

**IN THE BOARD OF COMMISSIONERS
HOUSING AUTHORITY AND COMMUNITY SERVICES AGENCY (HACSA)**

ORDER NO.

02-6-26-3H

**)In the Matter of Authorizing the Executive
)Director to Enter a HOME Interim Loan
)Agreement with the City of Eugene to Assist
)with Construction Financing at Sheldon Village
) (Phase II)**

WHEREAS, the City of Eugene offers a program that allows HACSA to borrow City of Eugene HOME funds on a short-term basis; and

WHEREAS, the City has up to \$750,000 in funds available in this program; and

WHEREAS, HACSA wishes to enter into this agreement to use this resource in the construction and development of the Sheldon Village (Phase II) development project;

NOW, THEREFORE, it is hereby resolved and ordered:

That the Executive Director or Deputy Director Is Authorized to execute a HOME Interim Agreement, not to exceed \$750,000, with the City of Eugene for the Sheldon Village (Phase II) Affordable Housing Development.

DATED this 26th day of June, 2002



Chair, HACSA Board of Commissioners

In the Matter In the Matter of Authorizing the Executive Director to Enter into
a HOME Interim Loan Agreement with the City of Eugene for Sheldon Village (Phase II)

ATTACHMENT 1

Draft HOME Interim Loan Agreement
Sheldon Village (Phase II)

**RENTAL HOUSING DEVELOPMENT
LOAN AGREEMENT**

BETWEEN: The City of Eugene, an Oregon municipal corporation (Lender)

AND: Housing Authority and Community Services Agency (Borrower)
of Lane County, an Oregon public corporation

DATE: April 1, 2002

PROJECT: Sheldon Village Phase II, 2475 Sheldon Loop Road, Eugene, OR 97401

LOAN NUMBER: 177/0202/805/05

RECITALS

- A. Borrower has requested Lender to make a short term loan to Borrower of federal HOME Investment Partnership Program (HOME) grant funds in the principal amount of Seven Hundred Fifty Thousand Dollars (\$750,000) for low income rental housing purposes.
- B. Borrower will secure permanent funding through Network for Oregon Affordable Housing (NOAH) or from Centennial Bank and will repay loan funds into the local HOME account. In addition, Borrower has secured a Restricted Line of Credit commitment in the amount of at least Seven Hundred Fifty Thousand Dollars (\$750,000) from Centennial Bank (Bank) to provide full repayment in the event of Lenders demand during construction of project.
- C. On January 25, 1999 the Council for the City of Eugene (Council) authorized the disbursement of HOME grant funds to Borrower for eligible project costs associated with the construction of at least seventy-eight (78) low income residential units at Sheldon Village Apartments. Forty-three of the low income housing units were built in Phase I, and Phase II will produce thirty-five units.
- D. Borrower will cause thirty-five (35) units of low income rental housing to be constructed at Sheldon Village Phase II and attests that all labor, materials and development costs associated with the construction, are according to the specifications described in Exhibit - C. The units will be available to low income renters and shall remain affordable to low income families for a minimum of twenty (20) years from completion of construction, according to the HOME requirements described in Exhibit - D. Borrower, as a recipient of federal HOME Investment Partnerships Program funds from the City, shall be obligated to comply with all federal laws and regulations imposed upon the City as part of its HOME Program and with all terms and conditions set forth herein and in the following exhibits:

Exhibit - A City of Eugene Standard Contract Provisions
Exhibit - B Memorandum of Agreement
Exhibit - C Description of HOME Assisted Units/Budget
Exhibit - D Federal HOME Investment Partnership (HOME) Regulations and Requirements
Exhibit - E Tenant Data Sheet
Exhibit - F Special Conditions
Exhibit - G Centennial Bank Restricted Funding Agreement

Exhibit - H	Lease and Tenant Protection Provisions
Exhibit - I	Declaration of Restrictive Covenants
Exhibit - J	HOME Program Rents
Exhibit - K	Trust Deed
Exhibit - L	Network for Oregon Affordable Housing Letter of Interest

AGREEMENT

Now, therefore, in consideration of the foregoing Recitals, which are incorporated by this reference, the parties hereto agree as follows:

1. Definitions.

- 1.1 "Default" shall mean an Event of Default or an event which with notice or lapse of time or both would become an event of Default.
- 1.2 "Event of Default" shall mean any Event or Default described in Paragraph 7 hereof.
- 1.3 "Loan" shall have the meaning ascribed thereto in Paragraph 2 hereof.
- 1.4 "Note" shall mean a note or notes issued pursuant to Paragraph 3 hereof.

2. Loan. Subject to the terms and conditions of this agreement, Lender agrees to make a loan (the "Loan") to Borrower in a principal amount not to exceed Seven Hundred Fifty Thousand Dollars (\$750,000), provided however, that Lender is not required to provide funds if HOME funds are not available to Lender or if providing funds under this agreement would interfere with City's other budgeted HOME projects. Should anticipated sources of revenue become unavailable Lender shall immediately notify Borrower in writing and within fifteen (15) calendar days Borrower will fully repay loan from proceeds of a bank loan.

- 2.1 Time for Completion. Borrower warrants that construction of the Project shall be completed in a manner satisfactory to Lender, and to fully repay loan funds on or before July 1, 2003. The Project shall not be deemed complete until final written approval is given by Lender. Should delays in construction progress arise Borrower may submit written request for extension to Lender. Any time extension or modification of specifications and budget attached as Exhibit - C must be approved in writing by Lender in its reasonable discretion. If Project costs increase from approved budget Borrower will be required to provide the additional funding from a source other than Lender.
- 2.2 Memorandum of Agreement. Exhibit - B will be recorded as a lien on the Project property, subordinate to loans described in Recitals Paragraph B of this Agreement until Lender receives full repayment. The Declaration of Restrictive Covenants, Exhibit - H, will be recorded and will remain as a lien for the entire twenty (20) year affordability term.
- 2.3 Progress Payments. Borrower shall submit to Lender a request for payment of actual expenses incurred by Borrower in execution of Project. Lender may request invoices as documentation of actual expenses. The payment requests shall be itemized in a format consistent with Exhibit - C. Lender shall inspect the work and determine eligibility for

payment of each request. If Lender, in its sole discretion, deems such payment appropriate funds will be disbursed to Borrowers.

- 2.4 **Loan Fee.** The use of City HOME funds under this agreement shall be treated in all respects as a loan. A loan fee in the amount of Two Hundred Dollars (\$200) shall be paid to Lender by Borrower with the final principal repayment, due July 1, 2003.
 - 2.5 **Right of Lender to Inspect.** Lender has the authority to inspect and to stop the work, if in the Lenders sole discretion performance of work on the Project is not in conformance with the Exhibit - C. Borrower agrees to provide to Lender such information as Lender may reasonably require regarding costs incurred, completion percentage and Project progress and status.
 - 2.6 **Quality of Project.** The Project must meet the housing quality standards of the HOME program. In addition, the Project must meet all applicable federal, state and local codes, ordinances and zoning regulations, and the Model Energy Code published by the Council of American Building Officials. Borrower warrants that the Project will be maintained at a level compliant with current applicable housing quality standards and local housing code requirements during the course of the twenty (20) year affordability term.
3. **Note.** The Loan shall be made against, evidenced by and repayable as a non-interest bearing loan, in accordance with a promissory note of Borrower, payable to the order of Lender in the principal amount of Seven Hundred Fifty Thousand Dollars (\$750,000), duly executed and delivered on behalf of Borrower and secured by a Deed of Trust of even date herewith attached as Exhibit - K.
 - 3.1 **Repayment.** Borrower promises to pay in full the entire outstanding principal and loan fee on or before July 1, 2003. Borrower shall cause Bank to forward full repayment to Lender within fifteen (15) business days of Borrowers receipt of take out loan proceeds. Borrower may prepay the indebtedness in whole or in part at any time and from time to time without penalty.
 - 3.2 **Place of Payment.** All payments and prepayments of principal and other amounts payable to Lender hereunder will be made to Lender at its office located at the address on Paragraph 10 of this Agreement or at such other place designated by Lender in writing to Borrower.
 - 3.3 **Demand Provision.** Lender shall have the absolute right to demand from Borrower full or partial repayment of the outstanding principal balance in writing upon fifteen (15) calendar days notice, by delivering or mailing such demand to Borrower at its office located at the address in Paragraph 10 of this Agreement.
4. **Borrower's Representations and Warranties.**
 - 4.1 Borrower is a public corporation duly organized and validly existing under the laws of Oregon and has full power and authority to transact the business in which it is engaged, and full power, authority and legal right to make this Agreement and the Note, and to incur and perform its obligations hereunder and under the Note.
 - 4.2 The making and performance by Borrower of this agreement and the Note and the borrowing by Borrower hereunder (a) have been duly authorized by necessary action of the Borrower, (b) do not violate any provision of any applicable law, rule, regulation or order of any court, regulatory commission, board or other administrative agency or any provision of Borrower's

corporate agreement and (c) do not result in the creation of any lien to any other indenture, bank or other credit agreement, mortgage or other agreement of instrument to which Borrower is a party.

- 4.3 This Agreement and the Note have been duly executed and delivered by Borrower and will continue the legal, valid and binding obligation of Borrower, enforceable in accordance with their terms subject to the laws of bankruptcy, insolvency or other similar laws affecting the enforcement of creditor's rights generally.
- 4.4 No authorization, consent, license, or approval of, or filing or registration with, or notification to, any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Borrower of this agreement and the Note or for the borrowing hereunder.
- 4.5 Since Borrower applied to Lender for the Loan, there has been no material adverse change in the financial condition of Borrower.
- 4.6 No representation or warranty by Borrower in this agreement or on any written statement, including information, data, exhibits and other materials submitted in connection with the Loan, furnished to Lender pursuant to this agreement or in connection with the transactions contemplated by this Agreement, when taken together, contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make statements not misleading.
- 4.7 Borrower may, at its option, subcontract tenant monitoring responsibilities covered in the Agreement, in whole or in part. Borrower shall require any subcontractor to agree, as to the portion subcontracted, to comply with all applicable federal, state and local laws, rules, ordinances, and regulations at all times in performance of the work. Borrower shall ensure that subcontractors comply with all federal standards that Lender agreed to meet in the Grant Agreements, which are hereby incorporated herein. Borrower shall remain obligated for full performance of this Agreement, and Lender shall incur no obligation to any subcontractor. Borrower shall indemnify, defend, and hold Lender harmless from all claims of its subcontractors.
- 4.8 There is no action, suit, proceeding, or investigation pending or threatened against Borrower which would, if adversely determined, have a material adverse effect on the financial condition or business of Borrower or on the ability of Borrower to perform its obligations under this Agreement or the Note.

5. **Conditions Precedent.** The obligation of Lender to make any additional disbursements under the Loan is subject to the following conditions precedent:

- 5.1 The representations contained in Paragraph 4 hereof shall be true and correct on and as of the date of the disbursement with the same force and effect as if made on and as of such date.
- 5.2 No default shall have occurred and be continuing on the date of the disbursement.
- 5.3 Lender shall have received prior to the making of the disbursement, both the Note and Trust Deed securing the Note duly executed and delivered on behalf of Borrower.

5.4 Borrower shall have delivered to Lender, an opinion of counsel for Borrower, to the effect that:

- 5.4.1 Borrower is a housing authority duly established under ORS 456, duly organized and validly existing under the laws of Oregon, and Borrower has the requisite power and authority to own its properties as a general partner and to conduct its business as now conducted.
- 5.4.2 Borrower and Borrower's representative have the requisite power and authority to execute, deliver and perform this Agreement and the Note.
- 5.4.3 To the best of such counsel's knowledge, without independent investigation, Borrower is not in violation or default of any material agreement to which it is a party or by which it is bound.
- 5.4.4 To the best of such counsel's knowledge without independent investigation, all consents, approvals, orders, or authorizations of and all qualifications, registrations, designations, or filings with any federal or state governmental authority on the part of Borrower required for the consummation of the transactions contemplated by this Agreement have been obtained and are effective as of the date hereof, and such counsel is not aware of any proceedings, or threat thereof, which question the validity thereof without independent investigation.
- 5.4.5 To the best of such counsel's knowledge, there is no action, suit, proceeding, or investigation pending or threatened against Borrower which would, if adversely determined, have a material adverse effect on the financial condition or business of Borrower or on the ability of Borrower to perform its obligations under this Agreement or the Note.

5.5 Borrower's financial condition and credit standing are maintained in a manner satisfactory to Lender, and that there shall be no filing for bankruptcy, reorganization or assignment for the benefit of creditors by Borrower.

5.6 Provision by Centennial Bank to Borrower of a Loan for financing adequate to and restricted to repay the loan evidenced by this Agreement in full on demand. Centennial Bank commitment is attached hereto as Exhibit - G.

5.7 Borrower's agreement to secure permanent funding through Network for Oregon Affordable Housing (NOAH) or from Centennial Bank to repay loan funds into the local HOME account. NOAH Letter of Interest is attached hereto as Exhibit - L.

6. **Covenants of Borrower.** While any principal on the Note is outstanding, Borrower agrees that, upon Lender request:

6.1 **Borrower will cause the following to be furnished to Lender:**

- 6.1.1 evidence of effective monitoring and evaluation of project performance, including but not limited to records verifying rent/lease affordability. In addition, upon reasonable advance notice, Lender or its authorized representatives may, from time to time, inspect, audit and make copies of Borrower's records that relate to this Agreement. If

any audit discloses that payments to Borrower were in excess of the amount to which Borrower was entitled under this Agreement, Borrower shall promptly pay to Lender the amount of such excess. If the excess is greater than 1% of the loan amount, Borrower shall also reimburse Lender its reasonable costs incurred in performing the audit; and

6.1.2 all reports requested of the Borrower under the HOME grants regulations and Borrower will be responsive to the Lender to provide the necessary information in a timely manner; and

6.1.3 from time to time, such further information regarding the business, affairs and financial condition of Borrower as Lender reasonably requests.

6.2 Borrower will comply with the requirements of all applicable federal, state and local laws, regulations and orders of any governmental authority at all times in the performance of the Project, including but not limited to, those detailed in the attached Exhibits.

6.3 Borrower will keep proper books of record and account, maintain records of its HOME loan requirements and Project construction under this Agreement for a period of not less than three (3) full years following the satisfaction date of this Agreement. Borrower will permit Lender and its agents to inspect its properties, all work done, labor performed and materials furnished in and about the Project, and to review its books of accounts and records with respect to the receipt and disbursement of funds received from Lender.

6.4 Borrower will pay and discharge all taxes, assessments, and governmental charges or any levies imposed upon it or upon its income or profits or upon any property belonging to it, prior to the date on which penalties attach thereto, and all lawful claims which, if unpaid, might become a lien upon its property provided that it shall not be required to pay any such tax, assessment, charge, levy or claim the payment of which is being contested in good faith and by proper proceedings and in respect of which it is maintaining adequate reserves.

6.5 Borrower will promptly give notice in writing to Lender of any litigation and any proceeding before any arbitral tribunal which may adversely and materially affect the ability of Borrower to perform its obligations under the agreement.

7. **Events of Default.** The following "Events of Default" entitle Lender to, by notice to Borrower, declare the entire indebtedness to be immediately due and payable.

7.1 Borrower defaults in the performance or observance of any of its covenants or agreements contained herein, and the default continues for thirty (30) days after Borrower receives notice thereof without commencement of action by Borrower reasonably satisfactory to Lender to remedy the default; or

7.2 any representation or warranty with respect to current or historical information made to Lender herein or in any certificate, notice, report, financial statement, or other instrument or document furnished to Lender hereunder or in connection herewith proves to have been incorrect in any material respect when made; or

7.3 any authorization, consent, license, approval, filing or registration now or hereafter necessary to enable Borrower to comply with its obligations hereunder or under the Note or incurred pursuant to hereto or thereto fails to be timely issued or granted, or expires or lapses and is not forthwith

renewed or extended, or is revoked, withdrawn, withheld, or modified so as to materially interfere with such compliance; or

- 7.4 Borrower (i) applies for consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) commences a voluntary case under the Federal Bankruptcy code (as now or hereafter in effect), (v) is adjudicated bankrupt or insolvent, (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under such Bankruptcy Code, or (viii) takes any action for the purpose of effecting any of the foregoing; or
- 7.5 a proceeding or case is commenced, without the application or consent of Borrower, in any court of competent jurisdiction, seeking (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Borrower, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Borrower or of all or any substantial part of its assets, or (iii) similar relief in respect to Borrower under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgement, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Borrower is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect); or
- 7.6 Borrower causes to be transferred any interest in properties securing the Loan without the prior written consent of Lender. Notwithstanding the foregoing limitation, Lender agrees to subordinate its interest in the property to a lender providing permanent financing for the Project so long as the funds from such loan are used to pay the City's Note in full. Further, Lender agrees that the proceeds of the Loan may be re-loaned to a partnership of which the Borrower is a General Partner; provided that: (a) such partnership is the owner of the property securing the Loan; (b) the partnership grants Borrower a trust deed securing the obligation to repay Borrower; (c) Borrower assigns its rights as beneficiary under such trust deed to Lender; and (d) Borrower shall remain liable on the City's Note in all respects.
8. **No Implied Waiver, Cumulative Remedies.** No failure on the part of Lender to exercise, and no delay in exercising, any right, power, or privilege under this agreement shall operate as a waiver thereof nor shall any single or partial exercise of any right, power, or privilege under this agreement shall preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.
9. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon and all actions relating to this agreement shall be tried before the courts of the State of Oregon.
10. **Notice.** Except as otherwise specified herein, all notices, requests, demands, and other communications to or upon the parties hereto shall be in writing or by tested or otherwise authenticated facsimile, telegram, or cable and shall be deemed to have been duly given or made when deposited in the mails, certified and postage prepaid, or transmitted by facsimile or delivered to the telegraph office, addressed to the party to which such notice, request, demand, or other communication is requested or permitted to be given or made hereunder at the addresses set forth below (or to any facsimile number published as

belonging to such party at such address) or at such other address of which such party shall have notified in writing the other parties hereto.

Borrower:

Housing Authority and Community
Services Agency of Lane County
Chris Todis, Executive Director
177 Day Island Road
Eugene, Oregon 97401

Lender:

City of Eugene
Planning & Development Department
Tom G. Coyle, Executive Director
99 West Tenth Avenue
Eugene, Oregon 97401

11. **Successors and Assigns.** This Agreement and all terms and conditions set forth in the attached Exhibits shall be binding upon and inure to the benefit of Lender, Borrower, and their respective successors and assigns except that Borrower may not assign or transfer its rights or obligations hereunder or any interest herein without the prior consent in writing of Lender. Lender hereby consents to a transfer as provided in Paragraph 7.6 hereof.
12. **Amendments.** This Agreement may not be amended or modified, nor may any of its provisions be waived, except by an instrument in writing signed by Borrower and Lender.
13. **Titles and Subtitles.** The titles and subtitles of this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provision of this Agreement.
14. **Severability.** If any provisions of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
15. **Attorney's Fees.** The prevailing party in any dispute arising from this Agreement shall be entitled to recover from the other its reasonable attorney's fees at trial and on appeal.
16. **Entire Agreement.** This Agreement, including the Note and those agreements referenced as attached Exhibits, shall constitute the entire agreement between the parties. Any waiver or consent, if made, shall be effective only in the specific instance and for the specific purpose given.
17. **Indemnification.** Borrower shall defend, indemnify and hold Lender, its agents, successors and assigns harmless from any and all claims, losses, damages, liens, costs expenses, and liabilities directly or indirectly arising out of or attributable to Borrower's or its subcontractors, agents or employees' activities in connection with this Agreement, or the use or occupation of the Project of Project site, including, but not limited to, any violation of any Environmental Law, or the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of any hazardous substance on, under, or about the site, including without limitations the costs of any required repair, clean-up, containment, or detoxification of the site, the preparation and implementation of any closure, remedial or other required plans, attorney's fees and costs (including but not limited to those incurred in any proceeding in State, Federal or Bankruptcy court, and any review or appeal), fees, penalties and fines. For purposes of this paragraph, "Environmental Law" means any federal, state or local law, statute, ordinance or regulation pertaining to hazardous substances as defined in ORS 453.005, health, industrial hygiene, or environmental condition. For purposes of this paragraph "Hazardous Substance" means all substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations. This indemnification provision shall survive the expiration or earlier termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

BORROWER:

LENDER:

**Housing and Community Services Agency
of Lane County**

City of Eugene

By: _____
Chris Todis, Executive Director

By: _____
James R. Carlson, City Manager pro tem