,472	22 %				
1-011	na	1	1				08/18/06	16,492				(16,492)	(100)		
1-012	na	1	1				07/01/08	16,492				(16,492)	(100)		
1-014	Caucasian	2	2				01/20/06	20,424	40 %	22,404	44 %	(20,424)	(100)		
1-015	Caucasian	1	1				08/09/10	12,360	24 %	22,069	43 %	10,044	81		
1-016	na	1	1				10/01/10	22,069	43 %						
1-017	Caucasian	1	1				08/25/11								
2-018	Caucasian	1	1				07/09/08								
2-019	Caucasian	1	1				09/13/11	14,560	28 %	14,560	28 %				
2-020	Caucasian	1	1				03/09/05	27,990	54 %	11,568	23 %	(27,990)	(100)		
2-021	Caucasian	1	1				10/22/10	28,034	55 %	5,700	11 %				
2-022	Caucasian	1	1				06/16/10	28,034		28,034	55 %	(12,936)	(100)		
2-023	Caucasian	1	1				05/09/11	12,936							
2-024	Caucasian	1	1				10/01/05								
2-025	na	2	2				09/10/07								
2-026	Caucasian	1	1				05/01/06	26,489	52 %	13,020	25 %				
2-027	Caucasian	1	1				01/09/12	21,843		26,489	52 %	(21,843)	(100)		
2-028	Black	2	2				01/07/06								
2-029	Caucasian	1	1				01/03/10								
2-030	Caucasian	2	2				12/17/07	18,609	32 %	26,743	45 %				
2-031	Caucasian	2	2				04/18/11			18,609	32 %				
2-032	Caucasian	1	1				05/28/10	15,500	26 %	13,863	27 %	(15,500)	(100)		
3-033	Asian	2	2				02/07/11	13,863	27 %	10,608	21 %				
3-034	Caucasian	1	1				07/22/11	10,608	21 %	31,582	61 %				
3-035	Caucasian	1	1				02/01/11	24,638	48 %	24,638	48 %				
3-036	Caucasian	1	1				06/28/03								
3-037	Hawaiian/Pacific Island	1	1				10/08/11								
3-038	Hispanic/Latino	1	1				02/01/09								
3-039	Caucasian	1	1				07/21/09	22,193		8,088	16 %	(22,193)	(100)		
3-040	na	1	1				09/28/00	19,176	37 %	19,176	37 %				
3-041	Caucasian	1	1				02/12/04								
3-042	Caucasian	1	1				08/19/11	12,468	24 %	12,468	24 %				
3-043	Caucasian	1	1				12/09/00								
3-044	Caucasian	1	1				10/13/00								
3-045	<VACANT>	2	2				03/01/08			28,756	49 %				

# Household Demographics Report

Printed on: 2/27/12 12:07 pm

Unit	Ethnicity	Total In Household	Adults >= 18 yr	Children <= 5 yr	Pre-Teens 6-12 yr	Teens 13-17 yr	Move-In Date	GROSS INCOME		DEDUCTIONS					
								Move-In \$	%AMI	Certified \$	%AMI	Change \$	%	Move-In \$	Certified \$
3-047	Other	1	1				12/06/07	21,840		13,860		(21,840)	(100)		
3-048	Caucasian	1	1				03/01/07								
4-049	Hispanic/Latino	6	4		1		02/21/05	28,995	49 %	28,995	49 %				
4-050	Other	2	2				10/01/11	9,396	16 %	9,396	16 %				
4-051	Caucasian	2	2				12/12/10								
4-052	Caucasian	1	1				12/06/11								
4-053	Caucasian	1	1				12/29/10	17,517	34 %			(17,517)	(100)		
4-054	Caucasian	1	1				06/15/11								
4-055	na	2	2	1			05/11/11	14,024	24 %	14,024	24 %				
6-056	Caucasian	2	2				10/04/11	20,448	35 %	20,448	35 %				
6-057	Caucasian	1	1				02/01/12			9,684	19 %				
6-058	Hawaiian/Pacifics land	1	1				09/03/11	23,920	47 %	23,920	47 %				
6-059	na	2	1	1			04/01/11	19,714	34 %	19,714	34 %	(17,016)	(100)		
6-060	na	1	1				12/28/07	17,016							
6-061	Caucasian	1	1				02/09/09								
6-062	na	1	1				07/01/05	7,644				(7,644)	(100)		
6-063	Caucasian	1	1				12/15/11	8,710	17 %	8,710	17 %				
6-064	Caucasian	1	1				03/04/08			7,994	15 %				
6-065	na	1	1				12/11/99	21,838				(21,838)	(100)		
5-066	Caucasian	1	1				06/23/06			7,968	16 %				
5-067	Caucasian	1	1				02/07/08								
5-068	na	4	2		2		06/04/05			26,000	35 %	(15,507)	(100)		
5-069	Other	2	2				07/01/09	15,507	26 %						
5-070	Caucasian	1	1				01/27/09								
7-071	Caucasian	1	1				02/16/11	10,704	21 %			(10,704)	(100)		
7-072	Other	1	1				07/13/07	28,140				(28,140)	(100)		
7-073	Caucasian	2	1	1			12/15/11	14,610	25 %	14,610	25 %	(5,652)	(100)		
7-074	Caucasian	1	1				11/10/96	5,652							
7-075	na	1	1				06/20/11	19,573	38 %	19,573	38 %				
7-076	Caucasian	1	1				08/20/11	23,140	45 %	23,140	45 %				
7-077	Caucasian	1	1				09/15/11	10,800	21 %	10,800	21 %				
7-078	Caucasian	1	1				04/29/09			8,088	16 %	8,088			
7-079	na	2	2				11/22/05	19,741				(19,741)	(100)		
7-080	AmerIndian/Alaskan	1	1				07/07/11	24,482	48 %	24,482	48 %				
7-081	Caucasian	1	1				08/17/06	7,236				(7,236)	(100)		
7-082	Black	1	1				09/20/11	14,908	29 %	14,908	29 %				
7-083	Caucasian	1	1				06/04/09			8,088	16 %				
7-084	<VACANT>	1	1									(16,070)	(100)		
7-085	na	1	1				07/13/04	16,070							
7-086	<VACANT>	1	1									(8,336)	(100)		
7-087	Caucasian	1	1				10/01/10	8,336	16 %						
7-088	Hispanic/Latino	1	1				02/14/11	21,000	41 %			(21,000)	(100)		
7-089	na	1	1				10/01/04	8,532				(8,532)	(100)		
7-090	Caucasian	1	1				08/19/10	16,824	33 %			(16,824)	(100)		
7-091	na	1	1				09/25/07	11,945				(11,945)	(100)		
7-092	<VACANT>	1	1									(9,401)	(100)		
7-093	na	1	1				09/26/08	9,401							

### Household Demographics Report

Printed on: 2/27/12 12:07 pm

Unit	Ethnicity	Total In Household	Adults >= 18 yr	Children <= 5 yr	Pre-Teens 6-12 yr	Teens 13-17 yr	Move-In Date	GROSS INCOME		Change \$	Change %	DEDUCTIONS	
								Move-In \$	%AMI			Certified \$	%AMI
7-094	Caucasian	1	1				02/04/08						
7-095	Asian	1	1				10/21/05	7,188		(7,188)	(100)		
7-096	Caucasian	1	1				01/24/08						
7-097	<VACANT>												
7-098	Caucasian	1	1				01/06/12	22,838	44 %	22,838	44 %		
7-099	Caucasian	1	1				01/15/10						
7-100	Caucasian	1					12/15/11						
8-101	Caucasian	1					11/17/09						
8-102	Black	1	1				08/27/10	11,352	22 %	(11,352)	(100)		
8-103	Black	1	1				02/11/08						
8-104	Caucasian	1	1				11/24/10	19,607	38 %	(19,607)	(100)		
8-105	Caucasian	1	1				11/01/10	21,363	42 %	(21,363)	(100)		
8-106	Caucasian	3	1		1		10/02/09						
8-107	Caucasian	1	1				05/27/10	19,723	38 %				
8-108	Asian	2	2				03/16/05	12,264	21 %				
8-109	Caucasian	1	1				06/15/07	12,348	24 %				
8-110	<VACANT>												
8-111	Caucasian	1	1				10/22/10	17,690	30 %	(17,690)	(100)		
8-112	Caucasian	1	1				03/20/09						
8-113	Caucasian	1	1				05/14/10	14,815	29 %				
8-114	Caucasian	2	2				07/03/11	27,848	47 %	13,360			
8-115	Caucasian	1	1				06/22/06	25,000	49 %				
8-116	Hispanic/Latino	3	3				01/01/08						
8-117	Caucasian	1	1				03/05/07	11,916	23 %				
8-118	Caucasian	1	1				04/17/09	7,812	15 %				
8-119	Caucasian	1	1				05/25/11	13,780	27 %				
8-7705							05/01/11						
Community Averages:		1	1	0	0	0		15,332	34 %	8,265	31 %	(6,793)	(89)
Total Units:		119											
Vacant Units:		6											
Occupied Units:		113											

**COMMUNITY SUMMARY:**

Income Layer	Move-In #	Income Avg	Certified #	Income Avg
<= 20%	3	16 %	12	15 %
> 20% And <= 30%	16	25 %	19	25 %
> 30% And <= 40%	10	36 %	8	36 %
> 40% And <= 50%	11	46 %	13	47 %
> 50% And <= 60%	3	54 %	2	54 %
> 60% And <= 80%			1	61 %
> 80%				

# **ATTACHMENT**

## **MOU FOR NON-PROFIT GENERAL PARTNERSHIP WITH PARTNERSHIP AGREEMENT AND LEASE TO PROPERTY**

**(PARTNERSHIP AGREEMENT AND LEASE TO BE ENTERED INTO FOLLOWING PRELIMINARY  
REVIEW AND APPROVAL OF TAX EXEMPTION STATUS)**

## MEMORANDUM OF UNDERSTANDING TO FORM GENERAL PARTNERSHIP

### In order To Provide Social Services and Low Income Housing At Hawthorne Villa Apartments

[~~FEBRUARY~~ 29, 2012]

#### PARTIES

Hawthorne Urban Development, LLC (“Hawthorne”)  
C/O Richard Krueger  
21001 Dairy Creek Rd  
North Plains, OR 97133

Accessible Living, Inc (“ALI”)  
3300 NW 185th St 186,  
Portland, OR 97229-3406

#### PURPOSE

The purpose of this Memorandum of Understanding (“MOU”) is to outline the expression of interest and binding intent to execute the proposed Partnership Agreement and for the partnership to then execute the proposed Lease, both of which are attached hereto, upon approval of the City of Tigard of the parties application for tax exempt status for the property known as Hawthorne Villa Apartments at 7705 SW Pfaffle Street, Tigard, Oregon, 97223 (“Hawthorne Villa Apartments”).

#### RECITALS

- A. ALI is a non-profit corporation who provides social services and support for low income residents.
- B. Hawthorne is an entity that owns Hawthorne Villa Apartments which provides residence to low income individuals at restricted and below market rent.
- C. The parties wish to enter into a mutually beneficial relationship that allows the continuation of Hawthorne’s ability to provide residences to low income individuals at restricted and below market rents; and, to allow low income individuals to receive social support services from ALI while residing at Hawthorne Villa Apartments.
- D. For the success of this intended desire held by both parties, it is necessary for them to maintain the tax exempt status per the City of Tigard Code, Chapter 3.50 et seq. (“Code”) Hawthorne and ALI wish to create a partnership who will lease the Hawthorne Villa Apartments form Hawthorne per Section **3.50.020(B)** of the Code to achieve their mutual goal to provide below market rent and social services to people of need.

## UNDERSTANDING

**Section 1. Creation of Partnership.** ALI and Hawthorne agree to create a partnership (“Partnership”) under the Oregon Revised Partnership Act (the “Act”) upon approval of tax exempt status of the property known as Hawthorne Villa Apartments at 7705 SW Pfaffle Street, Tigard, Oregon, 97223 under Code 3.50. It is the intent of the Partners that this Agreement shall create a general partnership subject to the terms, restrictions and limitations set forth in the attached proposed Partnership Agreement.

**Section 2. Consideration.** Consideration for this transaction, includes, but is not limited to:

1. Payment to ALI of:
  - a. Base Compensation of \$2,500/mos or such other amounts that may from time to time be determined by the written consent or agreement of all the Partners.
  - b. Enhanced Compensation at an hourly rate of \$30 for each hour that it spends in executing enhanced services.
  
2. Services performed by ALI as follows:
  - a. Basic Services set forth in the attached proposed Partnership Agreement, including but not limited to these examples:
    - (1) Housing Success: Assist residents to maintain their housing;
    - (2) Cooperate with the building manager to assist each resident in maintaining lease compliance and in obtaining and coordinating services;
    - (3) Follow-up on all ALI notices given to residents: Contact the affected resident’s case manager, if applicable; make referrals as appropriate; assist with neighbor relations; work closely with Hawthorne or its agents to coordinate supportive services;
    - (4) When necessary to evict resident, communicate and work closely with Hawthorne and its agents or staff for smooth transition of the resident from the building;
    - (5) Refer residents to appropriate agencies for benefits; make referrals to meet basic needs of food, clothing, personal items, medical care, and other assistance, as needed;
    - (6) Work with Hawthorne and its agents and local support agencies on eviction prevention strategies;
    - (7) Provide monthly newsletter to residents with the collaboration of Property Management;
    - (8) Meet monthly with Hawthorne and its agents and on-site staff; and
    - (9) Coordinate resident meetings as needed.
  
  - b. Enhanced Services set forth in the attached proposed Partnership Agreement, including but not limited to these examples.

- (1) Asset Development:
  - (A) Provide opportunities for residents to increase their economic stability.
  - (B) Provide residents with information regarding financial literacy classes.
- (2) Skill Development – ALI shall offer opportunities that help residents build skills and provide social opportunities, such as follows:
  - (A) Schedule and promote on-going classes and workshops such as “Cooking on a Budget”, exercise/movement classes, and/or other classes or activities as determined by resident interest.
  - (B) Monthly newsletter of building news and local activities.
  - (C) Provide computer instruction and open labs.
  - (D) Social gatherings for community building
- 3. Ownership interests in the partnership by ALI and Hawthorne per section 3.7 of the Partnership Agreement.
- 4. Execution of the attached Lease giving the Partnership rights to possess, use and maintain Hawthorne Villa Apartments for the benefit of low income housing residences.
- 5. Maintenance of Tax Exempt Status to allow continued services to low income residential tenants.
- 6. Initial Capital Contributions by Hawthorne in the amount of \$8,000.00; and,
- 7. Improvements planned by Hawthorne as follows:

<b>Hawthorne Interior Improvements</b>	Units
	118
<b>Budget</b>	
Interior Water Meter @ \$750 per units	\$ 88,500
Replace appliances	\$ 118,000
Interior painting @ \$600 per units	\$ 70,800
Replace interior carpet and vinyl @1200	\$ 141,600
Replace interior in exterior door \$1200 per unit	\$ 94,400
Contingency	<u>\$ 50,000</u>
<b>TOTAL</b>	<b>\$ 563,300</b>

**Section 3. Negotiation.** The principal aspects of the transaction have been negotiated and finalized and documented in the attached proposed Lease and Partnership Agreement.

**Section 4. Due Diligence.** ALI and Hawthorne both acknowledge they each have performed a due-diligence investigation of each other; and, believe each can perform as needed to provide shelter and social services to low income individuals.

**Section 5. Conditions to Execution of the Attached Partnership Agreement and Lease.** Execution of the agreements will be contingent on approval of tax exempt status per Code 3.50;

**Section 6. Closing Date.** The expected closing date will be on or about March 1, 2012, or, within three business days of approval of tax exempt status, which ever date is later.

**Section 7. Expenses.** Each party to the transaction will pay its own expenses and those of any professional advisers, including attorney fees.

**Section 8. Effect of This Letter.** This letter is an expression of interest only and does not constitute a binding legal obligation of the parties, and may not be relied on as the basis for a contract by estoppel or be the basis for a claim based on detrimental reliance or any other theory; however, the parties agree that they intend to execute the attached Partnership Agreement and Lease upon of approval of tax exempt status.

**Section 9. Termination.** This letter may not be terminated by either party unless tax exempt status is denied; or, July 1, 2012, whichever first occurs. Termination shall occur immediately upon delivery of a written notice to the other party of intent to terminate.

Dated 2/29/, 2012

Hawthorne Urban Development, LLC

By: SAR JIVANJEE  
Title: MANAGING MEMBER

Dated 2-29, 2012

Accessible Living, Inc.,  
By: Karen A. Udiss  
Title: Executive Director

## PARTNERSHIP AGREEMENT

### AGREEMENT OF PARTNERSHIP

This AGREEMENT OF PARTNERSHIP (this "Agreement"), dated as of \_\_\_\_\_, 2012, is among Hawthorne Urban Development, LLC, an Oregon limited liability company (hereinafter, "Hawthorne") and Accessible Living, Inc., an Oregon non-profit corporation (hereinafter, "ALI") (each individually, a "Partner," and collectively, the "Partners").

### AGREEMENT

The parties agree as follows:

#### SECTION 1. CREATION AND TERM OF PARTNERSHIP

**1.1 Creation of Partnership.** The Partners agree to create a partnership (the "Partnership") under the Oregon Revised Partnership Act (the "Act"). It is the intent of the Partners that this Agreement shall create a general partnership subject to the terms, restrictions and limitations set forth herein.

**1.2 Name.** The name of the Partnership is *Hawthorne Villa General Partnership*. Hawthorne shall be responsible for registering Hawthorne Villa General Partnership as an assumed business name with the Oregon Secretary of State within 60 days after this Agreement is fully executed by both Partners.

**1.3 Principal Office.** The principal office from which the Partnership conducts its business will be at 7705 SW Pfaffle Street, Tigard, Oregon, 97223. The business of the Partnership may also be conducted at such other places as may from time to time be determined by the Partners. The Partnership books and records will be kept at **21001 Dairy Creek Road, North Plains, Oregon 97133.**

**1.4 Purposes and Powers.** The Partnership is formed for the purpose of managing, renting, maintaining, improving, and otherwise enhancing the value of the real property owned by Hawthorne and located at **7705 SW Pfaffle Street, Tigard, Oregon 97223** ("Hawthorne Villa"), all the while maintaining Hawthorne's ability to receive tax credits or tax exemption from the City of Tigard or such other government entity through the use and management of said property. Without expanding the foregoing purpose, the Partners shall be empowered to do all things necessary for, incident to, or in furtherance of conducting such business.

**1.5 Indefinite Term of Partnership Subject to Election to Dissolve.** The term of the Partnership will commence as of the date of this Agreement and will continue until the Partners having more than 51% of the Ownership Interests of the Partnership, excluding any dissociated Partner, after October 31, 2012, gives 60 days' written notice to the Partnership and to

the other Partners of the election to dissolve the Partnership. The Partnership will dissolve 61 days after such notice is given and its affairs will be wound up, unless it has been dissolved earlier as provided in this Agreement.

**1.6 Title.** Title to Hawthorne Villa shall remain in the name of Hawthorne. Hawthorne shall lease Hawthorne Villa to the Partnership and the Partnership shall utilize its possessory interest in Hawthorne Villa to achieve the goals stated in Section 1.4 above.

## **SECTION 2. BOOKS AND RECORDS; ACCOUNTING**

### **2.1 Books and Records.**

**2.1.1 Maintenance of Books and Records.** The Partnership will maintain a separate books of account for the Partnership at **21001 Dairy Creek Road, North Plains, Oregon 97133**, which will show a true and accurate record of all costs and expenses incurred, all charges made, all credits made and received, and all income derived in connection with the conduct of the Partnership and the operation of the Partnership business. The books of account will be prepared in accordance with U.S. generally accepted accounting principles consistently applied and, to the extent inconsistent with those principles, in accordance with this Agreement.

**2.1.2 Access to Books and Records.** Any Partner or any agent or representative of a Partner, at the Partner's own expense and without notice to any other Partner, may examine, copy, and audit the books and records of the Partnership and make copies of and abstracts from the financial and operating books and records of account of the Partnership, and discuss the affairs, finances, and accounts of the Partnership with the independent accountants of the Partnership, all at such reasonable times and as often as a Partner or any agent or representative of a Partner may reasonably request. The rights granted to a Partner pursuant to this Section 2.1.2 are expressly subject to the Partner's compliance with the confidentiality procedures and guidelines of the Partnership as may be established from time to time.

**2.1.3 Reports.** Hawthorne will prepare or cause to be prepared financial reports of the Partnership and coordinate financial matters of the Partnership with the Partnership's accountants. Within 90 days after the end of each fiscal year and within 60 days after the end of each fiscal quarter, the Hawthorne will cause each Partner to be furnished with a copy of the balance sheet of the Partnership as of the last day of the applicable period, a statement of income or loss for the Partnership for that period, and a statement of the Partnership's cash flow for the period. Annual statements must also include a statement of the Partners' Capital Accounts (defined in Section 3.8) and changes therein for the fiscal year. Annual statements will be compiled by the Partnership's accountants.

**2.2 Method of Accounting.** The books of account of the Partnership will be kept on a cash basis.

**2.3 Accounting Year.** The books of account of the Partnership will be kept on a calendar year basis. The taxable year of the Partnership will be the calendar year.

**2.4 Income Tax Information.** The Partnership will furnish each Partner with information pertaining to partnership taxable income or loss, including but not limited to the informational tax returns of the Partnership and Schedule K-1, applicable to such Partner. Such information must show each Partner's distributive share of each class of income, gain, loss, deduction, or credit of the Partnership. Such information will be furnished to the Partners as soon as is practicable after the close of the Partnership's taxable year.

**2.5 Tax Matters Partner.** Hawthorne will be the tax-matters partner for the Partnership.

### SECTION 3. CAPITAL

**3.1 Initial Contribution.** The Partners will initially contribute cash to the capital of the Partnership in the respective amounts (each an "Initial Contribution") set opposite such Partner's name below:

Partner	Contribution
Hawthorne Urban Development	\$8,000.00
<u>ALI</u>	<u>\$ 80.00</u>
TOTAL	<u>\$8,080.00</u>

The Initial Contribution of each Partner will be due and payable in full 30 days after the date of this Agreement.

**3.2 Additional Contributions.** If Partners whose Ownership Interests (set forth in Section 3.7) equal or exceed 51% determine that additional funds are necessary to meet the needs of the Partnership, the Partners making such determination must so notify the other Partner(s) in writing. Any such notice must set forth (a) a statement of the aggregate additional capital required, (b) a reasonably detailed breakdown of the expenditures for which such funds will be used, and (c) a date by which the contribution is required to be made, which date may not be sooner than 15 days after the giving of such notice (the "Contribution Date"). If any such notice is given, the Partners must, on or before the Contribution Date, contribute to the Partnership such sums as are requested in such notice, in the ratio of their respective Ownership Interests.

**3.3 Failure to Make Contributions.** If any Partner (the "Defaulting Partner") fails to make a contribution required to be made by such Partner pursuant to Section 3.2 (a "Noncontributed Amount"), the other, nondefaulting Partner(s) will have the right and option at any time thereafter, but not the obligation, to advance to the Partnership the unpaid portion of such required contribution. Any such advance will bear interest at a rate equal to five percentage points above the annual rate of publicly announced prime rate of interest charged by Wells Fargo Bank in Tigard, Oregon, as of the Contribution Date, but not more than the maximum rate allowed by law. The advance must be secured by the partnership interest of the Defaulting Partner on whose behalf such advance is made. Repayment by the Defaulting Partner of the advance will be due not later than 90 days after it is made. Until such advance, plus interest, is

repaid, the Defaulting Partner will not have any right to participate in the management of the Partnership. If any such advance, plus interest, is not repaid when due, the party making such advance may either foreclose on the security interest granted on the partnership interest of the Defaulting Partner pursuant to the Oregon Uniform Commercial Code, or elect any other remedy at law or in equity. Each Partner agrees to execute and deliver all documents and instruments reasonably requested by the Partnership or the other Partners that may be required to evidence the obligation to repay the advance, to perfect the security interest granted pursuant to this section, and otherwise to effectuate and carry out the provisions of this section.

**3.4 Adjustment of Ownership Interests.** There shall be no adjustments to ownership interest based upon any Partner's failure to repay any debt incurred under Section 3.3 above.

**3.5 Interest.** Without limiting or waiving any interest incurred or accrued pursuant to a debt created under Section 3.3 above, no interest will be paid on the Initial Contributions or on any subsequent contributions to capital of the Partnership.

**3.6 Return of Contributions; No Right to Withdraw Capital.** Each Partner agrees to look solely to the assets of the Partnership for the return of such Partner's capital contributions and, if the assets of the Partnership are insufficient to return such capital contributions, such Partner will have no recourse against any other Partner for that purpose. Except as specifically provided in this Agreement, a Partner may not withdraw capital from the Partnership. To the extent that any amount that any Partner is entitled to receive from the Partnership pursuant to any provision of this Agreement constitutes a return of capital, each Partner consents to the withdrawal of such capital. A Partner will not have the right to demand and receive property other than cash in return for such Partner's capital contribution.

**3.7 Ownership Interest.** The "Ownership Interest" of each Partner in the Partnership will be as follows:

	Name	Ownership Percentage
	Hawthorne	99.9%
	ALI	0.01%

**3.8 Capital Accounts.** The Partnership will maintain a separate capital account (a "Capital Account") for each Partner in accordance with the requirements of Treasury Regulation §1.704-1. Each Partner's Capital Account will be equal to:

- (a) The amount of cash and the fair market value of the property contributed to the capital of the Partnership by such Partner in accordance with Section 3; plus
- (b) Such Partner's allocable share of any profits of the Partnership pursuant to Section 4; minus
- (c) Such Partner's allocable share of any losses of the Partnership pursuant to Section 4; minus
- (d) The amount of cash and the fair market value of property distributed to such Partner.

On a sale, exchange, transfer, assignment, gift, or other disposition of an interest in the Partnership, the Capital Account associated with the interest so transferred, whether such Capital Account has a positive or a negative balance, will be transferred to the transferee of such interest.

#### **SECTION 4. ALLOCATION OF PROFITS AND LOSSES**

**4.1 Determination.** The net profit or net loss of the Partnership for each fiscal year will be determined as of the end of such fiscal year by the Partnership's certified public accountants in accordance with those principles of the cash method of accounting that are employed in the preparation of the federal income tax informational return filed by the Partnership for that fiscal year, but without any special provisions for tax-exempt or partially tax-exempt income of the Partnership.

**4.2 Allocation.** The net profit or net loss of the Partnership for each fiscal year will be allocated among the Partners in direct proportion to their Ownership Interests.

**4.3 Transfer of Partnership Interest.** If a Partner transfers all or part of such Partner's interest in the Partnership, or if Ownership Interests of the Partners are adjusted pursuant to Section 3.4, the net profit or net loss of the Partnership allocable to the interest so transferred or adjusted will be prorated between the transferor and the transferee for the fiscal year in which such transfer or adjustment occurs in accordance with the number of days during such fiscal year that each owned such interest.

#### **SECTION 5. DISTRIBUTIONS**

The Partners must, not less often than quarterly, review the financial operations and cash position of the Partnership and may distribute any cash (including the proceeds of any refinancing of indebtedness of the Partnership) that is in excess of the amount that Partners having more than 51% of the Ownership Interests determine is reasonably needed by the Partnership. Any distribution pursuant to this Section 5 will be allocated among the Partners in the ratio of their Ownership Interests on the date of such distribution.

#### **SECTION 6. ADMINISTRATION OF PARTNERSHIP BUSINESS**

**6.1 Management.** Except for powers vested exclusively in the Partners as provided in Section 6.2 and subject to the consent requirements in Section 6.3, all Partners will have the right to participate in the management and conduct of the business of the Partnership. Except as otherwise provided in this Agreement, any matters related to the conduct of the business of the Partnership or the administration of the internal affairs of the Partnership will be decided by the affirmative vote or consent of Partners having combined Ownership Interests equal to or exceeding 51% in interest of the Ownership Interests.

**6.2 Management Duties.** Except as provided for in this Agreement, each Partner shall have sole and exclusive management rights and responsibilities as outlined in this Section 6.2. On the affirmative vote or consent of Partners having more than 51% of the Ownership Interests, each right and responsibility outlined herein may be removed without cause, which removal will terminate such Partner's rights and responsibilities under this section, but will not

affect the Ownership Interest or other rights of said Partner under this Agreement. On the death, incapacity, resignation, or removal of any Partner, a successor Partner will be selected by Partners having more than 51% of the Ownership Interests. The following Partners will have the following powers and authority to act on behalf of the Partnership:

### **6.2.1 Hawthorne's Management:**

Hawthorne (either by its self or through its agents) shall exclusively manage the following:

- (a) General Partnership obligations:
  - (1) All contracts with property managers, general contractors, subcontractors and other professionals related to Hawthorne Villa regardless of the expenditures involved in said contract;
  - (2) Any capital expenditures or series of related capital expenditures, when the total of such expenditures are in excess of \$5,000.
  - (3) Entering into any contract on behalf of the Partnership if the contract involves the payment of more than \$ 5,000.00 by or to the Partnership; or the contract may not be terminated by the Company upon 90 or fewer days' notice for any or no reason without any additional liability arising out of or resulting from the termination;
  - (4) The conversion of the Partnership into any other type of entity;
  - (5) The incurring of any indebtedness by the Partnership other than in the ordinary course of the business of the Partnership, or as expressly provided in this Agreement;
  - (6) Procuring all insurance necessary for the real estate and operations of Hawthorne Villa;
  
- (b) The following Property Management obligations:
  - (1) Maintain a waiting list of applicants and fill vacancies from the waiting list.
  - (2) Coordinate move-ins and move-outs with resident. Notify ALI or its agents and staff of move-ins and move-outs.
  - (3) Maintain the Hawthorne Villa building in general good repair and keep common areas and exteriors clean and free of hazards.
  - (4) Provide and maintain essential services to residents per Oregon Residential Landlord Tenant Act.
  - (5) Respond in a timely manner to requests for repairs by residents.
  - (6) Cooperate with ALI or its agents in efforts to assist clients in maintaining lease compliance and in obtaining and coordinating services. Notify ALI of potential lease violations for preventive action.
  - (7) Participate in monthly Property Management-Resident Services meetings, and assist in planning such meetings as requested.
  - (8) When necessary to evict resident, communicate and work closely with ALI or its agents for a smooth transition of resident from building.

## 6.2.2 ALI's Management:

ALI will hire resident services staff who will be assigned to 20 hours per week, providing or coordinating resident services at Hawthorne Villa. Provider's Service staff will be on-site a minimum of two (2) hours per week and available by phone other hours. ALI's service provider will also meet with property management staff at least weekly by phone and monthly on-site at Hawthorne Villa. ALI will additionally be responsible for conducting a needs assessment annually at the property to best match services to the needs of the resident population. ALI's resident services coordinator will provide the basic services outlined below and, subject to Hawthorne's prior written approval, the Partnership shall pay additional compensation to ALI for such enhanced services in accordance with Section 6.5 (b). ALI will provide the following services:

- (a) Basic Services - Basic Services described below will be developed by ALI during the months of February through April, 2012, inclusive, with full implementation of the developed services to begin no later than June 1, 2012:
  - (1) Housing Success: Assist residents to maintain their housing;
  - (2) Cooperate with the building manager to assist each resident in maintaining lease compliance and in obtaining and coordinating services;
  - (3) Follow-up on all ALI notices given to residents: Contact the affected resident's case manager, if applicable; make referrals as appropriate; assist with neighbor relations; work closely with Hawthorne or its agents to coordinate supportive services;
  - (4) When necessary to evict resident, communicate and work closely with Hawthorne and its agents or staff for smooth transition of the resident from the building;
  - (5) Refer residents to appropriate agencies for benefits; make referrals to meet basic needs of food, clothing, personal items, medical care, and other assistance, as needed;
  - (6) Work with Hawthorne and its agents and local support agencies on eviction prevention strategies;
  - (7) Provide monthly newsletter to residents with the collaboration of Property Management;
  - (8) Meet monthly with Hawthorne and its agents and on-site staff; and
  - (9) Coordinate resident meetings as needed.
- (b) Enhanced Services - These enhanced services are available to all Hawthorne Villa residents, subject to the prior written approval by Hawthorne. ALI shall be paid additional compensation for such services subject to Section 6.5 (b):

### (1) Asset Development:

- (A) Provide opportunities for residents to increase their economic stability.
- (B) Provide residents with information regarding financial literacy classes.

- (2) Skill Development – ALI shall offer opportunities that help residents build skills and provide social opportunities, such as follows:
- (A) Schedule and promote on-going classes and workshops such as “Cooking on a Budget”, exercise/movement classes, and/or other classes or activities as determined by resident interest.
  - (B) Monthly newsletter of building news and local activities.
  - (C) Provide computer instruction and open labs.
  - (D) Social gatherings for community building.

### **6.3 Restrictions.**

**6.3.1 Consent of Majority of Partners for Certain Acts.** No Partner may engage in any of the following acts without the written consent of Partners (who may include the Partner engaging in such act or acts) having Ownership Interests equal to or exceeding 51%:

- (a) Endorse any note, or act as an accommodation party, or otherwise become surety for any person, on behalf of the Partnership.
- (b) Borrow or lend money on behalf of the Partnership, or make, deliver, or accept any commercial paper, or execute any mortgage, security agreement, bond, or lease, or purchase or contract to purchase, or sell or contract to sell, any property for or of the Partnership, except that any Partner may, without the consent of any other Partner, purchase for the Partnership such items of equipment, materials, and supplies as are used or useful in the ordinary course of the Partnership business.

**6.3.2 Unanimous Consent of Partners for Certain Acts.** No Partner may engage in any of the following acts without the written consent of all Partners:

- (a) Enter into any agreement as a result of which any person may become interested with such Partner in the Partnership.
- (b) Admit a person as a Partner of the Partnership.
- (c) Do any act that is detrimental to the best interests of the Partnership (except as permitted by Section 6.4) or that would make it impossible to carry on the ordinary business of the Partnership.
- (d) Do any act that negatively affects the tax exempt status of Hawthorne Villa.

**6.4 Time Devoted; Other Activities.** Each Partner will be required to devote only such time to the affairs of the Partnership as the Partner determines in its sole discretion may be necessary to manage and operate the Partnership, and each such Partner will be free to serve any other person or enterprise in any capacity that the Partner may deem appropriate in the Partner’s discretion.

**6.4.1 Waiver of Claims to Interests of Other Partners.** Each Partner acknowledges that the other Partners and their Affiliates are free to engage or invest in the following activities or businesses, any one or more of which may be related to the activities or businesses of the Partnership:

Own, lease, manage or otherwise participate in the operations of real estate or personal property other than Hawthorne Villa.

Any Partner who engages in or invests in any business or activity described above may do so without having or incurring any obligation to offer any interest in such business or activity to the Partnership or any Partner, and neither this Agreement nor any activity undertaken pursuant to this Agreement will prevent any Partner from engaging in or investing in those businesses or activities, or require any Partner to permit the Partnership or any Partner to participate in them. As a material part of the consideration for the execution of this Agreement by each Partner, each Partner hereby waives, relinquishes, and renounces any such right or claim of participation or interest in any such business or activity. The Partners acknowledge that certain conflicts of interest may arise and hereby agree that the specific rights with respect to the Partners' and their Affiliates' freedom of action provided in this Section 6.4.1 are sufficient to protect their respective interests in relation to the possible conflicts and are to be in lieu of all other possible limitations that might otherwise be implied in fact, at law or in equity. A Partner will not be obligated to disclose, present, or offer to the Partnership or the other Partners any investment or business opportunity of which the Partner becomes aware, it being understood that the business of the Partnership is limited to the purposes set forth in Section 1.4.

**6.4.2 Transactions with Partners and Affiliates.** To the extent permitted by applicable law and except as otherwise provided in this Agreement, Hawthorne is authorized to purchase property from, to sell property to, or otherwise to deal with any Partner, acting on its own behalf, or any Affiliate of any Partner, as long as any such purchase, sale, or other transaction is in the ordinary course of the Partnership's business and is made on terms and conditions that are no less favorable to the Partnership than if the sale, purchase, or other transaction had been entered into with an independent third party. The Partners agree that the Lease and Property Management contract satisfy this independent third-party standard and the Partners hereby authorize the Hawthorne to enter into the agreements referenced in this Section 6.4.2.

**6.4.3 Loans to and from Partners and Affiliates.** Subject to obtaining the written consent of the Partners as provided in Section 6.3, each Partner and any Affiliate of a Partner may also lend money to, borrow money from, act as a surety, guarantor, or endorser for, guarantee or assume one or more specific obligations of, provide collateral for, and transact other business with the Partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a Partner; however, if a Partner acts as surety, guarantor, or endorser for a Partnership obligation, that act must be at no cost to the Partnership.

## **6.5 Salaries to Certain Partners.**

- (a) Base Salary - ALI will be entitled to a monthly base salary of \$2,500 or such other amounts that may from time to time be determined by the written consent or agreement of all the Partners. This salary will be treated as Partnership expenses in determining its profits and losses.

(b) **Enhanced Salary** – So long as ALI has received prior written consent from Hawthorne to provide services listed in 6.2.2(b) above, then ALI shall be paid by the Partnership an hourly rate of \$30 for each hour that it spends in executing such services. This enhanced salary shall be paid by the Partnership on or about the last day of the month in which the enhanced service was provided. As a condition to receiving such enhanced salary payment, prior to the last day of the month in which the enhanced service was provided, ALI shall submit to the Partnership an itemized list of what enhanced services were provided and an exact amount of time allotted for such enhanced service. This enhanced salary will be treated as Partnership expenses in determining its profits and losses.

**6.6 Expense Account.** Each Partner will be entitled to reimbursement monthly, on the submission of an itemized account, for such items as have been expended for the benefit of the business from such Partner's personal assets.

**6.7 Operating Fund.** The Partnership will maintain accounts at such banks and other financial institutions as determined by the Partners. All Partnership funds must be deposited in the Partnership's name and will be subject to withdrawal only on the signatures of both Hawthorne and ALI, except that a separate account ("Operating Fund") may be maintained with a balance never to exceed \$30,000. The amounts in that separate account will be subject to withdrawal on the signature of ALI alone. The Partners agree that if the balance of the Operating Fund ever drops below \$8,000, then ALI shall notify Hawthorne as such, and within 10 business days after receipt of such notice, ALI and Hawthorne shall both sign whatever instruments are necessary to transfer funds from one of the Partnership's other accounts to bring the balance of the Operating Fund up to \$30,000.

**6.8 Indemnification.** Each Partner will indemnify and hold harmless the Partnership and each of the other Partners from any and all expense and liability resulting from or arising out of any negligence or misconduct on his or her part to the extent that the Partnership does not have insurance coverage for the expense or liability or the amount of the expense or liability exceeds the Partnership's insurance coverage.

**6.9 Advisers.** The Partnership may select and engage the services of such advisers, accountants, lawyers, agents, and brokers as may be necessary or advisable in connection with the accomplishment of the Partnership purposes described in Section 1.4.

## **SECTION 7. TRANSFER OF PARTNERSHIP INTERESTS**

**7.1 Restriction on Transfer.** Except as expressly permitted under this Section 7 or any other provision of this Agreement, no Partner may sell, exchange, assign, pledge, give, or otherwise transfer or encumber in any manner or by any means whatsoever, whether to or in favor of another Partner or one who is not a Partner, and whether by operation of law or otherwise, all or any part of such Partner's interest in this Partnership, without obtaining the prior written consent of all other Partners.

**7.2 Right of First Refusal.** A Partner may, without the prior written consent of the other Partners, sell his or her entire interest (but may not sell a part of his or her interest) in the Partnership if he or she fully complies with this Section 7.2. Such Partner (the "Selling Partner") must give written notice to all other Partners (the "Nonselling Partners") that he or she has received a bona fide offer of purchase, in writing, of his or her entire interest in the Partnership (the "Offer"). Such notice must state with specificity the name and address of the person(s) desiring to purchase the Partnership interest, together with the price and terms of payment. A copy of the Offer must accompany the notice. Such notice also must contain the offer of the Selling Partner to sell his or her entire interest in the Partnership to the Nonselling Partners in the same manner, price, and terms as provided in the Offer. The notice must further contain a representation and warranty that the party making the Offer can fully perform all of the obligations of the Selling Partner under this Agreement, and in the case of ALI, that the party making the offer, if accepted as a Partner would not jeopardize the tax exempt status of the property managed by the Partnership and owned by Hawthorne. For a period of 60 days after the giving of such notice by the Selling Partner, the Nonselling Partners will have the option to accept the offer of the Selling Partner and to purchase the entire Partnership interest of the Selling Partner. Such option will be exercisable by the giving of written notice of acceptance, signed by the Nonselling Partners, to the Selling Partner within such 60-day period.

**7.3 Sale Pursuant to Lapse of Right of Refusal.** If the Nonselling Partners fail to exercise the option granted under and in accordance with Section 7.2, the Selling Partner will be free, for a period of 61 days after giving the notice described in Section 7.2, to transfer and assign his or her entire Partnership interest to the person(s) named in the third-party, bona fide offer of purchase, at a price and on the terms and conditions no less favorable to the Selling Partner than those set forth in the Offer. If the Partnership interest is not transferred and assigned as provided in this Section 7.3, it will remain subject to all the terms, conditions, and restrictions set forth in Section 7.

**7.4 Rights of Assignee.** In accordance with ORS 67.200, no person to whom a Partnership interest is transferred or assigned (other than as expressly permitted under Section 7 or another provision of this Agreement) may be a Partner or otherwise entitled, during the continuance of the Partnership, to participate in the management or administration of the business or internal affairs of the Partnership, to require any information or account of Partnership transactions, or to inspect the Partnership books and records. The assignee will merely be entitled to receive, in accordance with the terms of the assignment or other transfer, the profits, losses, and distributions to which the assigning or transferring Partner would otherwise be entitled.

**7.5 Liability of Selling Partner.** If any Partners' Partnership Interest is transferred pursuant to Section 7.2 above, and after such transfer, the Partnership or any Partner incurs economic losses due to a misrepresentation or breach of the warranty contained in the notice required under Section 7.2 above, then the Selling Partner shall be liable in damages to both the Partnership and each remaining Partner for such economics losses incurred by such party due to said breach.

## **SECTION 8. DISSOCIATION OF A PARTNER; ACTION FOR PARTITION; BREACHES**

**8.1 Waiver of Partition.** No Partner may, either directly or indirectly, take any action to require partition or to cause the sale of any asset or property of the Partnership and, notwithstanding any provisions of applicable law to the contrary, each Partner (and each Partner's legal representatives, successors, or assigns) hereby irrevocably waives any and all rights it may have to maintain any action for partition or to compel any sale with respect to a Partner's interest in the Partnership, or with respect to any asset or property of the Partnership, except as expressly provided in this Agreement.

**8.2 Covenant Not to Dissociate or Dissolve.** Subject to ORS 67.015, each Partner hereby covenants and agrees that the Partners have entered into this Agreement based on their mutual expectation that all Partners will continue as Partners and carry out the duties and obligations undertaken by them under this Agreement and that, except as otherwise expressly required or permitted hereby, each Partner hereby covenants and agrees not to (a) cause or permit itself to be dissolved, if the Partner is an entity or association, (b) dissociate or attempt to dissociate from the Partnership, (c) exercise any power under the Act to dissolve the Partnership, (d) transfer all or any portion of its Partnership interest, except as otherwise expressly permitted by this Agreement, (e) petition for judicial dissolution of the Partnership, or (f) demand a return of its contributions or profits (or a bond or other security for the return of such contributions or profits) without the unanimous written consent of the Partners.

**8.3 Death or Permanent Incapacitation.** Intentionally Deleted.

**8.4 Consequences of Violation of Covenants.** Notwithstanding anything to the contrary in the Act, if a Partner (a "Breaching Partner") (a) attempts to cause a partition in breach of Section 8.1, (b) attempts to dissociate from the Partnership, dissolve the Partnership, or take any action in breach of Section 8.2, (c) becomes a debtor in bankruptcy, executes an assignment for the benefit of creditors, or seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Partner of all or substantially all of the Partner's property, (d) fails, within 60 days after appointment, to have vacated the appointment of a trustee, receiver, or liquidator of the Partner or all or substantially all of the Partner's property, or (e) is expelled as a Partner, then in any such event the Partnership will continue, and the Breaching Partner will be subject to this Section 8.4. In that event, the following will occur:

- (a) The Breaching Partner will immediately cease to be a Partner and will have no further power to act for or to bind the Partnership;
- (b) The other Partners will continue to have the right to possess (as Partners) the Partnership's property and goodwill and to conduct its business and affairs;
- (c) The Breaching Partner will be liable in damages, without the requirement of a prior accounting, to the Partnership for all costs and liabilities that the Partnership or any Partner may incur as a result of such breach;
- (d) The Partnership will have no obligation to pay to the Breaching Partner any contributions, capital, or profits, but may, by notice to the Breaching Partner within 30 days after the date of dissociation, elect to make Breach Payments (as defined in Section 8.5) to the Breaching Partner in complete satisfaction of the Breaching Partner's interest in the Partnership;

(e) If the Partnership does not elect to make Breach Payments pursuant to Section 8.5, the Partnership will treat the Breaching Partner as if the Breaching Partner were an unadmitted assignee of the interest of the Breaching Partner and will make distributions to the Breaching Partner of only those amounts otherwise payable with respect to such interest hereunder;

(f) The Partnership may apply and offset any distributions otherwise payable with respect to such interest (including Breach Payments) to satisfy any claims it may have against the Breaching Partner;

(g) The Breaching Partner will have no right to inspect the Partnership's books or records or to obtain other information concerning the Partnership's operations for any period after the date of breach;

(h) The Breaching Partner will continue to be liable to the Partnership for any unpaid capital contributions required under this Agreement before the date of dissociation with respect to such interest and, to the fullest extent permitted by the Act, will continue to be jointly and severally liable with the other Partners for any debts and liabilities (whether actual or contingent, known or unknown) of the Partnership;

(i) Notwithstanding anything to the contrary in this Section 8.4, unless the Partnership has elected to make Breach Payments to the Breaching Partner in satisfaction of such Partner's interest, the Partnership may, on the Breaching Partner's behalf, offer and sell (on any terms that are not unconscionable) the interest of the Breaching Partner to any other Partner, person, or entity who agrees to become a Partner with respect to such interest and to perform the duties and obligations imposed by this Agreement on the Breaching Partner; and

(j) If the Partnership has not elected to make Breach Payments to the Breaching Partner in satisfaction of such Partner's interest and has not effected a sale of the Partner's interest as provided in Section 8.4(i) above, the rights and obligations of the Partnership and the Breaching Partner will not be governed by, and the Partners hereby waive the application of, the provisions of ORS 67.250.

**8.5 Breach Payments.** For purposes of this Section 8, Breach Payments will be made in four installments, each equal to one-fourth of the Breach Amount, payable on the next four consecutive anniversaries of the breach by the Breaching Partner, with simple interest accrued from the date of the breach through the date that each such installment is paid on the unpaid balance of the Breach Amount at 9% per annum. The "Breach Amount" will be an amount equal to the greater of \$1 or the Net Equity of the Breaching Partner's interest on the date of such breach, computed in accordance with Section 3.7. The Partnership may, at its sole election, prepay all or any portion of the Breach Payments or interest accrued thereon at any time without premium or penalty.

**8.6 No Security.** Notwithstanding any provision of the Act, the Partnership will not be obligated to secure the value of the Breaching Partner's interest by bond or otherwise.

## **SECTION 9. DISSOLUTION OF PARTNERSHIP**

**9.1 Liquidating Events.** The Partnership will dissolve and commence winding up and liquidating on the first to occur of any of the following events (a "Liquidating Event"):

(a) Hawthorne Villa loses its tax exempt status;

- (b) The sale of all or substantially all of Hawthorne Villa;
- (c) The vote by Partners holding 51% or more of the Ownership Interests to dissolve, wind up, and liquidate the Partnership; or
- (d) Any other event described in subsection (4), (5), (6), or (7) of ORS 67.290 requiring that the Partnership be liquidated and wound up.

The Partners hereby agree that, notwithstanding any provision of the Act, the Partnership will not dissolve before the occurrence of a Liquidating Event. If a court of competent jurisdiction determines that the Partnership has dissolved before the occurrence of a Liquidating Event, the Partners hereby agree to continue the business of the Partnership without a winding up or liquidation.

**9.2 Notice of Dissolution.** If a Liquidating Event occurs or an event occurs that would, but for the provisions of Section 9.1, result in a dissolution of the Partnership, then Hawthorne must, within 30 days thereafter, (a) provide written notice thereof to each of the Partners and to all other parties with whom the Partnership regularly conducts business (as determined in the discretion of Hawthorne) and (b) publish notice of the dissolution in a newspaper of general circulation in each place where the Partnership conducts business (as determined in the discretion of the Hawthorne).

## **SECTION 10. WINDING UP**

**10.1 Rights and Duties.** On the occurrence of a Liquidating Event as described in Section 9.1, the Partnership will continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and Partners, and no Partner may take any action that is inconsistent with, or not necessary to or appropriate for, winding up the Partnership's business and affairs. To the extent not inconsistent with the foregoing, all covenants contained in this Agreement and obligations provided for in this Agreement will continue to be fully binding on the Partners until the Partnership's assets have been distributed pursuant to this Section 10.1 and the Partnership has terminated. Hawthorne will be responsible for overseeing the winding up and liquidation of the Partnership, will take full account of the Partnership's liabilities and assets, will cause the Partnership's assets to be liquidated as promptly as is consistent with obtaining the fair market value thereof, and will cause the proceeds therefrom, to the extent sufficient therefor, to be applied and distributed in the following order:

- (a) First, to creditors other than Partners in satisfaction of the Partnership's debts and liabilities to such creditors other than liabilities for which reasonable provision for payment has been made;
- (b) Second, to the Partners in satisfaction of all of the Partnership's debts and liabilities to Partners other than liabilities for which reasonable provision for payment has been made; and
- (c) The balance, if any, to the Partners in accordance with their positive Capital Accounts after giving effect to all contributions, distributions, and allocations for all periods.

**10.2 No Additional Compensation.** No Partner will receive any additional compensation for any services performed pursuant to this Section 10.

**10.3 Waiver of Priority and Subordination.** Each Partner understands and agrees that by accepting the provisions of this Section 10 setting forth the priority of the distribution of the assets of the Partnership to be made on its liquidation, the Partner expressly waives any right that it, as a creditor of the Partnership, might otherwise have under the Act to receive distributions of assets *pari passu* with the other creditors of the Partnership in connection with a distribution of assets of the Partnership in satisfaction of any liability of the Partnership, and hereby subordinates to the debts and liabilities to those creditors any such right.

**10.4 Restoration of Deficit Capital Accounts.** If any Partner's Capital Account has a deficit balance (after giving effect to all contributions, distributions, and allocations for all taxable years, including the taxable year during which the Liquidating Event occurs), such Partner must contribute to the capital of the Partnership the amount necessary to restore the deficit balance to zero.

**10.5 Liquidating Trust; Reserve.** In the discretion of Hawthorne, a pro rata portion of the distributions pursuant to Section 10.1 that would otherwise be made to the Partners may be:

(a) Distributed to a trust established for the benefit of the Partners solely for the purposes of liquidating Partnership assets, collecting amounts owed to the Partnership, and paying any contingent or unforeseen liabilities or obligations of the Partnership or of the Partners arising out of or in connection with the Partnership. The assets of any such trust may be distributed to the Partners from time to time, in the reasonable discretion of Hawthorne, in the same proportions as the amount distributed to such trust by the Partnership would otherwise have been distributed to the Partners pursuant to Section 10.1; or

(b) Withheld to provide a reasonable reserve for Partnership liabilities (contingent or otherwise) and to allow for the collection of the unrealized portion of any installment obligations owed to the Partnership; any such amounts withheld must be distributed to the Partners as soon as practicable.

The portion of the distributions that would otherwise have been made to each of the Partners that is instead distributed to a trust pursuant to Section 10.5(a) or withheld to provide a reserve pursuant to Section 10.5(b) will be determined in the same manner as the expense or deduction would have been allocated if the Partnership had realized an expense equal to such amounts immediately before distributions being made pursuant to Section 10.1.

## **SECTION 11. ADMISSION OF ADDITIONAL PARTNERS**

Without limiting any other provision of this Agreement, no person or entity may be admitted as a Partner without first having received the prior written consent of all the Partners and executing a counterpart copy of this Agreement, as amended, pursuant to which such new Partner agrees to be bound by the provisions of this Agreement, as amended.

## **SECTION 12. MISCELLANEOUS**

**12.1 Amendment of Partnership Agreement.** This Agreement may be amended only by the written agreement of all the Partners.

**12.2 No Assignment.** No party may assign or delegate any of the party's rights or obligations under this Agreement to any person unless the assignment or delegation is expressly permitted by this Agreement.

**12.3 Binding Effect.** This Agreement will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit.

**12.4 Notices.** All notices or other communications required or permitted by this Agreement:

- (a) must be in writing;
- (b) must be delivered to the parties at the addresses set forth below, or any other address that a party may designate by notice to the other party; and
- (c) are considered delivered:
  - (1) upon actual receipt if delivered personally, by fax, or by a nationally recognized overnight delivery service; or
  - (2) at the end of the third business day after the date of deposit, if deposited in the United States mail, postage pre-paid, certified, return receipt requested.
- (d) Notices to Hawthorne:

Hawthorne Urban Development LLC  
Jivanjee Circosta Architects LLP  
PO BOX 230579  
Tigard OR 97281

- (e) Notices to ALI:

3300 NW 185<sup>th</sup> ST., #186  
Portland, OR 97229-3406

**12.5 Waiver.** No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A party's waiver of a breach of a provision of this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision.

**12.6 Severability.** If a provision of this Agreement is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Agreement will not be impaired.

**12.7 Further Assurances.** The parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Agreement.

**12.8 No Third-Party Beneficiaries.** The parties do not intend to confer any right or remedy on any third party.

**12.9 Termination.** The termination of this Agreement, regardless of how it occurs, will not relieve a party of obligations that have accrued before the termination.

**12.10 Survival.** All provisions of this Agreement that would reasonably be expected to survive the termination of this Agreement will do so.

**12.11 Attachments.** Any exhibits, schedules, and other attachments referenced in this Agreement are part of this Agreement.

**12.12 Remedies.** The parties will have all remedies available to them at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

**12.13 Governing Law.** This Agreement is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement.

**12.14 Attorney's Fees.** If any arbitration, action, suit, or proceeding is instituted to interpret, enforce, or rescind this Agreement, or otherwise in connection with the subject matter of this Agreement, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind, including but not limited to the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, action, suit, or proceeding, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

**12.15 Entire Agreement.** Except for the Articles of Organization, this Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement.

**12.16 Signatures.** This Agreement may be signed in counterparts. A fax transmission of a signature page will be considered an original signature page. At the request of a party, each other party will confirm a fax-transmitted signature page by delivering an original signature page to the requesting party.

**12.17 Arbitration.** Any dispute between the parties that is to be resolved by arbitration as provided in this Section 17.8 must be settled and decided by arbitration conducted in accordance with the rule of the Arbitration Service of Portland, Inc., as then in effect (the "Arbitration Rules"), except as provided below. Any such arbitration must be held and conducted in the city or county in which the Premises is located, before one (1) arbitrator who will be selected by mutual agreement of the parties; if agreement is not reached on the selection of such arbitrator within fifteen (15) days of receipt of a written demand for arbitration as set forth below, then an arbitrator is to be appointed by the presiding judge of the Circuit Court of the County in Oregon in which the Premises is located.

The parties enter into this Agreement as of the date first written above.

**[Signature Pages to Follow]**

Dated \_\_\_\_\_, 2012

Hawthorne Urban Development, LLC

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

Title: \_\_\_\_\_

Dated \_\_\_\_\_, 2012

Accessible Living, Inc.,

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

Title: \_\_\_\_\_

**LEASE**

Between  
HAWTHORNE URBAN DEVELOPMENT, LLC  
"Landlord"

and

Hawthorne Villa General Partnership  
"Tenant"

Dated: \_\_\_\_\_, 2012

**LEASE**

In consideration of the mutual promises of the parties set forth in this Lease, the Landlord leases to Tenant and Tenant leases from Landlord on the following terms and conditions the apartment complex commonly known as Hawthorne Villa Apartments located on the real property described in Exhibit A, illustrated on the site plan attached as Exhibit B-1, portions of which are further illustrated on Exhibit B-2, including all apartment units, parking areas, maintenance facilities, common use areas and any other improvements on the site necessary for the use and operation of the apartment complex (the "Premises").

**SECTION 1 BASIC LEASE PROVISIONS**

This Section sets forth certain definitions and a summary of the basic provisions contained in the Lease. In the event of any conflict between any provision contained in this Section 1 and a provision contained in the balance of the Lease, the latter provision will control.

**1.1 Date of Lease:** \_\_\_\_\_, 2012

**1.2 Name of Landlord ("Landlord"):** Hawthorne Urban Development, LLC

**1.3 Address for Notices to Landlord:** C/O Richard Krueger, 21001 Dairy Creek Rd,  
North Plains, OR 97133

Phone No.: 5036471000

Fax No.:

**1.4 Address for Rent Payments:** C/O Richard Krueger, 21001 Dairy Creek Rd,  
North Plains, OR 97133 \_\_\_\_\_

**1.5 Name of Tenant ("Tenant"):** Hawthorne Villa General Partnership

**1.6 Address for Notices to Tenant:** 7705 SW Pfaffle Street, \_\_\_\_\_  
Tigard, OR 97223

Phone No.: 503-639-8158 \_\_\_\_\_

Fax No.: 503-624-2770 \_\_\_\_\_

**1.7 Premises.** The apartment complex as shown on Exhibits A, B-1 and B-2 with a street address of 7705 SW Pfaffle Street, Tigard, Oregon, 97223.

**1.8 Permitted Use** (*see* Section 5.1): Rental of apartments units as low income housing.

**1.9 Trade Name to Be Used by Tenant at Premises** (*see* Section 5.4): Hawthorne Villa Apartments

**1.10 Gross Leasable Area of Premises:** 207,346 sq. feet/ 4.76 acres

**1.11 Lease Term** (*see* Section 3): 5 years

**1.12 Renewal Options(s):** Two five year terms

**1.13 Base Rent** (*see* Section 4): \$35,433.83 per month, subject to adjustments based on amount of Gross Rents and Expenses. See Exhibit H.

**1.14 Base Rent Increase** (*see* Section 4.2): 3% per annum, subject to downward adjustment if needed to maintain tax exempt status and rules governing the Low Income Housing Tax Credit ("LIHTC") Program.

**1.15 Percentage Rent Rate:** N/A

**1.16 Tenant's Proportionate Share (Building):** 100%

**1.17 Tenant's Proportionate Share (Common Areas):** 100%

**1.18 Minimum Hours of Operation** (*see* Section 5.3): 24 hours/7 days/365 days

**1.19 Landlord's Broker** (*see* Section 17.11): N/A

**1.20 Tenant's Broker** (*see* Section 17.11): N/A

**1.21 Security Deposit** (*see* Section 15): \$TBD

**1.22 Prepaid Rent** (*see* Section 4.5): \$TBD

**1.23 Guarantor's Name and Address** (*see* Exhibit F): N/A

**1.24 Radius Restriction Area** (*see* Section 5.6): N/A

**1.25 Exhibits:**

Exhibit A Legal Description and General Description

Exhibit B-1 Site Plan

Exhibit B-2 Sample Illustrations

Exhibit C Landlord Work

Exhibit D Rules and Regulations

Exhibit E Confirmation Letter

Exhibit F Addendum

Exhibit G Portions of Appraisal by Colliers International Valuation & Advisory Services, dated June 24, 2011 and valued through August 1, 2012 that are relevant to the determination of the restricted rent, value of unrestricted rent and the tax savings to Landlord.

Exhibit H Base Rent Calculation

**1.26 Definitions.**

**1.26.1 Building.** *Building* means all structures upon the Premises, including without limitation, those certain 9 buildings making up Hawthorne Villa Apartments and laundry rooms, storage units, and leasing office.

**1.26.2 Common Area.** *Common Area* means all areas and facilities within and about Hawthorne Villa Apartments for the use and enjoyment of Tenant and residential subtenants, including all vehicle parking spaces and areas, roads, traffic lanes, driveways, sidewalks,

pedestrian walkways, landscaped areas, court yards, signs, service-delivery facilities, common storage areas, common utility facilities, and all other areas provided and designated by Landlord.

**1.26.3 Default Interest Rate.** *Default Interest Rate* means the prime rate of interest as declared by a major bank of national standing plus two (2) percentage points, but not in any event at a rate greater than the maximum rate of interest permitted by law, calculated from and after the date of Default or expenditure until paid.

**1.26.4 ECR.** *ECR* means that certain agreement creating easements, covenants, and restrictions affecting Hawthorne Villa Apartments, made and entered into as of April 8, 1997, by and between Hawthorne Villa Limited Partnership and Oregon Housing and Community Services, as amended by written instrument dated September 13, 2011, and as further amended from time to time.

**1.26.5 Gross Leasable Area.** *Gross Leasable Area* means the aggregate of the number of square feet of or acreage of area of all the Premises.

**1.26.6 Gross Rents.** As used in this Lease, *Gross Rents* means all rental receipts from Tenant's business operated at the Premises, whether paid in cash or credit, and all money and things of value received by, or paid to, Tenant. The term *Gross Rents* does not include any taxes collected from residential subtenants and for which Tenant is accountable to any governmental agency, and does not include the amount of any actual refunds or credits made by Tenant.

**1.26.7 Hazardous Materials.** *Hazardous Materials* means petroleum, asbestos, polychlorinated biphenyls, radioactive materials, radon gas, or any chemical, material, or substance defined as or included in the definition of "hazardous substances, hazardous waste, hazardous materials, extremely hazardous waste, restrictive hazardous waste, or toxic substances," respectively, or words of similar import under any applicable federal, state, or local law, ordinance, statute, rule, or regulation, including but not limited to the Comprehensive Environmental Response Compensation Liability Act of 1980, as amended, the Federal Water Pollution Control Act, as amended, ORS chapter 465 ("Hazardous Waste and Hazardous Materials I"), ORS chapter 466 ("Hazardous Waste and Hazardous Materials II"), ORS chapter 468 ("Environmental Quality Generally"), the Pollution Control and the Hazardous Materials Transportation Act, or any regulation or publication adopted or promulgated pursuant to such laws, ordinances, statutes, rules, or regulations, and any other chemical, material, or substance to which exposure is prohibited, limited, or regulated by any governmental authority, or may or could pose a hazard to the health and safety of the occupants of the Premises on which may or could pose a hazard to the environment.

**1.26.8 Landlord's Work.** *Landlord's Work* means those improvements and alterations that Landlord will construct in or about the Premises, as described in Exhibit C attached to this Lease (*see* Section 16). Landlord's Work reflects the renovations to be performed and noted in the Exhibit G Appraisal.

**1.26.9 Lease Commencement Date.** *Lease Commencement Date* means the date on which Landlord delivers possession of the Premises to Tenant.

**1.26.10 Premises.** *Premises* means those certain Premises consisting of approximately 207,346 sq. feet/ 4.76 acres square feet of Gross Leasable Area plus the Common Areas and the Building plus all other appurtenances used by Tenant.

**1.26.11 Rent Commencement Date.** *Rent Commencement Date* means the date that is the later of (a) March 1, 2012, or (b) thirty (30) days after the date Landlord delivers possession

of the Premises to Tenant in accordance with Section 3.1 or the date upon which Tenant commences business operations in the Premises, if earlier than the date described in (a) or (b).

**1.26.12 Site Plan.** *Site Plan* means that certain site plan attached to this Lease as Exhibit B-1 showing Hawthorne Villa Apartments.

**1.26.13 Tenant's Work.** *Tenant's Work* means those improvements and alterations that Tenant will construct in the Premises, as described in Exhibit C, attached to this Lease. *See* Section 16.

**1.26.14 Capital Expenditure.** For the purpose of this Lease only, *Capital Expenditure* means improvements and alterations intended to acquire or upgrade physical assets such as the Buildings, Common Areas, and structural and systematic components of the Premises and machinery. Capital Expenditures do not include repairs and maintenance to keep the Premises in good operating condition (i.e. fixing leaks, drywall, painting, fixing broken windows etc.)

## **SECTION 2 DEMISE OF PREMISES; USE OF COMMON AREAS**

**2.1 Demise of Premises.** Commencing on the Lease Commencement Date, Landlord leases to Tenant and Tenant leases from Landlord the Premises for the Term as set forth in Section 1.11.

**2.2 Right to Use Premises including Building and Common Area.** Tenant and its employees, contractors, residential subtenants and invitees will have the right to use the Premises for all purposes necessary for the use and enjoyment of residential subtenants, including areas needed for ingress and egress to and from the Premises and for automobile parking on the terms and conditions contained in this Lease and subject to any reasonable rules and regulations that Landlord may from time to time promulgate.

**2.3 Restrictions, Regulations, and Laws.** This Lease is subject to all easements, restrictions, agreements of record, mortgages and deeds of trust, zoning and building laws, and all other laws, statutes, codes, ordinances, rules, regulations, and other governmental requirements now in effect or becoming effective after the date this Lease is executed (collectively, the "Laws").

## **SECTION 3 POSSESSION AND COMMENCEMENT OF TERM**

**3.1 Delivery of Possession and Commencement of Term.** Landlord will deliver the Premises to Tenant in its current condition and repair. Tenant understands Landlord is planning to complete items listed on Exhibit C; however, delivery of possession and commencement of the Lease Term is not contingent upon substantial completion of the items on Exhibit C. By accepting possession of the Premises under this Lease, Tenant acknowledges that Tenant accepts the Premises "AS IS, WHERE IS" and as suitable for Tenant's intended use, in good and sanitary operating order, condition, and repair, and without representation or warranty by Landlord as to the condition, use, or occupancy that may be made of the Premises and that the Gross Leasable Area of the Premises is as set forth in Section 1.10. If there is any delay in delivering possession of the Premises to Tenant, the term of this Lease will be extended by the number of days of the delay. If the Lease Commencement Date is a date other than the first day of a calendar month, then the Term will be deemed extended by the number of days between the Lease Commencement Date and the first day of the first calendar month thereafter so that the Term of the Lease will expire at midnight on the last day of the last calendar month of the Lease Term (the "Expiration Date"). After the Lease Commencement Date, Rent Commencement Date, and

Expiration Date have been determined pursuant to this Section 3, Landlord will notify Tenant in writing thereof and Tenant will complete and execute a confirmation letter in the form attached to this Lease as Exhibit E and incorporated in this Lease by reference.

**3.2 Early Possession.** If possession of the Premises is delivered to Tenant before the Lease Commencement Date, Tenant will have the right to occupy the Premises subject to all the terms and provisions of this Lease, including the payment of all Additional Rent and utilities. The payment of Base Rent will not commence until the Rent Commencement Date.

**3.3 Renewal Options.** As long as Tenant is not then in default of this Lease beyond any applicable notice and cure period, Tenant will have the option to extend the Term for two (2) additional periods of five (5) years each (individually, an "Extension," and collectively, the "Extensions"), commencing at midnight on the date on which the Term or any Extension expires. Base Rent during an Extension will be increased three percent (3%) annually over the Base Rent in effect in the previous lease year for each and every lease year of the Extension, adjusted as needed to reflect the savings resulting from any exemption from taxation provided by the City of Tigard. Each Extension will be deemed automatically exercised by Tenant and Landlord and the parties will be bound by this Lease for the Extension unless Tenant or Landlord gives the other party written notice of its intention not to exercise its option to extend the Lease, not later than one-hundred-eighty (180) days before the expiration of the Term or the preceding Extension. If Tenant or Landlord notifies the other that it elects not to exercise its option as set forth above, Tenant will vacate the Leased Premises upon the expiration of the Term or Extension then in effect and will deliver the Leased Premises to Landlord in accordance with the terms and conditions of this Lease.

## SECTION 4 RENT

### 4.1 Base Rent.

**4.1.1. Acknowledgments:** Landlord and Tenant agree that a recent appraisal on the property indicated the Rent Gap (average market rent for Tigard & Tualatin less market rents at the Premises) to be approximately 10%. See Exhibit G, pg. 62. As noted by the Appraisal:

Unit Type	# of Units	Concluded Market Rents	Concluded LIHTC Rents	Difference in Rent	% Gap
Studio	30	\$540	\$485	-\$55	10.2%
1 BD/1 BA (605SF)	62	\$610	\$550	-\$60	9.8%
1 BD/1 BA (685SF)	21	\$640	\$575	-\$65	10.2%
2 BD/1 BA	5	\$725	\$670	-\$55	7.6%

The Appraisal states, and its analysis explains, the concluded restricted rents after renovation are based on a typical Rent Gap of about 10% from the market rent conclusion. The Gross Rent as noted by the Appraisal is \$768,900.00 in normal market conditions. See Exhibit G, pg. 67. The parties agree that the 10% Rent Gap reduces Gross Rents by about \$77,000.00. The Appraisal states the estimated value of the tax exemption per unit to be \$375.00. See Exhibit F, pg. 29 & 71. With 118 units, the exemption provides a savings of about \$44,250.00 to Landlord. The saving of \$44,250.00 is offset by the decreased rental receipts received for the Property. Even if one factors in miscellaneous income from laundry, vending and storage of about \$18,750 per year, the rent restrictions still cause lost revenues to exceed the exemption. As a result, the parties agree to Base Rent based on the Gross Rents less Tenant Expenses and agree

that the tax savings resulting from the exemption are reflected in the Base Rent in light of the Rent Gap.

**4.1.2. Base Rent Amount:** Throughout the original Term, Tenant will pay to Landlord, as base rent, the amounts set forth in the schedule set forth in Section 1.13 ("Base Rent"). Tenant will pay Base Rent in advance on the first day of each calendar month of the Term at the address for rent payments set forth in Section 1.4, or at any other place that Landlord designates except that Tenant will pay Landlord the first month's Base Rent and Security Deposit on the date that Tenant executes this Lease.

**4.2 Base Rent Increase.** The Base Rent as set forth in Section 4.1 will be increased by three percent (3%) on the first day of each Lease Year after the Base Year but adjusted as needed to reflect the savings resulting from any exemption from taxation provided by the City of Tigard.

**4.3 Records.** Tenant will maintain complete and accurate records showing Gross Rents and Tenant Expenses on a monthly basis. Tenant will ensure that all records are available for inspection by Landlord at all times after reasonable advance notice.

**4.4 Reporting.** In addition to all monthly statements of Gross Rents and Expenses as required by Section 4.3, Tenant will submit to Landlord an annual statement of Gross Rents for each calendar year and partial calendar year during the Term within thirty (30) days after the end of each calendar year during the Term.

**4.5 Audit.** Landlord may cause Tenant's records of Gross Rents and Tenant Expense computations to be examined at any time by an accountant or other representative selected by Landlord. If the examination discloses that the Base Rent was understated, Tenant will immediately pay the unpaid Base Rent to Landlord together with interest at the Default Interest Rate on the shortage of Base Rent from the dates that such Rent should have been paid by Tenant. If the Base Rent was understated by more than two percent (2%), Landlord will provide written notice to Tenant of the understatement and, in addition to any Base Rent due, Tenant will pay the cost of the audit. If Tenant understates Gross Rents and Expenses at any subsequent time during the term of the Lease, in addition to all other rights and remedies available to Landlord hereunder, Tenant will pay the cost of the audit and Landlord may, by written notice to Tenant, terminate this Lease.

#### **4.6 Additional Rent**

**4.6.1 Operating Expenses.** In addition to Base Rent, Tenant will pay Landlord, as Additional Rent, Operating Expenses in accordance with this Section. For purposes of this Lease, the term *Operating Expenses* means all *expenses paid or incurred by* Landlord (or on Landlord's behalf) as reasonably determined by Landlord as necessary or appropriate for the operation, maintenance, repair, or replacement of the Premises as required by Landlord under this Lease, including the Building and Common Areas thereon. Operating Expenses may include, without limitation, (a) salaries, wages, and benefits of employees of Landlord engaged in the repair, operation, maintenance, and replacement thereon, if any; (b) payroll taxes, workers' compensation insurance, uniforms, and related expenses for those employees, if any; (c) the cost of all gas, utilities, sewer charges, and other services furnished to the Premises including the Building and Common Areas; (d) the cost of maintaining and repairing the Premises including the Building and Common Areas, including any replacement thereof, performed or to be performed by Landlord; (e) the cost of all comprehensive general liability and "all risk" casualty

insurance carried by Landlord; (f) the costs for renting all supplies and tools necessary for the maintenance and repair of the Building and Common Areas; (g) the costs of capital improvements, replacements, and remodelings of the Common Areas, the costs of which will be amortized (with interest on the unamortized balance at a commercially reasonable rate, as determined by Landlord) over the useful life of the improvements or remodelings and otherwise in accordance with generally accepted accounting principles uniformly applied as reasonably estimated by Landlord; (h) alterations and improvements to the Premises including the Building and Common Areas made by reason of all applicable Laws and requirements of any public authority or the requirements of any insurance body, but excluding any alteration or improvement that is included in Landlord's obligation to deliver the Premises, Building and Common Areas in compliance with Law, as set forth in Section 3.1; (i) management fees paid to a third party, or, if no managing agent is employed by Landlord, Landlord will be entitled to charge a reasonable management fee, and that fee will be included in the Operating Expenses; (j) reasonable legal, accounting, and other professional fees incurred in connection with the operation, maintenance, repair, replacement, and management of the Building and Common Areas; (k) the cost of landscape and parking-area maintenance, repair, and when necessary as determined by Landlord, including the replacement thereof; (l) janitorial and cleaning supplies and services; (m) all other charges properly allocable to the operation, repair, maintenance, and, if necessary, replacement of the Common Areas, Building, and Building Systems in accordance with generally accepted accounting principles; and all Section 4.4.3 Taxes (if imposed) .

**4.6.2 Operating Year.** *Operating Year* means each calendar year of the Term. If the Lease Commencement Date or the Expiration Date occurs on any date other than the first (1st) day of the calendar year, all calculations, costs, and payments referred to in this Section 4 will be prorated for the portion of the calendar year to which they apply.

**4.6.3 Taxes.** The term *Taxes* includes (a) if imposed, all ad valorem and other real property taxes and assessments and personal property taxes, charges, rates, user fees, duties, and assessments rated, levied, or imposed by any governmental authority with respect to the Premises and any improvements, fixtures, and equipment located in it or on it, and with respect to all other property of Landlord, real or personal, located in or on the Premises; (b) if imposed, any tax in lieu of a real property tax; (c) if imposed, any tax or excise levied or assessed by any governmental authority on the Rent payable under this Lease or Rent accruing from the use of the Premises or any portion of it; and (d) if imposed, any tax or excise imposed or assessed by or against Landlord that is measured or based in whole or in part on the capital used by Landlord to improve the Premises. The term *Taxes* does not include federal or state corporate or personal income taxes. If Landlord receives a refund of Taxes, then Landlord will credit the refund, net of any professional fees and costs incurred by Landlord to obtain the same, against the Taxes for the Operating Year to which the refund is applicable or the current Operating Year, at Landlord's option. Notwithstanding the foregoing, Tenant will pay before delinquency all taxes, assessments, licenses, fees, and charges assessed, imposed, or levied on (a) Tenant's business operations, (b) all trade fixtures, (c) leasehold improvements, (d) merchandise, and (e) other personal property in or about the Premises.

**4.6.4 Written Statement of Estimate.** Before the Lease Commencement Date, Landlord will furnish Tenant with a written statement setting forth Landlord's estimate of Operating Expenses and Taxes and Tenant's Proportionate Share (Center) thereof for the first Lease Year. Thereafter, before the commencement of each Operating Year after the first

Operating Year or as soon thereafter as reasonably possible, Landlord will furnish Tenant with a written statement setting forth the *estimated cost* of Operating Expenses and Taxes for the next Operating Year. Tenant will pay to Landlord as Additional Rent commencing on the Lease Commencement Date, and thereafter on the first day of each calendar month, an amount equal to one-twelfth (1/12th) of the estimated cost of Operating Expenses and Taxes, as shown in Landlord's written statement for that Operating Year. If Landlord fails to deliver the written estimate, Tenant will continue to pay to Landlord an amount equal to one-twelfth (1/12th) of the estimated cost of Operating Expenses and Taxes for the immediately preceding Operating Year until Landlord furnishes the written estimate. Upon receipt of the written estimate, Tenant will pay an amount equal to the difference between the estimated cost of Operating Expenses and Taxes for the expired portion of the current Operating Year and the Tenant's actual payments during that time, and any payments by Tenant in excess of the estimated cost of Operating Expenses, Taxes, and Insurance will be credited to the next due payment of Rent from Tenant. Landlord reserves the right, from time to time, to adjust the estimated cost of Operating Expenses and Taxes, and Tenant will commence payment of one-twelfth (1/12th) of the revised estimate on the first (1st) day of the month following receipt of the revised estimate.

**4.6.5 Final Written Statement.** Within one-hundred-twenty (120) days after the close of each Operating Year during the Term, Landlord will deliver to Tenant a written statement (the "Operating Statement") setting forth the actual cost of Operating Expenses and Taxes for the Premises for the preceding Operating Year for each such item. If the actual Operating Expenses and Taxes for the preceding Operating Year are greater than the amount paid by Tenant for the Operating Expenses and Taxes, Tenant will pay the amount due to Landlord as Additional Rent within thirty (30) days after Tenant receives the statement. If the actual Operating Expenses and Taxes for the preceding Operating Year are less than the amount paid by Tenant for the Operating Expenses and Taxes, then Landlord will, at Landlord's election, either (a) pay the amount of Tenant's overpayment to Tenant within thirty (30) days after the date of the statement or (b) apply the overpayment to Tenant's next Rent payment, reimbursing only the excess over the next Rent payment, if any. If an Operating Year ends after the expiration or termination of this Lease, any Additional Rent in respect thereof that is payable under this Section will be paid by Tenant within ten (10) days after Tenant receives the Operating Statement for the Operating Year, and any Additional Rent paid by Tenant in excess of the amount due under this Lease for the portion of the Operating Year after expiration or termination of this Lease for that Operating Year will be refunded by Landlord to Tenant within ten (10) days of the expiration of that Operating Year. Landlord's late delivery of any written statement will not constitute a waiver of Tenant's obligation to pay Operating Expenses and Taxes, but Landlord will use reasonable efforts to deliver such written statements as soon as reasonably possible after the commencement of each Operating Year.

**4.6.6 Tenant Examination.** The Operating Statement need not be audited but must contain sufficient detail to enable Tenant to verify the calculation of Operating Expenses, Taxes, and insurance for the Premises.

**4.6.7 Tenant's Share** Tenant's share of Operating Expenses and Taxes shall be One Hundred percent (100%) of the total cost.

**4.6.8 Late Charges and Interest.** Rent not paid when due will bear interest until paid at the Default Interest Rate. Landlord may impose a late charge of the greater of (a) five percent (5%) of Rent then due or (b) \$50 for each payment of Rent made more than ten (10) days late

(the "Late Charge"). Tenant acknowledges that late payment by Tenant to Landlord of any Rent or other sums due under this Lease will cause Landlord to incur costs not contemplated by this Lease, that the exact amount of those costs are extremely difficult and impracticable to ascertain, and that the Late Charge is not a penalty but represents a fair and reasonable estimate of the costs that Landlord will incur by reason of any such late payment. Landlord may levy and collect a late charge in addition to all other remedies available for Tenant's default, and collection of a late charge will neither be in lieu of nor waive the breach caused by the late payment.

**4.7 Prepaid Rent.** Unless waived by Landlord, Tenant will pay the initial monthly Base Rent for the first full month of the Lease Term for which Rent is payable upon the Lease Commencement Date.

**4.8 Place of Payment.** All payments required to be paid by Tenant under this Lease, other than the Base Rent, will constitute Additional Rent. Tenant must make all payments of Additional Rent at the address for rent payments set forth in Section 1.4, or at any other place that Landlord designates from time to time.

## **SECTION 5 USE**

**5.1 Permitted Use.** Tenant will use the Premises only for the purpose set forth in Section 1.8 and for no other purpose without the written consent of Landlord.

### **5.2 Further Covenants Regarding Use.**

**5.2.1 Compliance with Laws.** Except for Landlord's obligations as specifically set forth in this Lease, Tenant will comply at its expense with all applicable Laws, including without limitation those regarding the maintenance, operation, condition, and use of the Premises when and as required by the applicable public authority. Tenant will not use the Premises in conflict with any Laws nor will Tenant permit anything to be done in or about the Premises that would conflict with any Laws.

**5.2.2 Activities on Premises.** Tenant will neither conduct nor permit any activities on the Premises that would likely (a) increase the fire insurance rate on the Premises, (b) cause a cancellation of any of Landlord's insurance policies, (c) create a nuisance, (d) damage the reputation of Hawthorne Villa Apartments, or (e) be reasonably offensive to Landlord or other tenants. Tenant will not allow the disposal of any medical waste at the Premises trash receptacles by Tenant or Tenant's employees, agents, or independent contractors.

**5.2.3 Manner of Operating Business.** Tenant will keep the Premises clean and orderly and will operate its business in the Premises in a first-class, professional manner. Tenant will supervise its employees and cause Tenant's agents, independent contractors, employees, customers, suppliers, and invitees to conduct their activities in a manner that complies with the requirements of this Lease and the Rules and Regulations.

**5.3 Continuous Operation.** Tenant will continuously use and conduct its business described in Section 1.18 on the Premises during, at a minimum, the hours set forth therein. If Tenant fails to operate its business in the Premises for a period of thirty (30) days for any reason other than a casualty or condemnation that materially interferes with Tenant's operation of its business in the Premises, Tenant will be deemed to have abandoned the Premises and Landlord will have the right to exercise any and all rights and remedies set forth in this Lease. Tenant will use best efforts to operate the business conducted on the Premises in a diligent manner that will produce the maximum volume of Gross Rents.

**5.4 Name of Business.** The advertised name of the business operated in the Premises is set forth in Section 1.9. Tenant agrees not to change its advertised name without the prior written consent of Landlord, which consent Landlord will not unreasonably withhold.

**5.5 Storage, Trash, and Recycling.** Tenant will not store anything outside except in those areas approved in writing in advance by Landlord. Tenant will use only those trash and garbage receptacles approved by Landlord. Tenant will dispose of trash and other matter in a manner acceptable to Landlord, at Tenant's expense. Tenant will comply with all recycling programs required by applicable Laws or by Landlord from time to time.

## **SECTION 6 UTILITIES, SERVICES, AND SECURITY**

**6.1 Utilities and Services.** Tenant will pay all charges for utilities and services supplied to the Premises, including without limitation "hookup" and service charges for electricity, gas, telephone, cable, water, and sewer. If consumption is not separately metered to the Premises, Tenant will pay Landlord as an Operating Expense for all utilities consumed on the Premises at a rate reasonably determined by Landlord that is not in excess of the cost to Landlord.

**6.2 Security.** Landlord may, but will have no obligation to, provide security service or adopt any security measure concerning the Premises, and Tenant will abide by all reasonable security measures adopted by Landlord.

## **SECTION 7 INSURANCE AND INDEMNITY**

### **7.1 Tenant's Insurance**

**7.1.1 Commercial General Liability Insurance.** At all times during the Term of this Lease, Tenant, at its expense, will maintain commercial general liability insurance in respect of the Premises and the conduct or operation of business in it, naming Landlord and its managing agent, if any, as additional insureds, with a combined single limit of not less than two million dollars (\$2,000,000); unless otherwise reduced by Landlord in writing. All such insurance will insure the Tenant's performance of the indemnity agreement as to liability for bodily injury to, illness of, or death of persons and damage to property set forth in this Lease. Tenant will pay for and deliver to Landlord and any additional insured such policies or certificates of insurance, in form reasonably satisfactory to Landlord, issued by the insurance company or its authorized agent, at least ten (10) days before the Lease Commencement Date. Tenant will procure and pay for renewals of such insurance from time to time before the expiration thereof, and Tenant will deliver to Landlord and any additional insured the renewal policy at least thirty (30) days before the expiration of any existing policy. All such policies must contain a provision whereby the same cannot be canceled or modified unless Landlord and any additional insured are given at least thirty (30) days' prior written notice of the cancellation or modification.

**7.1.2 Property and Business-Interruption Insurance.** Tenant will continuously maintain at its expense (a) special form type property insurance coverage on all furnishings, leasehold improvements, fixtures, inventory, and equipment located on the Premises, covering full replacement value, (b) insurance on all plate glass on the Premises, covering replacement cost, and (c) business-interruption coverage. The proceeds of such insurance, as long as this Lease remains in effect, will be used to repair or replace the leasehold improvements, fixtures, inventory, equipment, and plate glass so insured and to compensate Tenant for any damage

incurred by Tenant resulting from any interference with Tenant's ability to operate its business in the Premises.

**7.1.3 Workers' Compensation Insurance.** At all times during the Lease Term and any extensions or renewals, Tenant agrees to keep and maintain, and to cause Tenant's agents, contractors, and subcontractors to keep and maintain, workers' compensation insurance and other forms of insurance as may from time to time be required by Law or may otherwise be necessary to protect Landlord and the Premises from claims of any person who may at any time work on or in the Premises, whether as a servant, agent, or employee of Tenant or otherwise. Such insurance must be maintained at the expense of Tenant or Tenant's agents, contractors, or subcontractors and not at the expense of Landlord.

**7.1.4 Insurance Policy Requirements.** All insurance policies to be carried by Tenant must cover the risks and include only prudent deductible amounts as reasonably determined by Landlord from time to time. All insurance policies must name Landlord and Landlord's mortgagee as additional insureds and must be provided by responsible insurance companies authorized to issue insurance in the State of Oregon, with loss-payable clauses satisfactory to Landlord, and with ratings no less than B + VIII by A.M. Best Insurance Rating Service. Before occupying the Premises, Tenant must deliver to Landlord copies of all policies or certificates evidencing such insurance in form acceptable to Landlord. All policies and certificates must bear endorsements requiring thirty (30) days' written notice to Landlord before any change or cancellation.

**7.2 Landlord's Insurance.** During the Lease Term, Landlord may, at its discretion, maintain in full force and effect a policy or policies of property insurance covering the Building and the Center that provide coverage against such risks that are commonly covered under (a) a commercial general liability insurance policy providing secondary coverage to Tenant's policy, (b) a "special form" type of policy (including earthquake and/or flood coverage, at Landlord's election), together with loss of Rents coverage, and (c) any other insurance that Landlord deems reasonably necessary.

**7.3 Waiver of Subrogation.** Each property insurance policy obtained by each party that covers or applies to the Premises, or the personal property, fixtures, or equipment located in or on the Premises, must include an appropriate clause or endorsement that waives the insurance company's right to make any subrogation claim and that permits the insured, before any loss, to agree with the other party to this Lease to waive any claim it might have against the other party without invalidating the coverage under the insurance policy. The waiver of subrogation and permission for waiver of any claim must extend to the parties and their respective agents and employees. Each party releases the other and its agents and employees in respect of any claim (including a claim for negligence) that it might otherwise have against the other party or its agents or employees for loss, damage, or other casualty (including rental value or business interest, as the case may be) occurring during the Term of this Lease and normally covered under a special form property insurance policy in the form normally used in respect of similar property in Portland, Oregon.

**7.4 Indemnification.** Each party will indemnify, defend, and hold harmless the other party and its respective partners, directors, officers, agents, and employees from and against any and all third-party claims for bodily injury or property damage arising from or in connection with any accident, injury, or damage even if caused in part by the negligence of the indemnitee or its partners, directors, officers, agents, and employees occurring in, at, or upon an area under the

care, custody, and control of the indemnitor, together with all costs, expenses, and liabilities incurred or in connection with each such claim or action or proceeding brought thereon, including without limitation all attorney fees and expenses at trial and upon appeal.

## **SECTION 8 REPAIRS, MAINTENANCE, AND ALTERATIONS**

### **8.1 Maintenance of Premises and Building**

**8.1.1 By Landlord.** Landlord will repair, maintain, or replace, when necessary, the major structural and system components of the Premises, (major structural and system components do not include items such as, without limitation, basic fixtures or components such as faucets, light bulbs, switch plates, basic wiring repair for a unit, range hoods, etc. or items that do not materially add to the value of the Premises) including the Common Areas and the roof, foundation, exterior walls, interior structural walls, all structural components, and all systems (such as mechanical, electrical, HVAC, and plumbing) of or in the Building. Tenant expressly waives the benefits of any statute now or later in effect that would otherwise give Tenant the right to make repairs at Landlord's expense and deduct that cost from Rent owing to Landlord.

**8.1.2 By Tenant.** Except for Landlord Repairs set forth in Section 8.1.1, Tenant will (a) maintain all portions of the Premises and fixtures situated within and upon the Premises in good order and repair (i.e. fixing leaks, drywall, painting, fixing broken windows etc.); (b) repair and maintain as needed to comply with the Oregon Residential Landlord Tenant Act (ORS Chpt. 90) and comply with any other legal requirements; (c) to satisfy sublease obligations to residential subtenants; (d) maintain, repair, or replace, when necessary, all special equipment and decorative treatments installed by or at Tenant's request and that serve the Premises only; (d) make all necessary repairs and replacements to all portions of the Premises and pay Landlord for the repairs or replacements to the Building if any such repairs or replacements are needed because of Tenant's misuse or primary negligence; and, (e) not commit waste to the Premises, Building or Common Areas. If Tenant fails to perform Tenant's obligations under this Section or under any other Section of this Lease, then after ten (10) business days' prior written notice to Tenant, except in an emergency when no notice is required, Landlord may enter the Premises, perform the obligations on Tenant's behalf, and recover the cost of performance, together with interest at the Default Interest Rate as Additional Rent payable by Tenant with the next installment of Base Rent.

**8.2 Condition of Premises upon Termination.** Upon the termination of this Lease, Tenant will surrender the Premises to Landlord broom clean, in good condition and repair, except for ordinary wear and tear and for casualty damage. All or any of the alterations or improvements to the Premises chosen by Landlord (excluding trade fixtures installed by Tenant and Tenant's other personal property) will, at Landlord's option, either (a) become part of the Premises and belong to Landlord and will be surrendered with the Premises without disturbance upon the termination of the Lease or (b) be removed by Tenant before the termination of this Lease, in which event Tenant will repair all damage caused thereby. No later than sixty (60) days before the Expiration Date, Landlord will deliver written notice to Tenant of Landlord's exercise of the foregoing option. If Landlord fails to provide that notice, Landlord will be deemed to have elected clause (b) above.

### **8.3 Alterations**

**8.3.1 By Landlord.** As long as the alteration or change does not materially interfere with Tenant's operation of its business in the Premises, Landlord may modify or alter any improvements in or upon the Premises, including the Building and Common Areas.

**8.3.2 By Tenant.** Unless Tenant obtains Landlord's prior written consent, which Landlord can withhold in its sole discretion, Tenant will not make or permit to be made any alterations or improvements (a) to the building envelopes, exteriors, structures, roofs, or electrical, mechanical, HVAC or plumbing systems of the Premises, (b) Capital Expenditures; (c) any work that cost in excess of Five Thousand Dollars (\$5,000), or (d) that require a building permit. If Landlord consents to Tenant's making any alterations or improvements, the same must be made at Tenant's sole expense, using a contractor first approved in writing by Landlord, and the same must be made in accordance with plans and specifications first approved in writing by Landlord and in accordance with all applicable Laws. Landlord may require a cash deposit or other reasonable security to assure Landlord that the cost of the alterations or improvements will be paid promptly when and as due to avoid any liens.

**8.4 Trade Fixtures.** Upon the termination of this Lease, Tenant will remove all trade fixtures, movable furniture, and equipment located on the Premises that belong to Tenant, and will repair at its expense any damage caused to the Premises by such removal. If Tenant fails to remove any such property, Landlord may either (a) retain the property and all rights of Tenant with respect to it will cease, the property being deemed abandoned, (b) require Tenant to remove the property, or (c) effect a removal and place the property in storage for Tenant's account. Tenant will be liable to Landlord for the cost or reasonable value of removal, restoration, transportation to storage, and storage, with interest on all such as expenses as provided in Section 1.26.4.

**8.5 Entry and Inspection.** Landlord or Landlord's agents or employees may enter the Premises at any time in the event of an emergency. Otherwise, after giving Tenant twenty-four (24) hours' prior oral notice, Landlord or Landlord's agents or employees may enter the Premises to determine Tenant's compliance with this Lease, to make necessary repairs, or to show the Premises to prospective tenants, lenders, or purchasers. On Landlord's request, Tenant will provide Landlord with keys to all doors at the Premises.

**8.6 Maintenance of Common Areas.** Tenant, at its expense, will keep the Common Areas neat, clean, and free of ice, snow, trash, and other debris and will maintain the Common Areas at all times during the Term in a state of good condition and repair (ordinary wear and tear and damage due to uninsured casualty and condemnation excepted) and, in any event, in compliance with the applicable standards with respect thereto, if any, that are set forth in the ECR (*see* Section 1.26.5).

## **SECTION 9 RECONSTRUCTION AND RESTORATION**

**9.1 Minor Damage.** If, during the Term, the Premises are damaged by fire or other casualty covered by Landlord's insurance and the damage is not "substantial" as defined in Section 9.2, and if Landlord receives insurance proceeds therefor, Landlord will promptly repair the damage at Landlord's expense and Tenant will repair any damage to its property at its expense or using proceeds from the insurance described in Section 7.1.2, and this Lease will continue in full force and effect.

**9.2 Substantial Damage.** If, during the Term, twenty-five percent (25%) or more of the Premises is destroyed or damaged by fire or other casualty (such percentage being defined as

an amount exceeding twenty-five percent (25%) of its full construction-replacement cost), then Landlord or Tenant may elect to terminate this Lease by giving the other party written notice of the termination within sixty (60) days after the date of the damage. Otherwise, Landlord will promptly commence commercially reasonable action to restore the Premises to a condition comparable to that existing before the damage and will thereafter prosecute the restoration to completion with diligence. Tenant will cooperate with Landlord during the period of repair and will vacate all or any part of the Premises to the extent necessary for the performance of the required work. Landlord need not incur expenses for restoration in excess of the net insurance proceeds received by Landlord for that purpose after payment of all reasonable costs, expenses, and attorney fees incurred by Landlord in connection therewith.

**9.3 Abatement of Rent.** All rent will be abated during the period and to the extent the Premises are not reasonably usable for Tenant's use. If the damage does not cause any material interference with Tenant's use, there will be no Rent abatement.

**9.4 Repair of Leasehold Improvements and Tenant's Property.** Repair, replacement, or restoration of any of Tenant's fixtures, inventory, leasehold improvements, equipment, or personal property (the "Tenant's Personal Property") will be the responsibility of Tenant. If (a) Tenant's Personal Property is damaged or destroyed by fire or other casualty and (b) this Lease is not terminated as set forth in Section 9.2, Tenant will promptly commence the restoration and repair of Tenant's Personal Property to a condition comparable to that existing before the damage, and thereafter will prosecute the restoration and repair to completion with diligence.

## **SECTION 10 ASSIGNMENT AND SUBLETTING**

Except for subleasing to residential subtenants which is expressly authorized by Landlord, Tenant will not (voluntarily or by operation of law) assign, transfer, mortgage, pledge, hypothecate, or encumber the Premises or Tenant's leasehold estate or sublet any portion of the Premises, or otherwise transfer any interest in the Premises (each of the foregoing being sometimes referred to as a "Transfer") without Landlord's prior written consent in each instance, which consent will not be unreasonably withheld. Landlord may condition its consent to a proposed Transfer on reasonable conditions, including without limitation an increase in Base Rent to the fair market rental value of the Premises. If Landlord withholds its consent to a proposed Transfer for any of the following reasons, the withholding will be deemed to be reasonable: (a) conflict, incompatibility, or duplication of the proposed use with other uses or restrictions in or pertaining to the Premises; (b) financial inadequacy or managerial inexperience of the proposed transferee; (c) any proposed change in use would diminish the reputation or profitability of the other businesses located in the Premises; (d) the unsuitability of percentage-rent clauses for the proposed transferee; (e) the proposed use would have an adverse impact on the use of the common facilities by other tenants of the Premises; (f) Tenant is then in default of the Lease or has been in default on two or more occasions during the twelve- (12-) month period preceding the date that Tenant requests the Transfer; (g) Tenant's failure to deliver to Landlord an assignment or sublease executed by Tenant and any assignee or sublessee in form and content reasonably acceptable to Landlord; and (h) any other reasonable criterion or requirement.

## **SECTION 11 CONDEMNATION**

**11.1 Entire or Substantial Taking.** If more than fifteen percent (15%) of the Premises or more than twenty-five percent (25%) of the Common Areas are taken under the power of eminent domain, or if any taking renders the balance of the Premises unusable for Tenant's use, this Lease will terminate on notice by Landlord or Tenant to the other party as of the date the condemning authority takes possession. A sale by Landlord to any authority with power of eminent domain, either under threat of condemnation or while condemnation proceedings are pending, will be deemed a taking under the power of eminent domain under this Section 11.

**11.2 Partial Taking.** If any taking under the power of eminent domain does not result in a termination of this Lease pursuant to Section 11.1, the Base Rent payable under this Lease will be reduced, effective on the date the condemning authority takes possession, in the same proportion as the reduction in Gross Leasable Area of the Premises.

**11.3 Awards.** Landlord is entitled to any award for a taking of all or any part of the Premises under the power of eminent domain, whether the award is made as compensation for diminution in value of the leasehold or for taking of the fee. Tenant hereby assigns to Landlord all interest in any such award. Nothing in this Lease precludes Tenant from making a separate claim for the value of its lost trade fixtures, Personal Property, or moving expenses as long as any such claim or award resulting from the claim does not reduce Landlord's award.

## **SECTION 12 SIGNS**

Tenant will not construct or install any signs, banners, or other advertising material visible from the exterior of the Premises without Landlord's prior written consent. Landlord's consent to such signage will not be unreasonably withheld.

## **SECTION 13 OTHER OBLIGATIONS OF PARTIES**

**13.1 Liens.** Tenant will pay when and as due all claims for work done on the Premises or for services rendered or materials furnished to the Premises and will keep the Premises free from any liens other than liens created by Landlord. If Tenant fails to pay such a claim or to discharge any lien within thirty (30) days of demand, Landlord may either (a) pay the claim on behalf of Tenant and then collect that amount from Tenant as additional Rent or (b) obtain a bond covering the lien and collect all costs and expenses incurred in obtaining the bond, including attorney fees, from Tenant as Additional Rent. Amounts paid by Landlord will bear interest and be repaid by Tenant as provided in Section 14.3. Any action taken by Landlord as allowed in this Section will be in addition to any other right or remedy and will not constitute a waiver of any right or remedy Landlord may have because of Tenant's breach of this Lease.

**13.2 Holding Over.** If Tenant fails to vacate the Premises, remove Tenant's property, or restore the Premises as required by this Lease upon the expiration or earlier termination of this Lease, Landlord may, upon thirty (30) days' prior written notice to Tenant, either (a) treat Tenant as a tenant from month to month, subject to all the provisions of this Lease (except that the Term will be month to month and the Base Rent will be one-hundred-fifty percent (150%) of the Base Rent payable by Tenant immediately before the end of the Term), or (b) eject Tenant from the Premises and recover damages caused by the wrongful holdover.

**13.3 Subordination.** Any mortgage, deed of trust, or ground lease to which this Lease is, at the time referred to, subject and subordinate is called a "Superior Mortgage" and the holder of a Superior Mortgage, or its successor in interest, at the time referred to, is called the "Superior Mortgagee." This Lease and all rights of Tenant under it are subject to and subordinate to all

mortgages that may now or hereafter affect the Premises, whether or not the mortgages also cover other lands and buildings, to each and every advance under the mortgages, and to all renewals, modifications, replacements, and extensions of the mortgages. This Section is self-operative, and no further instrument of subordination will be required. In confirmation of this subordination, Tenant will promptly execute, acknowledge, and deliver any instrument that Landlord or any Superior Mortgagee may reasonably request to evidence the subordination.

**13.4 Notice.** If any act or omission of Landlord would give Tenant the right, immediately or after the lapse of a period of time, to cancel or terminate this Lease, or to claim a partial or total eviction, Tenant will not exercise that right until (a) it has given written notice of that act or omission to Landlord and each Superior Mortgagee whose name and address has previously been furnished to Tenant and (b) a reasonable period of time has passed to allow the Landlord and each such Superior Mortgagee to cure the condition.

**13.5 Attornment.** For purposes of this Section, the term *Successor Landlord* means any Superior Mortgagee who succeeds to the rights of Landlord under this Lease, whether through possession, foreclosure action, or delivery of a new lease or deed, or any third party who succeeds to the rights of Landlord under this Lease by virtue of having purchased the Premises at a foreclosure sale. The Successor Landlord will accept Tenant's attornment, assume Landlord's obligations under the Lease, and agree in writing to not disturb Tenant's quiet possession of the Premises. Tenant will attorn to and recognize the Successor Landlord as Tenant's Landlord under this Lease and Tenant and the Successor Landlord will promptly execute and deliver an instrument reasonably acceptable to the parties to evidence such attornment and nondisturbance agreement. Upon such attornment, this Lease will continue in full force and effect as a direct lease between the Successor Landlord and Tenant upon all the terms, conditions, and covenants set forth in this Lease except that the Successor Landlord will not be (a) liable for any previous act or omission of Landlord under this Lease; (b) subject to any offset, deficiency, or defense that has accrued to Tenant against Landlord; (c) bound by any previous modification of this Lease or by any previous prepayment of more than one (1) month's Base Rent, unless the Superior Mortgagee expressly approved of the modification or prepayment in writing; or (d) liable for the return of any security deposit that was not actually transferred to the Successor Landlord.

**13.6 Landlord's Liability; Sale.** Landlord's liability under this Lease will be limited to Landlord's interest in the Premises, and any judgment against Landlord will be enforceable solely against Landlord's interest in the Premises. If the original Landlord under this Lease, or any successor owner of the Premises, sells, conveys, or otherwise transfers its interest in the Premises, all liabilities and obligations on the part of the original Landlord, or such successor owner, under this Lease accruing thereafter will terminate. All liabilities and obligations of Landlord accruing thereafter will be binding on the new owner. Tenant agrees to attorn to such new owner.

**13.7 Estoppel Certificate.** Within ten (10) days after written request by either party to the other, the requested party will deliver a written statement to the requesting party stating (a) the amount of all Base Rent, and the date to which the Base Rent and other charges have been paid, (b) whether the Lease is unmodified and in full force and effect, (c) whether the party knows of any current default by the other party and a description of any such default, and (d) any other matters that may reasonably be requested by the requesting party or by any prospective lender or purchaser.

**13.8 Rules and Regulations.** Tenant agrees to comply with all rules, regulations, and requirements for the Premises, as adopted and modified by Landlord from time to time at Landlord's sole and exclusive discretion (the "Rules and Regulations"), and to cause Tenant's contractors, employees, agents, and invitees to abide by the Rules and Regulations. The Rules and Regulations applicable to the Premises as of the date of this Lease are attached to this Lease as Exhibit D. Tenant agrees that Landlord will not be responsible to Tenant for the noncompliance by any residential subtenant or occupant of the Premises with the Rules and Regulations.

**13.9 Covenant of Quiet Enjoyment.** Landlord covenants that, as long as no event of default has occurred that remains uncured beyond any applicable cure period allowed by this Lease, Tenant will peaceably and quietly have, hold, and enjoy the Premises during the term of this Lease without any interruption or disturbance from Landlord or any party claiming, by, through, or under Landlord, subject to the terms and conditions of this Lease.

## **SECTION 14 DEFAULTS AND REMEDIES**

**14.1 Default.** The following events constitute events of default:

**14.1.1 Payment Default.** Tenant fails to pay any Base Rent, or Additional Rent, or any other amount due under this Lease, within three (3) days after receiving notice that the same is past due. No notice and no opportunity to cure will be required if Landlord has previously given Tenant notice of failure to make any such payment required by this Lease two (2) or more times in any twelve- (12-) month period during the Term.

**14.1.2 Unauthorized Transfer.** Tenant makes any Transfer of Tenant's interest in this Lease, including any assignment or subletting of it, without Landlord's prior written consent as required by Section 10.

**14.1.3 Abandonment of Premises.** Tenant fails to occupy or use the Premises for the purposes described in Section 1.8 for a total of 60 or more consecutive calendar days during the Term, unless such failure is excused under any other provision of this Lease.

**14.1.4 Default in Certain Covenants.** Tenant fails to deliver the instruments described in Section 13.4 or 13.6 within five (5) days after receiving written notice from Landlord after the expiration of the time for delivery required in Section 13.4 or 13.6, as applicable, or Tenant fails to comply with any applicable Law when and as required by the applicable governmental authority.

**14.1.5 Default in Other Term or Covenant.** Tenant fails to comply with any other term, covenant, or condition of this Lease or to fulfill any other obligation of this Lease within twenty (20) days after written notice by Landlord specifying the nature of the failure with reasonable particularity. No notice and no opportunity to cure will be required if Landlord has previously given Tenant notice of failure to comply with such term or condition or to fulfill such other obligation of this Lease two or more times in any twelve-month period during the Term.

**14.1.6 Insolvency Defaults.** (a) Dissolution, termination of existence, insolvency on a balance-sheet basis, or business failure of Tenant; (b) Tenant's commencement of a voluntary case under the federal bankruptcy laws or under any other federal or state law relating to insolvency or debtor's relief; (c) the entry of a decree or order for relief against Tenant in an involuntary case under the federal bankruptcy laws or under any other applicable federal or state law relating to insolvency or debtor's relief; (d) the appointment of or the consent by Tenant to the appointment of a receiver, trustee, or custodian of Tenant or of any of Tenant's property; (e)

an assignment for the benefit of creditors by Tenant; (f) Tenant's failure generally to pay its debts as they become due; (g) Tenant's making or suffering a fraudulent transfer under applicable federal or state law; (h) Tenant's concealment of any of its property in fraud of creditors; or (i) the imposition of a lien through legal proceedings or restraint upon any of the property of Tenant which is not discharged or bonded. During any period in which there is a Guarantor of this Lease, each reference to "Tenant" in this paragraph will be deemed to refer to "Guarantor" or "Tenant" separately.

**14.2 Remedies upon Default.** Upon any default, Landlord may exercise any one or more of the following remedies, or any other remedy available under applicable law:

**14.2.1 Retake Possession.** (a) To the extent permitted by law, Landlord may reenter and retake possession of the Premises, without notice, either by summary proceedings or by any other applicable action or proceeding [, or by other means, including self help].

(b) Upon retaking possession of the Premises, Landlord may use the Premises for Landlord's own purposes or relet the Premises on any reasonable terms without prejudice to any other remedies that Landlord may have by reason of Tenant's default. None of these actions will be deemed an acceptance of surrender by Tenant. To the extent permitted by law, and except as expressly provided in this Lease, Tenant waives the service of (i) any notice of intention to terminate this Lease or to retake the Premises, (ii) any demand for payment of Rent or for possession, and (iii) any and every other notice or demand required or permitted under applicable law.

**14.2.2 Relet the Premises.** Landlord at its option may relet the whole or any part of the Premises, from time to time, either in the name of Landlord or otherwise, to any tenants, for any terms ending before, on, or after the expiration date of the Term, at any rentals, and on any other conditions (including concessions and free-rent periods) that Landlord, in its sole discretion, determines to be appropriate. Landlord is to use commercially reasonable efforts to mitigate any damages incurred by Landlord as a result of any default by Tenant. However, no failure to mitigate damages by Landlord will operate to relieve Tenant of any liability under this Lease or otherwise affect Tenant's liability. If other comparable and unleased space exists in the Premises, Landlord will have no obligation to attempt to relet the Premises before leasing other space in the Premises.

**14.2.3 Damages for Default.** Whether or not Landlord retakes possession of or relets the Premises, Landlord may recover all damages caused by the default (including but not limited to unpaid Rent, attorney fees reasonably incurred, all costs of reletting the Premises, the unamortized cost of improvements installed by Landlord for Tenant, and broker commissions) together with interest thereon at the Default Interest Rate. Landlord may sue periodically to recover damages as they accrue during the remainder of the Term without barring a later action for further damages. Landlord may at any time bring an action seeking accrued damages plus damages for the remaining Term as allowed by Law.

**14.3 Cure of Tenant's Default.** Without prejudice to any other remedy for default, Landlord may perform any obligation of Tenant or make any payment required by Tenant under this Lease if Tenant fails to do so. On demand, Tenant will immediately reimburse Landlord for Landlord's costs of such performance, including reasonable attorney fees and all disbursements, together with interest at the Default Interest Rate from the date of expenditure until fully paid.

## **SECTION 15 SECURITY DEPOSIT**

Upon execution of this Lease, Tenant will deposit with Landlord the sum set forth in Section 1.21 (the "Security Deposit"), as security for Tenant's full and faithful performance of every provision of this Lease. If Tenant is in default of any provision of this Lease, Landlord may, but will not be obligated to, apply all or any part of the Security Deposit to remedy the default. If any portion of the Security Deposit is so applied, Tenant must immediately deposit with Landlord cash in an amount sufficient to restore the Security Deposit to its original amount. Landlord may commingle the Security Deposit with Landlord's funds, and Tenant will not be entitled to interest on the Security Deposit. If Tenant fully and faithfully performs every provision of this Lease, the Security Deposit or any remaining balance of it will be returned to Tenant within thirty (30) days after the expiration of the Term.

## **SECTION 16 LANDLORD'S AND TENANT'S WORK**

Landlord will perform the work described as Landlord's Work, if any, as set forth in the attached Exhibit C; but, the completion of Landlord's Work is not a condition precedent to commencement of the tenancy, this Lease or the obligation to pay rent.

## **SECTION 17 MISCELLANEOUS**

**17.1 Waivers.** No waiver by either party of performance of any provision of this Lease will be deemed to be a waiver of nor prejudice such party's right to otherwise require performance of the same provision or any other provision.

**17.2 Recording.** Tenant will not record this Lease or any memorandum of it without Landlord's prior written consent, which consent Landlord may withhold in its sole discretion.

**17.3 Notices.** All notices, demands, consents, approvals, and other communications provided for in this Lease will be invalid unless set forth in writing and delivered by facsimile transmission, email, overnight air courier, personal delivery, or registered or certified U.S. mail with return receipt requested to the appropriate party at its address as set forth in Section 1.6 for Tenant and Section 1.3 for Landlord. Addresses for notices may be changed from time to time by written notice to all other parties. Any communication given by email transmission must be confirmed within forty-eight (48) hours by mail. Any communication given by mail will be considered received on the earlier of (a) forty-eight (48) hours after deposit in the U.S. mail, with postage prepaid, or (b) actual receipt, as indicated by the return receipt. Any communication given by facsimile and email transmission will be considered received when sent. Any communication given by personal delivery or by overnight air courier will be considered received when delivered.

**17.4 Exhibits.** The Exhibits listed in Section 1.25 are attached to and made a part of this Lease as if they had been set forth in full in this Lease.

**17.5 Construction of Lease Provisions.** (a) This Lease is to be construed and governed by the laws of the state of Oregon; (b) the invalidity or nonenforceability of any provision of this Lease will not affect or impair any other provision in it; (c) this Lease constitutes the entire agreement of the parties and supersedes all prior agreements or understandings between the parties with respect to the subject matter of it; (d) this Lease may not be modified or amended except by written agreement signed by both parties; (e) if there is more than one tenant, the obligations imposed by this Lease on Tenant will be joint and several; (f) time is of the essence of this Lease and each and every provision of it; (g) nothing contained in

this Lease creates a principal-and-agent relationship, a partnership, or a joint venture between the parties to it, and no provisions contained in this Lease may be deemed to create any relationship other than that of landlord and tenant; (h) any provision of this Lease that does not require full performance before the expiration or earlier termination of this Lease will survive the expiration or earlier termination of this Lease and will be fully enforceable thereafter; (i) no representations have been made by Landlord or its agents and the parties have no understandings other than those set forth in this Lease; (j) upon delivery of possession of the Premises to Tenant, Tenant will be deemed to have measured the Premises and to have agreed that calculations of the Gross Leasable Area of the Premises, Building, and Premises are accurately set forth in the Basic Lease Provisions; and (k) no recalculation of square footage will affect the obligations of Tenant under this Lease including without limitation the amount of Base Rent, or Additional Rent payable by Tenant.

**17.6 Successors.** Subject to any limitations on assignments set forth in this Lease, all provisions of this Lease will inure to the benefit of and be binding on the successors and assigns of the parties to this Lease.

**17.7 Attorney Fees in Suit or Action; Waiver of Jury Trial**

**17.7.1 Attorney Fees.** If any suit or action is instituted to interpret or enforce any term or provision of this Lease, the prevailing party will be entitled to recover from the other party such sum as the court may adjudge reasonable as attorney fees at trial, on petition for review, or on appeal, in addition to all other sums provided by law.

**17.7.2 Waiver of Jury Trial.** THE PARTIES EACH HEREBY WAIVE THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION OR PROCEEDING BROUGHT BY EITHER PARTY OR ANY OTHER PARTY RELATING TO (A) THIS LEASE OR ANY UNDERSTANDINGS OR PRIOR DEALINGS BETWEEN THE PARTIES TO THIS LEASE, OR (B) THE PREMISES, THE BUILDING, OR THE PREMISES OR ANY PART THEREOF.

**17.8 Dispute Resolution**

**17.8.1 Disputes Subject to Arbitration.** Any dispute between the parties relating to the interpretation of their rights and obligations under this Lease must be resolved solely by arbitration in accordance with the provisions of this Section 17.8. **NOTWITHSTANDING THE FOREGOING, SECTION 17.8 WILL NOT APPLY TO ANY DISPUTE CONCERNING THE PAYMENT OF RENT.**

**17.8.2 Arbitration.** Any dispute between the parties that is to be resolved by arbitration as provided in this Section 17.8 must be settled and decided by arbitration conducted in accordance with the rule of the Arbitration Service of Portland, Inc., as then in effect (the "Arbitration Rules"), except as provided below. Any such arbitration must be held and conducted in the city or county in which the Premises is located, before one (1) arbitrator who will be selected by mutual agreement of the parties; if agreement is not reached on the selection of such arbitrator within fifteen (15) days of receipt of a written demand for arbitration as set forth below, then an arbitrator is to be appointed by the presiding judge of the Circuit Court of the County in Oregon in which the Premises is located. The provisions of the Arbitration Rules will apply to and govern the arbitration subject, however, to the following:

(a) Any demand for arbitration must be in writing and must be made within ninety (90) days after the claim, dispute, or other matter in question arose. The arbitration proceeding must commence within thirty (30) days after the arbitrator is appointed, and all document

exchange and other discovery of evidence must be completed within twenty (20) days after that appointment.

(b) The arbitrator appointed must be a former or retired judge or practicing attorney with at least ten (10) years' experience in real property and commercial matters. The arbitrator will resolve the controversy in accordance with the Arbitration Rules, applicable law, and the terms and conditions of this Lease. Thereafter, the arbitrator will prepare in writing and provide to the parties his or her decision, including factual findings and reasons on which the decision is based.

(c) The arbitration proceeding must be conducted and completed within five (5) days after its commencement and the arbitrator's decision must be made within sixty (60) days after the date of receipt of the written demand for arbitration.

(d) The arbitrator must award the prevailing party its reasonable attorney fees, expert and nonexpert witness costs and expenses, and other costs and expenses incurred in connection with the arbitration, unless the arbitrator, for good cause, determines otherwise.

(e) The nonprevailing party is responsible for paying the arbitrator's costs and fees.

(f) The arbitrator's decision, which may include equitable relief, will be final and judgment may be entered on the decision in accordance with applicable law in any court having jurisdiction over the matter.

#### **17.9 Hazardous Materials; Indemnities**

**17.9.1 Landlord Warranty.** Landlord warrants and represents to Tenant that as of the date of this Lease, Landlord has no actual knowledge of the existence of any Hazardous Materials on, in, or under the Premises above the legally permitted background levels other than as previously disclosed to Tenant in writing.

**17.9.2 Landlord's and Tenant's Representations.** Landlord and Tenant each warrant and represent to the other that at no time during Tenant's occupancy of the Premises will either party store, or use, or permit the storage or use on, in, or under the Premises of any Hazardous Materials. Notwithstanding the foregoing, each party consents to the prudent use by the other party and other occupants of normal and customary chemicals and substances (including Hazardous Materials) applied in accordance with sound practices in the use of the Premises in quantities and in accordance with all Laws. Landlord and any occupant who uses any Hazardous Materials, including Tenant, will properly store and dispose of all Hazardous Materials as approved or authorized by Law and will not store or dispose of any Hazardous Materials on the Premises.

**17.9.3 Landlord's Indemnity.** Landlord agrees to indemnify and hold Tenant harmless from and against all costs, including attorney fees and court costs, incurred during the cleanup and restoration of the Premises in regard to all Hazardous Materials in or under the Premises that preexisted the Lease Commencement Date and that were not deposited on the Premises by Tenant and any Hazardous Materials deposited on the Premises subsequent to the commencement of this Lease by Landlord and its employees and agents.

**17.9.4 Tenant's Indemnity.** Tenant hereby agrees to indemnify and hold Landlord harmless from and against all costs, including attorney fees and court costs, incurred in the cleanup and restoration of the Premises resulting from (a) any Hazardous Materials brought onto the Premises by Tenant or its agents, employees, contractors, or invitees and any contamination by Hazardous Materials that results, directly or indirectly, from the use of the Premises by Tenant; and (b) any and all claims for liability, loss, damages, or expenses (including attorney

fees) suffered by Landlord in connection with the existence of Hazardous Materials on the Premises, including in the soil or groundwater underlying or adjacent to the Premises and in the water, sewage, and drainage systems connected to and within the Premises, to the extent that such hazardous materials were deposited, discharged, or stored on or about the Premises by Tenant or its employees, agents, contractors, or invitees.

**17.10 Force Majeure.** Whenever this Lease prescribes a period of time for action to be taken by a party, that party will not be liable or responsible for, and the computation for the period of time will exclude, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, acts of terrorism, Laws, or any other causes of any kind whatsoever that are beyond the reasonable control of the party. This provision will not be applicable to excuse any delay in the payment of Rent or any other money owed by Tenant to Landlord.

**17.11 Authority.** The persons executing this Lease on behalf of Landlord and Tenant each hereby covenant and warrant that the execution of this Lease is duly authorized by the party executing this Lease, that such party is qualified to do business in Oregon, and that the person signing on behalf of each party was duly authorized by that party to bind that party to this Lease.

**17.12 No Offer.** This Lease is submitted to Tenant based on the understanding that such submittal is not an offer and will not bind Landlord in any way until (a) Tenant has duly executed and delivered duplicate originals of this Lease to Landlord and (b) Landlord has executed and delivered one of such originals to Tenant.

The parties have executed this Lease to be effective on \_\_\_\_\_, 20\_\_\_\_.

Landlord: \_\_\_\_\_

By: /s/ \_\_\_\_\_

Its: /s/ \_\_\_\_\_

Tenant: \_\_\_\_\_

By: /s/ \_\_\_\_\_

Its: /s/ \_\_\_\_\_

**Exhibit A**  
**Legal Description of the Premises**

**LEGAL DESCRIPTION**

See Exhibit A-1.

**GENERAL INFORMATION**

**Name:** Hawthorne Villa Apartments  
**Property Type:** Multi-Family (Garden/Low Rise) LIHTC Apartments  
**Address:** 7705 SW Pfaffle Street  
Tigard, Oregon 97223

**Assessor's Parcel #:** R282429  
**Census Tract No.:** 306.00

**Site Description:**

<b>USABLE AREA</b>	<b>EXCESS AREA</b>	<b>SURPLUS AREA</b>	<b>GROSS AREA</b>
<b>SF ACRES</b>	<b>SF ACRES</b>	<b>SF ACRES</b>	<b>SF ACRES</b>
207,346 4.76	0 0.00 0	0.00	207,346 4.76

Zoning: Medium-Density Residential (R-12)

**Improvement Description:**

No. of Total Buildings: 9 (8 one and two-story apartment buildings and 1 single-family home that is used as a leasing office and manager's unit)  
Number of Units: 118  
Amenities: Laundry rooms, storage units, and leasing office. Several landscaped courtyards on the property.

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

PARCEL I:

A part of the George Richardson Donation Land Claim in the Northeast quarter of the Southwest quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, described as follows:

BEGINNING at the Northwest corner of the George Richardson Donation Land Claim, situated in Section 36, Township 1 South, Range 1 West, Willamette Meridian; thence South 89°00' East, 1887.60 feet to a point in the Northerly boundary line of said Donation Land Claim; thence South 0°11' West, 1204.0 feet to an iron pipe, said iron pipe marking the Northwest corner of that tract conveyed in Deed Book 279, Page 648; thence South 89°49' East, 85.0 feet along the North line of that tract conveyed in Deed Book 279, Page 648 to the Northeast corner of said tract and true point of beginning of tract herein described; thence South 89°49' East, 25.0 feet; thence North 0°11' East parallel with the East line of that tract described in deed to Leonard E. Cason, et al, recorded January 16, 1968 in Book 677, Page 139, Washington County Records, 173.66 feet; thence South 88°17' East, 96 feet to the East line of said Cason tract; thence South 0°11' West along the East line of said Cason tract, 315.0 feet to the Southeast corner thereof; thence North 88°17' West along the South line of said Cason tract, 121.6 feet to the Southeast corner of that tract conveyed in Deed Book 279, Page 648; thence North 0°11' East along the East line of that tract conveyed in Deed Book 279, Page 648, 141.34 feet, more or less to the true point of beginning, all situated in Washington County, Oregon.

PARCEL II:

A part of the George Richardson Donation Land Claim in the Northeast quarter of the Southwest quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, described as follows:

BEGINNING at the Northwest corner of the George Richardson Donation Land Claim, situated in Section 36, Township 1 South, Range 1 West, Willamette Meridian; thence South 89°00' East, 1887.60 feet to a point in the Northerly boundary line of said Donation Land Claim; thence South 0°11' West, 1204.0 feet to an iron pipe, said iron pipe marking the Northwest corner of that tract conveyed in Deed Book 279, Page 648, and the true point of beginning herein described; thence South 89°49' East, 110.0 feet to a point; thence North 0°11' East, parallel with the East line of that tract described in deed to Leonard E. Cason, et al, recorded January 16, 1968 in Book 677, Page 139, Washington County Records, 173.66 feet to a point; thence North 88°37' West, 110.0 feet to a point on the West line of said Cason tract; thence South 0°11' West along said West line, 173.66 feet to the true point of beginning.

PARCEL III:

A part of the George Richardson Donation Land Claim in the Northeast quarter of the Southwest quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, described as follows:

BEGINNING at the Northwest corner of the George Richardson Donation Land Claim, situated in Section 36, Township 1 South, Range 1 West, Willamette Meridian; thence South 89°00' East, 1887.60 feet to a point in the Northerly boundary line of said Donation Land Claim; thence South 0°11' West, 1204.0 feet to an iron pipe, said iron pipe marking the Northwest corner of that tract conveyed in Deed Book 279, Page 648; thence South 89°49' East, 85.0 feet along the North line of that tract conveyed in Deed Book 279, Page 648 to the Northeast corner thereof; thence South 89°49' East, 25.0 feet; thence North 0°11' East parallel with the East line of that tract described in deed to Leonard E. Cason, et al, recorded January 16, 1968 in Book 677, Page 139, Washington County Records, 173.66 feet; thence South 88°17' East, 51.0 feet to the true point of beginning of the herein described premises; thence continuing South 88°17' East, 45.0 feet to a point on the East line of said Cason tract; thence North 0°11' East along said East line, 90.0 feet; thence North 88°17' West, 45.0 feet; thence South 0°11' West, 90.0 feet to the true point of beginning.

PARCEL IV:

A part of the George Richardson Donation Land Claim in the Northeast quarter of the Southwest quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, described as follows:

BEGINNING at the Northwest corner of the George Richardson Donation Land Claim, situated in Section 36, Township 1 South, Range 1 West, Willamette Meridian; thence South 89°00' East, 1887.60 feet to a point in the Northerly boundary line of said Donation Land Claim; thence South 0°11' West, 1030.34 feet to a point on the West line of that tract described in deed to Leonard E. Cason, et al, recorded January 16, 1968 in Book 677, Page 139, Records of Washington County, being the Westerly Northwest corner of that tract described in Mortgage recorded October 29, 1968 in Book 722, Page 520, Records of Washington County and the true point of beginning of the herein described premises; thence South 88°17' East, 161.6 feet; thence North 0°11' East, 90.0 feet; thence South 88°17' East, 45.0 feet to a point on the East line of said Cason tract; thence North 0°11' East along said East line, 171.34 feet to a point; thence North 88°17' West, 65.00 feet to a point; thence South 0°11' West, 75.0 feet to a point; thence North 88°17' West, 141.6 feet to a point on the West line of said Cason tract; thence South 0°11' West along said West line, 186.34 feet to the true point of beginning.

PARCEL V:

A part of the George Richardson Donation Land Claim in the Northeast quarter of the Southwest quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, described as follows:

BEGINNING at the Northwest corner of the George Richardson Donation Land Claim, situated in Section 36, Township 1 South, Range 1 West, Willamette Meridian; thence South 89°00' East, 1887.60 feet to a point in the Northerly boundary line of said Donation Land Claim; thence South 0°11' West, 844.0 feet to a point on the West line of that tract described in deed to Leonard E. Cason, et al, recorded January 16, 1968 in Book 677, Page 139, Records of Washington County, being the Westerly Northwest corner of the first tract described in Mortgage recorded February 4, 1969 in Book 732, Page 58, Records of Washington County and the true point of beginning of the herein described property; thence South 88°17' East, 141.6 feet to a point; thence North 0°11' East, 75.0 feet to a point; thence South 88°17' East, 65.0 feet to a point on the East line of said Cason tract; thence North 0°11' East along said East line, 113.66 feet to a point; thence North 88°17' West, 206 feet to a point on the West line of said Cason tract; thence South 0°11' West along said West line, 190 feet to the true point of beginning.

PARCEL VI:

A part of the George Richardson Donation Land Claim in the Northeast quarter of the Southwest quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, described as follows:

BEGINNING at the Northwest corner of the George Richardson Donation Land Claim, situated in Section 36, Township 1 South, Range 1 West, Willamette Meridian; thence South 89°00' East, 1887.60 feet to a point in the Northerly boundary line of said Donation Land Claim; thence South 0°11' West, 654.0 feet to a point on the West line of that tract described in deed to Leonard E. Cason, et al, recorded January 16, 1968 in Book 677, Page 139, Records of Washington County, being the Northwest corner of the first tract described in Mortgage recorded in Book 745, Page 285, Records of Washington County and the true point of beginning of the herein described property; thence South 88°17' East, 206 feet to a point on the East line of said Cason tract; thence North 0°11' East along said East line, 186.0 feet to a point; thence North 88°17' East, 206 feet to a point on the West line of said Cason tract; thence South 0°11' West along said West line, 186.0 feet to the true point of beginning.

PARCEL VII:

A part of the George Richardson Donation Land Claim in the Northeast quarter of the Southwest quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian, in the City of Tigard, County of Washington and State of Oregon, described as follows:

BEGINNING at the Northwest corner of the George Richardson Donation Land Claim, situated in Section 36, Township 1 South, Range 1 West, Willamette Meridian; thence South 89°00' East, 1887.60 feet to a point in the Northerly boundary

line of said Donation Land Claim; thence South 0°11' West, 290 feet to a point, said point being the Southwest corner of a tract conveyed to Oscar Sidler and Grace Sidler by deed recorded November 28, 1911 in Deed Book 90, Page 45, and the true point of beginning; thence South 0°11' West, 178 feet to a point on the West line of that tract described in a deed to Leonard E. Cason, et al, recorded January 16, 1968 in Book 677, Page 139, Records of Washington County, being the Northwest corner of the first tract described in Mortgage recorded May 19, 1971 in Book 818, Page 167, Records of Washington County; thence South 88°17' East, 206 feet to a point on the East line of said Cason tract; thence North 0°11' East along said East line, 178 feet to the South line of said Sidler tract; thence North 89° West along the West line of said Sidler tract, 206.0 feet to the true point of beginning.

# AERIAL PHOTOGRAPH

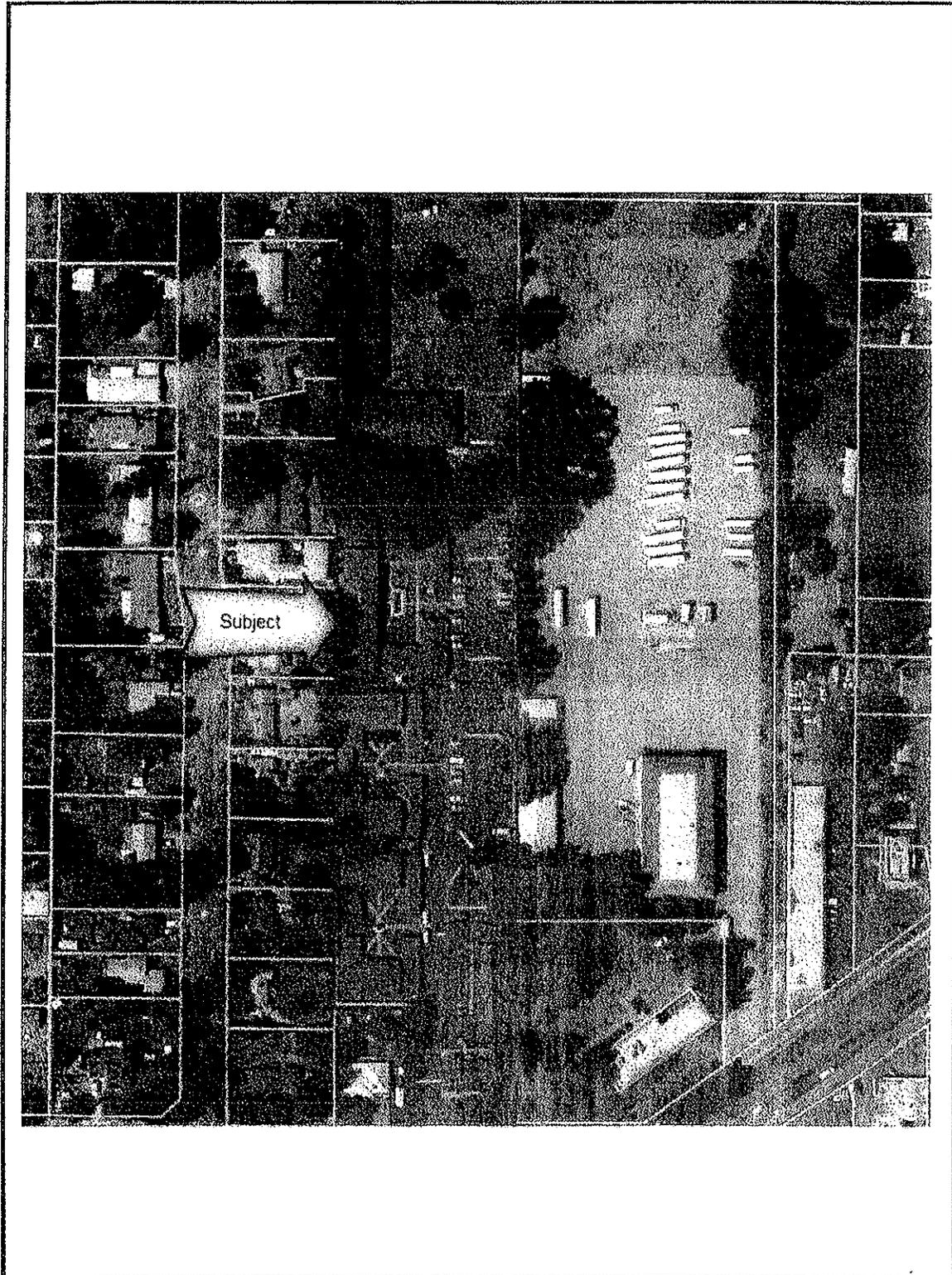


Exhibit B-1  
Page 1 of 1

### SUBJECT PROPERTY PHOTOGRAPHS



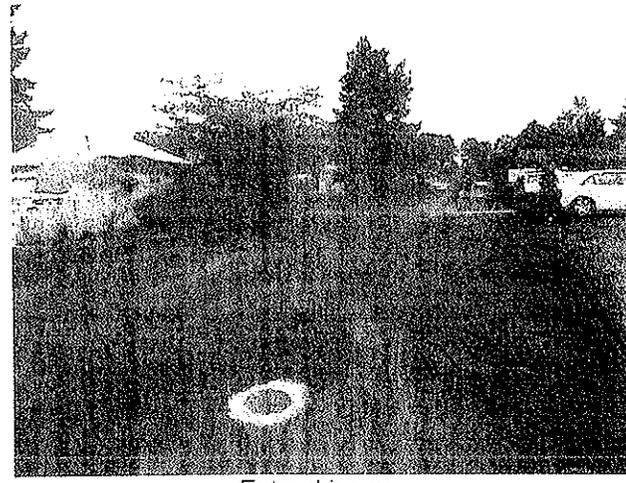
Typical one and two-story exterior



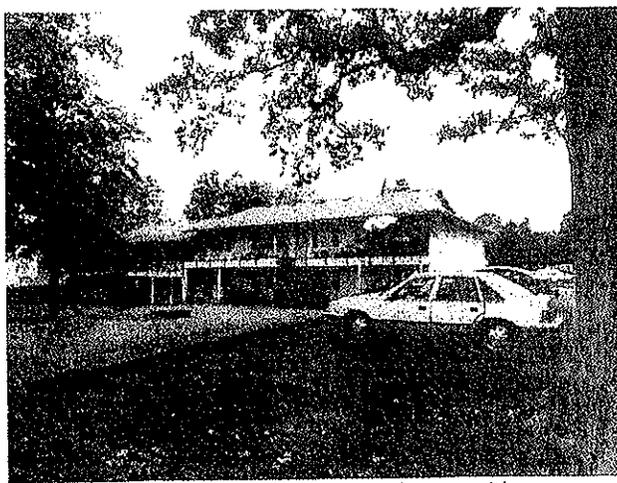
Courtyard with additional exterior view



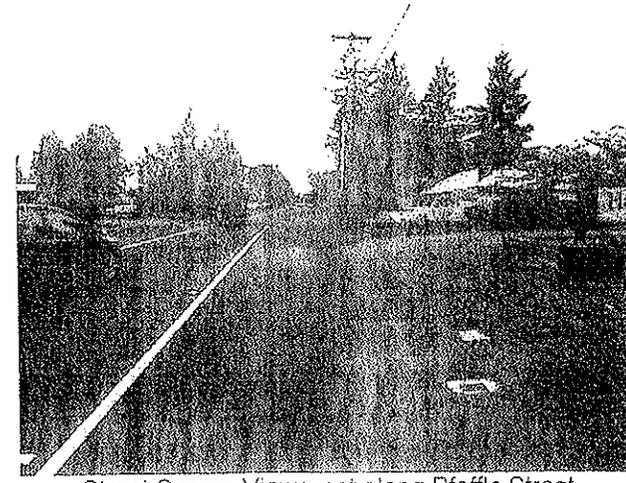
Entry to leasing office/manager's unit



Entry driveway



Two-story building (studios) w/ surface parking spaces

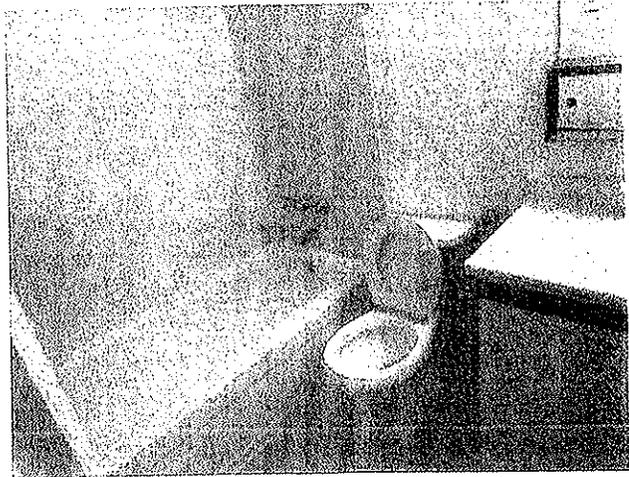


Street Scene: View west along Pfaffle Street

Exhibit B-2  
Page 1 of 3



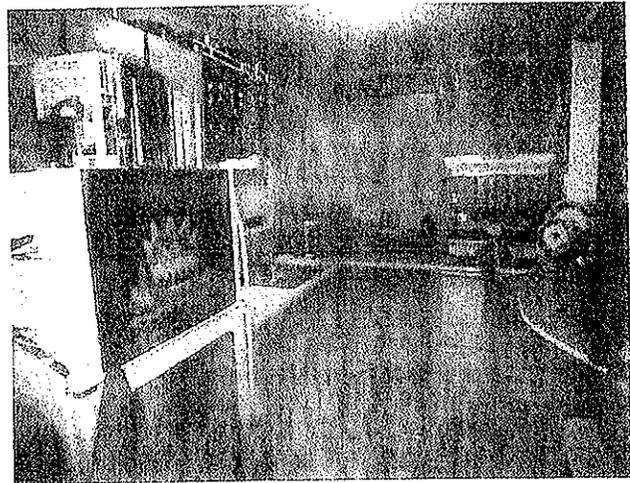
Typical bedroom



Bathroom



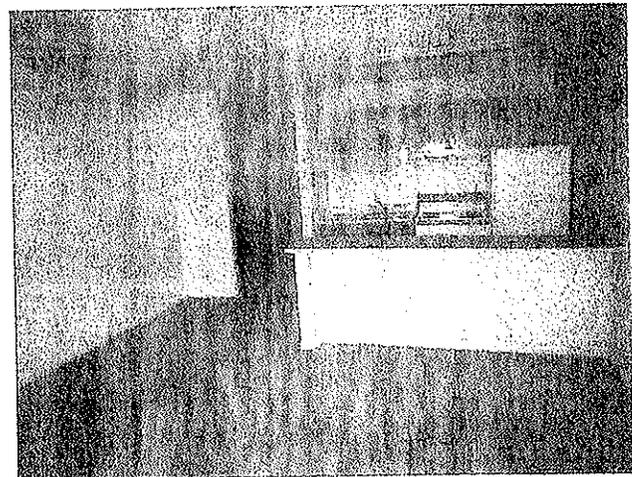
Kitchen and dining room area



Alternate kitchen view

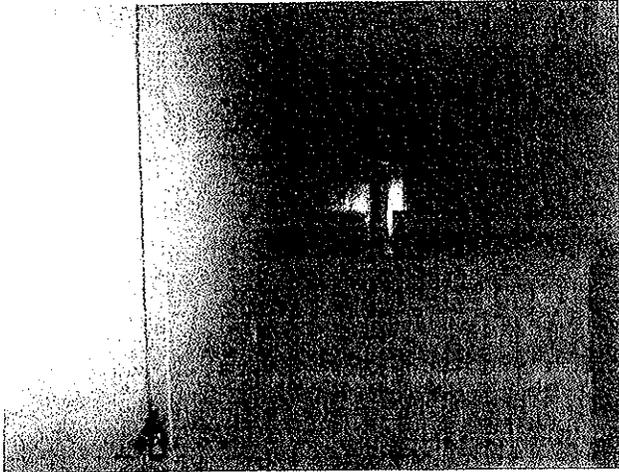


Typical living room



View of the studio from the entryway

Exhibit B-2  
Page 2 of 3



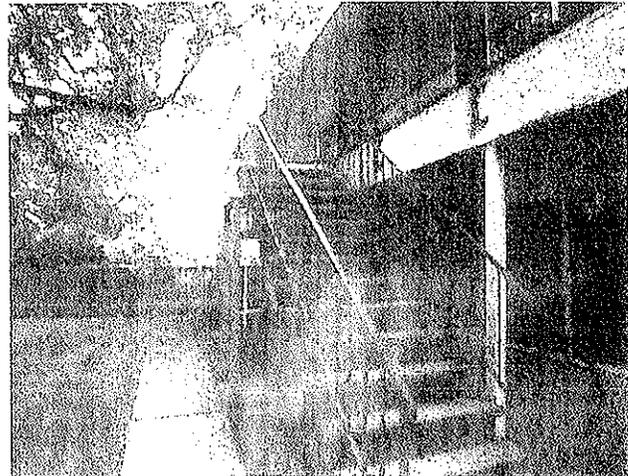
Storage units



Laundry room



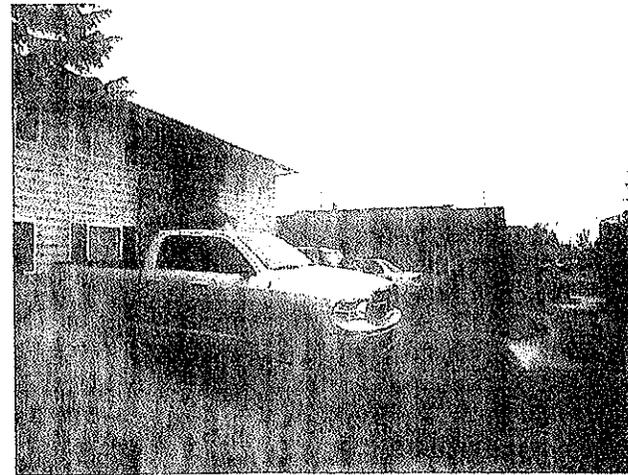
Common water heaters for studios



Stairwell and entry to studio units



Example of aging roof



View of parking and building exterior

Exhibit B-3  
Page 3 of 3

**Exhibit C**

**WORK LETTER**

**SECTION 1 IMPROVEMENTS PROVIDED BY LANDLORD**

Landlord will provide the following improvements at the Premises at Landlord's expense ("Landlord's Work") as well as the permits for them:

<b>Hawthorne Interior Improvements</b>	Units
	118
<b>Budget</b>	
Interior Water Meter @ \$750 per units	\$ 88,500
Replace appliances	\$ 118,000
Interior painting @ \$600 per units	\$ 70,800
Replace interior carpet and vinyl @1200	\$ 141,600
Replace interior in exterior door \$1200 per unit	\$ 94,400
Contingency	<u>\$ 50,000</u>
<b>TOTAL</b>	<b>\$ 563,300</b>

## Exhibit D

### RULES AND REGULATIONS

The following Rules and Regulations will remain in full force and effect until Tenant is notified in writing by Landlord of any changes or amendments to them:

(1) Landlord reserves the right to require Tenant to discontinue any display or demonstration in or from the Premises that, in Landlord's sole opinion, interferes with the use of the public passageways of the Premises or constitutes a nuisance or an unhealthy or unsafe condition.

(2) At all times Tenant must maintain an adequate number of suitable fire extinguishers in good working order in the Premises for use in the event of local fires, including electrical or chemical fires.

(3) Tenant must immediately notify Landlord of any breakage, injury, fire, or disorder coming to its attention that occurs in or about the Premises or any of the Common Areas.

(4) Tenant may not permit the use in the Premises of any device or instrument that is intended to be audible or visible beyond the confines of the Premises, such as a sound-reproduction system, television set, phonograph, or radio, or excessively bright, changing, flashing, flickering, moving, or neon lights, or other lighting devices or any similar devices, nor may Tenant permit any act or thing on the Premises that is disturbing to normal sensibilities or other tenants in the Premises.

(5) Tenant may not, at any time, place any security gate or grille in front of the entrance doors or storefront of the Premises.

(6) Landlord will not be responsible to Tenant for the nonobservance or violation of any of these Rules and Regulations.

(7) Tenant is responsible for furnishing and installing all light bulbs for the Premises.

(8) Landlord may, upon Tenant's written request, waive Tenant's compliance with any of the foregoing Rules and Regulations but (a) no waiver will be effective unless signed by Landlord or Landlord's authorized agent, (b) any such waiver will not relieve Tenant from the obligation to comply with such Rule or Regulation in the future unless expressly consented to by Landlord, and (c) no waiver granted to Tenant will relieve any other tenant from the obligation of complying with the foregoing Rules and Regulations, unless the other tenant has received a similar waiver in writing from Landlord.

(9) The term *Tenant* as used in these Rules and Regulations means, in addition to the Tenant under the Lease, any sublessee, assignee, agent, servant, contractor, employee, invitee, or licensee of Tenant. All said parties must comply with these Rules and Regulations.

**Exhibit E  
Confirmation Letter**

[date]

[name]

[address]

Dear \_\_\_\_\_:

Re: \_\_\_\_\_ (the "Premises")

CONFIRMATION LETTER AGREEMENT

As you know, on \_\_\_\_\_, 2012, \_\_\_\_\_, a \_\_\_\_\_, as Landlord, and \_\_\_\_\_, a \_\_\_\_\_, as Tenant, entered into a Lease for the above-referenced real property.

In Section 3.1 of that Lease, the parties agreed that once the Lease Commencement Date (as defined in the Lease) and certain other matters were determined, the parties would enter into a letter agreement confirming those matters.

Therefore, by execution of this letter, Landlord and Tenant confirm the following facts:

(1) The Lease Commencement Date is \_\_\_\_\_, 2012, Tenant has accepted the Premises, and the Premises are in the condition required by the Lease.

(2) The date that Landlord delivered possession of the Premises to Tenant is \_\_\_\_\_, 2012.

(3) The Rent Commencement Date is \_\_\_\_\_, 2012.

(4) The date that payment of Base Rent commences is \_\_\_\_\_, 2012.

(5) The date that payment of Operating Expense commences is \_\_\_\_\_, 2012.

(6) The Expiration Date is \_\_\_\_\_, 2017.

Please execute and date the enclosed copy of this letter in the space provided for that purpose and return it to me at your earliest convenience.

Thank you for your prompt attention to this matter.

Very truly yours,

/s/ \_\_\_\_\_

[name]

[title]

Attachment/Ex. \_\_\_\_\_

REVIEWED AND AGREED TO on \_\_\_\_\_, 2012.

[COMPANY'S NAME]

By: /s/ \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit F**  
**ADDENDUM**

N/A as of 3.1.12

## ASSESSMENT & TAX INFORMATION

The subject's assessed values and property taxes for the current year are summarized in the following table. According to the Washington County Tax Assessor, the subject is currently "specially" assessed and is currently fully tax exempt. Please note that it is unknown whether the subject property would remain tax exempt under the current potential buyer (discussed ahead).

TAX INFORMATION (2010/2011 Tax Year)						
APN	RMV			Assessed Total	2010/2011 Taxes	Millage Rate
	RMV Land	Imp./Other	RMV Total			
R282429	\$1,666,000	\$2,721,470	\$4,387,470	\$2,721,470	\$0	\$0.000
<b>Total</b>	<b>\$1,666,000</b>	<b>\$2,721,470</b>	<b>\$4,387,470</b>	<b>\$2,721,470</b>	<b>\$0</b>	

**Assessment & Taxation Description** - In Oregon, Measure 50 was passed in the May 20, 1997 special election. This measure establishes the maximum assessed value of property in Oregon for the 1997/1998 tax year as 90% of the property's real market value in the 1995/96 tax year. Any increases in assessed value for tax years following 1997/1998 are limited to 3% per year. Assessed value will be adjusted for new property or property improvements and certain other events. Certain local option taxes are permitted, if approved by voters. Measure 50 retains the existing total property tax rate for all property taxes, including local option taxes but excluding taxes for bonds at \$5 per \$1,000 of value for schools and \$10 per \$1,000 of value for non-school government. The subject property is not encumbered by bonds.

**Estimated Property Taxes** - The subject's current ownership group is a non-profit and the subject property is currently tax exempt. Because the buyer is a "for-profit" entity it is unknown whether the county will continue to fully abate real estate taxes and the change in ownership may trigger a full project reassessment; however, it is likely that the subject would receive a special assessment at a reduced tax liability, due to its status as an LIHTC project. Although tax comparables are not used by the assessor's office, for the purposes of estimating taxes for this analysis, the real estate taxes of the LIHTC expense comparables used in this report are presented below to provide a sample of range of taxes on a per unit basis:

TAX COMPARABLES (FROM EXPENSE COMPARABLES)						
	Subject	Comp. 1	Comp. 2	Comp. 3	Comp. 4	Comp. 5
Year Built	1969	1997	1992	1992	1991	1993
No. Units	118	124	104	114	54	210
Per Unit		\$0	\$241	\$670	\$219	\$513

Additionally, the Washington County Assessor's Office was contacted to assist in estimating taxes. According to Veronica with special assessment section, the subject began receiving special assessment in 2005. Additionally, the taxes at that time were \$37,544.83 (\$318/unit). The Assessor's Office warned that if the property was reassessed a full appraisal would be triggered without regard to previous taxes; however, this analysis considers the previous taxes as a reasonable guideline for potential taxes and uses a typical 3% tax growth per year from the 2004-2005 taxes. Therefore, the 2010-2011 taxes would be \$44,830 or \$379/unit, which seems reasonable based on the comparables as well.

Based on the above range of the comparables and the discussion with subject's continued status as a low-income housing project this analysis estimates taxes at \$44,250 or \$375 per unit.

Based on information provided by the buyer via phone, Veronica with the County Assessor stated that it is likely the full tax exemption would continue, but paperwork would need to be filed after the sale.

**Discussion of Rental Adjustments**

Adjustments for differences between the subject property and the comparables can be made quantitatively or qualitatively. Adjustments for some differences can be derived from the market and are addressed in the Quantitative Adjustments paragraph. Other items for which dollar adjustments are more difficult to derive are addressed in the Qualitative Adjustments paragraph.

**Quantitative Adjustments** - The subject property and the comparables vary to some degree in terms of project amenities, unit amenities, parking, laundry, and utilities. The following grid illustrates the quantitative adjustments applied to the comparables (when necessary) in order to make the comparables similar to the subject in terms of these features.

RENT COMPARABLE ADJUSTMENTS														
Adjustments			Comp. Comparison to the Subject											
Subcategory	\$ Adj.	Subject	Comp. 1		Comp. 2		Comp. 3		Comp. 4		Comp. 5		Comp. 6	
<b>Project Amenities</b>														
Pool	\$10	No	Yes	(\$10)	Yes	(\$10)	Yes	(\$10)	Yes	(\$10)	Yes	(\$10)	No	\$0
Clubhouse	\$10	No	No	\$0	No	\$0	Yes	(\$10)	No	\$0	Yes	(\$10)	No	\$0
Exercise facilities	\$10	No	Yes	(\$10)	No	\$0	Yes	(\$10)	No	\$0	Yes	(\$10)	No	\$0
<b>Subtotal</b>				(\$20)		(\$10)		(\$30)		(\$10)		(\$30)		\$0
<b>Unit Amenities</b>														
Fireplace	\$10	No	No	\$0	Yes	(\$10)	No	\$0	No	\$0	Yes	(\$10)	No	\$0
Dishwasher	\$10	No	Yes	(\$10)	Yes	(\$10)	Yes	(\$10)	Yes	(\$10)	Yes	(\$10)	Yes	(\$10)
<b>Subtotal</b>				(\$10)		(\$20)		(\$10)		(\$10)		(\$20)		(\$10)
<b>Laundry</b>														
Laundry	\$0	Yes	No	\$0	Yes	\$0	No	\$0	No	\$0	No	\$0	Yes	\$0
Washer/Dryer Hookup	\$10	No	Yes	(\$10)	No	\$0	Yes	(\$10)	No	\$0	Yes	(\$10)	No	\$0
Washer/Dryer	\$30	No	Yes	(\$30)	No	\$0	Yes	(\$30)	Yes	(\$30)	Yes	(\$30)	No	\$0
<b>Subtotal</b>				(\$40)		\$0		(\$40)		(\$30)		(\$40)		\$0
<b>Parking</b>														
Open	\$0	Yes	Yes	\$0	Yes	\$0	Yes	\$0	Yes	\$0	Yes	\$0	Yes	\$0
Carport	\$15	No	Yes	(\$15)	No	\$0	Yes	(\$15)	No	\$0	No	\$0	No	\$0
Garage	\$75	No	No	\$0	No	\$0	No	\$0	No	\$0	No	\$0	No	\$0
<b>Subtotal</b>				(\$15)		\$0		(\$15)		\$0		\$0		\$0
<b>Utilities Included in Rent</b>														
Electricity	\$30	No	No	\$0	No	\$0	No	\$0	No	\$0	No	\$0	No	\$0
Water	\$15	Yes	No	\$15	Yes	\$0	No	\$15	Yes	\$0	No	\$15	No	\$15
Hot Water	\$15	No	No	\$0	No	\$0	No	\$0	No	\$0	No	\$0	No	\$0
Sewer	\$15	Yes	No	\$15	Yes	\$0	No	\$15	Yes	\$0	No	\$15	No	\$15
Garbage	\$15	Yes	No	\$15	Yes	\$0	Yes	\$0	Yes	\$0	No	\$15	Yes	\$0
Telephone	\$20	No	No	\$0	No	\$0	No	\$0	No	\$0	No	\$0	No	\$0
Gas	\$10	No	No	\$0	No	\$0	No	\$0	No	\$0	No	\$0	No	\$0
Cable/Satellite	\$25	No	No	\$0	No	\$0	No	\$0	Yes	(\$25)	No	\$0	Yes	(\$25)
High-Speed Internet	\$35	No	No	\$0	No	\$0	No	\$0	No	\$0	No	\$0	No	\$0
<b>Subtotal</b>				\$45		\$0		\$30		(\$25)		\$45		\$5
<b>Total Adjustments</b>				(\$40)		(\$30)		(\$65)		(\$75)		(\$46)		(\$5)

Exhibit G  
Page 2 of 5

**Gross Rental Income**

The gross rental income equals the total gross income based the rent conclusions presented above and is summarized in the following table.

Income Items	Unit Mix	Market Rent	Monthly	Annual
<b>Rental Income</b>				
Studio/1 BA	30	\$485	\$14,550	\$174,600
1 BD/1 BA	62	\$550	\$34,100	\$409,200
1 BD/1 BA	21	\$575	\$12,075	\$144,900
2 BD/1 BA	5	\$670	\$3,350	\$40,200
<b>Total Rental Income</b>	<b>118</b>	<b>\$543</b>	<b>\$64,075</b>	<b>\$768,900</b>

**Other Income**

The other income for the subject is discussed below and historical income can be seen in the next section. The renovations will not likely heavily impact potential other income sources; therefore historical figures are considered good indicators for this analysis.

**Laundry/Vending** - Based on the historical income, income of \$6,000/year is used in the analysis.

**Storage** - Based on the historical income, income of \$750/year is used in the analysis.

**Miscellaneous Income** - Typical LIHTC projects see some minor other income relating to retained deposits, late fees, etc. The subject historical income appears reasonable and income of \$12,000/year is used in the analysis (near \$8.50/unit/month).

<b>Other Income</b>		
Laundry/Vending	\$500	\$6,000
Storage	\$63	\$750
Miscellaneous Income	\$1,000	\$12,000
<b>Total Other Income</b>	<b>\$1,563</b>	<b>\$18,750</b>

**Potential Gross Income (PGI)**

Potential gross income equals the gross rental income plus other income, and is stated as follows:

<b>POTENTIAL GROSS INCOME (PGI)</b>	<b>\$6,975</b>	<b>\$10,822</b>	<b>\$787,650</b>
-------------------------------------	----------------	-----------------	------------------

**Vacancy and Credit Loss**

This category accounts for the time period between occupants, as well as possible prolonged vacancies under slow market conditions. This assignment reflects the probable stabilized vacancy during the economic life of the property and not necessarily the current or short-term vacancy. The subject's current vacancy rate is 5.1%. Vacancy for rent restricted properties in the subject's area is 2.7%, according to our Colliers International Valuation & Advisory Services survey, shown in the Market Analysis Section of this report. The subject had six vacant units based on the rent roll used in the report. Based on the above information and contact with various developers, property owners, and managers, a vacancy rate of 5% is concluded on a stabilized basis recognizing the subject's location, planned rent gap, and area's historical vacancy rate. The other income items are based on income that is considered to already reflect vacancy and credit loss.

Exhibit 6  
Page 3 of 5

INCOME APPROACH -- AFTER RENOVATION (CONTINUED)

**SUBJECT HISTORICAL INCOME & EXPENSES**

Year	2009		2010		2011 Annualized		2012 Budget		Historicals*	
	Total	\$/Unit	Total	\$/Unit	Total	\$/Unit	Total	\$/Unit	Low	High
<b>INCOME ITEMS</b>										
Rental Income	\$685,763	\$5,812	\$685,789	\$5,812	\$698,403	\$5,919	\$783,600	\$6,641	\$5,812	\$5,919
Laundry/Vending	\$0	\$0	\$5,854	\$50	\$5,904	\$50	\$6,000	\$51	\$0	\$50
Storage	\$0	\$0	\$745	\$6	\$837	\$7	\$900	\$8	\$0	\$7
Miscellaneous Income	\$14,382	\$122	\$12,275	\$104	\$7,497	\$64	\$10,392	\$88	\$64	\$122
<b>EFFECTIVE GROSS INCOME</b>	<b>\$700,145</b>	<b>\$5,933</b>	<b>\$704,663</b>	<b>\$5,972</b>	<b>\$712,641</b>	<b>\$6,039</b>	<b>\$890,892</b>	<b>\$6,787</b>	<b>\$5,933</b>	<b>\$6,039</b>
<b>EXPENSE ITEMS</b>										
Real Estate Taxes	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Additional Tax Charges	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Insurance	\$10,308	\$87	\$12,602	\$107	\$11,265	\$95	\$12,600	\$107	\$87	\$107
Utilities	\$103,584	\$878	\$90,772	\$769	\$103,581	\$878	\$87,920	\$745	\$769	\$878
Repairs and Maintenance	\$52,698	\$447	\$42,073	\$357	\$33,750	\$286	\$35,640	\$302	\$286	\$447
Landscaping	\$0	\$0	\$3,950	\$33	\$5,250	\$44	\$14,400	\$122	\$0	\$44
Turnover Expenses	\$0	\$0	\$15,620	\$132	\$18,435	\$156	\$13,800	\$117	\$0	\$156
Off-Site Management	\$41,901	\$355	\$40,142	\$340	\$40,860	\$346	\$45,800	\$388	\$340	\$355
% of EGI		6.0%		5.7%		5.7%		5.7%	5.7%	6.0%
On-Site Management	\$92,483	\$784	\$63,455	\$707	\$60,018	\$509	\$89,474	\$758	\$509	\$784
Other Salaries	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Payroll Taxes/Benefits	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
General/Administrative	\$39,873	\$338	\$28,830	\$244	\$20,781	\$176	\$24,364	\$206	\$176	\$338
Reserves	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>TOTAL EXPENSES</b>	<b>\$340,847</b>	<b>\$2,889</b>	<b>\$317,444</b>	<b>\$2,690</b>	<b>\$293,940</b>	<b>\$2,491</b>	<b>\$323,998</b>	<b>\$2,746</b>	<b>\$2,491</b>	<b>\$2,889</b>
Expenses as % EGI	48.7%		45.0%		41.2%		40.5%		41.2%	48.7%
<b>NET OPERATING INCOME</b>	<b>\$359,298</b>	<b>\$3,045</b>	<b>\$387,219</b>	<b>\$3,282</b>	<b>\$418,701</b>	<b>\$3,548</b>	<b>\$476,894</b>	<b>\$4,041</b>	<b>\$3,045</b>	<b>\$3,548</b>

Exhibit 6  
Page 4 of 5

**EXPENSE ANALYSIS & CONCLUSIONS - AFTER RENOVATION**

Expense Item	Total	\$/Unit	Description & Analysis
Real Estate Taxes	\$44,250	\$375	The subject is currently classified as "not assessable" or tax exempt by Washington County; however, based on the previous discussion presented in the Assessment and Tax & Information Section an annual tax liability of \$44,250 is estimated for this analysis.
Additional Tax Charges	\$0	\$0	There are no additional taxes.
Insurance	\$13,000	\$110	The concluded amount considers the comparables and the subject historicals.
Utilities	\$100,300	\$850	The concluded amount considers the subject historicals and the expense comparables, but also considers that hot water is included in the rent for the studio units.
Repairs and Maintenance	\$41,300	\$350	The concluded amount is based on the low er-end of the expense comparable range, considering the proposed renovations
Landscaping	\$17,700	\$150	The concluded amount is based on the middle of the expense comparable range and considers the amount of landscaping at the subject.
Turnover Expenses	\$17,700	\$150	The concluded amount is based on the low -end of the expense comparable range due to the high number of studio units at the subject and planned renovations.
Off-Site Management	\$33,714	\$286	The concluded amount is based on 4.5% of the concluded Effective Gross Income.
% of EGI		4.5%	
On-Site Management	\$94,400	\$800	The concluded amount is based on the middle of the expense comparable range.
Other Salaries	\$0	\$0	There are no additional taxes.
Payroll Taxes/Benefits	\$0	\$0	There are no additional benefits.
General/Administrative	\$26,600	\$225	The concluded amount considers the subject historical costs and the comparables.
Reserves	\$29,500	\$250	The concluded amount is based on \$250/unit, which considers the subject's age, condition after renovation, and unit mix.
<b>Total Expenses</b>	<b>\$418,464</b>	<b>\$3,546</b>	The subject concluded expenses fall slightly below the range of the comparables, but this is reasonable recognizing the subject's small average unit size. The expense conclusion is generally above the comparables on a % of EGI basis. Overall the conclusions are reasonable recognizing the planned renovations and are used in the analysis.

**NOI Conclusion**

Net Operating Income is equal to the effective gross income less the estimated expenses, and is stated as follows:

<b>NET OPERATING INCOME (NOI)</b>	<b>\$2,803</b>	<b>\$496</b>	<b>\$300,741</b>
-----------------------------------	----------------	--------------	------------------

Exhibit 6  
Page 5 of 5

## EXHIBIT H

Base Rent shall be calculated as follows:

**2012:**

Estimated Gross Rents:

	\$768,900.00	Rental Income
+	\$ 18,750.00	(Laundry, Storage, Misc. Income)
	\$ 787,650.00	
-	\$ 38,445.00	(Vacancy/Credit Loss)
	\$ 749,205.00	

Tenant Estimated Operating Expenses:

\$323,999.00 (See Exhibit G, pg. 69)

Estimated Base Rent:

	\$ 749,205.00
-	\$ 323,999.00
	<u>\$ 425,206.00 / 12 = \$35,433.83/ per month</u>

Base Rent shall equal \$35,433.83 adjusted monthly (up or down) to reflect actual Gross Rents and Tenant Expenses.

# **ATTACHMENT**

## **ACCESSIBLE LIVING, INC. 501(C)3 EVIDENCE**

INTERNAL REVENUE SERVICE  
DISTRICT DIRECTOR  
2 CUPANIA CIRCLE  
MONTEREY PARK, CA 91754

DEPARTMENT OF THE TREASURY

Date: FEB 24 1993

ACCESSIBLE LIVING INC  
7435 SW SORRENTO  
BEAVERTON, OR 97005

Employer Identification Number:  
94-3081823  
Contact Person:  
TYRONE THOMAS  
Contact Telephone Number:  
(213) 894-2289

Our Letter Dated:  
May 1989  
Addendum Applies:  
No

Dear Applicant:

This modifies our letter of the above date in which we stated that you would be treated as an organization that is not a private foundation until the expiration of your advance ruling period.

Your exempt status under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3) is still in effect. Based on the information you submitted, we have determined that you are not a private foundation within the meaning of section 509(a) of the Code because you are an organization of the type described in section 509(a)(1) and 170(b)(1)(A)(vi).

Grantors and contributors may rely on this determination unless the Internal Revenue Service publishes notice to the contrary. However, if you lose your section 509(a)(1) status, a grantor or contributor may not rely on this determination if he or she was in part responsible for, or was aware of, the act or failure to act, or the substantial or material change on the part of the organization that resulted in your loss of such status, or if he or she acquired knowledge that the Internal Revenue Service had given notice that you would no longer be classified as a section 509(a)(1) organization.

As of January 1, 1984, you are liable for taxes under the Federal Insurance Contributions Act (social security taxes) on remuneration of \$100 or more you pay to each of your employees during a calendar year. You are not liable for the tax imposed under the Federal Unemployment Tax Act (FUTA).

You are required to file Form 990 only if your gross receipts each year are normally more than \$25,000. For guidance in determining whether your gross receipts are "normally" more than \$25,000, see the instructions for Form 990. If a return is required, it must be filed by the 15th day of the fifth month after the end of your annual accounting period. A penalty of \$10 a day is charged when a return is filed late, unless there is reasonable cause for the delay. However, the maximum penalty charged cannot exceed \$5,000 or 5 percent of your gross receipts for the year, whichever is less. This penalty may also be charged if a return is not complete, so please be sure your return is complete before you file it.

If we have indicated in the heading of this letter that an addendum applies, the addendum enclosed is an integral part of this letter.

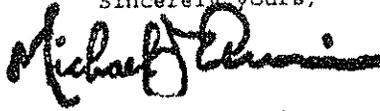
Letter 1050 (DO/CG)

ACCESSIBLE LIVING INC

Because this letter could help resolve any questions about your private foundation status, please keep it in your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Michael J. Quinn". The signature is written in a cursive style with a large, stylized initial "M".

Michael J. Quinn  
District Director



# **City of Tigard**

## **Application for Tax Abatement**

---

February 20, 2012

Greenburg Oaks (formerly Villa La Paz) Apartments  
11875 SW 91st Avenue, Tigard

**A. Property Description**

**B. Project's Charitable Purpose**

**C. Certification of Resident Income Levels**

**D. How Tax Exemption Will Benefit Residents**

**E. Tax Exempt Status**

**F. Verification of Information**

**G. IRS Letter**

## **A. Property Description**

**Greenburg Oaks Apartments (Tax account # R-276472), 11895 SW 91<sup>st</sup> Avenue**, is just off Greenburg Road, near Pacific Highway. The site sits on 3.01 acres and consists of 84 units in four buildings: 12 one-bedroom/one-bath 564 square foot units, 60 two-bedroom/one-bath 839 square foot units, and 12 three-bedroom/one-bath 1,007 square foot units. In 1998, CPAH added the now much used Community Center to the complex. The Community Center houses a computer center, library, multipurpose room and property management office. In 2005/2006, CPAH completed a \$3.5 million dollar rehabilitation of the apartment interiors, building exteriors and project site. Highlights of the rehab included: replacing all building siding and windows, re-configuring and repaving the parking lot, replacing all landscaping, upgrading the recreation facilities, upgrading site lighting and signage. Interior work included replacing all waterlines and drains, replacing all cabinets, countertops, light fixtures and most appliances (refrigerators, dishwashers, hot water heaters) with Energy Star rated devices, replacing all window coverings and many carpets, re-texturing and repainting all apartment interiors. The rehab project featured energy saving appliances, compact fluorescent light fixtures, better insulation, and low volume plumbing fixtures, all of which have reduced tenant energy costs.

The rehab work was done without displacing any tenants and with very minimal rent increases. As a testament to the quality of the rehab work, vacancies generally average under 5%, accounts payable are current and annual cash flow is positive.

Financing for the project came from a number of public and private grants and low income housing tax credit investments. No new debt was taken on. Approximately \$10,000 of the funding was provided by the City of Tigard Affordable Housing Fee Assistance program. Other funding came from the Meyer Memorial Trust, the Paul Allen Foundation, the Oregon Community Foundation, Washington County Office of Community Development through the CDBG and HOME investment programs, and the State of Oregon. Key Bank increased its investment by over \$2 million dollars.

**Legal Description:** The site is located in the southeast  $\frac{1}{4}$  of Section 35, Township 1 South, Range 1 West (Willamette Meridian).

**Tax Lot:** The Washington County Map shows the site as tax lot 23-74-2000, Parcels I, II, and III.

## **B. Project's Charitable Purpose**

**The mission of Community Partners for Affordable Housing, Inc. (CPAH) is to promote a healthy community through the development of: permanent affordable housing, sustainable economic growth, and community-based partnerships.**

CPAH's acquisition and renovation of the complex has ensured that the previously neglected property is professionally managed as safe, decent, and affordable housing for families with a shrinking number of housing options. Our property has significantly reduced the housing burdens of our families. The efficient delivery of our services has improved the health and prospects of all household members, and served to help break the multi-generational cycles of poverty. CPAH's

commitment to 40 years of affordability for those at 50 and 60% of median income guarantees that these apartments will be affordable effectively for the life of the buildings.

CPAH maintains active partnerships with the Tigard Police Department, Tualatin Valley Fire & Rescue, Tigard Libraries, and the Tigard School District to enhance the safety and quality of life for residents and to be sure that our programs are well-coordinated with other community resources. Partnerships with Community Action, Good Neighbor Center, Luke-Dorf, HopeSpring, Neighborhood House, Lifeworks NW and other organizations to provide information and referral as well as emergency services like food boxes and rent and utility assistance. Coordination agreements with these agencies enhances ongoing case management and has provided a fresh start to many families facing significant barriers to moving from homelessness to permanent housing. Several families each year are being reunited with their children as a result of receiving a housing opportunity at Greenburg Oaks. Three of the apartments are reserved for low income families with at least one member in active recovery from alcohol or drug addiction.

The Community Center at Greenburg Oaks is the focal point for support, skill building, and community building activities offered by CPAH through its resident services program which includes after-school and summer youth programs. CPAH's on-site computer learning center is used by youth for homework, research, e-mail, and educational games; and by adults for job search activities and Internet access. The Tigard Library has twice obtained grant resources to purchase children's material for our on-site library.

CPAH offers a variety of adult services as well. These include classes in support of parenting skills, budgeting and other financial literacy skills, and nutritional shopping and cooking. The Community Center is also host to a number of general community activities including rent readiness courses, HopeSpring parenting classes, financial literacy classes, parenting safety skills and budget and nutrition classes. The Community Center hosts weekly meetings for AA, NA, and Alanon groups. Food distributions are also held in the Community Center for both the residents at Greenburg Oaks and others in the Tigard community.

### **C. Certification of Resident Income Levels**

Resident income levels are verified upon application for tenancy and are recertified each year. CPAH has covenants with the state and with Washington County to use the property exclusively for low income rentals for a period of at least 40 years. These covenants require that all households have earnings at or below 60% of the area median income. Some units are restricted to households earning at or below 50%. Compliance with these covenants is monitored by the State of Oregon Department of Housing and Community Services and by the Washington County Office of Community Development. We certify that all apartments in this property are targeted to and remain affordable to households earning at or below 60% of the Area Median Income.

### **D. How Tax Exemption Will Benefit Residents**

100% of the property tax exemption is a direct subsidy for the residents. Every dollar reduction in operating costs is passed on as a reduction in the scheduled rents. Some costs, such as the cost of operating our youth programs, must be funded from outside sources mostly through fund raising. Without property tax abatement, we would have to shift some of our fundraising efforts from developing sources for these programs and use them instead to cover basic operations.

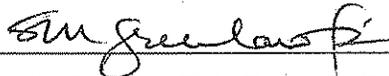
It can be argued that using property tax revenues to subsidize well managed affordable housing units results in a net savings of public resources. Fewer and less-severe police calls, healthier students, and stably housed social service consumers, all provide a direct reduction in the demand for government funded services.

**E. Tax Exempt Status**

CPAH is general partner of the Villa La Paz Limited Partnership, a single asset entity established for the purpose of acquiring the apartments and qualifying for low-income housing tax credits. CPAH's IRS Determination Letter is attached. CPAH undergoes a full independent audit of its books annually, as does Villa La Paz, LP. Both the State of Oregon Housing and Community Services Department and the U.S. Department of Housing and Urban Development review the project and resident files annually.

**F. Verification of Information**

I hereby certify that the information in this application for tax abatement is accurate and complete to the best of my knowledge. Income Property Management Company performs day-to-day management of the property and is responsible for certifying income levels of each resident for compliance with program guidelines.



\_\_\_\_\_  
Sheila Greenlaw-Fink, Executive Director

2-20-12

\_\_\_\_\_  
Date

INTERNAL REVENUE SERVICE  
DISTRICT DIRECTOR  
P. O. BOX 2508  
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date:

MAR 11 1998

COMMUNITY PARTNERS FOR AFFORDABLE  
HOUSING  
PO BOX 23206  
TIGARD, OR 97281-3206

Employer Identification Number:  
93-1155559

DLN:

17053030720009

Contact Person:

THOMAS E O'BRIEN

ID# 31187

Contact Telephone Number:

(877) 829-5500

Our Letter Dated:

February 1995

Addendum Applies:

No

Dear Applicant:

This modifies our letter of the above date in which we stated that you would be treated as an organization that is not a private foundation until the expiration of your advance ruling period.

Your exempt status under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3) is still in effect. Based on the information you submitted, we have determined that you are not a private foundation within the meaning of section 509(a) of the Code because you are an organization of the type described in section 509(a)(1) and 170(b)(1)(A)(vi).

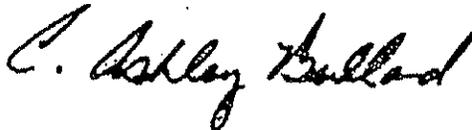
Grantors and contributors may rely on this determination unless the Internal Revenue Service publishes notice to the contrary. However, if you lose your section 509(a)(1) status, a grantor or contributor may not rely on this determination if he or she was in part responsible for, or was aware of, the act or failure to act, or the substantial or material change on the part of the organization that resulted in your loss of such status, or if he or she acquired knowledge that the Internal Revenue Service had given notice that you would no longer be classified as a section 509(a)(1) organization.

If we have indicated in the heading of this letter that an addendum applies, the addendum enclosed is an integral part of this letter.

Because this letter could help resolve any questions about your private foundation status, please keep it in your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,



District Director

Letter 1050 (DO/CG)



# City of Tigard

## Application for Tax Abatement

---

February 20, 2012

Tangela Single Family Rental Home  
9330 SW Tangela

**A. Property Description**

**B. Project's Charitable Purpose**

**C. Certification of Resident Income Levels**

**D. How Tax Exemption Will Benefit Residents**

**E. Tax Exempt Status**

**F. Verification of Information**

**G. IRS Letter**

## **A. Property Description**

**Community Partners for Affordable Housing, Inc. acquired the single family "Tangela House" at 9330 SW Tangela in Tigard, on December 31, 1999, with assistance from the Washington County CDBG program and a loan from Washington Mutual Savings Bank. The Tangela home is located just two blocks from CPAH's multifamily project, Greenburg Oaks Apartments.**

The two story 1,916 square foot house sits on a 5,450 square foot lot and is zoned R-7 residential. CPAH converted an upstairs bonus room into a 5th bedroom and completed other necessary repairs after initial acquisition.

In late 2006, the long term resident of the house gave notice that her family was growing and moving out and her Section 8 certificate was being reduced. She gave notice and moved into a smaller house consistent with her reduced Section 8 subsidy. We consider this a very successful outcome of a long term occupancy providing a stable neighborhood environment to raise a family that had previously experienced transient and sub-standard housing.

CPAH completed more than \$5,000 in repairs and replacements and the home was re-rented in February 2007 to the existing large low income family who continues to live in the home demonstrating the continuance of stable housing for low income families.

**Legal Description:** Barbee Court, Lot 1, Tigard, County of Washington, State of Oregon.

**Tax Lot:** 1S135DC-05300.

## **B. Project's Charitable Purpose**

**The mission of Community Partners for Affordable Housing, Inc. (CPAH) is to promote a healthy community through the development of permanent affordable housing, sustainable economic growth, and community-based partnerships.**

CPAH acquired the single family home in order to assist the County and the Good Neighbor Center Shelter in meeting a "replacement unit" requirement triggered by the Uniform Relocation Act when the shelter acquired its current site and demolished a single family home housing a low-income family. CPAH completed needed repairs and upgraded the Tangela home to a five-bedroom dwelling, in order to provide a rare opportunity in our community — an affordable single-family rental house for a very large family.

The home is proximate to CPAH's Greenburg Oaks property, where management and resident services are available to the household. These services include a computer center, community room, neighborhood watch, Individual Development Account grants, and other programs. The resident services coordinator and property management staff visit the home on a regular basis to ensure that the property is well managed and to maintain an ongoing relationship with the residents.

The home is located within a census tract (309) which has a higher than average concentration of low-income rental households. The number of residents without a high school diploma is notably

higher than for Tigard as a whole (15% vs. 9%). This area boasted the second highest concentration of children under 9 of the eight census tracts in Tigard. While this area represents 9% of Tigard's population base, it is home to nearly 16% of the city's minority households.

**C. Certification of Resident Income Levels**

Resident income level is verified upon application, and must be less than 60% of the area's median income. Income is recertified annually. We certify that all residents served by this property earned at or below 60% of the AMI.

**D. How Tax Exemption Will Benefit Residents**

100% of the property tax exemption is passed on as a direct subsidy for the residents. Every dollar reduction in operating costs results in a reduction in the scheduled rents. Some costs, such as the cost of operating our youth programs, must be funded from outside sources. Without property tax abatement, we would have to shift some of our fundraising efforts from developing sources for these programs and use them instead to cover basic operations.

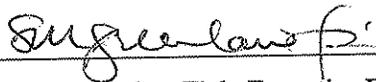
It can be argued that using property tax revenues to subsidize well managed affordable housing results in a net savings of public resources. Fewer and less-severe police calls, healthier students, and stably housed social service consumers, all provide a direct reduction in the demand for government funded services.

**E. Tax Exempt Status**

CPAH is direct owner of the Tangela property and is a nonprofit 501(c)(3) organization. Our operations are audited annually to, among other things, confirm that we are in compliance with our charitable status and with requirements of the County grant and Washington Mutual loan documents.

**F. Verification of Information**

I hereby certify that the information in this application for tax abatement is accurate and complete to the best of my knowledge. Income Property Management Company performs day-to-day management of the property and is responsible for certifying income levels of each resident for compliance with program guidelines.

  
\_\_\_\_\_  
Sheila Greenlaw-Fink, Executive Director

2.20.12  
Date

INTERNAL REVENUE SERVICE  
DISTRICT DIRECTOR  
P. O. BOX 2508  
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date:

MAR 11 1995

COMMUNITY PARTNERS FOR AFFORDABLE  
HOUSING  
PO BOX 23206  
TIGARD, OR 97281-3206

Employer Identification Number:

93-1155559

DLN:

17053030720009

Contact Person:

THOMAS E O'BRIEN

ID# 31187

Contact Telephone Number:

(877) 829-5500

Our Letter Dated:

February 1995

Addendum Applies:

No

Dear Applicant:

This modifies our letter of the above date in which we stated that you would be treated as an organization that is not a private foundation until the expiration of your advance ruling period.

Your exempt status under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3) is still in effect. Based on the information you submitted, we have determined that you are not a private foundation within the meaning of section 509(a) of the Code because you are an organization of the type described in section 509(a)(1) and 170(b)(1)(A)(vi).

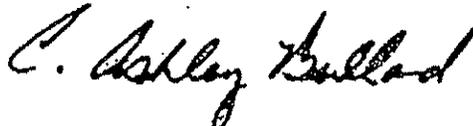
Grantors and contributors may rely on this determination unless the Internal Revenue Service publishes notice to the contrary. However, if you lose your section 509(a)(1) status, a grantor or contributor may not rely on this determination if he or she was in part responsible for, or was aware of, the act or failure to act, or the substantial or material change on the part of the organization that resulted in your loss of such status, or if he or she acquired knowledge that the Internal Revenue Service had given notice that you would no longer be classified as a section 509(a)(1) organization.

If we have indicated in the heading of this letter that an addendum applies, the addendum enclosed is an integral part of this letter.

Because this letter could help resolve any questions about your private foundation status, please keep it in your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,



District Director

Letter 1050 (DO/CG)

# City of Tigard

# Application for Tax Abatement

---

February 20, 2012

---

The Knoll @ Tigard

12291 SW Knoll Drive

Tigard, Oregon 97223

**A. Property Description**

**B. Project's Charitable Purpose**

**C. Certification of Resident Income Levels**

**D. How Tax Exemption Will Benefit Residents**

**E. Tax Exempt Status**

**F. Verification of Information**

**G. IRS Letter**

## **A. Property Description**

The Knoll @ Tigard was completed April 2011 with the Grand Opening held on April 21, 2011. The Knoll @ Tigard is located at 12291 SW Knoll Drive in Tigard. The location fronts on Hall Boulevard between SW Hunziker and SW Knoll. This site is a prime example of urban development, perched on the edge of the developing downtown of the City of Tigard, walking distance to the library, senior center, transportation, shopping and a variety of other amenities. Previously, three parcels of land totaling 1 acre supported only 3 single family residences. Following the recent zone change, and consistent with the long range goals of the City development plans, The Knoll @ Tigard brings this density to nearly 50 units per acre. The design takes advantage of a site with an established infrastructure of utilities, adjacent transportation and services, and enhances it's potential as a catalyst for respectful development of the urban neighborhood. The project receives a "very walkable" rating from Walkscore.com.

The Knoll @ Tigard is a 45,000 square foot, 48-unit apartment building providing active living for independent, low-income seniors along with common rooms and meeting space. Streetscape improvements were required on all 3 street frontages, including development of sidewalks, planting strips with street trees and below-grade utilities. Public spaces including entry courtyards and site walks are well lit. The Knoll @ Tigard is a secure access building with a surveillance system.

The total site contains .98 acres.

Legal Description: see attached Exhibit A

Tax Lot: R458454, R458436, R458445

## **B. Project's Charitable Purpose**

**The mission of Community Partners for Affordable Housing, Inc. (CPAH) is to promote a healthy community through the development of: permanent affordable housing, sustainable economic growth, and community-based partnerships.**

The Knoll @ Tigard is CPAH's first affordable units for seniors in Tigard and compliments CPAH's affordable units for seniors in Hillsdale. The 48 units are affordable to very low and low income residents on a permanent basis (The Knoll @ Tigard provides affordable housing for a minimum of sixty (60) years, with maximum rents regulated by covenants on the property). Rents are affordable to households at 30% to 60% of area median income and below market rents. 45 of the units are one bedroom units and 3 of the units are two bedroom units (1 of which for the on-site manager). 12 of the one bedroom units are Project Based Section 8 units through the Washington County Housing Authority and are set-aside for Veterans.

CPAH has expanded its community partnerships with the Tigard Police, the Tigard Library and the VA. Community building is provided through resident services programs and outreach. The Community Room is the focal point for community building activities and includes a computer center for residents.

## **C. Certification of Resident Income Levels**

Resident income levels are certified upon application. The seniors at The Knoll may remain in their units as long as they income qualify at entry. Rents range from \$562 to \$597 per month for the one-bedroom apartments deemed at 13% below market rates. Rents are \$707 per month for the two-bedroom apartments. Water, sewer and trash are included in the monthly rental.

#### **D. How Tax Exemption Will Benefit Residents**

The property tax exemption is a direct savings for the residents, allowing for reduced operating costs which results in affordable reduced rents for the seniors at The Knoll. For both the initial development, and long term operations of the project, full tax abatement is essential. The project pro forma allowed for the construction of The Knoll which meets all City and State design requirements along with affordable rents for our seniors.

The Knoll includes financing through Washington County HOME and CDBG funds, State of Oregon Trust Fund and Tax Credits. JP Morgan Chase is the private lender with Enterprise Neighborhood Partners as the investor (under the tax credit program). Tax abatement was critical in meeting lender and investor requirements while keeping rents affordable for The Knoll @ Tigard. Tax abatement is a direct benefit to senior residents who will pay lower rents. Tax abatement is key to the long-term sustainability of the project operating with affordable rents for seniors.

#### **E. Tax Exempt Status**

CPAH, an Oregon non-profit, is the general partner of The Knoll @ Tigard Limited Partnership, a single asset entity. CPAH's IRS Determination Letter is attached. CPAH undergoes full audit of its books annually, as will The Knoll @ Tigard. Mark Schwing of Markusen & Schwing in Beaverton currently provides audit services for CPAH and CPAH's single asset properties. The State of Oregon Housing and Community Services Department and the U.S. Department of Housing and Urban Development both will inspect and audit the project annually. The tax credit investor (Limited Partner) also monitors the project on a monthly basis and physically inspects on an annual basis.

#### **F. Verification of Information**

As CPAH's executive director, I hereby certify that the information in this application for tax abatement is accurate and complete to the best of my knowledge. Income Property Management provides the day-to-day management of the property and is responsible for certifying income levels of each resident for compliance with program guidelines. If additional information is desired on any aspect of this application, please do not hesitate to call. Thank you in advance for your consideration.



Sheila Greenlaw-Fink, CPAH Executive Director

Date: 2/20/12

INTERNAL REVENUE SERVICE  
DISTRICT DIRECTOR  
P. O. BOX 2508  
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date:

MAR 11 1995

COMMUNITY PARTNERS FOR AFFORDABLE  
HOUSING  
PO BOX 23206  
TIGARD, OR 97281-3206

Employer Identification Number:  
93-1155559

DIN:

17053030720009

Contact Person:

THOMAS E O'BRIEN

ID# 31187

Contact Telephone Number:

(877) 829-5500

Our Letter Dated:

February 1995

Addendum Applies:

No

Dear Applicant:

This modifies our letter of the above date in which we stated that you would be treated as an organization that is not a private foundation until the expiration of your advance ruling period.

Your exempt status under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3) is still in effect. Based on the information you submitted, we have determined that you are not a private foundation within the meaning of section 509(a) of the Code because you are an organization of the type described in section 509(a)(1) and 170(b)(1)(A)(vi).

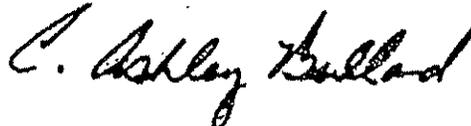
Grantors and contributors may rely on this determination unless the Internal Revenue Service publishes notice to the contrary. However, if you lose your section 509(a)(1) status, a grantor or contributor may not rely on this determination if he or she was in part responsible for, or was aware of, the act or failure to act, or the substantial or material change on the part of the organization that resulted in your loss of such status, or if he or she acquired knowledge that the Internal Revenue Service had given notice that you would no longer be classified as a section 509(a)(1) organization.

If we have indicated in the heading of this letter that an addendum applies, the addendum enclosed is an integral part of this letter.

Because this letter could help resolve any questions about your private foundation status, please keep it in your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,



District Director

Letter 1050 (DO/CG)



## **City of Tigard**

### **Application for Tax Abatement**

---

February 20, 2012

Village at Washington Square

11157-11163 SW Hall Boulevard, Tigard

**A. Property Description**

**B. Project's Charitable Purpose**

**C. Certification of Resident Income Levels**

**D. How Tax Exemption Will Benefit Residents**

**E. Tax Exempt Status**

**F. Verification of Information**

**G. IRS Letter**

## **A. Property Description**

Village at Washington Square is located at 11157-11163 SW Hall Boulevard, between SW Spruce and SW Pfaffle in Tigard. The site is located within the Washington Square Regional Center and is proximate to employment opportunities as well as public transportation and other services. The Village at Washington Square includes three residential buildings with a total of 26 dwelling units, and a community building, all arranged around a central courtyard/play yard. The project includes one studio, seven one-bedroom, five two-bedroom, seven three-bedroom and six four-bedroom units. Eleven of the units are traditional apartment flats, while the other 15 are two-story townhomes with bedrooms above the main floor living space. The total site sits on .84 acres.

**Legal Description:** Partition Plat 1998-038, Lot 1 and Partition Plat 1998-038, Lot 2 in the City of Tigard, County of Washington, State of Oregon

**Tax Lot:** 1S135DA (04600 & 04700)

## **B. Project's Charitable Purpose**

**The mission of Community Partners for Affordable Housing, Inc. (CPAH) is to promote a healthy community through the development of: permanent affordable housing, sustainable economic growth, and community-based partnerships.**

When it opened in 2002, The Village at Washington Square was the first addition of affordable units to the Tigard housing stock in a decade. The 26 units are priced to be affordable to very low, low, and moderate-income residents. The project is subject to an extended use agreement to keep the rents affordable for 60 years, effectively the full life of the project. This covenant is recorded with the title of the property and requires that rents will be affordable to households at 30%, 45% and 60% of area median income and significantly below market rents. Half of the units are three and four bedroom apartments serving larger families who are often unable to find affordable rental opportunities in Tigard.

CPAH maintains active partnerships with the Tigard Police Department, Tualatin Valley Fire & Rescue, Tigard Libraries, and the Tigard School District to enhance the safety and quality of life for residents and to ensure that our programs are well-coordinated with other community resources. CPAH works closely with Community Action and other agencies to provide information and referral as well as emergency services such as food boxes as well as rent and utility assistance. Coordination agreements with social service programs such as HopeSpring (a partnership of Lutheran Family Services, Community Action Organization, Good Neighbor Center, Luke-Dorf, and Lifeworks NW) enhance ongoing case management and link stable housing with successful program outcomes.

CPAH offers a variety of programs for youth including after school and summer programs as well as adult services including Neighborhood Watch, classes in support of parenting skills, budgeting and other financial literacy skills, and nutritional shopping and cooking. The Community Center is also host to HopeSpring self-sufficiency classes.

The Village at Washington Square is located within a census tract (309) which has a higher than average concentration of low-income rental households. The number of residents without a high school diploma is notably higher than for Tigard as a whole (15% vs. 9%). This area has the second highest concentration of children under 9 of the eight census tracts in Tigard. While this area represents 9% of Tigard's population, it is home to nearly 16% of the city's minority households.

**C. Certification of Resident Income Levels**

Resident income levels are verified upon application for tenancy. Residents may remain in their units as long as they income qualify at entry. Rents are well below the market for the area. We certify that all apartments in this project are targeted to and remain affordable to households earning at or below 60% of the AMI. Compliance with income restriction requirements is audited annually by the State of Oregon Department of Housing and Community Services, Washington County Office of Community Development, and by our limited partner investor, Key Bank.

**D. How Tax Exemption Will Benefit Residents**

100% of the property tax exemption is a direct subsidy for the residents. Every dollar reduction in operating costs is passed on as a reduction in the scheduled rents. Some costs, such as the cost of operating our youth programs, must be funded from outside sources. Without property tax abatement, we would have to shift some of our fundraising efforts from developing sources for these programs and use them instead to cover basic operations.

It can be argued that using property tax revenues to subsidize well managed affordable housing units results in a net savings of public resources. Fewer and less-severe police calls, healthier students, and stably housed social service consumers, all provide a direct reduction in the demand for government funded services.

**E. Tax Exempt Status**

CPAH is the general partner of the Village at Washington Square Limited Partnership, a single entity asset. CPAH's IRS Determination Letter is attached. CPAH undergoes full audit of its books annually, as does the Village at Washington Square. The State of Oregon Housing and Community Services Department and the U.S. Department of Housing and Urban Development review the project and resident files annually.

**F. Verification of Information**

I hereby certify that the information in this application for tax abatement is accurate and complete to the best of my knowledge. Income Property Management Company performs day-to-day management of the property and is responsible for certifying income levels of each resident for compliance with program guidelines.

Sheila Greenlaw-Fink  
Sheila Greenlaw-Fink, Executive Director

2-20-12  
Date

INTERNAL REVENUE SERVICE  
DISTRICT DIRECTOR  
P. O. BOX 2508  
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date:

MAR 11 1995

COMMUNITY PARTNERS FOR AFFORDABLE  
HOUSING  
PO BOX 23206  
TIGARD, OR 97281-3206

Employer Identification Number:  
93-1155559

DLN:

17053030720009

Contact Person:

THOMAS E O'BRIEN

ID# 31187

Contact Telephone Number:

(877) 829-5500

Our Letter Dated:

February 1995

Addendum Applies:

No

Dear Applicant:

This modifies our letter of the above date in which we stated that you would be treated as an organization that is not a private foundation until the expiration of your advance ruling period.

Your exempt status under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3) is still in effect. Based on the information you submitted, we have determined that you are not a private foundation within the meaning of section 509(a) of the Code because you are an organization of the type described in section 509(a)(1) and 170(b)(1)(A)(vi).

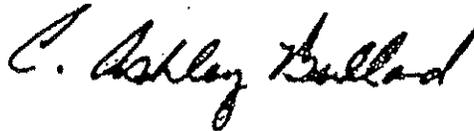
Grantors and contributors may rely on this determination unless the Internal Revenue Service publishes notice to the contrary. However, if you lose your section 509(a)(1) status, a grantor or contributor may not rely on this determination if he or she was in part responsible for, or was aware of, the act or failure to act, or the substantial or material change on the part of the organization that resulted in your loss of such status, or if he or she acquired knowledge that the Internal Revenue Service had given notice that you would no longer be classified as a section 509(a)(1) organization.

If we have indicated in the heading of this letter that an addendum applies, the addendum enclosed is an integral part of this letter.

Because this letter could help resolve any questions about your private foundation status, please keep it in your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,



District Director

Letter 1050 (DO/CG)

AIS-Fiscal Impact of Tax Abatement

Property	Estimated Market Value*	City of Tigard Tax Rate (Including Bond Levy)	City of Tigard Property Tax Impact (Estimated)	Total Tax Rate	Total Property Tax Impact
Village at Washington Square	\$1,754,450	\$2.9659/\$1,000	\$5,204	\$16.5961/\$1,000	\$29,117
Single Family Home – 9330 SW Tangela Ct.	\$223,400	\$2.9659/\$1,000	\$663	\$16.5961/\$1,000	\$3,708
Greenburg Oaks	\$4,750,810	\$2.9659/\$1,000	\$14,090	\$16.5961/\$1,000	\$78,845
The Knoll @ Tigard	\$3,140,990	\$2.9659/\$1,000	\$9,316	\$16.5961/\$1,000	\$52,128
Hawthorne Villa	\$4,441,900	\$2.9659/\$1,000	\$13,174	\$16.5961/\$1,000	\$73,718
Total Impact			\$42,447		\$237,516

\* Because these properties have been exempted from property taxation in the past, Washington County does not show a current assessed value. These figures are an estimated market value.

**Business Meeting**

**Meeting Date:** 03/27/2012

**Length (in minutes):** 10 Minutes

**Agenda Title:** Approve Purchase of the Paull Properties and Authorize the City Manager to Complete the Property Purchase

**Prepared For:** Steve Martin

**Submitted By:** Greer Gaston, Public Works

**Item Type:** Resolution

**Meeting Type:** Council Business Meeting - Main

**Information**

**ISSUE**

Shall the council consider a resolution:

- Approving the purchase the Paull properties as outlined in the purchase and sale agreement?
- Authorizing the city manager to take all necessary action to complete the property purchases on behalf of the city?

**STAFF RECOMMENDATION / ACTION REQUEST**

Staff recommends the council approves the resolution.

**KEY FACTS AND INFORMATION SUMMARY**

In November 2010 Tigard voters passed a \$17 million park bond measure. Eighty percent of bond proceeds were dedicated to acquiring park land such as the Paull properties.

In late 2010, the Park and Recreation Advisory Board (PRAB) was tasked with evaluating more than 60 potential park properties. The Paull properties, commonly referred to as the East Bull Mountain properties, ranked near the top of the PRAB's acquisition list.

The properties are located on Bull Mountain, at the northern terminus of Alpine Crest Way and to the west of Greenfield Drive. There is a vacant home on one property. Together the properties total 8 acres. Although a park is planned for the properties, about 4.4 acres were suitable for residential development. The remaining 3.6 acres, comprised of steep slopes, riparian areas and waterways, are considered sensitive and would have been more difficult to develop.

The properties are situated outside Tigard city limits in unincorporated Washington County. However, the properties abut City of Tigard boundaries and will be annexed into the city if the property purchase is finalized.

If the resolution is approved, the city will purchase the properties for \$1.75 million. Other terms of the Purchase Agreement and Escrow Instructions are fairly standard and have been reviewed by the city's real estate attorney.

Per the city's property acquisition procedures, a phase one environmental assessment of the property was conducted. No issues were identified in the assessment.

**OTHER ALTERNATIVES**

The council could choose not to adopt the resolution; the city would not purchase the property.

**COUNCIL OR CCDA GOALS, POLICIES, MASTER PLANS**

2012 Council Goal 1.c. "Deliver on the promise of the voter-approved park bond by identifying all acquisition opportunities and completing the majority of park land acquisitions and improvements by the end of 2012."

#### **DATES OF PREVIOUS CONSIDERATION**

The council has discussed this property purchase, along with other potential park acquisitions, in executive session on the following dates:

- July 26, 2011
- January 24, 2012
- February 28, 2012

---

---

#### **Fiscal Impact**

**Cost:** \$1,750,000  
**Budgeted (yes or no):** Yes  
**Where Budgeted (department/program):** CIP - Park bond funds

#### **Additional Fiscal Notes:**

The asking price for the property was \$2 million dollars; the property appraised at \$1.6 million. The sellers and the city negotiated and ultimately settled on a purchase price of \$1.75 million. Park bond fund dollars will be used to purchase the property; park land acquisition is included in the 2011-2012 Capital Improvement Plan (CIP).

---

---

#### **Attachments**

Resolution

Exhibit A - Purchase Agreement

Map Showing Paull Properties

---

---

**CITY OF TIGARD, OREGON  
TIGARD CITY COUNCIL  
RESOLUTION NO. 12-**

A RESOLUTION APPROVING THE PURCHASE OF THE PAULL PROPERTIES, COMMONLY REFERRED TO AS THE EAST BULL MOUNTAIN PROPERTIES, (TAX LOTS 2S104DC05800 AND 2S104DC05900), AND AUTHORIZING THE CITY MANAGER TO TAKE ALL NECESSARY ACTION TO COMPLETE THE PROPERTY PURCHASES ON BEHALF OF THE CITY

---

WHEREAS, in November 2010 Tigard voters passed a \$17 million park bond measure whereby 80 percent of bond proceeds were dedicated to acquiring park land such as the Paull properties; and

WHEREAS, the Park and Recreation Advisory Board (PRAB) was tasked with evaluating more than 60 potential park properties, and the Paull properties ranked near the top of the PRAB's acquisition list; and

WHEREAS, the city would like to acquire the properties to create publically-owned park land and open space; and

WHEREAS, together, the combined properties total approximately eight acres; and

WHEREAS, the properties are located on Bull Mountain in unincorporated Washington County at the northern terminus of Alpine Crest Way; and

WHEREAS, the properties abut City of Tigard boundaries and will be annexed into the city after the property purchase is finalized; and

WHEREAS, the city and the property owners have reached a tentative agreement on the purchase/sale of the properties. This agreement is contingent on the approval of the City Council.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The City Council agrees to the terms of the Purchase Agreement and Escrow Instructions, (Exhibit A), including the purchase price of \$1,750,000 for the Paull properties.

SECTION 2: The City Council authorizes the city manager to take all necessary action to complete the Paull property purchases on behalf of the city. This includes, but is not limited to, execution of the Purchase Agreement and Escrow Instructions and closing documents.

SECTION 3: This resolution is effective immediately upon passage.

PASSED: This \_\_\_\_\_ day of \_\_\_\_\_ 2012.

---

Mayor - City of Tigard

ATTEST:

---

City Recorder - City of Tigard

**PURCHASE AGREEMENT****AND****ESCROW INSTRUCTIONS**

**BETWEEN:** David D. Paull and Jennifer E. Paull, Co-Successor Trustees of the Paull Family Trust established April 14, 1994 and the Paull Family Trust established under Article 9 of the Paull Living Trust dated April 14, 1994, each as to an undivided one-half interest (“**Seller**”)

**And:** City of Tigard, an Oregon municipal corporation (“**Purchaser**”)

**DATED:** March \_\_\_\_\_, 2012 (“**Effective Date**”)

**RECITALS**

A. Seller owns approximately 8 acres of certain real property in the city of Tigard, county of Washington, Oregon, commonly known as 13950 SW Alpine Crest Way, Tigard, OR 97224 (Tax Lot 5800) and Tax Lot 5900, (Assessor’s Map No. 2S104DC05900) both of which are more fully described on the attached and incorporated Exhibit A (collectively, the “**Property**”).

B. Seller desires to sell the Property, and Purchaser desires to purchase the Property pursuant to the terms set forth in this Agreement.

**AGREEMENT**

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as set forth below.

**ARTICLE 1****DEFINED TERMS**

1.1 **Cash.** The term “**Cash**” means (i) United States currency, (ii) a check currently dated and payable to Escrow Holder, or (iii) U.S. funds credited by wire transfer into Escrow Holder’s bank account.

1.2 **Closing.** The process described in Article 9 of this Agreement.

1.3 **Closing Date.** Closing shall occur on the date that is thirty (30) days after the expiration of the Contingency Period, or on such other date as the parties may agree upon in writing.

1.4 **Contingency Period.** The period that ends on the date that the conditions precedent to Closing, set forth in Section 4 of this Agreement, are waived by Purchaser or satisfied.

1.5 **Deed.** A special warranty deed in the form of Exhibit B attached hereto which shall be used to convey the Property from Seller to Purchaser.

1.6 **Earnest Money.** The cash to be deposited into Escrow pursuant to Section 2.2 of this Agreement in the amount of Ten Thousand and No/100 Dollars (\$10,000), plus all interest, if any, which accrues thereon.

1.7 **Environmental Laws.** Any federal, state, or local laws, ordinances, codes, statutes, regulations, administrative rules, policies and orders, and other authority existing now or in the future that classify, regulate, list, or define Hazardous Materials.

1.8 **Escrow Holder.** First American Title, located at 9200 SE Sunnybrook Blvd, Suite 400, Clackamas, Oregon, 97015, Phone: (503) 659-0069.

1.9 **Escrow.** The escrow opened by Escrow Holder pursuant to this Agreement.

1.10 **Hazardous Materials.** Any toxic or hazardous substance, material, waste, pollutant, contaminant, or infectious or radioactive material, including but not limited to those substances, materials, waste, chemicals, or mixtures that are (or that contain any) substances, chemicals, compounds, or mixtures regulated, either now or in the future, under any Environmental Law.

1.11 **Property.** The term “**Property**” as defined in this Agreement, includes land described in Exhibit A, together with all improvements, rights, privileges, servitudes and appurtenances thereunto belonging or appertaining, including all right, title, and interest of Seller, if any, in and to the streets, alleys, and rights-of-way adjacent to the land, which will be transferred to Purchaser at Closing.

1.12 **Property Documents.** The following documents relating to or affecting the Property to the extent they exist and are in Seller’s possession: conditional use permits, land use approvals, land use applications, permits, licenses, maps, development agreements, surveys and studies relating to the Property prepared by third parties.

1.13 **Purchase Price.** Cash in the amount of One Million Seven Hundred Fifty Thousand and No/100 Dollars (\$1,750,000).

## ARTICLE 2

### EARNEST MONEY AND PURCHASE PRICE

2.1 **Sale of Property.** Subject to the terms and conditions in this Agreement, Seller agrees to sell the Property to Purchaser, and Purchaser agrees to buy the Property from Seller.

2.2 **Earnest Money.** Within ten (10) days after the opening of Escrow as set forth in Section 3.1, Purchaser shall deposit the Earnest Money into Escrow. Escrow Holder shall hold the Earnest Money in an interest-bearing account that is FDIC insured, unless the parties approve holding the Earnest Money in a non-interest bearing account. The Earnest Money shall be refundable to Buyer until the Contingency Period expires or the conditions precedent to Closing set forth in Section 4 of this Agreement are waived in writing by Buyer; thereafter, the Earnest Money shall not be refundable except in the event of a Seller default. The Earnest Money shall be applicable to the Purchase Price at closing.

2.3 **Purchase Price.** The Purchase Price shall be paid by Purchaser in Cash to Seller at the Closing. The Earnest Money shall be applied to the Purchase Price.

## ARTICLE 3

### DELIVERIES TO ESCROW HOLDER

#### 3.1 Opening of Escrow.

3.1.1 Within three (3) business days after the Effective Date, Purchaser and Seller shall open Escrow by depositing with Escrow Holder a fully executed photocopy of this Agreement for use as escrow instructions. Escrow Holder shall execute the Consent of Escrow Holder which appears at the end of this Agreement and deliver a fully executed consent to Purchaser and Seller.

3.1.2 Purchase and Seller hereby authorize Escrow Holder to take necessary steps for the Closing of this transaction pursuant to the terms of this Agreement.

3.1.3 Purchaser and Seller may jointly or separately prepare additional escrow instructions. Escrow Holder may also provide general instructions. If there is any inconsistency between the provisions of any of these instructions and this Agreement, the provisions of this Agreement shall control.

3.2 **Purchaser's Deliveries.** At or before Closing, Purchaser shall deposit into Escrow (i) the Earnest Money, (ii) the Purchase Price, (iii) an executed and acknowledged counterpart acceptance of the Deed, and (iv) all other documents and instruments reasonably requested by Escrow Holder for Closing.

3.3 **Seller's Deliveries.** At or before Closing, Seller shall deliver into Escrow (i) an executed and acknowledged counterpart of the Deed, (ii) an executed Certificate of Non-Foreign Status, pursuant to Section 1445(b)(2) of the Internal Revenue Code, certifying that Seller is a non-foreign person, and (iii) all other documents and instruments reasonably requested by

Escrow Holder for Closing. At Closing, Seller shall deliver possession of the Property to Purchaser.

## ARTICLE 4

### CONDITIONS PRECEDENT TO CLOSING

4.1 **Purchaser's Right to Analyze Property Documents.** Within ten (10) days after the Effective Date, Seller shall deliver all Property Documents within Seller's possession or control to Purchaser. During the Contingency Period, Purchaser shall have the right to analyze the Property Documents and determine, in Purchaser's sole, absolute and arbitrary discretion, whether the Property is suitable for Purchaser's intended use.

4.2 **Purchaser's Right to Analyze Property.** For a period of thirty (30) days after the Effective Date, Purchaser shall have the right to analyze the Property and determine, in Purchaser's sole, absolute and arbitrary discretion, whether the Property is suitable for Purchaser's intended use (the "**Study Period**"). Purchaser shall have the right to enter onto the Property to conduct any and all tests, investigations, and inspections deemed necessary by Purchaser, including without limitation a Level I environmental site assessment and a geotechnical assessment. Such investigations and/or studies shall be conducted by Purchaser at its sole expense. Purchaser shall defend, indemnify and hold Seller harmless for, from, and against any claim, loss, or liability, or any claim of lien or damage which arises in connection with any entry on the Property by Purchaser or any activities on the Property by Purchaser, its agents, employees, and independent contractors; provided, however, that Purchaser shall have no obligation to indemnify, defend, or hold harmless Seller from any condition of the Property discovered by Purchaser, or from any loss of marketability of the Property as a consequence of such discovery.

4.3 **Notice of Termination; Failure to Notify.** If Purchaser determines, in Purchaser's sole, absolute, and arbitrary discretion, the Property is not suitable, Purchaser may terminate this Agreement and cancel Escrow by delivering written notice of termination to Seller prior to the expiration of the Contingency Period, in which case this Agreement shall immediately terminate and Escrow Holder shall immediately return the Earnest Money to Purchaser.

4.4 **Review of Preliminary Report.** Within ten (10) days after the Effective Date, Seller shall provide Purchaser with a preliminary title report issued by the Escrow Holder, describing title to the Property, and including legible copies of all recorded documents described in the preliminary report and plotted easements (collectively, the "**Preliminary Report**"). On or before ten (10) days after Purchaser's receipt of the Preliminary Report, Purchaser shall deliver written notice of approval or disapproval of matters disclosed in the Preliminary Report, which approval or disapproval shall be in Purchaser's sole and absolute discretion. Failure of Purchaser to deliver notice of disapproval of any matters disclosed in the Preliminary Report within such 10-day period shall be deemed an approval of such matter. Unless waived pursuant to Section 4.6, the approved matters disclosed in the Preliminary Report along with the standard printed exceptions on a form of title insurance policy, shall be the "**Permitted Exceptions**" included as exceptions in the Title Policy, defined in Section 4.7.

4.5 **Right to Cure Disapproval of Preliminary Report.** If Purchaser delivers notice of disapproval pursuant to Section 4.4 above, Seller may elect in writing, within five (5) days thereafter, to agree to remove or otherwise cure, to Purchaser's reasonable satisfaction, any disapproved item(s) prior to Closing. Notwithstanding any provision in this Agreement to the contrary, Seller shall be obligated to remove any deeds of trust and other monetary liens (other than liens created by Purchaser and liens for non-delinquent taxes and assessments) and any exceptions to title caused by Seller.

4.6 **Failure to Cure Disapproval of Preliminary Report.** If Seller gives Purchaser written notice within such 5-day period that Seller will remove or otherwise cure a disapproved item, but Seller is unable to remove any such disapproved item at or before the closing, Purchaser may elect to either: (i) terminate this Agreement and receive a full refund of the Earnest Money, or (ii) waive in writing its prior disapproval of such item and accept title subject to such previously disapproved item, by delivering written notice of Purchaser's election to Seller prior to Closing. If Seller either: (i) gives Purchaser timely notice within such five day period that Seller has elected not to attempt to remove or otherwise cure all of the disapproved item(s) or (ii) fails to notify Purchaser within such five day period whether or not Seller will remove or otherwise attempt to cure the disapproved item(s), Purchaser shall have 10 days after Purchaser's receipt of Seller's notice to notify Seller in writing of Purchaser's election to (a) waive in writing its prior disapproval of such item(s) and accept title subject to such previously disapproved item(s) or (b) terminate this Agreement, in which event the Earnest Money shall be refunded to Purchaser. If Purchaser shall fail to notify Seller timely of its election to proceed under clause (a) above, Purchaser shall be deemed to have elected to terminate this Agreement, in which event the Earnest Money shall be refunded to Purchaser.

4.7 **Title Policy.** Seller shall be unconditionally committed to procure from Escrow Holder upon the Closing, an ALTA standard coverage owner's policy of title insurance for the Property, with a liability limit in the amount of the Purchase Price, and insuring fee title vests in Purchaser subject only to the Permitted Exceptions (collectively, the "**Title Policy**"). At Purchaser's option, Purchaser may elect to have the Title Policy issued with endorsements and/or in an ALTA extended coverage form, provided that Purchaser obtains, and pays the cost of, any survey required for extended coverage and pays any additional costs associated with issuance of such policy pursuant to section 8.4 of this Agreement.

#### 4.8 **Approval of Leases & Estoppel Certificates.**

4.8.1 **Leases.** Within ten (10) days of the Effective Date, Seller will provide to Purchaser copies of all current leases affecting the Property, and copies of any and all documents other than leases which provide for or discuss any matters affecting the occupancy of the Property by tenants, including but not limited to options to lease, relocation rights, termination rights, and/or expansion or contraction rights (collectively, the "**Lease Documents**"). Purchaser may terminate this Agreement at any time during the Study Period if Purchaser shall determine in the exercise of its sole discretion that the Property Documents or the Lease Documents are not satisfactory.

4.8.2 **No Tenancies.** At least five (5) days prior to the Closing Date, Seller shall have terminated any tenancy provided for in the Lease Documents and rendered the Property free of any occupants whatsoever.

4.9 **Contingency Failure.** In the event any of the contingencies set forth in Section 4 are not timely satisfied or waived, this Agreement and the rights and obligations of the Purchaser and the Seller shall automatically terminate, and the Escrow Agent shall immediately return the Earnest Money to Purchaser.

## ARTICLE 5

### COVENANTS AND AGREEMENTS

5.1 **Damage or Destruction; Eminent Domain.** If, prior to the Closing, all or a material part of the Property is damaged or destroyed, or taken or appropriated by any public or quasi-public authority under the power of eminent domain or such an eminent domain action is threatened pursuant to a resolution of intention to condemn filed by any public entity, Purchaser may either (i) terminate this Agreement and receive a refund of the Earnest Money, or (ii) elect to receive an assignment from Seller in lieu of the part of the Property that has been so damaged or taken of all of Seller's rights to any award and/or proceeds attributable to said damaged or taken part of the Property, and the parties shall proceed to Closing pursuant to this Agreement.

5.2 **Appliance and Fixtures.** Prior to Closing, Seller may remove the stained-glass cupboard doors from the kitchen cabinets and the bookshelves in the living room.

5.3 **Demolition.** If Purchaser, at any time on or before January 1, 2017, decides to demolish the residential structure located on the Property, it agrees to provide at least thirty (30) days written notice to Seller of its intent to do so ("**Post-Closing Demolition Notice**"). Such notice shall be sufficient if it meets the requirements set forth in Section 13.8 of this Agreement and is sent to the addresses listed in Section 13.8 of this Agreement or any subsequently designated address provided to Purchaser pursuant to Section 13.8 of this Agreement. Seller shall then be entitled, but under no obligation, to arrange with Purchaser for a time to enter onto the Property during the thirty (30) day period following the date of the Post-Closing Demolition Notice to remove cupboards, dining room stained-glass windows and fireplace stone work located in the residential structure location on the Property ("**Post-Closing Demolition Notice Period**"). Seller's right to do so shall automatically expire at the end of the Post-Closing Demolition Notice Period. The provisions of this Section 5.3 shall survive Closing.

5.4 **Naming of Park.** The parties acknowledge that the City intends to create a city park on the Property ("**Park**"). The parties agree that a Park feature will be named after the Paull family ("**Paull Feature**"). Purchaser agrees to cooperate with Seller, both prior to and after Closing, to choose the type of feature to be named and the name to be given to the Paull Feature. The parties acknowledge that any decisions regarding the type of features to be included in the Park and the name of the Paull Feature must be approved by the Tigard City Council. The Provisions of Section 5.4 shall survive Closing.

## ARTICLE 6

### SELLER'S REPRESENTATIONS AND WARRANTIES

6.1 **Representations and Warranties of Seller.** Seller represents and warrants that, as of the Effective Date, the end of the Contingency Period, and the Closing, that all of the representations and warranties contained in this Agreement are and shall be true and correct, and shall survive Closing for a period of one (1) year. Each of Seller's representations and warranties is material to and is being relied upon by Purchaser and the continuing truth thereof shall constitute a condition precedent to Purchaser's obligations hereunder. Seller represents and warrants to Purchaser as follows:

6.1.1 **Proof of Authority.** Seller has authority and authorization to enter into this Agreement and consummate the transaction contemplated by it, and shall deliver such proof of the power and authority of the persons executing and/or delivering any instruments, documents, or certificates on behalf of the Seller to act for or bind the Seller, as may be reasonably required by the Escrow Holder and/or the Purchaser.

6.1.2 **Title to the Property.** Seller has sole legal and beneficial fee title to the Property, and has not granted any person or entity any right or interest in the Property except as set forth in this Agreement and in the Preliminary Report. Seller agrees to transfer to Purchaser, via Deed, the Property, subject only to the Permitted Exceptions.

6.1.3 **Property Documents, Lease Documents; No Defaults.** To Seller's knowledge, the Property Documents and Lease Documents delivered by Seller to Purchaser are true, correct and complete copies and there are no other documents or instruments that would constitute Property Documents or Lease Documents that have not been delivered by Seller or otherwise made available to Purchaser. Seller has no knowledge of any default by Seller under any Property Documents or Lease Documents. Seller warrants that the services associated with the Property Documents and Lease Documents, have been, or will be, paid for by Seller through the Closing Date, no later than Closing.

6.1.4 **Pending Transactions, Suits or Proceedings.** To Seller's knowledge, there are no transactions, suits, proceedings, litigation (including zoning or other land use regulation proceedings), condemnation, or investigations pending or threatened against or affecting the Property or Seller as the owner of the Property in any court at law or in equity, or before or by any governmental department, commission, board, agency or instrumentality.

6.1.5 **Defects.** To Seller's knowledge, without independent investigation, there are no latent or other defects or conditions on or about the Property which would cause injury or damage to persons or property, or which would have a material adverse effect on lawful uses of the Property.

6.1.6 **No Further Encumbrances.** As long as this Agreement remains in force, Seller will not lease, transfer, option, mortgage, pledge, or convey its interest in the Property or any portion thereof nor any right therein, nor shall Seller enter into any agreement granting to

any person or entity any option to purchase or rights superior to Purchaser with respect to the Property or any part thereof.

**6.1.7 Hazardous Materials.** To Seller's knowledge, without independent investigation, no Hazardous Materials have been generated, disposed of, deposited or released (or caused to be generated, disposed of or released) on, within, under, about or from the Property. To Seller's knowledge, without independent investigation, no other party or person has used, stored, transported, generated, disposed of or released on, within, under, about or from the Property any Hazardous Materials. Without limiting the foregoing, neither Seller nor, to Seller's knowledge, without independent investigation, any other party, has installed, operated or maintained any underground storage tanks on or adjacent to the Property, and the Property is not now, and has never been, in violation and is not currently under investigation for the violation of any Environmental Laws. To Seller's knowledge, without independent investigation, there is no asbestos or lead paint on the Property. Seller hereby assigns to Purchaser as of the Closing, to the extent assignable, all claims, counterclaims, defenses or actions, whether at common law or pursuant to any other applicable federal or state or other laws, if any, that Seller may have against third parties to the extent relating to the existence of Hazardous Materials in, at, on, under or about the Property.

**6.1.8 Access; Possession.** The Property has legal and physical access to a publicly-dedicated street or road. Except as reflected in the Lease Documents, there are no leases or tenancies in effect on the Property and possession thereof can and will be delivered to Purchaser upon Closing free of any tenants or occupants whatsoever.

**6.1.9 Construction or Other Liens.** Seller warrants that, at the time of Closing, no work, labor or materials have been expended, bestowed or placed upon the Property, adjacent thereto or within any existing or proposed assessment district which will remain unpaid at close of escrow or upon which a lien may be filed.

**6.1.10 No Option or Right of First Refusal to Acquire Premises.** Seller represents that no person or entity has any right of first refusal or option to acquire any interest in the Property or any part thereof.

**6.1.11 Conduct Pending Full Payment; Covenants.**

**6.1.11.1 Conduct of Property.** Seller hereby agrees that Seller will not modify, cancel, extend or otherwise change in any material manner any of the terms, covenants or conditions of the Property Documents or Lease Documents, nor enter into any additional leases as to the Property without Purchaser's written consent (which may be withheld in Purchaser's sole discretion), nor enter into any other agreements having a material effect on the Property without the prior written consent of Purchaser, (which Purchaser may withhold in its sole discretion).

**6.1.11.2 No Alterations.** Except as otherwise provided under Section 5.2 of this Agreement, Seller will not make any material alterations to the Property prior to the Closing.

6.1.11.3 **Maintain Physical Condition.** Seller, at its sole cost and expense, will maintain and keep the Property in approximately the same condition, reasonable wear and tear, damage by casualty, and condemnation excepted, between the Effective Date and the Closing Date, and will keep Purchaser timely advised any change to its physical condition prior to the Closing Date.

6.2 **AS IS.** Seller has granted Purchaser the right to inspect and make investigations in connection with the Property and shall continue to permit Purchaser to make its independent inspection and investigation of the Property prior to the Closing Date. Except as otherwise expressly stated in this Agreement, no warranties, guarantees or representations have been or are being made by Seller or any agent or representative of Seller concerning the condition of the Property's soils, any tests, inspections or examinations of the Property or its financial and operating records, any governmental permits or approvals obtained or to be obtained in connection with Purchaser's use of the Property, the suitability of the Property for Purchaser's intended use, the applicable zoning, building, and other ordinances, restrictions, laws, and regulations affecting the Property, the condition of the Property, or other matters. Except as otherwise specifically set forth in this Agreement, Purchaser accepts the Property in its present condition, AS IS, WHERE IS, without any representations or warranties by Seller or any agent or representative of Seller, expressed or implied. Purchaser acknowledges that Purchaser has ascertained for itself the value and condition of the Property and Purchaser is not relying on, nor has Purchaser been influenced by, any representation of Seller or any agent or representative of Seller regarding the value or condition of the Property.

## ARTICLE 7

### PURCHASER'S REPRESENTATIONS AND WARRANTIES

7.1 **Purchaser's Representation and Warranties.** Purchaser represents and warrants that, as of the Effective Date, the end of the Contingency Period, and Closing, all of the representations and warranties of Purchaser contained in this Agreement are and shall be true and correct, and shall survive Closing for a period of one (1) year. Each of Purchaser's representations and warranties is material to and is being relied upon by Seller and the continuing truth thereof shall constitute a condition precedent to Seller's obligations hereunder. Purchaser represents and warrants to Seller as follows:

7.1.1 **Authority.** The execution and delivery of this Agreement has been duly authorized and approved by all requisite action of Purchaser, and the consummation of the transactions contemplated hereby will be duly authorized and approved by all requisite action of Purchaser, and no other authorizations or approvals will be necessary in order to enable Purchaser to enter into or to comply with the terms of this Agreement.

7.1.2 **Binding Effect of Documents.** This Agreement and the other documents to be executed by Purchaser hereunder, upon execution and delivery thereof by Purchaser, will have been duly entered into by Purchaser, and will constitute legal, valid and binding obligations of Purchaser. To Purchaser's actual knowledge, neither this Agreement nor anything provided to be done under this Agreement violates or shall violate any contract, document, understanding, agreement or instrument to which Purchaser is a party or by which it is bound.

## ARTICLE 8

### PRORATED FEES AND COSTS

8.1 **Prorations.** Escrow Holder will prorate between the parties, based on the latest information available to Escrow Holder, all taxes, bonds and assessments (“**Taxes**”) for the Property, except as provided in Section 8.2 below. If, after the Closing, either party receives a bill for any Taxes, the parties agree that the Taxes shall be prorated between the parties to the Closing Date. The party receiving the bill for the Taxes shall notify the other party in writing of the amount of such Taxes and the party receiving that notice shall pay its prorated share of such Taxes within thirty (30) days of demand therefore, but not later than ten (10) days prior to delinquency. The parties’ obligations under this Section shall survive Closing.

8.2 **Penalties.** Any penalties that would be due as a result of removal of the Property from any tax deferral program shall be charged to Seller as though the Property were removed from such program on the Closing Date. Seller’s obligations under this Section shall survive Closing.

8.3 **Seller’s Fees and Costs.** Except where otherwise provided for in this Agreement Seller shall not be obligated to pay for any fees and costs.

8.4 **Purchaser’s Fees and Costs.** Purchaser shall pay (i) the costs for the Title Policy, including any extended coverage or endorsements for the Title Policy; ii) all the Escrow Holder’s escrow fee, (iii) all recording charges; and (iv) all transfer taxes.

8.5 **Other Costs.** Except as otherwise provided in this Agreement, each party shall bear and pay the expense of its own attorneys, accountants and other professionals incurred in negotiating and closing this Agreement.

## ARTICLE 9

### CLOSING

9.1 **Closing.** Escrow Holder shall close Escrow by (i) recording the Deed; (ii) confirming execution of all documents necessary for Closing and (iii) delivering funds and documents as set forth herein, when and only when all terms and conditions of this Agreement have been met and each of the conditions set forth below have been satisfied:

9.1.1 **Funds and Instruments.** All funds and instruments required pursuant to this Agreement have been delivered to Escrow Holder.

9.1.2 **Satisfaction of Conditions Precedent.** Each of the conditions precedent set forth in the Agreement have been either satisfied or waived.

9.1.3 **Liens and Encumbrances.** All liens and encumbrances required to be paid by Seller have been paid and satisfied at Seller’s sole expense, including without limitation any trust deed or mortgage affecting the Property. The Property shall be conveyed free of

encumbrances, except for the Permitted Exceptions and those expressly accepted or waived in writing by Purchaser pursuant to the terms of this Agreement.

9.1.4 **Assignment of Lease Documents.** If applicable, Seller shall have executed the Assignment of Leases attached to this Agreement as Exhibit C (“**Assignment of Leases**”).

## ARTICLE 10

### RECORDATION AND DISTRIBUTION OF FUNDS AND DOCUMENTS

10.1 **Recorded Documents.** Escrow Holder shall cause the County Recorder of Washington County to mail the Deed to Purchaser.

10.2 **Conformed Copies.** Escrow Holder shall at Closing deliver to Seller and Purchaser (i) a copy of the Deed, conformed to show recording date, and conformed copies of each document recorded to place title in the condition required by this Agreement, (ii) a copy of each non-recorded document received hereunder by Escrow Holder, and (iii) copies of all documents deposited into Escrow to the parties herein.

10.3 **Payment of Funds at Closing.** Escrow Holder shall deliver at Closing all amounts as set forth in the final, approved closing statement.

10.4 **Original Documents.** If applicable, Escrow Holder shall at Closing deliver to Purchaser the Original Assignment of Leases.

## ARTICLE 11

### DEFAULT AND REMEDIES

11.1 **Purchaser’s Default.** If Purchaser breaches this Agreement, which breach Purchaser fails to cure within thirty (30) days after receipt of written notice thereof from Seller, Purchaser shall be in default hereunder and Seller is entitled, as Seller’s sole and exclusive remedy, to liquidated damages pursuant to this Article. If Escrow fails to close due to Purchaser’s default, Purchaser shall pay all Escrow cancellation charges.

11.2 **Seller’s Remedies.** In the event of Purchaser’s default under this Agreement, the Earnest Money shall be forfeited by Purchaser and retained by Seller as liquidated damages. Such amount has been agreed by the parties to be reasonable compensation and the exclusive remedy for Purchaser’s default, since the precise amount of such compensation would be difficult to determine. Seller shall have no right to any other damages, claims or actions against Purchaser. By initialing this provision in the spaces below, Seller and Purchaser each specifically affirm their respective agreement to this liquidated damages provision as Seller’s sole and exclusive remedy for Purchaser’s default, and agreement that the sum is a reasonable sum.

Purchaser’s Initials \_\_\_\_\_

Seller’s Initials \_\_\_\_\_

11.3 **Seller's Default.** If Seller breaches this Agreement, which breach Seller fails to cure within thirty (30) days after receipt of written notice thereof from Purchaser, Seller shall be in default of this Agreement. If Escrow fails to close due to Seller's default, Seller shall pay all Escrow cancellation charges.

11.4 **Purchaser's Remedies.** In the event of Seller's default under this Agreement, Purchaser shall have the right to either (i) terminate this Agreement, and upon such event the Earnest Money shall be immediately refunded to Purchaser, or (ii) seek an action for specific performance in order to enforce Purchaser's rights hereunder. No provision of this Agreement shall be construed as waiving any of Purchaser's rights regarding eminent domain.

## ARTICLE 12

### ASSIGNMENT

12.1 **Assignment by Purchaser.** Purchaser may not assign or otherwise transfer any of its rights or obligations under this Agreement.

## ARTICLE 13

### GENERAL PROVISIONS

13.1 **Attorneys Fees.** If any action is instituted between Seller and Purchaser in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs of action, including, without limitation, attorneys' fees and costs as fixed by the court therein, at trial and on any appeal.

13.2 **Construction of Agreement.** The agreements contained herein shall not be construed in favor of or against either party, but shall be construed as if both parties prepared this Agreement.

13.3 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein. The foregoing sentence shall in no way affect the validity of any instruments executed by the parties in the form of the exhibits attached to this Agreement.

13.4 **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Oregon.

13.5 **Joint and Several Liability.** If any party consists of more than one person or entity, the liability of each such person or entity signing this Agreement shall be joint and several.

13.6 **Modification.** No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing and signed by all signatories hereto.

**13.7 Real Estate Brokerage Commission.** Purchaser represents and warrants that no real estate agent or broker representing Purchaser was involved in negotiating the transaction contemplated herein. Seller is represented by Mollie Cleveland and Jane Galluzzo of Knipe Realty, NW. Seller agrees to be responsible for payment of any compensation, commission or fee to Seller's broker in accordance with the terms and conditions of the agreement between them. In the event any claims for real estate commissions, fees or compensation arise in connection with this transaction, the party so incurring or causing such claims shall indemnify, defend and hold harmless the other party from any loss or damage, including attorneys' fees, that said other party suffers because of said claims. The obligations of the parties in the prior sentence shall survive Closing or the termination of this Agreement.

**13.8 Notice and Payments.** Any notice or document to be given pursuant to this Agreement must be delivered either in person, deposited in the United States mail duly certified or registered, return receipt requested with postage prepaid, by electronic mail, or by Federal Express or other similar overnight delivery service marked for next business day delivery. Notices shall be effective upon receipt if delivered personally, upon confirmation of receipt if sent by electronic mail, on the next day if sent by overnight courier, or two (2) days after deposit in the mail if mailed. Any party listed below may designate a different address, which shall be substituted for the one specified below, by written notice to the others.

If to Seller: Jennifer Paull  
80309 Quincy Mayger Rd.  
Clatskanie, OR 97016  
[E-mail: jennypaull@earthlink.net](mailto:jennypaull@earthlink.net)

Dave Paull  
6347 SW Corbett Ave  
Portland, OR 97239  
E-mail: paulldave@yahoo.com

With a copy to: Mollie Cleveland  
(Via e-mail): MClev30@aol.com

If to Purchaser: City of Tigard  
Attn: Parks Manager  
City Hall  
13125 SW Hall Blvd  
Tigard OR 97223  
E-mail: steve@tigard-or.gov

with a copy to : Jeff Bennett  
Jordan Ramis PC  
Two Centerpointe Drive, 6th Floor  
Lake Oswego, OR 97035  
E-mail: jeff.bennett@jordanramis.com

13.9 **Remedies Cumulative.** Except as specifically set forth herein, all rights and remedies of Purchaser and Seller contained in this Agreement shall be construed and held to be cumulative.

13.10 **Severability.** In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

13.11 **Successors and Assigns.** Subject to limitations expressed in this Agreement, each and all of the covenants and conditions of this Agreement shall inure to the benefit of and shall be binding upon the successors-in-interest, assigns, and representatives of the parties hereto. As used in the foregoing, "successors" shall refer to the parties' interest in the Property and to the successors to all or substantially all of their assets and to their successors by merger or consolidation.

13.12 **Time of the Essence.** Time is of the essence of each and every provision of this Agreement.

13.13 **Legal Representation.** Seller acknowledges that this is a legal document and that Seller has been advised to obtain the advice of legal counsel in connection with its review and execution of this Agreement. Seller covenants that it will not deny the enforceability of this Agreement on the basis that Seller elects not to obtain legal counsel to review and approve this Agreement.

13.14 **Waiver.** No waiver by Purchaser or Seller of a breach of any of the terms, covenants or conditions of this Agreement by the other party shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained. No waiver of any default by Purchaser or Seller hereunder shall be implied from any omission by the other party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect a default other than as specified in such waiver. The consent or approval by Purchaser or Seller to or of any act by the other party requiring the consent or approval of the first party shall not be deemed to waive or render unnecessary such party's consent or approval to or of any subsequent similar acts by the other party.

13.15 **Negation of Agency and Partnership.** Any agreement by either party to cooperate with the other in connection with any provision of this Agreement shall not be construed as making either party an agent or partner of the other party.

13.16 **Calculation of Time.** All periods of time referred to herein shall include Saturdays, Sundays and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday or such holiday, the period shall be extended to include the next day which is not a Saturday, Sunday or such holiday.

13.17 **Statutory Disclaimer.** THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING

STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009 AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009 AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

13.18 **Counterparts.** This Agreement may be executed in counterparts, each of which, when taken together, shall constitute fully executed originals.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the Effective Date.

**SELLER:**

David D. Paull and Jennifer E. Paull, Co-Successor Trustees of the Paull Family Trust established April 14, 1994 and the Paull Family Trust established under Article 9 of the Paull Living Trust dated April 14, 1994, each as to an undivided one-half interest

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

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

**PURCHASER:**

City of Tigard, an Oregon municipal corporation

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**APPROVED AS TO FORM:**

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

City Attorney

Exhibit A - Property  
Exhibit B – Deed

**CONSENT OF ESCROW HOLDER**

The undersigned Escrow Holder hereby agrees to (i) accept the foregoing Agreement, (ii) be the Escrow Holder under said Agreement, and (iii) be bound by said Agreement in the performance of its duties as Escrow Holder; provided, however, the undersigned shall have no obligations, liability or responsibility under this Consent or otherwise unless and until said Agreement, fully signed by the parties, has been delivered to the undersigned.

DATED: \_\_\_\_\_, 2012.

**FIRST AMERICAN TITLE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT A**

### **Tax Lot 5800**

Real property in the County of Washington, State of Oregon, described as follows:

#### **PARCEL I:**

The South 10 acres of the Southwest one-quarter of the Southeast one-quarter of Section 4, Township 2 South, Range 1 West, of the Willamette Meridian, in the County of Washington and State of Oregon.

EXCEPTING the West 462 feet thereof. PARCEL II:

Also a non-exclusive, perpetual easement for road and utility purposes on, over, under and across the East 50 feet of the following described tract:

Beginning at a stone marking the quarter section corner of the North line of Section 9, Township 2 South, Range 1 West, of the Willamette Meridian; and running thence South 0°35' East along the quarter section line 1238.5 feet to an iron in the center of County Road; thence along County Road South 61°27' East 707.7 feet to an iron pipe in the center of County Road, which iron marks the Southwest corner of the Moler tract; thence North 0°35' West along the West line of the Moler tract, 1581 feet to an iron on North line of said Section 9; thence on section line South 89°36' West 618.1 feet to the place of beginning.

NOTE: This Legal Description was created prior to January 01, 2008.

### **Tax Lot 5900**

Real property in the County of Washington, State of Oregon, described as follows:

A TRACT OF LAND IN SECTION 4, TOWNSHIP 2 SOUTH, RANGE 1 WEST, OF THE WILLAMETTE MERIDIAN, IN THE COUNTY OF WASHINGTON AND STATE OF OREGON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE ONE-QUARTER CORNER OF THE SOUTH LINE OF SAID SECTION 4; THENCE NORTH 0° 14' 40" WEST, 330.0 FEET, MORE OR LESS, TO THE NORTHWEST CORNER OF THE SOUTH 10.0 ACRES OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 4; THENCE NORTH 80° 45' 40" EAST ALONG THE NORTH LINE OF SAID 10.0 ACRE TRACT, A DISTANCE OF 462.0 FEET TO A POINT; THENCE SOUTH 0° 14' 40" EAST, PARALLEL WITH THE WEST LINE OF SAID 10.0 ACRE TRACT, 330.0 FEET, MORE OR LESS, TO THE SOUTH LINE OF SAID SECTION 4; THENCE SOUTH 89° 45' 40" WEST, 462.0 FEET TO THE PLACE OF BEGINNING.

EXCEPTING THEREFROM THE FOLLOWING:

THE WESTERLY 2 ACRES OF THE FOLLOWING TRACT OF LAND IN SECTION 4, TOWNSHIP 2 SOUTH, RANGE 1 WEST, OF THE WILLAMETTE MERIDIAN, IN THE COUNTY OF WASHINGTON AND STATE OF OREGON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE ONE-QUARTER CORNER OF THE SOUTH LINE OF SAID SECTION 4; THENCE NORTH 0° 14' 40" WEST, 330.0 FEET, MORE OR LESS, TO THE NORTHWEST CORNER OF THE SOUTH 10.0 ACRES OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 4; THENCE NORTH 80° 45' 40" EAST ALONG THE NORTH LINE OF SAID 10.0 ACRE TRACT, A DISTANCE OF 462.0 FEET TO A POINT; THENCE SOUTH 0° 14' 40" EAST, PARALLEL WITH THE WEST LINE OF SAID 10.0 ACRE TRACT, 330.0 FEET, MORE OR LESS TO THE SOUTH LINE OF SAID SECTION 4; THENCE SOUTH 89° 45' 40" WEST, 462.0 FEET TO THE PLACE OF BEGINNING.

NOTE: This Legal Description was created prior to January 01, 2008.

## EXHIBIT B

AFTER RECORDING RETURN TO:

Grantor: Paull Family Trust

Attn: Dave Paull

6347 SW Corbett Ave.

Portland, OR 97239

Grantee: City of Tigard

Attn: City Manager City Hall

13125 SW Hall Blvd Tigard OR 97223

*This space is reserved for recorder's use.*

### SPECIAL WARRANTY DEED

David D. Paull and Jennifer E. Paull, Co-Successor Trustees of the Paull Family Trust established April 14, 1994 and the Paull Family Trust established under Article 9 of the Paull Living Trust dated April 14, 1994, whose address is \_\_\_\_\_, each as to an undivided one-half interest, Grantor, conveys and specially warrants to CITY OF TIGARD, an Oregon municipal corporation, whose address is \_\_\_\_\_ Grantee, the following described real property free of encumbrances created or suffered by the Grantor except as specifically set forth herein:

See Exhibit A attached hereto.

The true consideration for this conveyance is One Million Seven Hundred Fifty Thousand and No/100 (\$1,750,000.00). This conveyance is made subject to the matters set forth on Exhibit B attached hereto.

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

**PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.**

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ .

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

STATE OF OREGON            )  
  ) ss.  
County of \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

ACCEPTED:

GRANTEE

CITY OF TIGARD, an Oregon municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF OREGON            )  
  ) ss.  
County of \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_ as \_\_\_\_\_ of the City of Tigard, an Oregon municipal  
corporation.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

## **Exhibit A**

### **Tax Lot 5800**

Real property in the County of Washington, State of Oregon, described as follows:

#### **PARCEL I:**

The South 10 acres of the Southwest one-quarter of the Southeast one-quarter of Section 4, Township 2 South, Range 1 West, of the Willamette Meridian, in the County of Washington and State of Oregon.

EXCEPTING the West 462 feet thereof. PARCEL II:

Also a non-exclusive, perpetual easement for road and utility purposes on, over, under and across the East 50 feet of the following described tract:

Beginning at a stone marking the quarter section corner of the North line of Section 9, Township 2 South, Range 1 West, of the Willamette Meridian; and running thence South 0°35' East along the quarter section line 1238.5 feet to an iron in the center of County Road; thence along County Road South 61°27' East 707.7 feet to an iron pipe in the center of County Road, which iron marks the Southwest corner of the Moler tract; thence North 0°35' West along the West line of the Moler tract, 1581 feet to an iron on North line of said Section 9; thence on section line South 89°36' West 618.1 feet to the place of beginning.

NOTE: This Legal Description was created prior to January 01, 2008.

### **Tax Lot 5900**

Real property in the County of Washington, State of Oregon, described as follows:

A TRACT OF LAND IN SECTION 4, TOWNSHIP 2 SOUTH, RANGE 1 WEST, OF THE WILLAMETTE MERIDIAN, IN THE COUNTY OF WASHINGTON AND STATE OF OREGON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE ONE-QUARTER CORNER OF THE SOUTH LINE OF SAID SECTION 4; THENCE NORTH 0° 14' 40" WEST, 330.0 FEET, MORE OR LESS, TO THE NORTHWEST CORNER OF THE SOUTH 10.0 ACRES OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 4; THENCE NORTH 80° 45' 40" EAST ALONG THE NORTH LINE OF SAID 10.0 ACRE TRACT, A DISTANCE OF 462.0 FEET TO A POINT; THENCE SOUTH 0° 14' 40" EAST, PARALLEL WITH THE WEST LINE OF SAID 10.0 ACRE TRACT, 330.0 FEET, MORE OR LESS, TO THE SOUTH LINE OF SAID SECTION 4; THENCE SOUTH 89° 45' 40" WEST, 462.0 FEET TO THE PLACE OF BEGINNING.

EXCEPTING THEREFROM THE FOLLOWING:

THE WESTERLY 2 ACRES OF THE FOLLOWING TRACT OF LAND IN SECTION 4, TOWNSHIP 2 SOUTH, RANGE 1 WEST, OF THE WILLAMETTE MERIDIAN, IN THE COUNTY OF WASHINGTON AND STATE OF OREGON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE ONE-QUARTER CORNER OF THE SOUTH LINE OF SAID SECTION 4; THENCE NORTH 0° 14' 40" WEST, 330.0 FEET, MORE OR LESS, TO THE NORTHWEST CORNER OF THE SOUTH 10.0 ACRES OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 4; THENCE NORTH 80° 45' 40" EAST ALONG THE NORTH LINE OF SAID 10.0 ACRE TRACT, A DISTANCE OF 462.0 FEET TO A POINT; THENCE SOUTH 0° 14' 40" EAST, PARALLEL WITH THE WEST LINE OF SAID 10.0 ACRE TRACT, 330.0 FEET, MORE OR LESS TO THE SOUTH LINE OF SAID SECTION 4; THENCE SOUTH 89° 45' 40" WEST, 462.0 FEET TO THE PLACE OF BEGINNING.

NOTE: This Legal Description was created prior to January 01, 2008.

**EXHIBIT B**  
**Exceptions**

**EXHIBIT C**  
**Assignment of Leases**

Paul Properties



**Business Meeting****Meeting Date:** 03/27/2012**Length (in minutes):** 15 Minutes**Agenda Title:** Adopt Revised Planning Commission Bylaws (Resolution) and Amend Tigard Municipal Code Chapter 2.08 (Ordinance)**Prepared For:** Susan Hartnett**Submitted By:** Gary Pagenstecher, Community Development**Item Type:** Ordinance  
Resolution  
Public Hearing - Legislative**Meeting Type:** Council Business Meeting - Main**Information****ISSUE**

Consider a resolution adopting revised Planning Commission bylaws, which are consistent with the Model Bylaws previously approved by council, and an ordinance amending the Tigard Municipal Code Chapter 2.08, consistent with the revised bylaws.

**STAFF RECOMMENDATION / ACTION REQUEST**

- 1) Approve the attached resolution and adopt the Planning Commission's Recommended Tigard Planning Commission Bylaws.
- 2) Accept the Planning Commission's finding that the proposed amendments to the Tigard Municipal Code, Chapter 2.08, Planning Commission, are consistent with the Planning Commission revised bylaws, and approve the attached ordinance.

**KEY FACTS AND INFORMATION SUMMARY**

In 2010, City Council adopted Model Bylaws and directed city boards and commissions to revise their bylaws to be consistent with them. The Tigard Municipal Code (TMC) Chapter 2.08, Planning Commission, addresses many of the same topics contained in the Model Bylaws. In addition, the existing Planning Commission Bylaws duplicate topics contained in the existing text of Chapter 2.08. Staff has worked with the Planning Commission to revise the existing bylaws to be consistent with the Model Bylaws and to prepare amendments to the TMC to assure consistency and eliminate duplication between the TMC and the Planning Commission Bylaws.

On November 21, 2011, the Tigard Planning Commission considered revisions to their existing bylaws and amendments to TMC Chapter 2.08, Planning Commission. On February 6, 2012, the Tigard Planning Commission considered the Proposed Tigard Planning Commission Bylaws and, after making minor changes, the commission recommended council adopt the revised bylaws. The commission also reviewed the proposed amendments to Chapter 2.08 and concluded that they are consistent with the revised bylaws.

Attachment 1 contains a resolution adopting the Planning Commission's recommended bylaws, which are Exhibit A to the resolution. For reference, the Model Bylaws are provided in Attachment 2 and the existing Planning Commission Bylaws are provided in Attachment 3. The revised bylaws integrate required portions of the Model Bylaws and certain sections of Chapter 2.08 into the existing Planning Commission Bylaws. Key highlights of the revisions include:

1. Composition of the Planning Commission will include a minimum of two members with expertise related to design to assure the Downtown Design and Review Board function of the commission can be fulfilled;
2. The charge to act as the Committee for Citizen Involvement for land use related matters, as assigned through Resolution No. 10-62, is incorporated;

3. The charges and duties of the Planning Commission are no longer itemized in the bylaws but instead reference the language in the TMC Chapter 2.08, Planning Commission;
4. The term and responsibilities for alternate Planning Commission members are clarified;
5. Additional provisions on the use of electronic communications from the Model Bylaws and on conflict of interest from the TMC; and
6. Any future changes to the Planning Commission Bylaws are now subject to council approval.

Concurrent with the bylaw revisions, amendments to TMC Chapter 2.08, Planning Commission, were prepared for council review and adoption by ordinance. Attachment 4 contains an ordinance approving the amendments to TMC Chapter 2.08, which are attached in strike-through text as Exhibit A to the ordinance. For ease of reading, a clean copy of TMC 2.08 is provided in Attachment 5. The proposed TMC revisions streamline the code and avoid redundancy with the revised bylaws.

**OTHER ALTERNATIVES**

The resolution implements the council's direction to amend the Planning Commission Bylaws, consistent with Model Bylaws. No alternatives are proposed.

The ordinance revises Chapter 2.08 to be consistent with the revised bylaws. Council could modify the proposed amendments or choose to not adopt them.

**COUNCIL OR CCDA GOALS, POLICIES, MASTER PLANS**

NA

**DATES OF PREVIOUS CONSIDERATION**

None

**Fiscal Impact**

**Cost:** N/A  
**Budgeted (yes or no):** N/A  
**Where Budgeted (department/program):** N/A

**Additional Fiscal Notes:**

There is no fiscal impact associated with these actions.

**Attachments**

- Attachment 1 - Resolution with Revised PC Bylaws
- Attachment 2 - Model Bylaws
- Attachment 3 - Existing PC Bylaws
- Attachment 4 - Ordinance with TMC 2.08 amendments
- Attachment 5 - TMC 2.08 (clean)

**CITY OF TIGARD, OREGON  
TIGARD CITY COUNCIL  
RESOLUTION NO. 12-\_\_\_\_\_**

A RESOLUTION AMENDING THE TIGARD PLANNING COMMISSION BYLAWS TO BE CONSISTENT WITH COUNCIL APPROVED MODEL BYLAWS

---

WHEREAS, the Tigard Planning Commission is currently governed by existing bylaws as amended by the commission on March 7, 2005 and Chapter 2.08 of the Tigard Municipal Code; and

WHEREAS, council approved Model Bylaws in 2010, and directed boards and commissions to adopt bylaws consistent with the Model Bylaws; and

WHEREAS, on November 21, 2011, the Tigard Planning Commission held a workshop to consider the staff proposed Draft Tigard Planning Commission Bylaws; and

WHEREAS, on February 6, 2012, the Tigard Planning Commission held a meeting to consider the revised Tigard Planning Commission Bylaws and, with minor amendments, recommended council adoption; and

WHEREAS, on March 27, 2012, the City Council held a public hearing to consider the Planning Commission's recommendation to adopt the Tigard Planning Commission Bylaws (Exhibit A).

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: The revised Planning Commission Bylaws, attached as EXHIBIT A, are hereby adopted.

SECTION 2: This resolution is effective immediately upon passage.

PASSED: This \_\_\_\_\_ day of \_\_\_\_\_ 2012.

---

Mayor - City of Tigard

ATTEST:

---

City Recorder - City of Tigard

CITY OF TIGARD  
PLANNING COMMISSION BYLAWS

SECTION I. CHARGE AND DUTIES

- A) The Tigard Planning Commission (“commission”) shall have no powers except as conferred by resolution of the City Council, City Charter, Tigard Municipal Code - Chapter 2.08, Tigard Development Code - Title 18 or the Oregon Revised Statutes.
- B) The commission shall act as an advisory body to the City Council and in specified quasi-judicial matters, shall act as the review authority.
- C) The commission, its members and alternates, shall act in a manner that is in keeping with applicable federal, state of Oregon and local laws pertaining to conduct and ethics and the City of Tigard Code of Conduct. Any violation of the provisions of such laws and guidelines shall be grounds for removal from office.
- D) Advisory committees to the commission may be appointed by the commission, by majority vote of the commission members, for the consideration of special assignments. Advisory committees formed by the commission, and subcommittees formed by action of City Council, shall not be authorized to operate under separate bylaws and shall operate in accordance with the Tigard Municipal Code, Planning Commission Bylaws and any modifications the City Council may make.
- E) The Planning Commission shall act as the Committee for Citizen Involvement for land use related matters and will meet annually with City Council to evaluate the effectiveness of the citizen engagement process. (Resolution No. 10-62)

SECTION II. COMPOSITION

- A) The commission shall consist of nine voting members (“member or members”) appointed by the City Council with the following representation and restrictions:
  - 1) Not more than two members may be nonresidents of the city.
  - 2) Not more than two members may be city officers, who shall serve as ex officio nonvoting members.
  - 3) Not more than two members may engage principally in the buying, selling or developing of real estate for profit as individuals, or be members of any partnership, or officers or employees of any corporation, that engages principally in the buying, selling or developing of real estate for profit;
  - 4) Not more than two members shall be engaged in the same kind of occupation, business, trade or profession.

- 5) Two members shall have an expertise related to the design of sites, buildings, structures or landscapes including but not limited to architects, landscape architects, engineers and urban design planners.
- B) Membership may temporarily drop below required minimums due to either resignations or difficulty in recruiting qualified applicants.
- C) The commission may also have up to two non-voting alternate members (“alternate or alternates”) appointed by the City Council.

### SECTION III. APPOINTMENTS

- A) Council shall fill vacancies with individuals who meet the compositional requirements listed in Section II.
- B) Appointments of members and alternates shall be made by the City Council, with recommendations from the mayor.

### SECTION IV. TERM OF OFFICE

- A) Commission members serve for a term of four years, beginning January 1 in the year of appointment.
- B) The term for an alternate begins January 1, or upon appointment, and expires when the next full-term commission position opens and shall not exceed two years.
- C) Any vacancy on the commission shall be filled by appointment by the council and mayor for the unexpired portion of the term. The unexpired portion of a term does not count towards the fulfillment of the maximum number of allowed terms.
- D) Members may be reappointed for up to two consecutive full terms. Alternates must be reappointed to serve more than two years.
- E) Members shall receive no compensation for their services, but shall be reimbursed for duly authorized expenses. The community development director shall determine and authorize reimbursable expenses.
- F) A member who seeks to resign from the commission shall submit a written resignation to the president of the commission, the staff liaison, or the city recorder’s office. If possible, the resignation should allow for a thirty (30) day notice so the City Council can appoint a replacement.

### SECTION V. ORGANIZATION OF THE COMMISSION

- A) Officers. The officers of the commission shall be a president and vice-president.

- B) The community development director or designee shall be the secretary of the commission. The secretary is not a member of the commission.
- C) Election.
- 1) The president and vice-president shall be elected at the first meeting of each odd numbered year, and shall serve until their successors are elected and qualified. The term shall start with the first meeting following election or upon election if there is not a current presiding officer.
  - 2) If the office of the president or vice-president becomes vacant, the commission shall at its next meeting elect a successor from its members, who shall serve the unexpired term of the predecessor.
  - 3) Nominations shall be by oral motion. At the close of nominations, the commission shall vote by voice vote upon the names nominated for the office. If requested by any member, written ballots shall be used for voting purposes.
- D) President.
- 1) Except as otherwise provided herein, the president shall:
    - a) Have general directional powers over the commission.
    - b) Preside over all deliberations and meetings of the commission.
    - c) Vote on all questions before the commission.
    - d) Call special meetings of the commission in accordance with these bylaws.
    - e) Sign all documents memorializing commission action promptly after approval by the commission. The power to sign reports and other documents of the commission may be delegated, in writing, to the secretary.
    - f) Be an ex-officio member of all commission advisory committees.
    - g) Be the sole spokesperson for the commission unless this responsibility is delegated to another member or the staff liaison.
- E) Vice-President. During the absence, disability, or disqualification of the president, the vice-president shall exercise or perform all the duties and be subject to all the responsibilities of the president. In the absence of the president and vice-president, the remaining members present shall elect an acting president.
- F) Secretary.
- 1) The secretary shall:
    - a) Maintain an accurate, permanent, and complete record of all proceedings conducted before the commission including all applications, appeals, hearings, continuances, postponements, date of notices, final disposition of matters, and other steps taken or acts performed by the commission, its officers, and the secretary.
    - b) Prepare the agenda and minutes for all commission meetings.
    - c) Give all notices required by law.

- d) Inform the commission of correspondence relating to commission business and conduct all correspondence of the commission.
  - e) Be responsible for meeting logistics.
  - f) Attend all meetings and hearings of the commission or send a substitute.
  - g) Perform such other duties for the commission as are customary in that role to support the duties of the commission.
- G) Staff liaisons are the primary contacts for City of Tigard boards and the primary interface between these bodies and the City Council, city manager and departments. Besides serving as a technical resource, staff liaisons are responsible for member recruitment and recognition and monitoring board effectiveness.

## SECTION VI. MEETINGS

- A) Regular Meetings. Regular meetings of the commission shall be held in the Council Chambers in City Hall, 13125 SW Hall Blvd., Tigard, Oregon, or at such other places as may be determined by the commission, at 7:00 p.m., or other time as determined by the commission. Meeting dates are normally chosen for timely action on applications submitted for the commission's consideration and are held at least once a month or as necessary. At regular meetings, the commission shall consider all matters properly brought before it without the necessity of prior notice thereof given to any members.
- B) Special Meetings. The president of the commission may call a special meeting, and the president shall call a special meeting upon the request of a majority of the members of the commission. The call shall state the purpose of the meeting. Unless otherwise specified in the call, all special meetings shall be held at the regular meeting place and time of the commission. Notice of special meetings shall be in writing and communicated to all members and alternates by the secretary at least forty-eight (48) hours before the meeting.
- C) Open Meetings. All meetings of the commission shall be open to the public, except that the commission may hold executive sessions, from which the public may be excluded, in such manner and for such purposes as may be authorized by law. Representatives of the news media shall be allowed to attend executive sessions under such conditions governing the disclosure of information as provided by law.
- D) Notice of Meetings.
- 1) In addition to notice required to be given to commission members and the secretary, public notice of all commission meetings shall be given in a manner reasonably calculated to give actual notice to interested persons and consistent with all applicable requirements of the Tigard Development Code. The notice shall consist of the time and place of the meeting and an agenda or summary of the subject matter to be considered.
  - 2) Notice shall be posted in the lobby of City Hall and disseminated to the city recorder, local news media representatives, and other persons and organizations as provided by law. At the discretion of the secretary, notice may also be provided to persons and organizations known to have a special interest in matters to be

considered by the commission.

- 3) Notice shall be given not less than five (5) days in advance of a meeting and be consistent with all applicable requirements of the Tigard Development Code. However, in case of an emergency, a meeting may be held upon such public notice as is appropriate in the circumstances.
- 4) Failure to provide notice as specified in this section shall not invalidate any decision or proceeding of the commission.

E) Agenda.

- 1) Order of Business. The order of business at all meetings shall be determined by the agenda which shall be composed generally of the following items:
  - a) Call to order;
  - b) Roll call;
  - c) Communications;
  - d) Minutes of previous meetings;
  - e) Old business - continuances;
  - f) New business;
  - g) Other business; and
  - h) Adjournment.
- 2) Any item may be taken out of order by direction of the president.
- 3) Actions of the commission are not limited to the prepared agenda except for those subject to notice requirements for land use decisions.
- 4) Meetings will end at 11:00 p.m., unless there is an affirmative vote by the commission to extend the time. In the absence of that vote, an item in progress will be continued as described in G below.

F) Voting.

- 1) A majority of votes by the members of the commission present at an open meeting shall determine any question before the commission. A tie vote causes the motion to fail.
- 2) Alternates are not allowed to vote under any circumstances, except as provided in Tigard Municipal Code, Section 2.08.105 - Downtown Design Review Board.
- 3) When a matter is called for a vote, the president shall, before a vote is taken, restate the motion and shall announce the decision of the commission after such vote.
- 4) Voting shall be by voice vote. All votes, whether positive, negative, or abstentions, shall be recorded in the minutes.
- 5) Voting "in absentia" or by proxy is not permitted.

G) Continuances, Remands.

- 1) Any item before the commission may be continued to a subsequent meeting. A

motion to continue an item shall specify the date when the item shall next be taken up or the event upon which continuation is to be based. If a matter which originally required public notice is continued without setting time and place certain, the public notification must be repeated when time and place are made certain. A list of continued items, showing the date at which an item was continued, or the event upon which continuance is based, shall be recorded and kept by the secretary and made available to the public.

- 2) Unless otherwise provided by the City Council upon remand of a legislative matter, any item remanded by the City Council for reconsideration by the commission shall be treated as a new item, and proceedings shall be provided for as if the matter were initially before the commission and noticed consistent with all applicable requirements of the Tigard Development Code.

H) Minutes.

- 1) The secretary or a designee shall be present at each meeting and shall cause the proceedings to be electronically recorded. Written minutes summarizing the matters discussed at a meeting and the view of the participants shall be prepared and maintained by the secretary. Executive sessions are excluded from published minutes.
- 2) Minutes shall be available to the public, upon request, within a reasonable time after a meeting and shall include the following:
  - a) Members present;
  - b) Motions, proposals, measures proposed and their disposition;
  - c) Results of all votes, including the vote of each member by name if not unanimous; and
  - d) Substance of any discussion of any matter.
  - e) If the minutes are not yet approved by the commission, if requested, draft minutes, if available, may be provided.
- 3) Members are expected to vote for approval of the minutes based on the accuracy of representation of events at the meeting. If there are no corrections, the president may declare the minutes approved as presented, without the need for a motion and vote. A vote in favor of adopting minutes does not signify agreement or disagreement with the commission's actions memorialized in the minutes.
- 4) Any member not present at a meeting must abstain from voting on approval of the minutes of that meeting.

I) Agendas and minutes shall be posted for public notice on the City of Tigard web page and in the lobby of City Hall in compliance with Oregon Public Meetings Law.

J) Rules of Procedure. All rules of order not herein provided for shall be determined in accordance with the latest edition of "Robert's Rules of Order Newly Revised." However, the commission has an obligation to be as clear and simple in its procedure as possible.

- K) Commission members and alternates shall not send or receive electronic communications concerning any matter pending before the commission during a commission meeting. Electronic communications means e-mail, text messages, or other forms of communications transmitted or received by technological means.
- L) Commission members and alternates shall not use electronic communication devices to review or access information regarding matters not in consideration before the commission during a commission meeting. Commission members and alternates may receive emergency communications regarding personal or work related matters. Electronic communication devices include but are not limited to lap-top computers, smart phones, cell-phones, notebooks, or other similar devices capable of transmitting or receiving messages electronically.
- M) Any electronic communications regarding a quasi-judicial matter to be considered by the commission is an ex parte contact and shall be disclosed as required by law.

#### SECTION VII. COMMISSION MEMBER AND ALTERNATE RESPONSIBILITIES

- A) Commission members shall:
  - 1) Regularly attend meeting and contribute constructively to discussions;
  - 2) Consider and discuss issues from a citywide perspective, as well as that of particular stakeholder or interests;
  - 3) Strive to reach consensus on matters under consideration;
  - 4) Act with respect and consideration for the viewpoint of others;
  - 5) Not act in an official capacity except through the action of the commission.
  - 6) Not make representations on behalf of the City of Tigard or Planning Commission, whether intentional or not, without authorization;
  - 7) Thoroughly review all materials provided in advance; and
  - 8) Contact staff liaison if clarification of applicable criteria or other matters is desired.
- B) A member absent during the presentation of any evidence in a hearing may not participate in the deliberations or final determination regarding the matter of the hearing, unless he or she has reviewed the evidence received and the meeting minutes.
- C) Commission alternates shall have the same responsibilities as members except that they shall not vote.
- D) Conflict of Interest Activities
  - 1) A member or alternate of the commission shall not participate in any commission proceeding or action in which any of the following has a direct or substantial financial interest:
    - a) The member or the spouse, brother, sister, child, parent, father-in-law, mother-in-law of the member;
    - b) Any business in which the member is then serving or has served within the

- previous two years; or
- c) Any business for which the member is negotiating, or for which the member has an arrangement or understanding concerning prospective partnership or employment.
- 2) Any actual or potential interest shall be disclosed at the meeting of the commission where the action is being taken.
- E) Disclosure of Prehearing or Ex-parte Contact
- 1) A member or alternate shall disclose to the commission, prior to any quasi-judicial hearing on a petition for a permit or with respect to any contested case, any prehearing or ex parte contacts with the applicant's officers, agents and employees or any of the parties to a contested case concerning the permit sought or the question at issue.
  - 2) A member or alternate shall disqualify himself or be disqualified by the remaining members of the commission present at a quasi-judicial hearing when it appears that the impartiality or objectivity of any member has been compromised by prehearing or ex parte contact.

#### SECTION VIII. ATTENDANCE

If a member of the commission is unable to attend a meeting, he or she is expected to notify the secretary as soon as possible. If any member is absent from 6 meetings within one year or three consecutive meetings without reasonable cause, the issue shall be placed on the upcoming agenda, and, upon majority vote of the commission, the commission may recommend that the position be declared vacant. The commission shall forward their action to the mayor and council, who shall vote whether to accept the commission's recommendation.

#### SECTION IX. QUORUM

- A) At any meeting of the commission, a quorum shall be a majority of the current members of the commission (excluding alternates). For the purposes of forming a quorum, members who have disqualified or excused themselves from participation in any matter shall be counted as present. No action shall be taken in the absence of a quorum except to:
  - 1) Adjust the order of the agenda;
  - 2) Continue quasi-judicial matters and public hearings to a time and place certain;
  - 3) Discuss agenda items not requiring commission action; and
  - 4) Adjourn the meeting.
- B) In the event a quorum will not be present at any meeting and no quasi-judicial items are scheduled for that meeting, the secretary shall notify the commission members and alternates in advance of that fact, and cancel the meeting. The secretary shall post notice of the cancelation on the door of the Council Chambers.

## SECTION X. REMOVAL OF MEMBERS

- A) The City Council may remove members of the commission in accordance with Section VIII Attendance.
- B) The council may also remove members when, in its judgment, the conduct of a member does not conform to the City of Tigard Code of Conduct for Boards, Commissions and Committees or based on other conduct unbecoming a representative of the city.
- C) The commission may make a recommendation to council for the removal of a member in accordance with Section VII - Member Responsibilities. If the commission wishes to forward a recommendation for replacement to the mayor and City Council, it shall do so in a timely manner.

## SECTION XI. ANNUAL REPORT OF THE COMMISSION

- A) Not later than April 1, the commission shall present its annual report to the City Council. This may take the form of an annual joint meeting.
- B) The annual report shall include a summary of key activities, proceedings, and any specific suggestions or recommendations that the commission believes would be noteworthy to the council.
- C) The annual report shall not be submitted unless approved by the commission.

## SECTION XII. AMENDMENTS

- A) These bylaws are adopted by resolution of the Tigard City Council, are binding on the commission, and may be amended by the City Council. The commission may propose amendments for City Council consideration.
- B) Publication and Distribution. A copy of these approved bylaws shall be:
  - 1) Placed on record with the city recorder and the secretary of the commission;
  - 2) Available at each commission meeting;
  - 3) Distributed to each member and alternate of the commission.



# City of Tigard Board, Commission, Committee Name Here

---

## M O D E L B Y L A W S

---

- The model bylaws were developed using the City Center Advisory Committee and Tigard Tree Board Bylaws.
  - The model bylaws serve as a guide for boards.
  - Section headings should remain the same for all boards.
  - Boards have discretion to revise the model bylaws with the exception of areas highlighted in gray.
- 

### SECTION I. CHARGE AND DUTIES

- A. The *(insert board name)* hereafter referred to as the “Board” shall have no powers except as conferred by resolution, City Charter, Tigard Municipal Code, or the Oregon Revised Statutes.
- B. It shall be the function of the *(insert board name)* to act as an advisory body to the City Council.
- C. The Board and its members shall conduct itself in a manner that’s in keeping with applicable federal, state, and local laws pertaining to conduct and ethics and the City of Tigard Code of Conduct. Any violation of the provisions of such laws shall be grounds for removal from office.
- D. The *(insert board name)* is charged with advising the City Council on matters pertaining to:
  - List mission and duties of board.
  - Describe board’s role in public involvement
- E. The Board may form subcommittees to investigate areas relevant to its charge or duties pursuant to this section.
  - List provisions for forming subcommittee.

### SECTION II. COMPOSITION

- A. The Board shall consist of *(insert # of members)* appointed by the City Council with the following representation:
  - State whether members must be a resident, have a certain expertise, live in a certain area, etc.
- B. Membership may temporarily drop below required minimums due to resignations and/or difficulty in recruiting qualified applications.

### SECTION III. APPOINTMENTS

- A. Council shall fill vacancies with individuals who meet the compositional requirements listed in Section II.
  - B. Appointments of at-large members shall be made the City Council, with recommendations from the Mayor.
-

## SECTION IV. TERM OF OFFICE

- A. Board members serve for a term of *(insert term length)* beginning *(insert beginning date)* on the year of appointment.
- B. Any vacancy in the Board shall be filled by appointment by the Council and Mayor for the unexpired portion of the term. The unexpired portion of a term does not count towards the fulfillment of the maximum number of allowed terms.
- C. Members may be reappointed for up to *(insert # of consecutive terms)* consecutive terms.
- D. Members shall receive no compensation for their services.
  - *(State whether reimbursements are given for trips, conferences, etc.)*
- E. An individual board member may not act in an official capacity except through the action of the board.
- F. A member who seeks to resign from the Board shall submit a written resignation to the chair of the Board, the staff liaison, or the city recorder's office. If possible, the resignation should allow for a thirty (30) day notice so the City Council can appoint a replacement.

## SECTION V. ORGANIZATION OF THE BOARD

- A. At its first meeting of the year, and thereafter annually, the Board shall elect a Chair from its members who shall hold office at the pleasure of the Board.
  - **Chair.** The chair shall have general directional powers over the Board. The chair shall preside at all meetings and, in consultation with support staff, set the agendas and notify the board of all meeting times and place. The chair shall also be an ex-officio member of all subcommittees and shall be the sole spokesperson for the Board unless this responsibility is delegated to support staff.
    - *(Insert other applicable officers such as vice-chair, secretary, etc.)*
- B. If the Chair should resign, the Board shall, at its next meeting, conduct an election and provide a replacement to fill the unexpired term.
- C. Staff liaisons are the primary contacts for City of Tigard boards and the primary interface between these bodies and the City Council, City Manager, and departments. Besides serving as a technical resource, staff liaisons are responsible for meeting logistics, member recruitment and recognition, recordkeeping, and monitoring board effectiveness.

## SECTION VI. MEETINGS

- A. The regular meeting of the Board shall be held on the *(insert meeting day/how often)* of each month at *(insert time)*, at *(insert location)* unless otherwise determined by the Board. If the regular meeting day is a holiday, the meeting will be held on *(insert alternative date)*.
- B. The Board shall meet *(insert frequency of meetings during a calendar year)* at a time and place that is specified at least five (5) days in advance.

- C. The parliamentary authority for the Board is *Robert's Rules of Order Revised*, except where superseded by these bylaws or local, state, or federal law.
- D. The Chair may call a special meeting, and the Chair shall call a special meeting if requested by three or more members. The call shall state the purpose of the meeting. Notice of a special meeting must be in writing and communicated to all members at least *(insert # of days)* before the meeting.
- E. Agendas and minutes shall be posted for public notice on the City of Tigard web page and in the lobby of City Hall in compliance with Oregon Public Meetings Law. All meetings shall be open to the public.
  - *(If applicable, include policy on Exec Session)*
- F. A majority of votes of Board members present shall determine the official position of the Board on a given issue. Alternates are not allowed to vote under any circumstances.
- G. The Chair shall vote on all matters before the Board unless having declared a conflict of interest.
- H. Board members shall not send or receive electronic communications concerning any matter pending before the Board during a Board meeting.
  - **Electronic Communications** means e-mail, text messages, or other forms of communications transmitted or received by technological means.
  - **Electronic Communications Devices** means lap-top computers, blackberries, cell-phones, notebooks, or other similar devices capable of transmitting or receiving messages electronically.
- I. Board member shall not use electronic communication devices to review or access information regarding matters not in consideration before the Board during a Board meeting.
- J. Any electronic communications regarding a quasi-judicial matter to be considered by the Board is an ex-parte contact and shall be disclosed as required by law. *(Note: Only applies to Planning Commission Bylaws.)*

## SECTION VII. BOARD MEMBER RESPONSIBILITIES

Members of the Board: *(insert specific responsibilities, examples listed below)*

- Regularly attend meeting and contribute constructively to discussions,
- Consider and discuss issues from a Citywide perspective, as well as that of particular stakeholder or interests,
- Strive to reach consensus on matters under consideration
- Act with respect and consideration for the viewpoint of others
- Shall not make representations on behalf of the City of Tigard or Board whether intentional or not, without authorization.

## SECTION VIII. ATTENDANCE

If a member is unable to attend a meeting, he or she is expected to notify the Chair. If a member has *(insert # of allowable unexcused absences)* regularly scheduled meetings within one year, the issue shall be placed on the upcoming agenda, and upon majority vote of the Board members present, that position shall be declared vacant. The Board shall forward its action to the Mayor and Council, who shall fill the vacant position.

## **SECTION IX. QUORUM**

At any meeting of the Board, a quorum shall be a majority of the current members (*excludes alternates*) of the Board. No action shall be taken in the absence of a quorum except that the meeting may continue with discussion on agenda items. For the purposes of forming a quorum, members who have disqualified or excused themselves from participation in any matter shall be counted as present.

In the event a quorum will not be present at any meeting, the Chair or Vice Chair shall notify the Board members in advance so that a decision may be made whether to meet and take no action on agenda items or to reschedule to a different time.

## **SECTION X. REMOVAL OF MEMBERS**

- A. The City Council may remove members of the Board in accordance with Section VIII Attendance.
- B. The Council may also remove members, when, in its judgment the conduct of a member does not conform to the City of Tigard Code of Conduct for Boards, Commissions and Committees or based on other conduct unbecoming a representative of the City.
- C. The Board may make a recommendation to Council for the removal of a member in accordance with Section VII Member Responsibilities. The Board shall forward a recommendation for replacement to the Mayor and Council in a timely manner.

## **SECTION XI. ANNUAL REPORT OF THE BOARD**

- A. Not later than (*insert deadline for submitting annual report*), the Board shall prepare and file its Annual Report to the City Council.
- B. The Annual Report shall include a summary of key activities and proceeding and any specific suggestions or recommendations which the Board believes would be noteworthy to the Council.
- C. The Annual Report shall not be submitted unless approved by the Board.

## **SECTION XII. AMENDMENTS**

These bylaws are adopted by resolution of the Tigard City Council, are binding on the Board, and may be amended by the City Council. Boards may propose amendments for Council consideration.

A RESOLUTION ADOPTING REVISED BYLAWS AND RULES OF PROCEDURE FOR THE ORGANIZATION OF AND CONDUCT OF BUSINESS BY THE TIGARD PLANNING COMMISSION.

**BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF TIGARD, OREGON:**

The following bylaws, rules, and regulations are hereby adopted by the Planning Commission for the transaction of its business:

**ARTICLE I  
General**

Section 1. Explanation and Interpretation

A. A nine member City Planning Commission has been established Chapter 2.08 of the Municipal Code. This chapter was enacted by the City Council pursuant to the authority of the home rule Charter of the City of Tigard. The Council has also adopted other ordinances, resolutions, and policy statements relating to the organization, powers, duties, and procedures of the Commission. The Commission is empowered to adopt and amend rules and regulations, to govern the conduct of its business consistent with the Charter and ordinances of the City, and official policies promulgated by the Council.

B. It is the intention of the Commission to set forth in this resolution not only rules and regulations governing its organization and procedures, but also certain other provisions relating thereto, now contained in various ordinances, resolutions, and other documents. The intent is to set forth in one document the essential information relating to the Commission's organization and procedures for the benefit of the Commission, applicants, and the general public.

**ARTICLE II  
Responsibilities of Commission**

Section 1. Responsibilities. The purpose, objectives, and responsibilities of the City Planning Commission shall be as delineated in TMC Chapter 2.08.100, Powers and Duties of the Commission and include:

A. Tigard Comprehensive Plan. The Commission shall carry out duties assigned to it by the Council relating to development, updating, and general maintenance of the Plan.

B. Capital Improvement Program. The Commission will assist the Council in the formulation of a Capital Improvement Program and, after adoption of said Program, may submit periodic reports and recommendations to the Council relating to the integration and conformance of the Program with the Tigard Area Comprehensive Plan.

C. Application of Development Regulations. Except for those matters which may be delegated to the Planning Director, the Commission shall review and take action on quasi judicial and legislative matters, and other proposals which result from the application of development

regulations contained within the Development Code on specific pieces of property and uses of land, buildings, etc. The Development Code shall be followed in holding hearings and taking required action.

D. Coordination and Cooperation. The Commission shall endeavor to advance cooperative and harmonious relationships with the City Council, Citizen Involvement Teams (CITs), other Planning Commissions, public and semi-public agencies and officials, and civic and private organizations, with a view to coordinating and integrating public and private planning and developmental and policy conflicts. The Commission may, and is encouraged to, exchange research, information, ideas and experiences, participate in joint meetings, develop programs and undertake such other formal and informal actions to facilitate cooperation and coordination.

E. General Welfare. Upon its own initiative or direction of the Council, the Commission shall study and propose in general such measures as may be advisable for promotion of the public interest, health, morals, safety, comfort, convenience, and welfare of the City of Tigard and its environs related to its particular area of responsibility.

F. Rules of Procedure. The Commission shall adopt and periodically review and amend rules of procedure. Rules of procedure shall govern the conduct of hearings and participation of Commission members on all matters coming before the Commission. These rules shall be consistent with State law and City ordinances relating to the same matters.

### **ARTICLE III**

#### **Officers**

Section 1. Officers. The Officers of the Commission shall be a President and Vice-President. The City Community Development Director shall be the Secretary of the Commission. In the event the Secretary is absent from any meeting, the Secretary may send a designee.

#### Section 2. Election.

A. The President and Vice-President shall be elected at the first meeting of each odd numbered year, and shall serve until their successors are elected and qualified. The term shall start with the first meeting in January, following election.

B. If the office of the President or Vice-President becomes vacant, the Commission shall elect a successor from its membership who shall serve the unexpired term of the predecessor.

C. Nominations shall be by oral motion. At the close of nominations, the Commission shall vote by voice vote upon the names nominated for the office. If requested by any member, written ballots shall be used for voting purposes.

Section 3. President.

A. Except as otherwise provided herein, the President shall have the duties and powers to:

1. Preside over all deliberations and meetings of the Commission;
2. Vote on all questions before the Commission;
3. Call special meetings of the Commission in accordance with these bylaws;
4. Sign all documents memorializing Commission action promptly after approval by the Commission. The power to sign reports and other documents of the Commission may be delegated, in writing, to the Secretary.

B. All decisions of the President as presiding officer shall be subject to review by a majority of Commission members present upon motion duly made and seconded. Upon a majority vote of the members present, the Commission may overturn a decision of the President.

Section 4. Vice-President. During the absence, disability, or disqualification of the President, the Vice-President shall exercise or perform all the duties and be subject to all the responsibilities of the President. In the absence of the President and Vice-President, the remaining members present shall elect an acting President.

Section 5. Secretary.

A. The Secretary shall:

1. Maintain an accurate, permanent, and complete record of all proceedings conducted before the Commission;
2. Prepare the agenda and minutes for all Commission meetings;
3. Give all notices required by law;
4. Inform the Commission of correspondence relating to Commission business and conduct all correspondence of the Commission;
5. Attend all meetings and hearings of the Commission or send a designee;
6. Compile all required records and maintain the necessary files, indexes, maps, and plans.

B. The Secretary shall maintain records indicating all applications, appeals, hearings, continuances, postponements, date of sending notice, final disposition of matters, and other steps taken or acts performed by the Commission, its officers, and the Secretary.

C. The Secretary shall perform such other duties for the commission as are customary in that role or as may, from time to time, be required by the Commission.

## **ARTICLE IV**

### **Meetings**

Section 1. Regular Meetings. Regular meetings of the Commission shall be held in the Council Chambers, City Hall, 13125 SW Hall Blvd., Tigard, Oregon, or at such other places as may be determined by the Commission, at 7:00 p.m., or other time as determined by the Commission. Meeting dates are normally chosen for timely action on applications submitted for the Commission's consideration and are held at least once a month or as necessary. At regular meetings, the Commission shall consider all matters properly brought before it without the necessity of prior notice thereof given to any members.

Section 2. Special Meetings. The President of the Commission upon his or her own motion may, or upon the request of a majority of the members of the Commission shall, call a special meeting of the Commission. Unless otherwise specified in the call, all special meetings shall be held at the regular meeting place and time of the Commission. Notice of special meetings shall be given personally or by mail to all members of the Commission and the Secretary not less than forty-eight (48) hours in advance thereof. In case of an emergency, a special meeting may be held upon such notice as is appropriate in the circumstances; provided, however, that reasonable effort is made to notify all members of the Commission.

Section 3. Open Meetings. All meetings of the Commission shall be open to the public, except that the Commission may hold executive sessions, from which the public may be excluded, in such manner and for such purposes as may be authorized by law. Representatives of the news media shall be allowed to attend executive sessions under such conditions governing the disclosure of information as provided by law.

#### Section 4. Notice of Meetings.

A. In addition to notice required to be given to Commission members and the Secretary, public notice of all Commission meetings shall be given in a manner reasonably calculated to give actual notice to interested persons. The notice shall consist of the time and place of the meeting and an agenda or summary of the subject matter to be considered.

B. Notice shall be posted on a bulletin board in the City Hall and disseminated to the City Recorder, local news media representatives, and other persons and organizations as provided by law. At the discretion of the Secretary, notice may also be provided to persons and organizations known to have a special interest in matters to be considered by the Commission.

C. Notice shall be given not less than forty-eight (48) hours in advance of a meeting; provided, however, that in case of an emergency, a meeting may be held upon such public notice as is appropriate in the circumstances.

D. Failure to provide notice as specified in this section, shall not invalidate any decision or proceeding of the Commission.

Section 6. Agenda: Order of Business.

A. The order of business at all meetings shall be determined by the agenda which shall be composed generally of the following items:

- 1) Call to order;
- 2) Roll call;
- 3) Communications;
- 4) Minutes of previous meetings;
- 5) Old business - continuances;
- 6 New business;
- 7 Other business;
- 8 Adjournment.

B. Any item may be taken out of order by direction of the President.

C. Actions of the Commission are not limited to the prepared agenda.

D. Public hearings will be stopped at 11:00 P.M. unless there is a motion from the commission to extend the time of the hearing in progress. In the absence of that motion, the issue will be taken up at the following meeting.

E. The Commission shall not consider a new item after 11:00 p.m. unless there is a motion by the Commission to extend the time for the agenda item.

Section 7. Attendance. If a member of the Commission is unable to attend a meeting, he or she is expected to notify the Secretary. If any member is absent from 6 meetings within one year or three consecutive meetings without reasonable cause, upon majority vote of the Commission, that position shall be declared vacant. The Commission shall forward their action to the Mayor and Council, who shall fill the vacant position.

Section 8. Quorum. At any meeting of the Commission, a quorum shall be a majority of the current members of the Commission. No action shall be taken in the absence of a quorum except to adjourn the meeting and to continue public hearings to a time and place certain. For the purposes of forming a quorum, members who have disqualified or excused themselves from participation in any matter shall be counted as present.

In the event a quorum will not be present at any meeting, the Secretary shall notify the Commission members in advance of that fact, and all items scheduled before the meeting shall be automatically continued to the next regularly scheduled meeting. The Secretary shall post notice of the continuance on the door of the Council Chambers notifying the public of the continuance and specifying the date and time when the matter will be before the Commission.

Section 9. Voting.

A. The concurrence of a majority of the members of the Commission present at an open meeting shall be necessary to determine any question before the Commission. A tie vote causes the motion to fail.

B. When a matter is called for a vote, the President shall, before a vote is taken, restate the motion and shall announce the decision of the Commission after such vote.

C. Voting shall be by voice vote. All votes, whether positive, negative, or abstentions, shall be recorded in the minutes.

D. Voting "in absentia" or by proxy is not permitted.

E. A motion to reconsider can be made only at the same meeting the vote to be reconsidered was taken. Suspension of this rule is not permitted. Further, a motion to reconsider may only be made by a member who voted on the prevailing side of the issue.

#### Section 10. Continuances, Remands.

A. Any item before the Commission may be continued to a subsequent meeting. A motion to continue an item shall specify the date or event upon which continuation is to be based. If a matter which originally required public notice is continued without setting time and place certain, the public notification must be repeated when time and place are made certain. A list of continued items, showing the date at which an item was continued, or the event upon which continuance is based, shall be recorded and kept by the Secretary and made available to the public.

B. Unless otherwise provided by the Council upon remand, any item remanded by the Council for reconsideration by the Commission shall be treated as a new item and proceedings shall be provided for as if the matter were initially before the Commission.

C. A member absent during the presentation of any evidence in a hearing may not participate in the deliberations or final determination regarding the matter of the hearing, unless he or she has reviewed the evidence received.

Section 11. Rules of Procedure. All rules of order not herein provided for shall be determined in accordance with the latest edition of "Robert's Rules of Order Newly Revised". However, the Commission has an obligation to be as clear and simple in its procedure as possible.

#### Section 12. Minutes.

A. The Secretary or a designee shall be present at each meeting and shall cause the proceedings to be stenographically or electronically recorded. A full transcript is not required, but written minutes giving a true reflection of the matters discussed at a meeting and the view of the participants shall be prepared and maintained by the Secretary. Executive sessions are excluded from published minutes.

B. Minutes shall be available to the public, upon request, within a reasonable time after a meeting and shall include the following:

- 1) Members present;
- 2) Motions, proposals, measures proposed and their disposition;
- 3) Results of all votes, including the vote of each member by name if not unanimous;  
and
- 4) Substance of any discussion of any matter.
- 5) If the minutes are not yet approved by the Commission, if requested, draft minutes, if available, may be provided.

C. The Secretary may charge a reasonable fee for copies of minutes and other materials relating to Commission matters.

D. Commissioners are expected to vote for approval of the minutes based on the accuracy of representation of events at the meeting. If there are no corrections, the President may declare the minutes approved as presented, without the need for a motion and vote. A vote in favor of adopting minutes does not signify agreement or disagreement with the Commission's actions memorialized in the minutes.

E. Any Commissioner not present at a meeting must abstain from voting on approval of the minutes of that meeting.

## **ARTICLE V**

### **Advisory Committees**

Appointment. Advisory committees to the Commission may be appointed by the Commission, with the concurrence of the Commission members, for the consideration of special assignments.

**ARTICLE VI**  
**Publication and Amendment of Bylaws and Rules of Procedure**

Section 1. Publication and Distribution. A copy of these approved bylaws and rules of procedures shall be:

- A. Placed on record with the City Recorder and the Secretary of the Commission;
- B. Available at each Commission meeting;
- C. Distributed to each member of the Commission; and
- D. Available to the public for the cost of duplication.

Section 2. Amendment and Suspension.

A. These bylaws, rules, and regulations may be amended by approval of a majority of the members of the entire Commission at a regular or special meeting, provided notice of the proposed amendment is given at the preceding regular meeting, or at least five (5) days written notice is delivered to, or mailed to the home address of each Commissioner. The notice shall identify the section or sections of this resolution proposed to be amended.

B. Notwithstanding subsection A above, any rule of procedure not required by law may be suspended temporarily at any meeting by majority vote of those members present and voting, except the rule on reconsideration.

Amended by the Planning Commission of the City of Tigard, Oregon, with a quorum in attendance at its regular meeting of March 7, 2005, and signed by the President in authentication of its amendment.

Planning Commission President  
City of Tigard, OR

\_\_\_\_\_  
Date

**CITY OF TIGARD, OREGON**  
**TIGARD CITY COUNCIL**  
**ORDINANCE NO. 12-\_\_\_\_\_**

AN ORDINANCE AMENDING TIGARD MUNICIPAL CODE CHAPTER 2.08, PLANNING COMMISSION, COMPLEMENTING AMENDMENTS TO AMENDED PLANNING COMMISSION BYLAWS, CONSISTENT WITH COUNCIL APPROVED MODEL BYLAWS.

---

WHEREAS, the Tigard Municipal Code (TMC), Chapter 2.08, Planning Commission, includes sections on Commission Purpose, Appointment-Membership, Vacancy, Voting Members, Election of Officers, Meetings-Quorum, Conflict of Interest, Disclosure, Powers and Duties, Downtown Design Review Board, Hearings Officer, and Hearings Procedures; and

WHEREAS, Council adopted Model Bylaws in 2010, and directed boards and commissions to adopt bylaws consistent with the Model Bylaws; and

WHEREAS, on November 21, 2011, the Tigard Planning Commission held a workshop to consider the Staff Proposed Draft Amended Bylaws and on February 6, 2012, held a meeting to consider revised Tigard Planning Commission Bylaws and, with minor amendments, recommended the City Council adopt them; and

WHEREAS, the Planning Commission also reviewed Tigard Municipal Code Chapter 2.08, Planning Commission and found that simplifying and streamlining sections of TMC 2.08 to include only sections on the Planning Commission, Powers and Duties of Commission, Downtown Design Review Board, Hearings Officer, and Hearing Procedures is consistent with the recommended amendments to its bylaws; and

WHEREAS, on March 27, 2012, the City Council considered the Planning Commission's recommendation to adopt the revised Tigard Planning Commission Bylaws; and

WHEREAS, on March 27, 2012, the City Council held a public hearing to consider amendments to Tigard Municipal Code, Chapter 2.08.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: Tigard Municipal Code, Chapter 2.08, Planning Commission is amended as shown in EXHIBIT A.

SECTION 2: This ordinance shall be effective 30 days after its passage by the council, signature by the mayor, and posting by the city recorder.

PASSED: By \_\_\_\_\_ vote of all council members present after being read by number and title only, this \_\_\_\_ day of \_\_\_\_\_, 2012.

---

Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Craig Dirksen, Mayor

Approved as to form:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

# TIGARD MUNICIPAL CODE

**Chapter 2.08 PLANNING COMMISSION  
AND HEARINGS OFFICER.**

**Sections:**

- 2.08.010 Purpose.Planning Commission**
- 2.08.020 Appointment--Membership.  
(Repealed by Ord. 12-XX)**
- 2.08.030 Commission Removal.  
(Repealed by Ord. 10-17)**
- 2.08.040 Vacancy.  
(Repealed by Ord. 12-XX)**
- 2.08.050 Voting Members.  
(Repealed by Ord. 12-XX)**
- 2.08.060 Election Of of Officers.  
(Repealed by Ord. 12-XX)**
- 2.08.070 Meetings -- Quorum -- Voting.  
(Repealed by Ord. 12-XX)**
- 2.08.080 Planning Commission Member  
Conflict Of of Interest  
Activities.  
(Repealed by Ord. 12-XX)**
- 2.08.090 Disclosure Of of Prehearing  
Contact  
(Repealed by Ord. 12-XX).**
- 2.08.100 Powers And and Duties Of of  
Commission.**
- 2.08.105 Downtown Design Review  
Board.**
- 2.08.110 Hearings Officer.**
- 2.08.120 Hearing Procedures.**
- 2.08.010 Purpose.Planning Commission**

The ~~purpose of the~~ Tigard Planning Commission ~~is to advise~~ the City Council on general land use and transportation planning issues; long-range capital improvement programs; and to act as a hearings body for applications of permits, land use applications and land use appeals, or other matters as directed by the City Council. The Planning Commission shall operate pursuant to bylaws approved by City Council, which may only be amended by action of the City Council. (Ord. 92-35 §2 (Exh. A)(part), 1992).

**2.08.020 Appointment--Membership.**

~~—The City Planning Commission shall consist of nine members, not more than two of whom may be nonresidents of the City, to be appointed by the Council to serve a term of four years. No person appointed after January 1, 1996 may serve more than two full consecutive terms on the Planning Commission, notwithstanding prior appointment to an unexpired term. Commission members shall receive no compensation but shall be reimbursed for duly authorized expenses. (Ord. 95-26; Ord. 92-35 §2 (Exh. A)(part), 1992).~~  
(Repealed by Ord. 12-XX)

**2.08.030 Commission Removal.**

(Repealed by Ord. 10-17)

**2.08.040 Vacancy.**

~~—Any vacancy in such a commission shall be filled by the appointing authority for the unexpired term of the predecessor in the office. (Ord. 92-35 §2 (Exh. A)(part), 1992).~~  
(Repealed by Ord. 12-XX)

**2.08.050 Voting Members.**

~~—No more than two voting members of the Commission may engage principally in the buying, selling or developing of real estate for profit as individuals, or be members of any partnership, or officers or employees of any corporation, that engages principally in the buying, selling or developing of real estate for profit. No more than two members shall be engaged in the same kind of occupation, business, trade or profession. (Ord. 92-35 §2 (Exh. A)(part), 1992).~~  
(Repealed by Ord. 12-XX)

**2.08.060 Election Of of Officers.**

# TIGARD MUNICIPAL CODE

~~The Planning Commission, at its first meeting in each odd numbered calendar year, shall elect a president and a vice president, who shall hold office at the pleasure of the Commission. The president and vice president shall be voting members of the Commission. The vice president shall preside in the absence of the president. (Ord. 92-35 §2 (Exh. A)(part), 1992).~~  
~~(Repealed by Ord. 12-XX)~~

## 2.08.070 Meetings ~~--~~ Quorum ~~--~~ Voting.

~~The Commission shall meet at least once in each calendar month or as necessary. A majority of the members of the Commission shall constitute a quorum. A majority vote of those members present at an open meeting of the Commission shall be necessary to legally act on any matter before the Commission. (Ord. 92-35 §2 (Exh. A)(part), 1992).~~  
~~(Repealed by Ord. 12-XX)~~

## 2.08.080 Planning Commission Member Conflict ~~Of~~ Interest Activities.

~~(a) A member of the Planning Commission shall not participate in any Commission proceeding or action in which any of the following has a direct or substantial financial interest:~~

~~(1) The member or the spouse, brother, sister, child, parent, father in law, mother in law of the member;~~

~~(2) Any business in which the member is then serving or has served within the previous two years; or~~

~~(3) Any business for which the member is negotiating or for which the member has an arrangement or understanding concerning prospective partnership or employment.~~

~~(b) Any actual or potential interest shall be disclosed at the meeting of the Commission where the action is being taken. (Ord. 92-35 (Exh. A)(part), 1992).~~  
~~(Repealed by Ord. 12-XX)~~

## 2.08.090 Disclosure ~~Of~~ Prehearing Contact.

~~(a) A member of the Planning Commission shall disclose to the Commission, prior to any hearing on a petition for a permit or with respect to any contested case, any prehearing or ex parte contacts with the applicant's officers, agents and employees, or any of the parties to a contested case concerning the permit sought or the question at issue.~~

~~(b) A member of the Commission shall disqualify himself or be disqualified by the remaining members of the Commission present at a hearing when it appears that the impartiality or objectivity of any member has been compromised by prehearing or ex parte contact. (Ord. 92-35 §2 (Exh. A)(part), 1992).~~  
~~(Repealed by Ord. 12-XX)~~

## 2.08.100 Powers ~~And~~ Duties ~~Of~~ Commission.

~~(a)A.~~ Except as otherwise provided by the City Council, and described in the commission's bylaws, a Citythe Tigard Planning Commission may:

~~(1) Make and alter rules and regulations for its government and procedure consistent with the laws of the state of Oregon, the City Charter, this chapter and other ordinances of the City;~~

~~(2)1.~~ Recommend and make suggestions to the City Council and to other public authorities concerning:

# TIGARD MUNICIPAL CODE

~~(A)~~a. The long range comprehensive land use plans for the City, as well as any land use plans for specific areas within the City,

~~(B)~~b. Plans for the City-wide transportation system, including the laying out, widening, extending and locating of public thoroughfares; relieving traffic congestion conditions; bicycle and pedestrian facilities; transit facilities and routes; design standards for transportation facilities; and parking lot regulations,

~~(C)~~c. Any proposals to adopt or amend planning documents for the City-wide transportation system, including the transportation map of the comprehensive plan and the transportation capital facilities program,

~~(D)~~d. Establishment of districts for limiting the use, height, area, design, bulk and other characteristics of buildings and structures related to land development, including the creation of and amendments to the Tigard development code and the zoning map,

~~(E)~~e. Betterment of housing and sanitation conditions,

~~(F)~~f. Protection and assurance of solar access;

~~(3)~~g. ~~Recommend to the Council and other public authorities plans~~ Plans for regulating the future growth, development and design of the City in respect to its public and private buildings and works, streets, parks, grounds and vacant lots; ~~and~~

h. ~~plans~~ Plans to secure to the City and its inhabitants sanitation, proper service of public utilities and telecommunications utilities, and shipping and transportation facilities; ~~and~~

i. ~~appropriate~~ Appropriate measures for energy conservation; ~~and~~

~~(4)~~j. ~~Recommend to the Council and other public authorities p~~ Plans for promotion, development and regulation of industrial and economic activities in the community;

~~(5)~~2. Do and perform all other acts and things necessary or proper to carry out the provisions of ORS 227.010 to 227.~~120-170~~, and 227.~~160-175~~ to 227.180;

~~(6)~~3. Study and propose such measures as are advisable for promotion of the public interest, health, morals, safety, comfort, convenience and welfare of the City, including the area that is expected to eventually become a part of the City through annexation.

~~(b)~~B. The City Council shall assign to the Planning Commission such facilities and services as necessary to enable the Commission to hold its meetings, transact its business and keep its records. (Ord. 92-35 §2 (Exh. A)(part), 1992).

## **2.08.105 Downtown Design Review Board.**

~~(a)~~A. The ~~Council~~ council may appoint or designate a subcommittee of the Planning Commission as the Downtown Design Review Board. The Downtown Design Review Board shall have the power to conduct Type III-C hearings on applications for permits as specified in ~~the Tigard Development Code~~ Title 18 of this code.

~~(b)~~B. The subcommittee shall consist of a minimum of three members or alternate members of the Planning Commission.

# TIGARD MUNICIPAL CODE

~~(e)C.~~ ~~Notwithstanding the provisions of Section 2.08.070, a~~A majority of the designated subcommittee shall constitute a quorum. A majority vote of those members present at an open meeting of the ~~Board~~board shall be necessary to legally act on any matter before the ~~Board~~board. (Ord. 10-12 § 1, 2010).

## **2.08.110 Hearings Officer.**

The ~~Council~~council may appoint or designate one or more qualified persons as Planning and Zoning Hearings Officer(s), to serve at the pleasure of the City Council. The ~~Hearings Officer~~officer(s) shall have the power to conduct hearings on applications for permits. (Ord. 92-35 §2 (Exh. A)(part), 1992).

## **2.08.120 Hearing Procedures.**

~~(a)A.~~ Procedures for the conduct of quasi-judicial hearings as prescribed by ~~Section 18.32.160~~Title 18 of this code shall apply with respect to the conduct of hearings by the Planning Commission, Downtown Design Review Board and ~~Hearings Officer~~officer.

~~(b)B.~~ Procedures for the conduct of legislative hearings as prescribed by ~~Section 18.30.100~~Title 18 of this code shall apply with respect to the conduct of legislative hearings by the Planning Commission. (Ord. 92-35 §2 (Exh. A)(part), 1992). ■

# TIGARD MUNICIPAL CODE

**Chapter 2.08 PLANNING COMMISSION  
AND HEARINGS OFFICER**

**Sections:**

- 2.08.010 Planning Commission**
- 2.08.020 Appointment - Membership  
(Repealed by Ord. 12-XX)**
- 2.08.030 Commission Removal  
(Repealed by Ord. 10-17)**
- 2.08.040 Vacancy  
(Repealed by Ord. 12-XX)**
- 2.08.050 Voting Members  
(Repealed by Ord. 12-XX)**
- 2.08.060 Election of Officers  
(Repealed by Ord. 12-XX)**
- 2.08.070 Meetings - Quorum - Voting  
(Repealed by Ord. 12-XX)**
- 2.08.080 Planning Commission Member  
Conflict of Interest Activities  
(Repealed by Ord. 12-XX)**
- 2.08.090 Disclosure of Prehearing  
Contact  
(Repealed by Ord. 12-XX)**
- 2.08.100 Powers and Duties of  
Commission**
- 2.08.105 Downtown Design Review  
Board**
- 2.08.110 Hearings Officer**
- 2.08.120 Hearing Procedures**
  
- 2.08.010 Planning Commission**

The Tigard Planning Commission advises the City Council on general land use and transportation planning issues; long-range capital improvement programs; and to act as a hearings body for applications of permits, land use applications and land use appeals, or other matters as directed by the City Council. The Planning Commission shall operate pursuant to bylaws approved by City Council, which may only be amended by action of the City Council. (Ord. 92-35 §2 (Exh. A)(part), 1992).

- 2.08.020 Appointment - Membership  
  
(Repealed by Ord. 12-XX)**
- 2.08.030 Commission Removal  
  
(Repealed by Ord. 10-17)**
- 2.08.040 Vacancy  
  
(Repealed by Ord. 12-XX)**
- 2.08.050 Voting Members  
  
(Repealed by Ord. 12-XX)**
- 2.08.060 Election of Officers  
  
(Repealed by Ord. 12-XX)**
- 2.08.070 Meetings - Quorum - Voting.  
  
(Repealed by Ord. 12-XX)**
- 2.08.080 Planning Commission Member  
Conflict of Interest Activities  
  
(Repealed by Ord. 12-XX)**
- 2.08.090 Disclosure of Prehearing  
Contact  
  
(Repealed by Ord. 12-XX)**
- 2.08.100 Powers and Duties of  
Commission**

A. Except as otherwise provided by the City Council, and described in the commission's bylaws, the Tigard Planning Commission may:

1. Recommend and make suggestions to the City Council and to other public authorities concerning:

# TIGARD MUNICIPAL CODE

a. The long range comprehensive land use plans for the city, as well as any land use plans for specific areas within the city,

b. Plans for the city-wide transportation system, including the laying out, widening, extending and locating of public thoroughfares; relieving traffic congestion conditions; bicycle and pedestrian facilities; transit facilities and routes; design standards for transportation facilities; and parking lot regulations,

c. Any proposals to adopt or amend planning documents for the city-wide transportation system, including the transportation map of the comprehensive plan and the transportation capital facilities program,

d. Establishment of districts for limiting the use, height, area, design, bulk and other characteristics of buildings and structures related to land development, including the creation of and amendments to the Tigard development code and the zoning map,

e. Betterment of housing and sanitation conditions,

f. Protection and assurance of solar access;

g. Plans for regulating the future growth, development and design of the city in respect to its public and private buildings and works, streets, parks, grounds and vacant lots;

h. Plans to secure to the city and its inhabitants sanitation, proper service of public utilities and telecommunications utilities, and shipping and transportation facilities;

i. Appropriate measures for energy conservation; and

j. Plans for promotion, development and regulation of industrial and economic activities in the community.

2. Do and perform all other acts and things necessary or proper to carry out the provisions of ORS 227.010 to 227.170, and 227.175 to 227.180;

3. Study and propose such measures as are advisable for promotion of the public interest, health, morals, safety, comfort, convenience and welfare of the city, including the area that is expected to eventually become a part of the city through annexation.

B. The City Council shall assign to the Planning Commission such facilities and services as necessary to enable the commission to hold its meetings, transact its business and keep its records. (Ord. 92-35 §2 (Exh. A)(part), 1992).

## **2.08.105 Downtown Design Review Board**

A. The council may appoint or designate a subcommittee of the Planning Commission as the Downtown Design Review Board. The Downtown Design Review Board shall have the power to conduct Type III-C hearings on applications for permits as specified in Title 18 of this code.

B. The subcommittee shall consist of a minimum of three members or alternate members of the Planning Commission.

C. A majority of the designated subcommittee shall constitute a quorum. A majority vote of those members present at an open meeting of the board shall be necessary to legally act on any matter before the board. (Ord. 10-12 § 1, 2010).

## **2.08.110 Hearings Officer**

# TIGARD MUNICIPAL CODE

The council may appoint or designate one or more qualified persons as Planning and Zoning Hearings Officer(s), to serve at the pleasure of the City Council. The hearings officer(s) shall have the power to conduct hearings on applications for permits. (Ord. 92-35 §2 (Exh. A)(part), 1992).

## **2.08.120 Hearing Procedures**

A. Procedures for the conduct of quasi-judicial hearings as prescribed by Title 18 of this code shall apply with respect to the conduct of hearings by the Planning Commission, Downtown Design Review Board and hearings officer.

B. Procedures for the conduct of legislative hearings as prescribed by Title 18 of this code shall apply with respect to the conduct of legislative hearings by the Planning Commission. (Ord. 92-35 §2 (Exh. A)(part), 1992). ■

AIS-877

11. A.

**Business Meeting**

**Meeting Date:** 03/27/2012

**Length (in minutes):** Consent Item

**Agenda Title:** Consider Waiving Sign Permit Fees for Tigard Youth Football

**Prepared For:** Liz Lutz

**Submitted By:**

Liz Lutz, Financial  
and Information  
Services

**Item Type:** Resolution

**Meeting Type:**

Council Business  
Meeting - Main

---

**Information**

**ISSUE**

Does the Tigard City Council find benefit to the community of waiving the temporary sign permit fees for Tigard Youth Football to hang two banners, outweighs the \$104 financial hardship to the city?

**STAFF RECOMMENDATION / ACTION REQUEST**

Consider Resolution waiving \$104 of permit fees for Tigard Youth Football.

**KEY FACTS AND INFORMATION SUMMARY**

On March 20, 2012, Dawn Rachele Holman from Tigard Youth Football e-mailed the city to request a waiver of permit fees charged to hang two additional banners (text of email is attached). According to the Master Fees and Charges Schedule, Temporary Sign Permits are \$52 per sign. Dawn Rachele is requesting the city waive fees for two signs totaling a \$104 fee waiver. TMC 3.32.070 authorizes Council to waive fees for non-profits. The text of the TMC is as follows:

“3.32.070 Exemptions. The City Council is authorized to waive or exempt the fee or charge imposed upon an application or for the use of City facilities and services, if a nonprofit organization requests such a waiver in writing and the Council determines that community benefit from the proposed activity outweighs the financial burden on the City. The waiver or exemption shall not excuse the nonprofit organization from compliance with other requirements of this code.”

Tigard Youth Football is a qualifying non-profit. They have made their request to waive fees in writing. If Council determines that the benefit to the community outweighs the loss of \$104 in permit fees, then Council is authorized to waive the fees.

**OTHER ALTERNATIVES**

City Council could deny the request.

**COUNCIL OR CCDA GOALS, POLICIES, MASTER PLANS**

Tigard citizens are involved in the community and participate effectively.

**DATES OF PREVIOUS CONSIDERATION**

On February 28, 2012 the City Council passed Resolution 12-07A, granting a waiver for the Tigard Youth Football for five signs, for a total of \$260. We received an additional request to waive the fees for two additional signs on March 20, 2012.

---

---

**Fiscal Impact**

**Cost:** NA

**Budgeted (yes or no):** NA

**Where Budgeted (department/program):** NA

**Additional Fiscal Notes:**

Waiving the fees will reduce City of Tigard General Fund revenues by \$104.

---

---

**Attachments**

Resolution

Request Letter

---

---

**CITY OF TIGARD, OREGON  
TIGARD CITY COUNCIL  
RESOLUTION NO. 12-**

A RESOLUTION WAIVING \$104 IN TEMPORARY SIGN PERMIT FEES FOR TIGARD YOUTH FOOTBALL

---

WHEREAS, Tigard Municipal Code 3.32.070 authorizes City Council to waive fees for non-profits when the request is made in writing and Council determines that the community benefit outweighs the financial burden to the City; and

WHEREAS, Tigard Youth Football has requested in writing the waiver of fees for two temporary sign permits; and

WHEREAS, The Master Fees and Charges states that the fee for temporary sign permits is \$52 per sign; and

WHEREAS, Council determines that the community benefit outweighs the \$104 financial burden to the city.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: Tigard Youth Football receives a waiver of \$104 in temporary sign permit fees.

SECTION 2: This resolution is effective immediately upon passage.

PASSED: This \_\_\_\_\_ day of \_\_\_\_\_ 2012.

---

Mayor - City of Tigard

ATTEST:

---

City Recorder - City of Tigard

March 20, 2012

Toby LaFrance  
Director of Finance & IS  
City of Tigard  
13125 SW Hall Blvd.  
Tigard, OR 97223

Mr. LaFrance and the Tigard City Council,

Tigard Youth Football (TYF) is a non-profit organization that allows children in grades 3-8 the opportunity to play full-pad tackle football and learn essential life skills such as working together as a team to achieve a common goal and dealing with adversity. We also teach kids to exhibit excellent sportsmanship and to be proud of being a Tigard Tiger! As evidenced by the photo to the right, we also strongly support Breast Cancer Awareness Month during the month of October – one of the few programs to do so in the Tualatin Valley Youth Football League.



Each year, in order to promote participation in TYF, we place registration signs throughout our community. In the past, TYF has paid these fees, which takes away funds that might be otherwise used to provide scholarships to families that can't afford to pay or to buy newer, safer equipment. At this time, we are requesting a waiver of the fees associated with posting two signs in public places as outlined in TMC 3.32.070.

TYF greatly appreciates the Council's consideration of this important matter.

Sincerely,

Dawn Rachele Holman  
*Events Coordinator*  
**Tigard Youth Football**