

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

THIS RECOVERABLE GRANT AGREEMENT (the “*Grant Agreement*”) is entered into as of _____, 2017, 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 TWO MILLION and 00/100 Dollars (\$2,000,000) 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 76 unit multi-family apartment complex to serve low and moderate income households commonly known as Highland Village Apartments (the “*Project*”) and located on the real property located at 14526 NE 7th Place in Bellevue, Washington and legally described on Exhibit A hereto (the “*Property*”). The Authority acquired the Project to preserve the existing residential units which, if not purchased by the Authority, would be demolished and replaced with for-sale market rate townhomes. The City has identified the need for additional affordable housing in the City as a top public priority. The redevelopment of the Property into for-sale townhomes 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 and rehabilitation of the Project, pursuant to the terms of this Agreement, the City is providing to the Authority a recoverable grant in the amount of Two Million and 00/100 Dollars (\$2,000,000) (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 76 of the residential units, other than any site staff or common area unit(s), shall be occupied by households who, upon initial occupancy shall have incomes no greater than 80 percent of the Area Median Income for the Seattle-Tacoma- Bellevue Metropolitan MSA 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 percent of the Area Median Income, provided however, that upon unit turnover, any new tenants, at the time of initial occupancy, shall have incomes less than 80 percent of the Area Median Income.

5. **Rent Restrictions.** The Gross Rents charged Tenants shall not exceed thirty percent (30%) of the applicable income limitation adjusted for the Imputed Household Size. For purposes of this rent restriction 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
Three Bedrooms	4.5	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 percent of the area median income, provided that the Authority may not raise the rents for such residents in excess of the Rent Restriction limit.

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 [March 1, 2017] and terminating [February 28, 2057]. 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, or in the event that the owner of the Project 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 the City or its 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 Borrower from

any sources, except those revenues which are now or hereafter prohibited from being used for the purpose of paying the Borrower'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 Borrower under the U.S. Housing Act of 1937).

10. **Assignment & Subordination.** The City acknowledges that part of the financing for the rehabilitation of the Project may come from Low Income Housing Tax Credits which will 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 anything to the contrary in this section 10, the Authority acknowledges and agrees that it remains responsible for compliance with this Agreement and the Covenant regardless of whether Authority has transferred ownership of the Project.

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 or 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 of 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 also shall provide a copy of such notice and demand to the Investor. The Authority or its successor, or the Investor, 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 seek 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.** 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 the Investor 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 of King
600 Andover Park West
Tukwila, WA 98188-3326
Attn: _____ -

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

16. **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 as to form:

Robert A. Hyde
Deputy City Attorney