



CITY OF SALEM

Revisions to the Agenda

City Council

555 Liberty St SE
Salem, OR 97301

Monday, May 8, 2017

6:00 PM

Council Chambers

3.3 e. [17-201](#) Affordable housing development at 3350 Portland Road, NE.

Ward(s): Ward 5
Board Member(s): Ausec
Neighborhood(s): Northgate, Highland

Attachments: [Map](#)

[Draft HOME Funding Commitment Letter](#)

[Draft HOME Funding Agreement](#)

Revise - Replaced Attachments 2 and 3

7.1 a. [17-163](#) Utility Code

Ward(s): All Wards
Councilor(s): All Councilors
Neighborhood(s): All Neighborhoods

Attachments: [Ordinance Bill No. 7-17](#)

Revise - Revised Issue and Recommendation

May _____, 2017

Beth Hayes
Cornerstone Apartments Limited Partnership
265 Commercial St. SE, Suite 270
Salem, OR 97301

Dear Ms. Hayes:

Congratulations! This letter is to confirm that Cornerstone Apartments Limited Partnership has been awarded \$300,000 of HOME Investment Partnership (HOME) funds by the City of Salem for development of the Cornerstone Apartments. This award was allocated during the City's 2017-2018 application cycle (\$300,000) and will be funded with prior year HOME funds and HOME Program Income. The funds will be available upon execution of a development agreement.

An agreement will be mailed once all requested documents, if requested, are received. A HOME agreement will need to be signed and returned so your award can become available. An updated sources and uses budget and, if applicable, a project schedule must also be submitted before any funds can be released. These funds must be used to benefit low-moderate income citizens in the cities of Salem and/or Keizer.

If you are no longer planning to utilize the funds allocated, please provide a written statement indicating you are withdrawing your application. If you have any questions please feel free to contact me at 503.540.2405.

Best regards,

Kristin Retherford
Urban Development Director

**-DRAFT-
AGREEMENT BETWEEN THE CITY OF SALEM**

And Cornerstone Apartments Limited Partnership

Cornerstone Apartments

Grant Number: M-17-DC-41-0204

This agreement (Agreement) made and entered into in duplicate by and between the City of Salem, an Oregon municipal corporation with offices located at 350 Commercial St NE, Salem, OR 97301 in Marion County, ("City"), and Cornerstone Apartments Limited Partnership located at 201 Ferry Street SE, Suite 400 Salem, OR, in Marion County ("Owner/Developer").

WITNESSETH:

WHEREAS, the City has entered into an agreement with the U.S. Department of Housing and Urban Development ("HUD") to execute and implement the HOME Investment Partnerships Program ("HOME"), with a goal of expanding the supply of decent, safe, affordable housing for those of very low and low income;

WHEREAS, under the HOME Program the City contracts with public or private for-profit or non-profit investor developers or non-profit investor community housing development organizations to complete affordable housing projects;

WHEREAS, the Developer has applied to the City for a HOME Deferred Payment in the amount of **three-hundred thousand dollars (\$300,000)**, which will be made available to the Owner/Developer under the terms of this Agreement;

WHEREAS, the City has agreed to make the Deferred Payment available under the terms contained herein, pursuant to the authority of 24 CFR Part 92, which establishes the HOME Investment Partnership Program, and other applicable federal statutes and regulations, a listing of which is attached hereto as Exhibit A and incorporated herein by this reference;

NOW THEREFORE, in consideration of the promises and mutual covenants and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I
Use of Funds**

- 1.1 The total deferred payment forgivable loan amount provided by the City, pursuant to this Agreement is three-hundred thousand dollars (\$300,000) ("Proceeds"). The Proceeds shall be used for construction of Cornerstone Apartments, located at 3350 Portland Road, more particularly described in Exhibit B attached hereto and incorporated herein by this reference ("Property"). The Project consists of new construction of 180 units; 12 studio units, 24 1-bedroom units, 96 2-bedroom units, and 48 3-bedroom units. Three (3) of the one-hundred and eighty (180) units; 1 1-bedroom, 1 2-bedroom, and 1 3-bedroom units, will be designated as High HOME units as identified in the Subsidy Layering Analysis attached hereto as Exhibit K and incorporated herein by this reference, will be Fixed HOME assisted units ("HOME Units"). At least nine units will need to be designated as accessible units per Section 504 requirements that 5% of the units meet this requirement and shall remain accessible upon completion of the project. Pre-paid costs incurred, after the award of funding, but prior to the signing of this Agreement, and associated with the project may be reimbursed upon execution of this contract at the discretion of the City, as allowed by HUD regulations.
- 1.2 Prior to initial disbursement of funds, the Developer must provide the City with a current operating budget including all sources and uses, a development budget and a draw schedule. To avoid delay in payments, Developer must provide prior notification and receive written approval regarding any changes to the budget or draw schedule. Prior to funds being reimbursed the Developer will complete the Request for Payment on the City of Salem's Webgrants System at www.salemgrants.org, with all required supporting information included and signed. Requests that are incomplete or not submitted on correct forms will be returned.

- 1.3 This Project, as defined in 1.1, is to be completed by December 31, 2017 with at least 25% of the Project construction being completed quarterly beginning at the time of Agreement execution and updates provided in the Quarterly Progress Report to be submitted as listed under 12.4 of this Agreement, on the City of Salem's Webgrants System at www.salemgrants.org. If the Project will not meet agreed upon deadline for the completion of construction of the Project, a written request must be submitted explaining the need for an extension as well as any changes in capacity or condition. Failure to provide documentation and make progress required in this section could result in cancellation of this Agreement, jeopardize future funding, and result in repayment of 100% of funds received. The environmental review must be completed and this Agreement signed PRIOR to any work beginning on this Project.
- 1.4 The Proceeds shall be used strictly in compliance with the Use of Proceeds Statement, attached hereto as Exhibit C and incorporated herein by this reference and shall not be used for any other purpose or manner. Failure to use the Proceeds in compliance with the Use of Proceeds Statement or to fulfill the affordability requirements, set out in this Agreement shall constitute a material breach of the terms of this Agreement. A material breach of these terms would require Owner and Developer to repay the funds provided for the Project (\$300,000) and the City of Salem's costs associated with this Project, not to exceed (\$0), for a total of three-hundred thousand dollars (\$300,000). The Use of Proceeds Statement lists the tasks to be performed with respect to the Project.
- 1.5 Developer and Owner are prohibited from using funds provided herein or personnel employed in the administration of the Project for political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

ARTICLE II

Loan Terms

- 2.1 Loan terms are as follows:
- a. Interest Rate: 0
 - b. Term: 20 years, Deferred Payment
 - c. Repayment: Due and payable upon breach of this Agreement, transfer or sale of property, or any other action not previously approved by Federal Programs with regards to ownership and management of the property. A breach of this Agreement will require repayment of the principal loan amount plus any expenses the City incurs for the administration of this Project, not to exceed \$300,000.
 - d. Security: The Deferred Payment will be evidenced by a promissory note and secured by a trust deed in the amount of \$300,000.
 - e. Special conditions: There are no prepayment penalties. In the event the property falls below the local housing codes during the affordability period, the City has the ability to reevaluate the deferred payment loan status and repayment of the loan including all administrative costs associated with this Project.
 - f. Subordination Requests: During the affordability period of this project, requests for subordinations will not require a processing fee. The request is subject to review and approval by the City as outlined in the Subordination Policies.

ARTICLE III
Affordability

- 3.1 Prior to the disbursement of HOME funds, Owner and Developer must execute the Declaration of Restrictive Covenants attached hereto as in Exhibit D and incorporated herein by this reference, which requires that units funded with HOME meet the affordability requirements of 24 CFR 92.252. The funds must be returned if the HOME units do not meet the affordability requirement for the specified time period. The terms of the affordability requirement are as follows:
- a. For a period of 20 years, commencing on the date of Project closing in the Integrated Disbursement Information System (IDIS), the U.S. Department of Housing and Urban Development (HUD) federal reporting system. ("Affordability Period") the incomes of all HOME unit tenants shall meet the requirements of 24 CFR 92.252, as in effect at time of execution of this Agreement, specifically including 24 CFR 92.252(a), (b), (c), (d) and (e). Additionally documented in the Unit Distribution Sheet, attached hereto as Exhibit J and incorporated herein by this reference and Subsidy Layering Analysis attached hereto as Exhibit K and incorporated herein by this reference.
 - b. For new construction of multi-family projects, a minimum of 5% of units in the Project (but not less than one unit) must be accessible to individuals with mobility impairments and meet all federal ADA guidelines. An additional 2%, at a minimum, of the units (but not less than one unit) must be accessible to individuals with sensory impairments.
 - c. For rehabilitation projects the requirement as outlined in 24 CFR 8.23(a), if alterations to a project that has 15 or more units where the cost of the alterations is 75 percent or more of the replacement cost of the completed facility, then the provisions of 24 CFR 8.22 shall apply. In the event that the rehabilitation has less than 15 units or the cost of alterations to a project with 15 or more units is less than 75 percent of the replacement cost of the completed facility, the following shall apply under 24 CFR 8.23(b): alterations to dwelling units in a multifamily housing project (including public housing) shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with mobility impairments. If alterations of single elements or spaces of a dwelling unit, when considered together, amount to an alteration of a dwelling unit, the entire dwelling unit shall be made accessible. Once five percent of the dwelling units in a project are readily accessible to and usable by individuals with mobility impairments, then no additional elements of dwelling units, or entire dwelling units, are required to be accessible. Alterations to common areas or parts of facilities that affect accessibility of existing housing facilities shall, to the maximum extent feasible, be made to be accessible to and usable by individuals with handicaps. As defined here the meaning of maximum extent feasible shall not be interpreted as requiring that a recipient (including a PHA) make a dwelling unit, common area, facility or element thereof accessible if doing so would impose undue financial and administrative burdens on the operation of the multifamily housing project.
 - d. HUD may prescribe a higher percentage or number than that prescribed above for an area upon request therefor by any affected recipient or by any State or local government or agency thereof based upon demonstration to the reasonable satisfaction of HUD of a need for a higher percentage or number, based on census data or other available current data (including a currently effective Housing Assistance Plan or Comprehensive Homeless Assistance Plan), or in response to evidence of a need for a higher percentage or number received in any other manner. In reviewing such request or otherwise assessing the existence of such needs, HUD shall take into account the expected needs of eligible persons with and without handicaps.
 - e. The affordability requirements shall remain in effect for the Affordability Period irrespective of the sale, conveyance, or other transfer of the property, and irrespective of the termination, satisfaction, release, or other discharge of the mortgage or the lien thereof upon the property, and shall be binding upon the Owner and Developer, its successors, assigns and transferees, and all parties having any right, title or interest in the property. Provided, however, that upon foreclosure by a loan or other transfer in lieu of foreclosure, the Affordability Period shall be terminated and all federal funds received must be repaid at the time of transfer of title. If such foreclosure or other transfer recognizes any contractual or legal rights of public agencies, non-profit investor sponsors, or others to take actions that would avoid the termination of low-income affordability; and further provided that the affordability restrictions shall be revived according to the terms hereof if, during the original affordability period, the Owner of record before the foreclosure or other transfer, or any entity that includes such former Owner/Developer or those with whom such

former Owner/Developer has or had family or business ties, obtains an ownership interest in any of the Property. Upon transfer of title, all loan or grant balances must be repaid.

ARTICLE IV **Rental Qualifications**

4.1 UNIT RENT AND OCCUPATION:

- a. Until expiration of the Affordability Period, rent on the HOME Units shall not exceed the current HUD established HIGH and LOW HOME Rents and/or the rents as defined in the Unit Distribution Sheet attached hereto as Exhibit J and incorporated herein by this reference and Subsidy Layering Analysis attached hereto as Exhibit K and incorporated herein by this reference.
- b. At initial lease up, the HOME Units will not be occupied by households whose annual incomes exceed sixty percent (60%) of the median income for the City of Salem, Oregon, as determined by HUD and as shown in the table attached hereto as Exhibit E and incorporated herein by this reference, with adjustments for smaller and larger families, maintaining the income restrictions as identified in the Unit Distribution Sheet attached hereto as Exhibit J and incorporated herein by this reference and Subsidy Layering Analysis attached hereto as Exhibit K and incorporated herein by this reference. Beneficiary data must be provided at lease up and until all units are occupied by income-eligible tenants regardless of construction completion. Projects with 5 or more HOME assisted units must provide 20% of the HOME assisted units to be rented to those at or below 50% of the median income at initial lease up for the City of Salem, as determined by HUD attached hereto as Exhibit E and incorporated herein by this reference, the distribution of such units is identified in the Unit Distribution Sheet attached hereto as Exhibit J and incorporated herein by this reference and Subsidy Layering Analysis attached hereto as Exhibit K and incorporated herein by this reference.
- c. In the event that the initial lease up exceeds six (6) months after issuance of Certificate of Occupancy, or in the event of rehabilitation, after rehabilitation work is complete, proof of marketing and a marketing plan are required to be submitted by the Owner/Developer to the City. In the event that the property is not completely leased up eighteen (18) months after issuance of Occupancy, or in the event of rehabilitation, after rehabilitation work is complete, repayment of the funding represented in the subsidy layering analysis for those units not occupied must be immediately repaid to the City out of non-federal funding for disbursement into the U.S. Treasury through HUD guidance.
- d. The Owner and Developer shall not refuse leasing a HOME Unit to the holder of a certificate of family participation under 24 CFR Part 882 (Rental Certificate Program) or the holder of a rental voucher under 24 CFR Part 887 (Rental Voucher Program) or to the holder of a comparable document evidencing participation in a HOME tenant-based assistance program because of the status of the prospective tenant as a holder of such certificate of family participation, rental voucher, or comparable HOME tenant-based assistance document.
- e. The Owner and Developer shall not discriminate against any person or family on the ground of race, color, national origin, sex, religion, family status, or handicap in the use, lease, rental, sale, or occupancy of any residential unit in the Property. Age discrimination and discrimination against minor dependents are also not permitted. Owner and Developer shall further meet the equal opportunity and fair housing requirements of 24 CFR 92.257.
- f. The Owner and Developer shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the government setting forth the provisions of this non-discrimination clause. The Owner and Developer agree that all qualified candidates for employment will receive consideration without regard to race, color, religion, sex, age, familial status, handicap, or national origin. The Owner and Developer shall comply with all City ordinances, state laws and federal regulations, regarding Equal Opportunity Fair Housing, Fair Labor Standards Act (FLSA) and Family and Medical Leave Act (FMLA), Equal Employment Opportunity (EEO) as enforced by the Equal Employment Opportunity Commission (EEOC) and all required state postings must be on display in a visible area. For projects triggering federal "Davis Bacon" requirements, the Contract Work Hours and Safety Standards Act and Wage Determination for that project must also be posted at the job site. For employers with more than 15 employees, the nondiscrimination of those with disabilities (ADA requirements) is also required.

- g. All housing projects must meet federal accessibility requirements.
- h. All Projects with 5 or more HOME assisted units or programs receiving federal funds must be fairly marketed. Marketing fairly, consists of marketing and outreach for the units within the Project to those minority and underserved populations. Marketing plans (Affirmative Fair Housing Marketing Plans, as required by HUD) must be submitted during the application period and be kept current during the Affordability Period.
- i. The City shall review and approve annually the rents proposed for the HOME Units, as well as the monthly allowance proposed for utilities and services to be paid by the tenant. The submissions of rents for annual approval are to be submitted with the HOME Annual Report for review and approval by the City. The Initial Rent Schedule and Initial Utility Allowance Schedule for such units are attached hereto as Exhibit E-1 and incorporated herein by this reference. The Owner shall re-examine the income of each tenant household living in low-income units at least annually on a Tenant Income Certification Form attached hereto as Exhibit F and incorporated herein by this reference. During the initial occupancy and thereafter the 6th, 12th, and 18th years of the Project, source documentation must be obtained from tenants and will be reviewed during City monitoring. If this project out of compliance, it is subject to full repayment of three-hundred thousand dollars (\$300,000). Information must be retained for five (5) years after Project closeout, as identified in Article III, upon completion of the required affordability period.
- j. The maximum monthly rent per unit by bedroom size, shall be recalculated by the Owner and reviewed and approved by the City annually, and may change as changes in the applicable gross rent amounts, the income adjustments, or the monthly allowance for utilities and services warrant. Any increase in rent for lower income units is subject to the provisions of outstanding leases, and in any event, the Owner must provide tenants of those units not less than thirty (30) days prior written notice before implementing any increase in rent.
- k. Any provision of the lease which falls within the classifications of Prohibited Lease items attached hereto as Exhibit G and incorporated herein by this reference shall not apply and cannot be enforced by the Owner and/or the property management company in accordance with CFR 92.253.
- l. Owners of rental properties built prior to January 1, 1978 shall disclose to tenants the presence of any known lead-based paint hazards and provide all tenants with a lead hazard information pamphlet. Tenants must sign a lead based paint disclosure form to confirm they have received the pamphlet and are aware of potential issues in accordance with 24 CFR Part 35.
- m. Owners of rental properties must adopt and implement comprehensive policies for screening out applicants who engage in illegal drug use or other criminal activity and for evicting or terminating tenancy of persons who engage in certain criminal activity. Such policies must be adopted and implemented in a manner that is consistent with Fair Housing and Equal Opportunity regulations as well as any other applicable legal requirements.
- n. Rental housing qualifies as affordable housing despite a temporary noncompliance with paragraph 4.1(b) of this Agreement, if the noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with this Agreement until the noncompliance issue is corrected.
- o. Tenants who no longer qualify as low-income families (families whose income exceeds 80% of Area Median Income (AMI)) must pay, as rent, the lesser of the amount payable by the tenant under State or local law, or thirty percent (30%) of the family's adjusted monthly income, as re-certified annually. The preceding sentence shall not apply with respect to funds made available under this part for units that have been allocated low-income housing tax credits by a housing credit agency pursuant to Section 42 of the Internal Revenue Code.
- p. Changes in fair market rents and in median income over time should be sufficient to maintain the financial viability of the property within the qualifying rent standards in paragraphs 4.1(a) and 4.2(b) herein. Regardless of changes in fair market rents and in median income over time, the qualifying rents are not required to be lower than the HOME rent for the property that is in effect at the time of Project commitment.
- q. The City, with prior HUD approval, may adjust the qualifying rents established for the HOME Units under 4.1(b) only if the City and HUD find that an adjustment is necessary to support the continued financial viability of the

Project and only by an amount that the City and HUD determine is necessary to maintain continued viability of the Project.

- r. In the event that requirements of 24 CFR Part 92 shall become less restrictive with respect to the income levels for eligibility for occupancy of HOME Units, the requirements of the then-applicable governmental regulations shall prevail over those stated in this Agreement.

ARTICLE V

Project Requirements

- 5.1 The Project shall meet all relevant requirements of 24 CFR 92.250 thru 92.253, as indicated below. The amount of HOME assistance will be determined through the Subsidy Layering Analysis attached hereto in Exhibit K and incorporated herein by this reference.
 - a. Qualification as affordable housing and income targeting; rental housing 24 CFR 92.252.
 - b. Tenant and Participant Protection 24 CFR 92.253.

ARTICLE VI

Labor Standards Disclosure

- 6.1 Owner and Developer agrees that, all contractors engaged under contracts for construction, renovation, or repair work financed in whole or in part with assistance provided under this contract as determined in the HOME Investment Partnership Act Statutory Provision, Section 286, shall comply with federal requirements adopted by City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve Owner/Developer of its obligation, if any, to require payment of the higher wage. Owner/Developer shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

Contracts for the construction or rehabilitation of housing that includes 12 or more HOME assisted units must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a – 276a-5), to all laborers and mechanics employed in the development of any part of the housing. Such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332), listed in Federal Regulations, Exhibit A attached hereto and incorporated herein by this reference.

Owner and Developer agree to comply, and agree to require their contractors, and subcontractors to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a-276a-5) as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable federal, state, and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. Owner and Developer agree to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. Any contracts executed as a result of this Agreement may also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332). Owner and Developer shall maintain documentation that demonstrates compliance with hour and wage requirements of this part, pay employees on a weekly basis and submit weekly certified payrolls. Such documentation shall be made available to City for review upon request. All recipients with projects triggering Davis Bacon must submit the Contract and Subcontract Activity Form, Exhibit H attached hereto and incorporated herein by this reference, and Section 3 Summary Report, Exhibit I attached hereto and incorporated herein by this reference, at the time of Project close out and prior to final funds being disbursed. Recipient shall provide bid documents for City review prior to publication or funds allocated may be jeopardized. Recipient must require contractors, subcontractors and payroll staff to attend a preconstruction meeting prior to the commencement of work. Documentation that contractors and subcontractors have been deemed eligible must be provided to the City prior to project commencement.

- 6.2 Owner and Developer, their subcontractors, if any, and all employees working under this Agreement are subject to Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires workers' compensation coverage for all subject workers.

ARTICLE VII
Property Standards
Rental Housing Quality Standards

- 7.1 The Owner and Developer shall meet the requirements of 24 CFR 92.251 relating to property standards including Uniform Physical condition Standards (UPCS) and all applicable local housing code (Salem Revised Code (SRC) 59 and 50) requirements for the duration of this Agreement and any modifications or amendments or successor agreements thereto. Annual inspections by the Owner of the property are required and proof of such annual inspections must be maintained in the Owner's files for annual compliance reviews by the City.
- 7.2 All properties built before January 1, 1978, must have a lead based paint exam of all interior and exterior surfaces and report defective conditions. If lead based paint is located, all lead affected surfaces must be abated and a clearance report submitted once abatement is completed.

ARTICLE VIII
Displacement, Relocation, Property Acquisition

- 8.1 All reasonable steps must be taken to minimize the impact and provide compensation to individuals displaced or relocated as a result of projects receiving federal funds. Individuals must be treated fairly, required notices sent and compensation is required in accordance with 49 CFR Part 24, 24 CFR Part 42, Uniform Relocation Act and Section 104(d). For residential displacement, this includes providing relocation advisory services to displaced tenants and owner occupants, providing a minimum 90 days written notice to vacate prior to requiring possession, reimbursement for moving expenses and providing payments for the added costs of renting or purchasing comparable replacement housing. For non-residential displacement (businesses, farms, and nonprofit organizations) this includes providing relocation advisory services, providing a minimum 90 days written notice to vacate prior to requiring possession and reimbursement for moving and reestablishment expenses. Notice must continue to be provided for new tenants until the project is completely closed out.
- 8.2 For real property acquisition an appraisal of the property is required before negotiations between the property Owner and Developer being offered the opportunity can begin. The developer must be afforded the opportunity to accompany the appraiser during the property inspection. The Owner and Developer must be provided with a written offer of just compensation and a summary of what is being acquired, payment for property before possession, reimbursement of expenses resulting from the transfer of title such as recording fees and prepaid real estate taxes, or other expenses.
- 8.3 When displacement or relocation is involved with a HOME project, a plan must be submitted prior to funds being expended. Costs resulting from the relocation must be addressed in the budget.
- 8.4 Acquisition of vacant land with HOME funding requires construction to begin within 12 months of closing.
- 8.5 The maximum time allotment under federal regulations for completion of the project is four years under federal regulations. The project must be completed within four years of signing this Agreement.

ARTICLE IX
Other Program Requirements

- 9.1 The Owner and Developer shall comply with all applicable federal laws and regulations as described in 24 CFR Part 92, subpart H inclusive, listed in Exhibit A attached hereto and incorporated herein by this reference.

ARTICLE X
Disbursement of Funds

- 10.1 The Owner and Developer shall notify the City prior to any disbursement of funds associated with the Project. The City will then approve the disbursement requested on a reimbursement basis for work completed. All reimbursed funds must include eligible activities and be limited to the amount needed. Documentation submitted must include invoices, employee timesheets or documentation outlining work performed. Draw requests must be submitted on the G702 and G703 report attached hereto as Exhibit M and incorporated herein by this reference with all required information included and signed. Requests that are incomplete or not submitted on correct forms will be return unpaid. In the event performance or compliance issues occur, payment may be withheld until requirements are met. **Projects will be inspected prior to any payments being released.**
- 10.2 A 5% retainage will be withheld for projects until projects and all final inspections are completed. The final payment will include the retainage. In the event additional inspections are required beyond the typical scope of the project, a fee may be assessed and that amount reduced from funds available for disbursement.

Article XI
Reversion of Assets

- 11.1 All HOME funds not expended must be returned upon expiration of this Agreement.

ARTICLE XII
Records and Reports

- 12.1 The Owner and Developer shall maintain records sufficient to meet the requirements of 24 CFR 92.508(a)(3). All records and reports required herein shall be retained and made accessible as provided in 24 CFR 92.508(c) and (d). All original records pertinent to this Agreement shall be retained by the Owner and Developer for five (5) years following the date of termination of this Agreement or of submission of the final close-out report, whichever is later, with the following exceptions:
- a. If any litigation, claim, or audit is started before the expiration of the five (5) year period and extends beyond the five (5) year period, the records will be maintained until all litigation, claims, or audit findings involving the records have been resolved;
 - b. Records for the disposition of non-expendable personal property valued at \$1,000 or more at the time of acquisition shall be retained for five (5) years after final disposition;
 - c. Records relating to real property acquisition shall be retained for the period of affordability set forth in Article III and required under 24CFR 92.254.
- 12.2 All records, including supporting documentation of all acquisition costs, shall be sufficient to determine compliance with the requirements and objectives of the applicable federal laws and regulations described in Exhibit A attached hereto and incorporated herein by this reference and all other applicable laws and regulations.
- 12.3 The Owner and Developer, its employees and agents, including all subcontractors or consultants to be paid from funds provided under this Agreement shall allow access to its records at reasonable times to the City, its employees and agents, and to HUD. "Reasonable" shall be construed according to the circumstances, but ordinarily shall mean during normal business hours of 8:00 a.m. to 5:00 p.m, local time, on Monday through Friday. The term "agents" shall include, but is not limited to, auditors retained by the City.
- 12.4 A Quarterly Status Report, as provided on the City of Salem's Webgrants System at www.salemgrants.org, must be submitted each quarter throughout the program or project duration with the reporting schedule as follows:
- | | |
|--|-------------------------------|
| Quarter 1 - July 1 st to September 30 th | Due: October 10 th |
| Quarter 2 - October 1 st to December 30 th | Due: January 10 th |

Quarter 3 - January 1st to March 30th
Quarter 4 - April 1st to June 30th

Due: April 10th
Due: July 10th

In the event that the Project duration is longer than one year, subsequent Quarterly Status Reports are due on the same schedule until completion of the project.

Failure to submit quarterly progress reports in a timely manner could cause a delay in the next requested disbursement.

- 12.5 This Agreement will be monitored for 20 years after the close of the Project in the Integrated Disbursement and Information System (IDIS), as identified in Article III. Monitoring will include ongoing site and tenant record review and property inspection for 20 years. The HOME Annual Property Report, attached here to as Exhibit L and incorporated herein by this reference, must be completed and submitted on an annual basis during the period of affordability.
- 12.6 Any changes in Key Personnel, including property management companies, assigned or their general responsibilities under this project are subject to the prior approval of City. Any changes in the scope of work or in the approved timeline are subject to prior approval from the City.
- 12.7 For housing projects, a copy of the General Information Notice, Notice of Non-Displacement or Notice of Eligibility sent to residents must be sent to the City.

ARTICLE XIII

Enforcement and Termination of the Agreement

- 13.1 The affordability requirement, as required by this Agreement, shall be enforced by a Declaration of Restrictive Covenants, recorded in the public records of Marion and/or Polk County. Any breach of this Agreement that remains uncured thirty (30) days after the Owner/Developer's receipt of written notice from the City (by certified or registered mail) of such breach may, at the option of the City, be addressed by any action to recover Loan and Grant proceeds. In addition to the remedies of the City set forth above, if the Owner/Developer materially breaches this Agreement, the City may suspend or terminate this Agreement in accordance with 24 CFR 85.43 and, in addition, the City may terminate this Agreement for convenience in accordance with 24 CFR 85.44; (provided however, the City may terminate this Agreement at any time, with or without cause, by giving Owner/Developer sixty (60) days advanced written notice at Owner/Developer's address as stated on the first page hereto).

ARTICLE XIV

Duration of Agreement

- 14.1 This Agreement shall be effective upon its execution by both parties unless terminated sooner under Article IX and shall terminate 20 years after the date of final inspection and acceptance by the City and the completion certification of the HOME-assisted rental units in conjunction with the Project closing as mentioned in Article III. The affordability period for HOME units will be for 20 years following project completion as in defined by the completion of the Project as mentioned in Article III.

ARTICLE XV

Indemnification and Insurance

- 15.1 The Owner and Developer shall act as an independent contractor, and not as an agent or employee of the City, in acquiring the aforementioned Property. The Owner/Developer shall be liable, and agrees to be liable for, and shall indemnify, defend and hold harmless the City, including without limitation, all officers, directors, members, representatives, agents and employees of the City, from and against any and all claims, suits, demands, judgments, losses, costs, fines, penalties, damages, liabilities and expenses (including, but not limited to, court costs, reasonable expert witness fees and attorney fees) which may be incurred by, charged to or recovered from any of the foregoing (a) arising directly or indirectly out of the Owner and Developer's operations with respect to the Property or any future project in connection with any of Owner and Developer's operation rights and obligations

contained in this Agreement including, but not limited to, any and all claims for damages as a result of the injury to or death of any person or persons, or damage to or destruction of any property which arises as a result of any negligence act or omission on the part of the Owner or Developer or its officers, directors, partners, employees, agents, contractors, subcontractors or otherwise regardless of where the damage, injury or death occurred, or (b) arising out of the failure of Owner/Developer to keep, observe or perform any of its obligations under this Agreement.

- 15.2 Owner and Developer shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud, and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from City. Owner/Developer shall obtain, maintain and provide a policy of liability insurance in form and coverage approved by the City, providing coverage is not less than \$1,000,000 "single limits" for bodily injury, personal injury, property damage, and \$2,000,000 Annual Aggregate and naming "the City of Salem, Oregon, its officers, agents and employees" as mortgagee; and the Owner/Developer shall, prior to commencing service, furnish to the City a certificate evidencing such coverage and any renewal of such coverage, and providing for not less than 30-day written notice to be given to the City in the event of cancellation or reduction in coverage. Flood insurance will be required if the project is in a designated flood zone as described in the Federal Emergency Management Agency Flood Hazard Boundary Maps or Flood Insurance Rate Maps.
- 15.3 Owner and Developer shall obtain and maintain a policy of fire insurance with extended coverage endorsements on the basis of 100% of full replacement cost of all improvements, general liability (Bodily Injury and Property Damage) on an occurrence basis in a minimum amount of \$1,000,000 for bodily and property damage for a single occurrence and \$2,000,000 in the aggregate, with City listed as mortgagee and additional insured in favor of the City of Salem it's Successors and or Assigns, Attn: Finance, 555 Liberty St. SE, Salem, OR 97301-3412, subject to City's acceptance of the insuring company. Certificate or policy should be sent to the above address. Flood insurance will be required if the project is in a designated flood zone as described in the Federal Emergency Management Agency Flood Hazard Boundary Maps or Flood Insurance Rate Maps.
- 15.4 Owner and Developer shall comply with the bonding and insurance requirements of 24 CFR 84.31 and 84.48, Bonding and Insurance.

ARTICLE XVI **Conflict of Interest**

- 16.1 In the procurement of labor, supplies, equipment, construction, and services by the Owner/Developer or by any subcontractor, the conflict of interest provisions in 24 CFR 92.356(b), 24 CFR 85.36 and 24 CFR Part 84 (the revised OMB Circular A-110) listed in Exhibit A attached hereto and incorporated herein by this reference shall be adhered to, to the extent applicable. No persons, as defined and included, can obtain a financial interest or benefit from a HOME assisted activity. No owner, developer or sponsor of a project assisted with HOME funds can occupy a HOME assisted affordable housing unit. Familial relationships, as defined by the 2013 HOME Rule, states this is limited to immediate family members.
- 16.2 No Owner, recipient or subcontractors receiving HOME funds may obtain personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement related to the work on the Project. This applies to individuals, board members, family members or anyone having business ties to Owner or Developer during the Project tenure or for one year thereafter.

Any Owner, Developer, recipient or subcontractor in a position to participate in a decision making process or gain inside information with regard to such activities, shall maintain a written code or standard of conduct that shall govern the performance of its officers, employee, or agents engaged in the award and administration of contracts supported by federal funds.

Article XVII
Accounting Standards

- 17.1 Owner and Developer agree to comply with 24 CFR 84.21-28 and agree to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all cost incurred.
- 17.2 Owner and Developer shall administer the Project in conformance with Office of Management and Budget (OMB) circulars A-122, "Cost Principles for Non-Profit Organizations." These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.
- 17.3 In the event, that during the period of this Agreement, Owner or Developer expends more than seven-hundred and fifty thousand (\$750,000) dollars in federal funds in an operating year from this and other federal grants, Owner and Developer shall, at its own cost and expense, cause to be carried out an independent audit. **The audit shall be completed, and a copy furnished to the City, within the earlier of thirty (30) days after receipt of the auditor's report(s) or nine (9) months after the end of the audit period, unless a longer period is agreed to in advance by the City.** For purposes of this Agreement, an operating and/or audit year is the equivalent to the Owner or Developer's fiscal year. The determination of when grant funds are expended is based on when the activity related to the expenditure occurs.
- 17.4 The audit shall be conducted in compliance with the Office of Management and Budget Circular No. A-133, as amended and 24 CFR Parts 44 and 45. In the event the audit shows that the entire funds disbursed hereunder, or any portion thereof, were not expended in accordance with the conditions of this Agreement, Owner and Developer shall be held liable for reimbursement to the City of all funds not expended in accordance with these applicable regulations and Agreement provisions within thirty (30) days after the City has notified Owner or Developer of such non-compliance.
- 17.5 If expenditure does not exceed seven-hundred and fifty thousand (\$750,000) dollars during an operating year, **Owner and Developer shall provide the City with its annual financial statement within nine (9) months after the end of the audit period.** Said financial statement shall be prepared by an actively licensed certified public accountant.

Article XVIII
City Recognition

- 18.1 Owner shall insure recognition of the role of City in providing services through this Agreement. All activities, facilities, and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, Owner will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement. Owner agrees to allow use of project or program photos or logos in City marketing materials unless a written request is submitted indicating otherwise.

Article XIX
Insurance & Bonding

- 19.1 Owner shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud, and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from City. Owner shall obtain, maintain and provide a policy of liability insurance in form and coverage approved by the City, providing coverage is not less than \$1,000,000 "single limits" for bodily injury, personal injury, property damage, and \$2,000,000 Annual Aggregate and naming "the City of Salem, Oregon, its officers, agents and employees" as mortgagee; and the Owner shall, prior to commencing service, furnish to the City a certificate evidencing such coverage and any renewal of such coverage, and providing for not less than 30-day written notice to be given to the City in the event of cancellation or reduction in coverage. Flood/Mud insurance will be required if the project is in a designated flood zone as described in the Federal Emergency Management Agency Flood Hazard Boundary Maps or Flood Insurance Rate Maps.

- 19.2 Owner shall obtain and maintain a policy of fire insurance with extended coverage endorsements on the basis of 100% of full replacement cost of all improvements, general liability (Bodily Injury and Property Damage) on an occurrence basis in a minimum amount of \$1,000,000 for bodily and property damage for a single occurrence and \$2,000,000 in the aggregate, with City listed as mortgage and additional insured in favor of the City of Salem it's Successors and or Assigns, Attn: Finance, 555 Liberty St. SE, Salem, OR 97301-3412, subject to City's acceptance of the insuring company. Certificate or policy should be sent to the above address. Flood insurance will be required if the project is in a designated flood zone as described in the Federal Emergency Management Agency Flood Hazard Boundary Maps or Flood Insurance Rate Maps.
- 19.3 Owner shall comply with the bonding and insurance requirements of 24 CFR 84.31 and 84.48, Bonding and Insurance.

ARTICLE XX
Other Program Requirements

- 20.1 The Owner and Developer shall carry out each activity in compliance with all applicable federal laws and regulations as described in Exhibit A attached hereto and incorporated herein by this reference.
- 20.2 Owner and Developer shall observe and comply with all applicable laws, ordinances, rules, and regulations of the state of Oregon and City of Salem now existing or hereinafter in effect, which may in any manner affect the performance of its obligations under this Agreement, including, without limitation, the provisions of Salem Revised Code, Chapter 97, and Oregon Revised Statutes 279B.220, 279B.230, and 279B.235, which by this reference are made a part of this Agreement.
- 20.3 Verification of citizenship or qualified alien status is required. Copies of the follow documents can be used to verify citizenship status: birth certificate, passport, birth abroad, or a certificate of naturalization or citizenship.

ARTICLE XXI
Governing Law

- 21.1 This Agreement is governed by and shall be construed in accordance with the laws of the State of Oregon.

ARTICLE XXII
Other City Requirement

- 22.1 Owner and Developer will return to the City within fifteen (15) days of demand all HOME Loan and Grant funds expended for disallowed expenditures as determined by the Urban Development Housing Program Manager and this Agreement, which disallowed expenditures are described as follows:
- a. Bad Debts - losses arising from un-collectable accounts and other claims, and related costs;
 - b. Contingencies - contributions to a contingency reserve or any similar provision for unforeseen events;
 - c. Contributions or Donations - contributions and donations;
 - d. Entertainment - costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities;
 - e. Fines and Penalties - costs, including late charges, resulting from violations of, or failure to comply with, Federal, State, and local laws and regulations;
 - f. Governor's Expenses - salaries and expenses of the Office of the Governor of a state or the chief executive of a political subdivision, municipality, or body politic and corporate;

- g. Legislative Expenses - salaries and other expenses of the State Legislature or similar local governmental bodies such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction;
- h. Interest and Other Financial Costs - interest on borrowings (however represented), bond discounts, costs of financing and refinancing operations, and legal and professional fees paid in connection therewith.

ARTICLE XXIII
Religious Organizations

- 23.1 Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the HOME program in accordance with 24 CFR Part 92.257. For projects or programs receiving federal funding, all religious activities must be voluntary and housing must be separate from religious activities. Faith based organizations can retain independence but are not required to form a separate organization. Discrimination based on religious affiliation is prohibited.

Article XXIV
No Agency

- 24.1 Owner and Developer are not considered an agent of City for any purpose, and employees of Owner and Developer are not employees of City, and not entitled to any benefit the City may provide for City's employees, including but not limited to retirement benefits, medical and dental insurance, workers' compensation insurance, and unemployment insurance.

Article XV
Notices

- 25.1 Notices required by this Agreement shall be in writing and delivered via mail, commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.
- 25.2 Communication and details concerning this Agreement shall be directed to the following representatives:

City
City of Salem, Urban Development Department
Federal Programs Division
350 Commercial Street NE
Salem, OR 97301
503-588-6178
Fax: 503-589-2054

Owner or Developer
Cornerstone Apartments Limited Partnership
C/O: Beth Hays
Chief Operating Officer
Mountain West Investment Corporation-
Community Resource Trust
201 Ferry Street SE, Suite 400
Salem, OR 97301
503-507-8248
beth@mwinv.com

Article XXVI
Change or Modification

- 26.1 No change, modification, or waiver of any provision in this Agreement shall be valid or binding upon the parties hereto unless such change, modification or waiver shall be in writing signed by all parties hereto.

ARTICLE XXVII
Entire Agreement

- 27.1 This Agreement represents the entire agreement by and between the parties hereto for the matter specified herein. No statement, representation, writing, understanding or agreement made by either party or a representative of either party shall be binding unless expressed herein. All changes, amendments, modifications or revisions to this Agreement shall be binding only when in writing and signed by both parties hereto, by their respective authorized officers, agents or representatives and is subject to HUD funding.
- 27.2 Penalties for failure to comply are considered a default on this Agreement and may result in delays or discontinued reimbursements, increased reporting or monitoring or being ineligible for future HOME funding.

ARTICLE XXVIII
Terms of the Agreement

- 28.1 The terms of the Deferred Payment are based on a period of 20 years provided the property remains as it was originally intended for Affordable Housing pursuant to this Agreement, and no other default occurs. A breach of this Agreement will require repayment of the principal loan amount plus any expenses the City incurs for the administration of this project, not to exceed \$300,000.
- 28.2 Funding for the Cornerstone Apartments is contingent upon City's receipt of funds from HUD. City shall inform the Cornerstone Apartments Limited Partnership in writing on or before August 1, 2016 if funding for the Program has not been received in the amount identified herein.

ARTICLE XXIX
Incorporation of Recitals

- 29.1 The recitals made at the beginning of this Agreement are true and correct and, by this reference, are incorporated herein and made a part hereof. The exhibits attached to this Agreement and mentioned herein are, by this reference, incorporated herein and made a part hereof.

IN WITNESS WHEREOF, the parties hereto duly execute this Agreement, and it becomes effective, as of the day and year last signed below.

**CORNERSTONE APARTMENTS LIMITED PARTNERSHIP,,
an Oregon Limited Partnership**

By: Cornerstone GP LLC, an Oregon limited liability company,
General Partner

By: Community Resource Trust, an Oregon nonprofit corporation,
Manager

By: _____
Beth Hays,
Chief Operating Officer

**City of Salem,
CITY OF SALEM, OREGON**

Steven D. Powers, City Manager

Date

Attached are sample forms addressed in the Agreement. Originals can be obtained at the City of Salem, Urban Development Department, Federal Programs Division website:

www.cityofsalem.net/DEPARTMENTS/URBANDEVELOPMENT/FEDERALPROGRAMS/Pages/Forms.aspx

- Exhibit A Other Federal Requirements (attached)**
- Exhibit B Legal Documents (attached)**
- Exhibit C Use of Proceeds (attached)**
- Exhibit D Declaration of Covenant (attached)**
- Exhibit E Income Limits (attached)**
- Exhibit E-1 Utility Allowances (attached)**
- Exhibit F Tenant Income Certification Form (attached)**
- Exhibit G Prohibited Lease Terms (attached)**
- Exhibit H Contractor and Subcontractor report (Davis Bacon projects only Form)**
- Exhibit I Section 3 Summary Report (Davis Bacon projects only)**
- Exhibit J N/A**
- Exhibit K Subsidy Layering Analysis**
- Exhibit L Annual Property Report (attached)**
- Exhibit M G701 and G702**
- Exhibit N Income and Rent Restrictions**
- Exhibit O Replacement Reserve Agreement**

OTHER FEDERAL PROGRAM REQUIREMENTS

HOME Investment Partnerships Program

- 24 CFR Part 92, Complete rules and requirements for HOME program

Audit Requirements

- 24 CFR Part 44; State and Local Government audit requirements
- 24 CFR Part 45; Institutions of Higher Education and Other Non-profit investor Institutions

Uniform Administrative Requirements 92.505; financial standards, internal control, use of federal funds

- 24 CFR Part 85 and 2 CFR Part 225; OMB Circular A-87, Government Entities financial and accounting compliance
- OMB Circular A-122; 24 CFR Part 84 and 2 CFR Part 230, Nonprofit entities financial and accounting compliance
- 24CFR Part 84.21, Both entities, financial and accounting compliance

Affirmative Marketing Plan

- 24 CFR.200.625, Regulations regarding outreach to those least likely to apply

Fair Housing and accessibility

- Fair Housing Act 24 CFR Part 100, Restricts discrimination or access or participation under any program or activity receiving federal financial assistance

Non-Discrimination in Federally Assisted Programs

- Title VI of the Civil Rights Act of 1964, - 24 CFR Part 1, Prohibits discrimination on the basis of race, color, or national origin in all HUD-assisted programs
- Title 41 Public Contracts and Property Management; 41 CFR Part 60, Equal opportunity employment practices.
- Article 104(b) and Article 109 of Title I of the Housing and Community Development Act of 1974 as amended

Discriminatory Conduct under the Fair Housing Act

- Title VI of the Civil Rights Act of 1968, as amended "Fair Housing Act" 2; Requires, to the greatest extent feasible, that recipients of HUD funds (and their contractors and subcontractors) provide jobs and other economic opportunities to low-income persons, particularly public housing residents
- USC 3601; United States Code that enforces the Federal Housing Act
- 24 CFR Part 100; Requires compliance with the non-discrimination provisions of Federal civil rights laws, including Section 504 of the Rehabilitation Act and the Fair Housing Act and implementing regulations regarding Americans With Disabilities Act

Conflict of Interest

- Procurement, 24 CFR 85.36; All procurement procedures must reflect applicable State and local laws and regulations and conform to applicable Federal law and the standards identified in this section
- Codes of Conduct 24 CFR Part 84; Uniform administrative requirements for Federal grants and agreements awarded non-profit organizations

Equal Opportunity in Housing

- Executive Order 11063; Prevention of discrimination
- 24 CFR. Part 107; Equal housing opportunities

Non-Discrimination Based on Age or Handicap

- Subtitle A, Title II, American with Disabilities Act of 1990; Parts 35 & 36, Prohibits discrimination against individuals with disabilities
- Age Discrimination Act of 1975, as amended; 24 CFR Part 146; Prohibits discrimination based on age
- Section 504 of the Rehabilitation Act of 1973; 24 CFR Part 8; Prohibits discrimination based on disability in any program or activity receiving federal financial assistance, including the sale, rental or financing of housing

Employment and Contracting Opportunities

- Section 3 of the Housing and Urban Development Act of 1968, 24 CFR Part 135, Helps create employment for low-income persons and provides contracting opportunities for businesses that are owned by low-income people or that provide employment to low-income people

Minority/Women's Business Enterprise

- Executive Orders 11625; 12138; Outreach to ensure efforts are made to attract minority groups to the procurement process
- 24 CFR Part 85 Subpart C Section 36(e); Procurement code of standards, conflicts of interest

Lead Based Paint Poisoning Prevention

- 24 CFR Part 35; Provisions regarding lead based paint abatement and disclosure

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction

- HUD 4010 Federal Labor Standards Provisions; Wage, payment, overtime, withholding and other payroll Requirements
- Davis Bacon Act 29 CFR Parts 1, 3, 5, 6, and 7; Requirements triggered with 12 or more units
- Fair Labor Standards Act of 1938; Dictates wage and labor standards for federal projects
- Copeland Anti-Kickback Act; Requires employees paid weekly, deductions are permissible and contractors maintain and submit weekly certified payroll
- Contract Work Hours and Safety Standards Act (CWHSSA); Coverage threshold for overtime and health and safety provisions
- 24 CFR 92.354; Regarding construction contracts, volunteers cannot receive direct compensation
- General Provisions, 24 CFR Part 135, Volume 1; Provisions required in contracts
- Relating to the Use of Volunteers, 24 CFR Part 70; Family members who provide labor in exchange for acquisition of a property for homeownership in lieu of, or as a supplement to, rent payments
- 24 CFR 92.354 (a)(2); Davis-Bacon requirements when HOME funds provide down payment assistance to individual homebuyers
- HOME: National Affordable Housing Act of 1990 (NAHA) Section 286; Use of prison inmate labor
- 24 CFR Part 24; Contractor expectations, regarding use of disbarred, suspended or ineligible contractors
- 29 CFR 5.12(a)(1); Requires verification that contractors are eligible to work on projects
- Wage Decision; Identifies prevailing hourly wage requirements for all laborers working on a project

Lobbying

- 24 CFR Part 87; Compliance and restrictions on lobbying

Displacement, Relocation Assistance and Real Property Acquisition

- 49 CFR Part 24; Relocation and acquisition requirements
- 24 CFR Part 42 Regulations that implement section 104(d); Replacement, on a one-for-one basis, of demolished or converted low-moderate income dwellings and provision of relocation assistance

National Flood Insurance

- Flood Disaster Protection Act of 1973; Insurance requirements for properties located in flood hazard areas
- 42 U.S.C. 40001; Congressional findings on the necessity for flood insurance program
- National Environmental Policy; Requires consideration of environmental impacts of proposed federal projects
- 24 CFR 58; Requires property be free of hazardous materials, contamination, or substances that could affect health and safety of occupants

Environmental Review

- 24CFR parts 50 and 58 including Subpart H under 92.352; Environmental procedures and policies for all federal projects based on the entire project and not just on the part funded by HOME dollars.

Uniform Relocation Act

- 49 CFR Part 24, 24 CFR Part 42, (www.fhwa.dot.gov/realestate/act.htm). Relocation requirements and policies
- 104(d) (www.hud.gov/offices/cpd/affordablehousing/training/web/relocation/section104d.cfm). Minimum requirements when units are demolished or converted to a use other than low- or moderate-income dwellings

OTHER REQUIREMENTS

1. Upon request by City, Owner/Developer shall execute and deliver to City a certificate of compliance with the Architectural Barriers Act of 1968 and Section 504 of the Rehabilitation Act of 1973. City may also require a certificate of compliance from an architect, engineer, or other third party acceptable to City.
2. If requested, Owner/Developer shall provide satisfactory evidence that the property complies with all applicable zoning, building, use and other governmental requirements and that all licenses, permits and agreements necessary for the lawful use and operation of the property have been obtained. Required evidence may include, without limitation, copies of building permits and/or certificates of occupancy.
3. At City's discretion, City may require that the funds be closed in escrow.
4. This commitment supersedes all prior oral or written negotiations, understandings, representations and agreements between the parties with respect to the Loan and Grant and may not be changed without the written agreement of Owner/Developer and City.
5. City may at its option, declare this Agreement to be in default if (a) there is any material adverse change in the financial condition of Owner/Developer or in the Project, (b) there is any change in the management or in the ownership or capital stock in Owner/Developer, (c) a proceeding under any bankruptcy or insolvency laws is commenced by or against Owner/Developer, (d) any material representation or warranty shall prove to have been false when made by Owner/Developer, (e) Owner/Developer fails to disclose any material facts, or comply with any terms of this commitment, or (f) CITY discovers any information which City reasonably determines has a negative effect on the proposed transaction.
6. This commitment is solely for the benefit of the Owner/Developer and City and City's successors and assigns and shall not inure to the benefit of, or be relied upon by any other person or entity.
7. All information, documents and instruments required to be executed, delivered or provided to City shall be in form and substance reasonably satisfactory to City.

LEGAL DESCRIPTION

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

LEGAL DECSRIPTION

Site address to be known as:

TBD

USE OF PROCEEDS STATEMENT

(a full project budget showing developer fees, monitoring fees (if applicable), soft costs, and hard costs is attached)

The proceeds from the aforementioned funding will be used for the new construction of 180 affordable rental housing units as indicated in final detailed budget located at 3350 Portland Road.

HOME funds in the amount of \$300,000, \$300,000 for costs of the Project and \$0 for the costs associated with the City's administration of this Project will be set-aside to complete the following new construction work within 21 months of agreement signing and affordability will begin as stated in Article III:

SOURCES OF FUNDS

City of Salem (HOME)	\$300,000
Tax Exempt Bonds (Long Term)	\$ 8,212,774
Tax Exempt Bonds (Short Term)- <i>Short Term Use of Bonds-not included in total Sources</i>	\$4,978,583
4% LIHTC (Equity)	\$8,243,011
Other: LIFT	\$4,877,919
Deferred Development Fee	\$964,449
Urban Renewal Area (URA) Grant	\$749,000
URA Infrastructure Reimbursement	\$650,000

Total Sources of Funds**\$24,097,153****USES OF FUNDS**

Acquisition and Construction Costs	\$24,097,153
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Total Uses of Funds**\$24,097,153**

DECLARATION OF COVENANTS AND RESTRICTIONS

After recording, return to:
City of Salem
Attn: **Kristin Retherford**
350 Commercial St NE
Salem, OR 97301

COVENANT

THIS DECLARATION OF COVENANTS AND RESTRICTIONS (this "Declaration") is made as of _____, by Cornerstone Apartments Limited Partnership, an Oregon Limited Partnership (herein called the "Owner/Developer"), whose address is 201 Ferry Street SE, Suite 400, Salem, OR, in favor of the City of Salem, an Oregon municipal corporation, c/o Urban Development Department, whose address is 350 Commercial St. NE, Salem, OR 97301.

Owner and Developer, in consideration for affordable rental housing new construction assistance from the City of Salem, Oregon, agree and covenants as follows:

1. The Owner and Developer and his/her heirs, legal representatives, successors and assigns shall keep on the property described below an affordable rental housing project and shall not change the use of said property:

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

Legal Description

Address to be known as: LEGAL DESCRIPTION
Site address to be known as: **TBD**

2. The rental housing on the property will remain affordable as defined by the Department of Housing and Urban Development (HUD) Standards as set forth in 24 CFR Part 92.
3. Developer has received funds from the City of Salem which is a local governmental participating jurisdiction under 24 CFR Part 92. A portion of those funds were made available to the City of Salem, Oregon through the Department of Housing and Urban Development HUD a part of the HOME Investment Partnership Program, for the purpose of providing affordable housing for the benefit of the citizens of Salem and/or Keizer. The HOME program requires the Owner and Developer keep the rental housing Project on the property affordable as required by the rules and regulations of HUD under the above-referenced programs and more specifically identified for this program under the Unit Distribution Sheet, Exhibit J attached hereto and incorporated herein by this reference and Subsidy Layering Analysis, Exhibit K attached hereto and incorporated herein by this reference. These conditions are effective for a term of **20 years** following the date of "project closing", (Covenant Term), as defined by the project completion in the Integrated Disbursement and Information System (IDIS), the HUD federal reporting system, as required by regulation. The date of project closing (as determined under HUD rules) and upon the City verifying tenant information, household data, administration/financial monitoring, final inspection and final fund disbursement.
4. Notwithstanding any other terms or condition of this Covenant, pursuant to 24 CFR, Part 92.252, as amended, this Covenant and the covenants and obligations set forth herein shall remain in effect for not less than the Covenant Terms described in Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701, without regard to underlying security and without regard to any transfer of ownership, pursuant to the restrictive covenants running with the land, provided that all covenants and obligations set forth in this Covenant shall

automatically terminate upon the date, if any, that the Project is acquired by foreclosure or transfer in lieu of foreclosure, and provided further that if at any time following such an acquisition by foreclosure or transfer in lieu of foreclosure, but still during the Covenant Term, the owner of record prior to the foreclosure, or any newly formed entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property, all covenants and obligations set forth in this Covenant shall be revived to their original terms for the duration of the Covenant Term.

5. The Owner and Developer further covenants that such conditions as stated above shall run with the land and shall be binding upon all future Owner and Developers and occupants thereof and that the City and HUD are beneficiaries of and entitled to enforce such covenant.
6. In the event City, Owner, and Developer lack privity of estate, Owner and Developer indicate its intent to create an equitable servitude with the same conditions expressed above.
7. The affordability requirements as set forth in 24 CFR 92.252, specifically including 24 CFR 92.252(a), (b), (c), (d), (e), shall be covenants that shall touch and concern the land described in paragraph one (1) and shall be deemed covenants running with the land.

IN WITNESS WHEREOF, Owner and Developer have caused this Declaration to be executed in its name as of the date first above written.

Cornerstone Apartments Limited Partnership,
an Oregon Limited Partnership

By: Cornerstone GP LLC, an Oregon limited liability company,
General Partner

By: Community Resource Trust, an Oregon nonprofit corporation,
Manager

By: _____
Beth Hays,
Chief Operating Officer

STATE OF OREGON,)
) ss.
County of Marion)

On _____, personally appeared before me, the above named **Beth Hays, Chief Operating Officer, Community Resource Trust**, "Owner/Developer", an Oregon Non-Profit.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public for Oregon
My Commission expires _____

STATE OF OREGON,)
) ss.
County of Marion)

On _____, personally appeared before me, the above named Beth Hays, Chief Operating Officer of the Community Resource Trust, an Oregon Non-Profit corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public for Oregon
My Commission expires _____

Page
Break



Staff Report

File #: 17-163

Version: 2

Date: 5/8/2017

Item #: 7.1 a.

TO: Mayor and City Council

THROUGH: Steve Powers, City Manager

FROM: Peter Fernandez, PE, Public Works Director

SUBJECT:

Utility Code

Ward(s): All Wards

Councilor(s): All Councilors

Neighborhood(s): All Neighborhoods

ISSUE:

Shall City Council schedule a public hearing on May 22 regarding Ordinance Bill No. 7-17, relating to the Utility Code and amending Salem Revised Code Chapters 70, 70A, 71, 72, and 73?

RECOMMENDATION:

Schedule a public hearing on May 22 regarding Ordinance Bill No. 7-17, relating to the Utility Code and amending Salem Revised Code Chapters 70, 70A, 71, 72, and 73.

SUMMARY AND BACKGROUND:

Salem Revised Code (SRC) Chapters 70 (Utilities General), 70A (Streetlights), 71 (Stormwater), 72 (Water), and 73 (Wastewater), collectively referred to as the Utility Code, address the management and operation of the City of Salem's water, wastewater, stormwater, and street light systems. The Public Works Department is tasked with operating these utilities and with implementing and enforcing the provisions of the Utility Code. Over the course of several years, these chapters have been amended multiple times, business practices have changed, new SRC chapters have been promulgated, and the use of administrative rules has expanded, with the result that the Utility Code is in need of a major rewrite.

Ordinance Bill No. 7-17 includes revisions and updates to the Utility Code that provide coherence and consistency across the chapters while, at the same time, remove extraneous details and repetitive elements. Additionally, many subsections that were formerly in the Utility Code will now be contained in new administrative rules, which have been developed to more appropriately detail

certain programmatic procedures and policies.

FACTS AND FINDINGS:

The proposed revisions to the Utility Code will provide a more concise, coherent, and articulate regulatory framework for managing and operating the City's public utilities. Attachment 1 contains the complete set of changes. Revisions of note include:

1. All definitions used throughout the Utility Code are relocated to SRC 70 (Utilities General), ensuring consistency while providing a central location for ease of use.
2. General authority is given to the Director of Public Works to develop and administer grant programs for the benefit of the City, the utility, and the environment.
3. Construction standards and inspection requirements are consolidated in SRC 70, eliminating unnecessary redundancy elsewhere in the Utility Code.
4. Procedures for development-driven extensions of the utilities are removed from the Utility Code. These procedures are detailed in SRC 41 (Development Fee), SRC 200 (Urban Growth Management), and SRC 802 (Public Improvements).
5. All stormwater sections are eliminated from SRC 72 (formerly "Sewers" and now "Wastewater"). SRC 73 (Stormwater) was adopted in 2013 and addresses requirements for discharges into the stormwater system.
6. New administrative rules have been developed to regulate the utility billing, water curtailment, and cross-connection control programs. Authority for these programs remains in the Utility Code, but details have been removed from code and incorporated into the new administrative rules.
7. Ordinance Bill No. 7-17 contains an emergency clause and will become effective immediately upon adoption. Administrative Rules corresponding to the changes in the Utility Code will appear as an information report on the same Council agenda as second reading of this ordinance, and both the ordinance and administrative rules will be effective on the same date, so there will be no gaps in continuity of regulatory authority or practices.

Robert D. Chandler, PhD, PE
Assistant Public Works Director

Attachment:

1. Ordinance Bill No. 7-17

April 6, 2017