

RECOVERABLE GRANT AGREEMENT
(City of Bellevue/Housing of Authority of the County of King)
(Illahee Apartments)

THIS RECOVERABLE GRANT AGREEMENT (the “*Grant Agreement*”) is entered into as of _____, 2021, between the City of Bellevue, a municipal corporation (the “*City*”), and the Housing Authority of the County of King, a public body corporate and politic of the State of Washington (the “*Authority*”). The City agrees to grant to the Authority the principal amount of FOUR MILLION and 00/100 Dollars (\$4,000,000) for the purposes and subject to the terms and conditions set forth below. In consideration of the mutual covenants contained herein, the City and the Authority agree as follows:

1. **Purpose.** The purpose of the Grant is to reimburse the Authority for a portion of the funds provided by the Authority for the acquisition of a 36 unit multi-family apartment complex to serve extremely low, low and moderate income households commonly known as Illahee Apartments (the “*Project*”) and located on the real property located at 14049 NE Bel-Red Road in Bellevue, Washington and legally described on Exhibit A hereto (the “*Property*”). The Authority acquired the Project to preserve the existing affordable residential units which, if not purchased by the Authority, would be redeveloped as high rent market rate housing. The City has identified the need for additional affordable housing in the City as a top public priority. The redevelopment of the Property into high rent market rate apartments would represent a significant step backward in preserving the supply of housing that the City is seeking to increase. Following acquisition of the Project, the Authority intends to substantially rehabilitate the Project.

2. **Recoverable Grant.** To help facilitate the acquisition of the Project, pursuant to the terms of this Agreement, the City is providing to the Authority a recoverable grant in the amount of Four Million and 00/100 Dollars (\$4,000,000) (the “*Grant*”).

3. **Use of Funds.** The Grant Funds shall be used solely to reimburse the Authority for a portion of the funds provided by the Authority for the acquisition of the Project.

4. **Income Restrictions.** The Authority shall operate the Project such that all 36 of the residential units, other than any site staff or common area unit(s), shall be occupied by an Eligible Household. It is the intent of the Authority to transition all 36 residential units in the Project, other than any site staff or common area unit(s), to households having incomes no greater than 30% of Area Median Income upon unit turnover. To that end, for purposes of this provision, “Eligible Household” means (i) with respect to a unit in the Project during any period when such unit is funded through a federally-assisted housing program, one or more adults and their dependents comprising a household who qualify at the income limits required for such program, anticipated to be 30% of Area Median Income, and (ii) during any period when a unit in the Project is not funded through a federally-assisted housing program, one or more adults and their dependents comprising a household, who, upon initial occupancy shall have incomes no greater than 80% of the Area Median Income. “Area Median Income” shall mean the median income for the Seattle-Bellevue, WA HUD Metro FMR Area adjusted for the imputed household size, as estimated from

time to time by the United States Department of Housing and Urban Development ("HUD"). If HUD ceases to provide such estimates of median income, then median income shall mean such comparable figure for Bellevue published or reported by a federal, state, or local agency as the City shall select. The Authority shall not be required to terminate the tenancies of current residents whose income exceeds 80% of the Area Median Income, provided however, that upon unit turnover, any new tenants, at the time of initial occupancy, shall be Eligible Households meeting the definition in Section 4(i) above.

5. **Rent Restrictions.** The rent paid by the tenant household if subject to Section 4 (i) above shall be calculated at 30% of the Eligible Household’s monthly income less an allowance for utilities, calculated and applied in accordance with the federally-assisted housing program requirements, and if subject to Section 4(ii) shall not exceed thirty percent (30%) of the applicable income limitation adjusted for an Imputed Household Size, less a monthly allowance for customary utilities (excluding telephone, cable television and other telecommunications) to be paid by tenant. For purposes of the rent restriction subject to Section 4(ii) above, Imputed Household Size means the number of people deemed living in a residential unit, determined by the number of bedrooms in the residential unit, as follows:

<u>Type of Housing Unit</u>	<u>Imputed Household Size</u>
One Bedroom	1.5 Persons
Two Bedrooms	3 Persons

Gross Rent means the actual rent paid by the tenant less a monthly allowance for customary utilities (excluding telephone, cable television and other telecommunications), to be paid by tenant. Gross Rent does not include any payments under Section 8 or any comparable rental assistance program.

The Income Restriction shall not apply to existing residents whose income exceeds 80% of the area median income, provided that the Authority may not charge rents for such residents in excess of the rent restriction limits set forth in this Section 5, as applied to the existing resident’s income.

6. **Covenant.** Concurrently with the execution of this Agreement, the Authority shall record a Low Income Housing Covenant Agreement in the form attached hereto as Exhibit B (the “***Covenant***”). The Covenant shall constitute a covenant running with the land and shall pass to and be binding upon the Authority its successors and assigns, heirs, grantees, or lessees of the Property, commencing _____ 1, 2021 and terminating _____, 2071. Each and every contract, deed or other instrument covering or conveying the Property, or any portion thereof, shall be conclusively held to have been executed, delivered and accepted subject to such covenants, regardless of whether such covenants are set forth in such contract, deed, or other instruments.

7. **Recovery of Grant Payments.** Absent a default by the Authority of its obligations under this Agreement or the Covenant, the funds advanced hereunder shall be deemed a grant and the Authority shall have no obligation to repay the City for such funds. In the event the Authority breaches this Agreement or the Covenant, the Authority shall, in addition to those other remedies set forth in section 11 below, be obligated to repay the entire amount of the Grant.

8. **Compliance Reports.** The Authority shall submit to A Regional Coalition for Housing, as the City's designee, or an alternate designee, an annual compliance report on or before March 31st of each year documenting the income and rent for all residential units of the Project. To the extent the Authority is required to provide such reports to any other governmental agency, a copy of the report submitted to such other agency shall meet the requirements of this provision. During the term of the Covenant, the records and documents with respect to all matters covered by this Grant Agreement shall be subject at all times to inspection, review or audit by the City or its designee.

9. **Guaranty.** The Authority pledges its General Revenues to the payment of its obligations under this Grant Agreement and the Covenant, For purposes of this Grant Agreement "General Revenues" means the rent, fees and other revenues of the Authority from any sources, except those revenues which are now or hereafter prohibited from being used for the purpose of paying the Authority's obligations under this Grant Agreement and Covenant under the provisions of any law, regulation, contract or covenant, resolution or deed of trust (including restrictions relating to funds available to the Authority under the U.S. Housing Act of 1937) (the "1937 Housing Act").

10. **Assignment & Subordination.** The City acknowledges that part of the financing for the rehabilitation of the Project may come from (a) federal housing subsidy funded by HUD under Title 8 and/or Title 9 of the 1937 Housing Act, (b) additional public and/or private financing, and (c) Low Income Housing Tax Credits which would require that the Authority transfer ownership of the Project to a limited partnership in which the Authority or an affiliate of the Authority will be the general partner and a tax credit investor (the "Investor") as the limited partner. The City specifically consents to any such transfer of the Property. In addition, the City acknowledges the Authority will be using other affordable financing resources and will agree to cooperate in subordinating its rights under this Agreement if such subordination is necessary for facilitating financing and/or rehabilitation of the Project. Notwithstanding the foregoing acknowledgment and consent, the City reserves the right to consent to any financing for the Project that will increase the income restrictions above those set forth in the Covenant or in Section 4 of this Agreement.

11. **Default and Remedies.** In the event of a violation by the Authority or its successors in interest of any of the provisions of this Grant Agreement of the Covenant, the City may notify the Authority or its successor in writing of the violation and may demand that it be cured. As a condition to exercise the remedy to seek repayment of the Grant pursuant to section 7 above or any other remedy set forth herein, the City shall provide notice to the Authority, who shall provide a copy of such notice and demand to the Investor. The Authority or its successor, or an Investor, if any, shall have thirty (30) days from such notice to cure such violation. Notwithstanding the foregoing, if the violation is of such a nature that it may not practicably be cured within thirty (30) days, City shall not be entitled to exercise its remedies so long as the Authority or Investor commences cure of such violation within the thirty-day period and diligently pursues the cure to completion within ninety (90) days after such demand, or within such other time frame as shall be approved by the City. If the Authority or its successors, or Investor, does not cure (or, if the preceding sentence applies, commence cure of the violation

within the thirty day period or if the Authority or Investor does not diligently pursue cure pursuant to the preceding sentence, the City may require repayment from the Authority of the Grant proceeds, monetary damages, restitution, and recovery of all costs and attorneys' fees incurred in enforcing this Grant Agreement or the Covenant Agreement.

Notwithstanding any other provisions herein, the City may not seek any monetary payments from any party other than the Authority nor may it seek foreclosure or any similar remedy with respect to the Property or the Project. The City's sole remedy with respect to the Project shall be to seek specific performance, preliminary and permanent injunctive relief with respect to compliance with this Agreement and the Covenant.

12. **Estoppel Certificate.** At the request of the Authority, the City agrees to provide such estoppel certificates certifying that this Grant Agreement and Covenant have not been amended or otherwise modified and that the Authority is in full compliance therein or such other matters as may be reasonably requested by any Project lender or tax credit equity provider.

13. **Entire Agreement.** This Agreement and the Covenant represent the entire agreement of the parties and supersede and replace in their entirety any previous oral or written agreements, discussions or negotiations of the Authority and City with respect to this Grant Agreement and the Covenant.

14. **Amendments and Modifications.** The City or the Authority may request an amendment or modification of this Grant Agreement. However, such agreement shall not take effect until approved, in writing, by the City and the Authority. The City acknowledges that an Investor, if any, may require certain amendments to this Grant Agreement and the City agrees to make such modifications as the City deems reasonable.

15. **Notices.** All notices and reports required to be delivered to either of the parties hereunder shall be delivered by hand delivery, reputable overnight courier service, or certified mail, return receipt requested, to the following addresses:

If to the City City of Bellevue
 Department of Planning and Community
 Development
 450 110th Avenue NE
 PO Box 90012
 Bellevue, WA 98009
 Attn: Housing Planner

If to the Authority: The Housing Authority of the County or King
 600 Andover Park West
 Tukwila, WA 98188-3326
 Attn: Executive Director

The address for notices may be changed from time by either party by written notice given in the manner provided herein.

16. **Federal Funds:** The Authority shall pursue federal grants and subsidies as necessary to ensure the Project remains a viable source of housing consistent with the terms of this Agreement and the Covenant.

17. **Governing Law.** Except to the extent that Federal law controls, this Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

DATED as of the day and year first above written.

HOUSING AUTHORITY OF THE COUNTY OF
KING, a public body corporate and politic of the
State of Washington

By: _____
Its: _____

THE CITY OF BELLEVUE, a Washington
municipal corporation

By: _____
Its: _____

Approved by:

BELLEVUE CITY ATTORNEY

By: _____
Its: _____

EXHIBIT A
Legal Description

Parcel A:

The East 262.00 ft. of the Northwest quarter of the Northwest quarter of the Southeast quarter of Section 27, Township 25 North, Range 5 East, W.M., in King County, Washington;

Except the South 496 feet.

Parcel B:

The East 262.00 feet of that portion of the Southwest quarter of the Southwest quarter of Northeast quarter of Section 27, Township 25 North, Range 5 East, W.M., in King County, Washington, lying South of Redmond Bellevue County Road.

Parcel C:

Beginning at the Southwest corner of the East 262.00 feet of the Southwest quarter of the Southwest quarter of the Northeast quarter of Section 27, Township 25 North, Range 5 East;

Thence North $01^{\circ}03'10''$ West along the Westerly line of said East 262.00 feet of the Southwest quarter of the Southwest quarter of the NE quarter, a distance of 105.01 ft. more or less to the Southeasterly line of Bellevue Redmond County Road;

Thence South $72^{\circ}33'39''$ West along said Southeasterly line 60.00 feet;

Thence Southeasterly to the point of beginning.

EXHIBIT B
Low Income Covenant