Ordinance No. 122487

Council Bill No. 115984

An Ordinance relating to development in the Central Area neighborhood; amending Ordinance 121740; authorizing a loan of federal Section 108 loan proceeds to finance development of 1700 South Jackson Street; appropriating and authorizing the disbursement of Brownfields Economic Development Initiative grant ("BEDI Grant") funds to reduce debt service obligations on the loan, to provide loan loss reserves and to finance project costs associated with the loan; authorizing and ratifying loan documents, amendments, replacements and related documents and actions; authorizing use of the Central Area Capital Fund Program as additional security for the loan; and authorizing amendments to the City's 2005-2008 Consolidated Plan to reflect the transactions contemplated by this ordinance.

CF No.

| | |
|---|---|
| Date Introduced: 8-13-04 | |
| Date 1st Referred: 8-13-04 | To: (committee) Economic Development and Neighborhoods |
| Date Re - Referred: | To: (committee) |
| Date Re - Referred: | To: (committee) |
| Date of Final Passage: 9-10-07 | Full Council Vote: 8-0 |
| Date Presented to Mayor: 9-11-07 | Date Approved: 9.21.07 |
| Date Returned to City Clerk: 9.21.07 | Date Published: 10 T.O. X F.T. |
| Date Vetoed by Mayor: | Date Veto Published: |
| Date Passed Over Veto: | Veto Sustained: |

# The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: Sally Clark
Councilmember

## Committee Action:

9/6/2007 SJC, RJM 2-0 passed as Amended

9-10-07 Passed 8-0 (Excused: Drago)

This file is complete and ready for presentation to Full Council. Committee: _____ (Initial/date)

Law Department

Law Dept. Review | OMP Review | City Clerk Review | Electronic Copy Loaded | Indexed

ORDINANCE 122487

AN ORDINANCE relating to development in the Central Area neighborhood; amending Ordinance 121740; authorizing a loan of federal Section 108 loan proceeds to finance development of 1700 South Jackson Street; appropriating and authorizing the disbursement of Brownfields Economic Development Initiative grant ("BEDI Grant") funds to reduce debt service obligations on the loan, to provide loan loss reserves and to finance project costs associated with the loan; authorizing and ratifying loan documents, amendments, replacements and related documents and actions; authorizing use of the Central Area Capital Fund Program as additional security for the loan; and authorizing amendments to the City's 2005-2008 Consolidated Plan to reflect the transactions contemplated by this ordinance.

WHEREAS, Ordinance 121740 authorized the OED Director to transfer ownership of the Property to the Central Area Development Association ("CADA"); and

WHEREAS, pursuant to Ordinance 122139, in order to support certain eligible activities under the federal Section 108 program, including the acquisition and development of certain properties within the City, the City is authorized to issue a note in the principal amount not to exceed Ten Million Dollars ($10,000,000), or multiple notes in a total principal amount not exceeding that sum, without recourse to general funds, and enter into a contract with the United States Department of Housing and Urban Development ("HUD") for a Section 108 guaranty of the note and agreements with a custodian (the "Custodian") to establish separate accounts to handle disbursements and receipts, which documents allowed the City to request funds under the note from time to time; and

WHEREAS, Ordinance 122139 also authorized loans of a portion of the note proceeds and authorized acceptance of a companion Brownfields Economic Development Initiative ("BEDI") Grant in the amount of Two Million Dollars ($2,000,000); and

WHEREAS, the Director of the Office of Economic Development and the City's Loan Committee have approved a loan in the amount of Two Million Three Hundred Ninety Eight Thousand Seven Hundred Ninety Four Dollars ($2,398,794) from the note proceeds and a companion BEDI Grant in the amount of Four Hundred Seventy Nine Thousand Seven Hundred Fifty Nine Dollars ($479,759), to finance development costs of 1700 South Jackson Street in the Central Area neighborhood; and

WHEREAS, subsequent to the passage of Ordinance 121740, CADA determined that it could construct the Project on a portion of the Property and requested that it be permitted to sell the remainder of the Property and use the sale proceeds to offset increased development costs of the Project; and



CITY CLERK

WHEREAS, the OED Director determined that the sale of the Property to CADA and the application of the proceeds from the sale of that portion of the Property that is surplus to CADA's needs to development costs of the Project is necessary to the successful development of the Project; and

WHEREAS, the City's participation in the Section 108 loan guaranty program and the expenditure of guaranteed loan proceeds thereunder is authorized by RCW 35.21.735; and

WHEREAS, the Office of Economic Development has given public notice of the proposed loan and the City Council has held a public hearing with respect to the proposed loan;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 1 of Ordinance 121740 is hereby amended to read as follows:

The Mayor or Director of the Office of Economic Development ("OED Director") is authorized, on behalf of the City of Seattle, to execute, deliver, administer and cause to be performed a Contract for Sale of Real Estate ("Agreement") with the Central Area Development Association (CADA), a Washington nonprofit corporation ("CADA") based on the form attached as Attachment A, with such additions, modifications and amendments as the Mayor or OED Director decide are necessary or advisable to carry out the purposes of this ordinance, together with such ancillary and related documents as the Mayor or OED Director may deem necessary or advisable to carry out the purposes of this ordinance. The Agreement shall provide for the transfer of the land legally described as:

Parcel "40" - Lots 1 and 2, except the North 70 feet thereof and except the South 16 feet for alley, in Block 19, Hill Tract Addition to the City of Seattle, according to the plat recorded in Volume 8 of Plats, page 42, records of King County, Washington; and

The South 36 feet of the North 70 feet of Lot 1 and the South 36 feet of the North 70 feet of the West 10 feet of Lot 2, in Block 19, Hill Tract Addition

to the City of Seattle, according to the plat recorded in Volume 8 of Plats, page 42, records of King County, Washington;

and

Parcel "41" - Lots 7, 8, 9, 10, 11, 12, 13, 14, and 15, Block 19, Hill Tract Addition to the City of Seattle, according to the plat recorded in Volume 8 of Plats, page 42, records of King County, Washington

(the "Property") to CADA, or an assignee permitted by the City, on the terms and subject to the conditions authorized in this ordinance. Consideration for the transfer of the Property shall be SEVEN HUNDRED FIFTY THOUSAND and no/100 dollars ($750,000.00). The City Council determines that such amount, payable on the terms authorized herein, is adequate in light of the factors described in RCW 35.81.090. The Agreement shall provide that the Property shall be transferred subject to restrictions of record, and to development and use conditions that the City shall impose as a condition of the sale, which shall include, but not be limited to, substantially those described in Section 3 of this ordinance; provided, however, that because the Project will be constructed entirely on Parcel 41, the OED Director is authorized, on behalf of the City, to execute and deliver a release of said use covenants recorded against Parcel 40 conditioned on CADA's, or its assignee's, agreement that all proceeds from the sale of Parcel 40 shall be applied to development costs of the project. The Agreement shall provide for the consideration to be paid by applying the nonrefundable earnest money to be delivered to the City upon signing of the Agreement, and the balance according to the terms of a nonrecourse promissory note secured by a deed of trust on the Property. The promissory note shall be on the terms described in an exhibit to Attachment A, with such modifications and insertions as the Mayor or OED Director may deem necessary or appropriate to carry out the intent of this ordinance, and shall have a maturity date approximately 15 years from the anticipated date of completion of the

improvements on the Property required by the Agreement, provided that the Mayor or OED Director may agree to a later maturity date if necessary to accommodate other financing.

Section 2. Section 6 of Ordinance 121740 is hereby amended to read as follows:

The Mayor or the OED Director is authorized, on behalf of the City, to lend and cause the disbursement to CADA, pursuant to the Loan Agreement authorized in Section 7 of this ordinance, of up to ~~SEVEN HUNDRED FIFTY THOUSAND DOLLARS ($750,000)~~ ONE MILLION TWO HUNDRED FOUR THOUSAND NINE HUNDRED NINETY TWO DOLLARS ($1,204,992) of funds previously appropriated for the Community Equity Fund component of the Central Area Capital Fund Program ("Equity Fund"), which program was authorized in Ordinance 117729, as amended by Ordinance 119224. Such loan funds shall be used to finance the earnest money payment to the City required by the Agreement and other costs related to the proposed acquisition and redevelopment of the Property, including predevelopment costs. The loan shall be payable on the terms set forth in the form of promissory note attached as Attachment B to this ordinance, with such insertions and modifications as the Mayor or OED Director may determine are necessary or appropriate to carry out the intent of this ordinance~~, and except that the Loan Agreement may provide that if the Agreement shall terminate without the Property having been conveyed to the purchaser, under circumstances in which the earnest money is retained by the City and there is no liability of either party, then an amount of the loan up to $450,500 may be forgiven~~. The maturity date of the loan shall be approximately 15 years from the anticipated date of completion of the improvements on the Property required by the Agreement, provided that the Mayor or OED Director may agree to a later maturity date if necessary to accommodate other financing. At any time prior to the

maturity date and upon written request of CADA, up to ~~$300,000~~ 754,992 of the loan amount ~~may~~ shall be forgiven provided that the principal amount has not previously become due; the redevelopment of the Property has been timely completed; at least 51% of residential units have been occupied by low- and moderate-income households, at least 8,000 net rental square feet have been maintained as a neighborhood commercial/retail center; CADA, or an entity in which CADA has a direct interest, remains the legal and equitable owner of the Property; and CADA remains in compliance with the terms of the Agreement and all other agreements with the City regarding the property. To the extent the loan terms and conditions described in this ordinance and in Attachment B hereto differ from those set forth in the policies for the Central Area Capital Fund adopted in Ordinance 117729, as amended by Ordinance 119224, the terms and conditions of this ordinance and Attachment B shall govern.

Section 3. The Mayor or OED Director is authorized, on behalf of The City of Seattle, to issue a non-recourse promissory note ("Note") in the principal amount not to exceed Two Million Three Hundred Ninety Eight Thousand Seven Hundred Ninety Four Dollars ($2,398,794), based on the form attached as Exhibit C to this ordinance, and with such modifications, additions or amendments as HUD may require or the Mayor or OED Director may deem necessary or advisable to carry out the purposes of this ordinance. The Note shall provide for a schedule of maturities of principal approximately as stated in Exhibit A, with such modifications and amendments as HUD may require or the Mayor or OED Director deem necessary or advisable to carry out the purposes of this Ordinance. The Mayor or OED Director is further authorized, on behalf of the City, to lend and cause the disbursement of the Note proceeds to the 17th & Jackson Investment Fund LLC ("Obligor" or "NMTC Investment Fund"), or a substitute entity approved by the Mayor or OED Director. Obligor is an entity formed by

Washington Mutual Community Development, Inc., as investor member, and ESIC Community Partners, Inc., as managing member, and such entity shall serve as the New Markets Tax Credit investment fund that will assist in financing development of the Property. The Mayor or OED Director is further authorized, on behalf of The City of Seattle, to cause there to be drawn from the federal treasury and deposited in the Special Purpose Grants Fund, No. 17820, companion Brownfields Economic Development Initiative ("BEDI") Grant funds in the amount of Four Hundred Seventy Nine Thousand Seven Hundred Fifty Nine Dollars ($479,759), and pursuant to the appropriation in Section 7 of this ordinance, to cause the disbursement of such amount for the benefit of Obligor, for the purposes of reducing debt service obligations on the loan, to provide loan loss reserves and to finance project costs associated with the Section 108 loan. The amount of such BEDI Grant funds is based on the ratio of the maximum amount of the Section 108 loan ($2,398,794) to the maximum proceeds of the City's Note (i.e., $10,000,000).

Section 4. The Mayor or the OED Director is authorized, on behalf of The City of Seattle, to execute, deliver, administer and cause to be performed: (1) a Loan Agreement with the Obligor based on the form attached as Exhibit B to this ordinance and the terms outlined in Attachment B to Exhibit B, with such adjustments as HUD may require or the Mayor or OED Director deem necessary or advisable to carry out the purposes of this ordinance; and (2) such amendments and related documents as the Mayor or OED Director may deem necessary or advisable to carry out the purposes of this ordinance. The Section 108 loan shall be secured by an assignment and pledge for security purposes of the interest of Obligor in the CDE. As a condition of the 108 loan, the Loan Agreement shall require Obligor to cause the CDE to secure one or more deeds of trust, in form and content acceptable to the OED Director, against the Property.

Section 5. The Mayor or the OED Director is authorized, on behalf of The City of Seattle, to use the Equity Fund as additional security for the 108 loan, in an amount up to $1,800,000. The OED Director shall have the discretion to release such security when the OED Director has determined that the 17th and Jackson project has completed construction and has achieved sufficient lease-up to meet stabilized vacancy levels (i.e., 5% vacancy for residential space and 10% vacancy for commercial/retail space). Appropriation is authorized from the Equity Fund as follows, and unspent funds so appropriated shall carry forward to subsequent fiscal years until the OED has determined that conditions of Section 5 of this ordinance have been met, or such funds are otherwise exhausted or abandoned by ordinance:

| **Fund** | **Department** | **Budget Control Level** | **Amount** |
|---|---|---|---|
| Housing and Community Development Revenue Sharing Fund No. 17810 (Project No. XDIURI77, Central Area Equity Fund) | Office of Economic Development | 6XD10 | $1,800,000 |

Section 6. The Loan Agreement shall provide, consistent with HUD regulations, that the Obligor shall take affirmative steps to assure that minority and women's business enterprises are used when possible, that Obligor shall maintain records of those steps, and that nothing in the Loan Agreement shall be construed to require or authorize any discrimination or preferential treatment contrary to applicable law.

Section 7. To the extent that BEDI Grant funds are received by the City in the Special Purpose Grants Fund, the appropriation for the following in the 2007 Budget is increased from the fund shown, as follows:

| Fund | Department | Budget Control Level | Amount |
|---|---|---|---|
| Special Purpose Grants Fund, No. 17820 | Office of Economic Development | 6XD20 | $479,759 (BEDI Grant funds) |

Section 8. The Mayor or OED Director may require the Obligor to pay a loan origination fee of no more than one percent (1%) of the loan amount, i.e., no more than Twenty Three Thousand Nine Hundred Eighty Seven Dollars ($23,987). The OED Director is authorized to cause all or a portion of this fee to pay the National Development Council for consulting services related to the loans authorized hereby, in accordance with the City's existing contract with the National Development Council, and to pay for the City's legal fees and any other costs related to the issuance and placement of the Note and the administration of the transactions authorized by this Ordinance, that are not paid by Obligors pursuant to loan agreements. The OED Director is authorized to cause any remaining portion of such fee to be applied to payment of expenses incurred in the administration of any federally guaranteed or federally funded economic development loan or program administered by the OED Director or to be remitted to the City and deposited in the Housing and Community Development Revenue Sharing Fund.

Section 9. The Director of the Human Services Department ("HSD Director") is authorized to further amend the City's 2005-2008 Consolidated Plan to reflect the transactions contemplated by this Ordinance and provide OED with technical assistance to ensure compliance with Community Development Block Grant ("CDBG") regulations applicable to the Section 108

loan program. The Mayor, OED Director, and the HSD Director are authorized to take such other actions as they shall deem necessary to implement the actions authorized by this Ordinance.

Section 10. This Ordinance is not intended to create, and shall not be construed to create, any contractual or otherwise binding obligation upon, or commitment by, the City for the benefit of Washington Mutual, CADA, or any other party interested in the acquisition or development of the Property. The commitments authorized by this Ordinance, subject to the limitations herein and under applicable law, shall become effective only if and when the agreements authorized hereby are duly executed and delivered by the City and other necessary parties.

Section 11. Any act pursuant to the authority and prior to the effective date of this ordinance is hereby ratified and confirmed. If any provision of this ordinance is determined to be invalid or unenforceable the remainder shall nonetheless remain in full force and effect.

Section 12. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 10th day of September, 2007, and signed by me in open session in authentication of its passage this 10th day September, 2007.

President _____ of the City Council

Approved by me this 21st day of September, 2007.

Gregory J. Nickels, Mayor

Filed by me this 21st day of September, 2007.

City Clerk

(Seal)

Exhibits:

A. Schedule of Maturities
B. Form of Loan Agreement
   - Attachment A Legal Description for Property
   - Attachment B Description of Project
   - Attachment C Form of Obligor Note
C. Form of Note

Ken Takahashi/KT
OED 108 Loan FISC
July 26, 2007
Version #2

Form revised December 4, 2006

# FISCAL NOTE FOR NON-CAPITAL PROJECTS

| Department: | Contact Person/Phone: | DOF Analyst/Phone: |
|---|---|---|
| Office of Economic Development | Ken Takahashi/684-8378 | Janet Credo/ 684-8687 |

**Legislation Title:**
An Ordinance relating to development in the Central Area neighborhood; amending Ordinance 121740; authorizing a loan of federal Section 108 loan proceeds to finance development of 1700 South Jackson Street; appropriating and authorizing the disbursement of Brownfields Economic Development Initiative grant ("BEDI Grant") funds to reduce debt service obligations on the loan, to provide loan loss reserves and to finance project costs associated with the loan; authorizing and ratifying loan documents, amendments, replacements and related documents and actions; authorizing use of the Central Area Capital Fund Program as additional security for the loan; and authorizing amendments to the City's 2005-2008 Consolidated Plan to reflect the transactions contemplated by this ordinance.

- **Summary of the Legislation:**

This legislation authorizes OED, on behalf of the City, to make a $2,398,794 Section 108 loan to finance development costs of the 17th and Jackson project in the Central Area neighborhood. Loan proceeds will come from a previously approved federal Section 108 loan fund in the amount of $10,000,000 (Ordinance 122139). This legislation also authorizes the appropriation and disbursement of $479,759 from a previously approved companion federal Brownfields Economic Development Initiative grant in the amount of $2,000,000 ("BEDI Grant"). The BEDI Grant will be used to reduce debt service obligations on the loan, provide loan loss reserves and to finance project costs associated with the loan.

- **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):*

Pursuant to Ordinance 121740, the City transferred ownership of 1700 South Jackson Street to the Central Area Development Association ("CADA") under the conditions that CADA develop a project ("Project") with 59 residential rental units and 11,000 square feet of commercial/retail space. Moreover, the Project is required to have a minimum of 51% of the residential units with rents affordable at 80% median income for a twenty year period. Subsequent to the passage of Ordinance 121740, CADA determined that it could construct the Project on a portion of the Property and requested that it be permitted to sell the remainder of the Property and use the sale proceeds to offset increased development costs of the Project. The legislation will amend Ordinance 121740, authorizing the OED Director, on behalf of the City to execute and deliver a release of said use covenants recorded against Parcel 40. In the event that CADA re-sells Parcel 40, all sale proceeds shall be applied to development costs of the project that have been approved by the OED Director.



BDS CITY CLERK

The legislation will authorize OED, on behalf of the City, to provide a $2,398,794 Section 108 loan and a companion $479,759 BEDI Grant to help make the Project feasible.

The legislation also authorizes the appropriation of $1,800,000 from the Central Area Equity Fund to be used by the OED Director as additional security for the 108 loan. The OED Director shall have the discretion to release such security when the OED Director has determined that the 17th and Jackson project has completed construction and has achieved sufficient lease-up to meet stabilized vacancy levels (i.e., 5% vacancy for residential space and 10% vacancy for commercial/retail space).

The borrower will pay an asset management and loan monitoring fee in the annual amount up to Three Thousand Dollars ($3,000), until all amounts owing on the 108 loan have been paid in full. However, the City will not receive such amounts as revenue. It is anticipated that the loan monitoring and asset management duties will be performed by a private entity under contract to the City, and the borrower shall make payment directly to such private entity according to instructions provided by the City.

- *Please check one of the following:*

____ **This legislation does not have any financial implications.** (*Stop here and delete the remainder of this document prior to saving and printing.)*

__x__ **This legi slation has financial implications.** *(Please complete all relevant sections that follow.)*

***Appropriations:*** *This table should reflect appropriations that are a direct result of this legislation. In the event that the project/ programs associated with this ordinance have appropriations that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below.*

| Fund Name and Number | Department | Budget Control Level* | 2007 Appropriation | 2008 Anticipated Appropriation |
|---|---|---|---|---|
| Special Purpose Grants Fund 17820 | Office of Economic Development | 6XD20 | $479,759 | |
| Housing and Community Development Revenue Sharing Fund No. 17810 (Project No. XDIURI77, | Office of Economic Development | 6XD10 | $1,800,000 | |



CITY CLERK

| | | | | |
|---|---|---|---|---|
| Central Area Equity Fund) | | | | |
| **TOTAL** | | | **$2,279,759** | |

**See budget book to obtain the appropriate Budget Control Level for your department.*

***Notes:***

Proceeds of the $2,398,794 Section 108 loan will be deposited directly by HUD to the City's trustee/custodian known as The Bank of New York ("Custodian"). Also proceeds from the BEDI Grant in the amount of $479,759 will be deposited by the federal Treasury Department to the City, and the City will then deposit such funds with the Custodian. According to an agreement with the Custodian, the City will direct the Custodian to disburse Section 108 and BEDI Grant funds to the borrower, and the Custodian will also be authorized to receive loan repayments from the borrower.

As authorized in Section 4 of the ordinance, funds in the amount of $1,800,000 shall be appropriated from the Central Area Equity Fund to be used by the OED Director as additional security for the 108 loan. Unspent funds shall carry forward to subsequent fiscal years until the OED Director has determined that the 17th and Jackson project has completed construction and has achieved sufficient lease-up to meet stabilized vacancy levels (5% vacancy for residential space and 10% vacancy for commercial/retail space), or such funds are otherwise exhausted or abandoned by ordinance.



CITY CLERK

***Anticipated Revenue/Reimbursement: Resulting From This Legislation:*** *This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below the table.*

| Fund Name and Number | Department | Revenue Source | 2007 Revenue | 2008 Revenue |
|---|---|---|---|---|
| Special Purpose Grants Fund 17820 | Office of Economic Development | BEDI Grant Funds | $479,759 | |
| **TOTAL** | | | | |

***Notes:***

Of the $2 million BEDI Grant awarded by HUD to the City, $479,759 is allocated for use in the 17th and Jackson project. HUD calculates the allocable amount of BEDI Grant funds to this project by determining the proportion of the Section 108 note to be disbursed to the total amount of Section 108 loan guaranty. This percentage is then applied to the total amount of the BEDI Grant. This legislation includes approval of the disbursement of $2,398,794 in Section 108 loan funds of the total $10 million loan fund, or 24% which when applied to the total BEDI Grant, results in $479,759 being allocated to the City.

***Total Regular Positions Created Or Abrogated Through This Legislation, Including FTE Impact:*** *This table should only reflect the actual number of positions created by this legislation In the event that positions have been, or will be, created as a result of previous or future legislation or budget actions, please provide details in the Notes section below the table.*

| Position Title and Department* | Fund Name | Fund Number | Part-Time/ Full Time | 2007 Positions | 2007 FTE | 2008 Positions** | 2008 FTE** |
|---|---|---|---|---|---|---|---|
| N/A | | | | | | | |
| | | | | | | | |
| **TOTAL** | | | | | | | |

* *List each position separately*
** *2008 positions and FTE are total 2008 position changes resulting from this legislation, not incremental changes. Therefore, under 2008, please be sure to include any continuing positions from 2007.*

***Notes:***

- **Do positions sunset in the future?** *(If yes, identify sunset date):*



CITY CLERK

***Spending/Cash Flow:*** *This table should be completed only in those cases where part or all of the funds authorized by this legislation will be spent in a different year than when they were appropriated (e.g., as in the case of certain grants and capital projects). Details surrounding spending that will occur in future years should be provided in the Notes section below the table.*

| Fund Name and Number | Department | Budget Control Level* | 2007 Expenditures | 2008 Anticipated Expenditures |
|---|---|---|---|---|
| N/A | | | | |
| TOTAL | | | | |

** See budget book to obtain the appropriate Budget Control Level for your department.*

*Notes:*

- **What is the financial cost of not implementing the legislation?** *(Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented.)*

There is no financial cost for not implementing the legislation. The cost would be measured in terms of unachieved public benefits in the Central Area neighborhood.

- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** *(Include any potential alternatives to the proposed legislation, such as reducing fee-supported activities, identifying outside funding sources for fee-supported activities, etc.)*

None.

- **Is the legislation subject to public hearing requirements:** *(If yes, what public hearings have been held to date, and/or what plans are in place to hold a public hearing(s) in the future.)*

Yes. A public hearing will be held before Council committee consideration of this ordinance.

- **Other Issues** (*including long-term implications of the legislation*):

None.

***Please list attachments to the fiscal note below:***

N/A



CITY CLERK

**EXHIBIT B TO ORDINANCE**

LOAN AGREEMENT

between

17TH & JACKSON INVESTMENT FUND LLC
and

THE CITY OF SEATTLE



CITY CLERK

TABLE OF CONTENTS


RECITALS 1

ARTICLE I – THE LOAN 3

1.1 The Loan 3
1.2 Purpose of Loan 3
1.3 Loan Documentation; Payment of Principal and Interest; Covenant 3
1.4 Security 3
1.5 Loan Fee 5
1.6 Obligor's Payment of Costs and Fees 5
1.7 City Funds Not Obligated 6
1.8 Application of Payments 6
1.9 Acceleration on Certain Events 6

ARTICLE II – OBLIGOR'S REPRESENTATIONS, WARRANTIES AND COVENANTS 7

2.1 Organization of Obligor; Authority to Enter into Agreement 7
2.2 Nondiscrimination, Fair Contracting Practices, WMBE 7
2.3 No Litigation 8
2.4 Title 9
2.5 Covenants, Zoning, Codes and Permits 9
2.6 Description of the Project 9
2.7 Compliance With Documents 10
2.8 Taxes Are Paid 10
2.9 TIN 10

ARTICLE III – CONDITIONS PRECEDENT TO LOAN CLOSING 10

3.1 Documents 10
3.5 Evidence of Availability of Required Equity and Establishment of BEDI Grant Reserve Account 10
3.6 Evidence of Authority; Officer's Certificate 10
3.9 Legal Opinions 11
3.10 Additional Conditions Precedent to Each Advance of Funds 11

ARTICLE IV – LOAN DISBURSEMENTS AND REPAYMENTS; RESERVE ACCOUNTS 12

4.1 Single Disbursement to Finance Property Acquisition 12
4.2 Other Conditions to Disbursement 12




CITY CLERK

4.4 Request for Interim Funding Advance; Interest to Run from City Note Funding; Cancellation upon Failure to Satisfy Closing Conditions; Payment of City's Costs 13
4.5 Reserved 13
4.6 Loan Repayment Account 13
4.7 Application of Payments 15

ARTICLE V – OBLIGOR'S LOAN COVENANTS 16

5.1 General 16
5.2 Commencement and Completion of Rehabilitation 16
5.3 Compliance with Laws 16
5.4 Inspections 16
5.5 Notify City of Litigation or Complaints 17
5.6 Waiver of Immunity 17
5.7 Federal Regulations 17
5.8 Reports 22
5.9 Liens or Claims of Liens 22
5.10 Political Activity 23
5.11 Further Actions 23
5.12 Other Agreements 23
5.13 Payment of Compensation of Custodian 23
5.14 Payment of Other Indebtedness 23
5.15 Transfer of Property 23

ARTICLE VI – DEFAULT AND REMEDIES 23

6.1 Events of Default 23
6.2 Declaration of Event of Default 25
6.3 Remedies 25
6.4 No Default Prior to Declaration 25

ARTICLE VII – MISCELLANEOUS 26

7.1 No Waiver 26
7.2 Successors and Assigns; Delegation to Custodian; Changes in Custodian and Custodial Agreement 26
7.3 No Defense Based on City Regulatory Actions 26
7.4 Time 27
7.5 Entire Agreement; Amendments 27
7.6 Headings 27
7.7 Number and Gender; Joint and Several Obligations 27
7.8 Validity 27
7.9 Governing Law 27
7.10 Survival 28
7.11 Venue and Forum 28



BMS CITY CLERK

7.12 Attorney's Fees 28
7.13 Duplicate Originals; Counterparts 28
7.14 Construction 28
7.15 Notices; Administration by City 28
7.16 Additional Terms and Conditions 29

Attachment A Legal Description for Property
Attachment B Description of Project
Attachment C Form of Obligor Note



CITY CLERK

LOAN AGREEMENT

THIS LOAN AGREEMENT (as supplemented or amended from time to time, and including all documents and terms incorporated herein by reference, the "Agreement"), dated as of_ _____, is entered into by and between 17TH & JACKSON INVESTMENT FUND LLC, a Washington limited liability company (hereinafter called "Obligor") and THE CITY OF SEATTLE, a Washington municipal corporation (hereinafter called "City").

RECITALS

This Agreement is entered into upon the basis of the following facts and circumstances:

A. 17th & Jackson LLC ("QALICB"), a Washington limited liability company with the Central Area Development Association ("CADA") as managing member, is the owner of real property described in Attachment A, attached hereto and made a part hereof by this reference (the "Property"), and they intend to cause the development of the Property as described in Attachment B, attached hereto and incorporated herein by this reference ("the Project").

B. Obligor has requested from City a loan of federal Section 108 loan proceeds in the amount of Two Million Three Hundred Ninety Eight Thousand Seven Hundred Ninety Four Dollars ($2,398,794) in order to invest in ESIC New Markets Partners XXI Limited Partnership, a Maryland limited partnership ("CDE") to finance the Project, which qualifies for the New Markets Tax Credit allowed by Sections 38 and 45D of the Internal Revenue Code of 1986, as amended (the "Code").

C. The United States Department of Housing and Urban Development ("HUD") has agreed, subject to certain conditions, to guarantee a non-recourse note or notes (collectively, as supplemented or amended from time to time, and together with any replacements thereof issued by the City and guaranteed by HUD pursuant to the HUD Contract described below, the "City Note") issued by City in part to fund the Loan (described in Section 1.1 below), in accordance with Section 108 of the Housing and Community Development Act of 1974, as amended (such Act and the federal regulations promulgated thereunder are hereinafter collectively called the "Act"). The City Note will be a Variable/Fixed Rate Note in the maximum commitment amount of $2,398,794, which will be issued pursuant to a Contract for Loan Guarantee Assistance between the City and HUD (the "HUD Contract") and certain Letter Agreements for Section 108 Guarantee Program Custodial Account (as supplemented or amended from time to time, the "Letter Agreements") among the City, HUD and The Bank of New York (hereinafter referred to, with any successors under such agreement or successor agreement, and in its capacity as trustee in connection with the BEDI Grant Reserve Account, as "Custodian"). City will also enter into an Indenture of Trust and Custodial Agreement with the Custodian (as supplemented or amended from time to time, together with any substitute therefor in accordance with Section 7.2 below, the "Custodial Agreement"), which provides for, among other things, the Custodian to hold certain security for the City Note on behalf of HUD and for the establishment and management of certain accounts pursuant to the HUD Contract and Letter Agreements. The HUD Contract will be entered into pursuant to an application



CITY CLERK

submitted to HUD by the City dated March 15, 2005 (the "Application"). The Application, HUD Contract, Letter Agreements and Custodial Agreement are incorporated herein by this reference. Unless the context otherwise requires, capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to them in the HUD Contract or City Note, as applicable.

D. The Office of Economic Development of the City ("OED") is responsible within The City of Seattle for making, subject to City Council approval, loans of funds obtained from HUD by pledges of Community Development Block Grant ("CDBG") funds to be made available to the City by HUD, pursuant to the Act. Unless the City otherwise notifies Obligor, in writing, OED shall be responsible for performance of the obligations of the City under this Agreement and the other Loan Documents, and for oversight of performance of such agreements by Obligor, and references hereinafter made to the City shall be deemed to mean the City, acting through OED. The Director of OED, or his or her duly authorized designee, and any official of the City succeeding to the functions of such Director, is referred to herein as the "OED Director."

E. The Loan shall be evidenced by this Agreement and by Obligor's Promissory Note ("Obligor Note") in the form attached hereto as Attachment C and hereby incorporated by reference, and together with Obligor's other obligations under the Loan Documents, secured by a Security Agreement – Pledge (the "Security Agreement") relating to Borrower's interest in CDE in the form and content acceptable to the City. The Obligor Note, this Agreement, the Security Agreement, and any other documents or instruments executed by Obligor in favor of City pursuant hereto, are collectively referred to herein as the "Loan Documents". Where the context so requires, to the extent that the Loan Documents provide that Obligor's obligations or duties thereunder are determined by reference to any terms or provisions of documents incorporated by reference in any of the Loan Documents, any reference to the "Loan Documents" shall include such terms or provisions.

F. The portion of principal on the City Note that is scheduled to become due and payable in any year, equal to that portion of principal on the Obligor Note scheduled to become due in the same year, is referred to as the "Corresponding Advance" to such portion of principal on the Obligor Note, and the aggregate of all Corresponding Advances is referred to as the "Corresponding Portion" of the City Note.

G. The City will transfer funds in the maximum aggregate amount of Four Hundred Seventy Nine Thousand Seven Hundred Fifty Nine Dollars ($479,759), derived solely from a Brownfields Economic Development Initiative ("BEDI") Grant from HUD, to the Custodian, for deposit into a reserve account (the "BEDI Grant Reserve Account") to be established by the Custodian at Closing and held for the following purposes described in Section 4.5 below.

**NOTICE: ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT, ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

NOW, THEREFORE, in consideration of the foregoing Recitals and the covenants, conditions, representations and warranties contained herein, the parties hereto agree as follows:



CITY CLERK

## ARTICLE I – THE LOAN

1.1 The Loan. In reliance upon Obligor's representations and warranties, and subject to the terms and conditions contained in this Agreement, the other Loan Documents, the HUD Contract, the Letter Agreements and the Custodial Agreement, the City hereby agrees to cause funds to be advanced to Obligor through the Custodian (which advances collectively shall constitute the "Loan") in a maximum aggregate principal amount equal to Two Million Three Hundred Ninety-Eight Thousand Seven Hundred Ninety-Four Dollars ($2,398,794), solely for the purposes set forth in Section 1.2 below. Loan disbursements shall be made only to the extent of available funds received by the Custodian for such purposes through issuance by the City of the City Note, and except with respect to the payment of interest from BEDI Grant funds allocated for such purpose as more particularly described in Section 4.5(b) of this Agreement and the Custodial Agreement, the City shall have no obligation to make disbursements to or for the benefit of Obligor for acquisition of the Property, payment of costs of the Project or otherwise, from any other source. Obligor shall have the right to receive Loan funds only pursuant to the terms and conditions of this Agreement and in accordance with the Act.

1.2 Purpose of Loan. Loan proceeds shall be used by Obligor solely to invest in the CDE to finance predevelopment, non-construction soft costs of the Project in accordance with this Agreement.

1.3 Loan Documentation; Payment of Principal and Interest; Covenant.

(a) Loan Documentation. The Loan shall be evidenced by this Agreement and by the Obligor Note and, together with Obligor's other obligations under the Loan Documents, shall be secured by the Security Agreement. In addition, a covenant has been recorded against the Property, committing to maintain low-income housing at affordable rents to the extent described in Section 5.7(a) below and in Attachment B to this Loan Agreement and containing such other provisions as the City shall require.

(b) Principal and Interest. The principal of and interest on this Loan shall be due and payable in accordance with the terms set forth in the Obligor Note.

1.4 Security.

(a) Security Agreement. The obligations of Obligor under the Loan Documents at all times shall be secured by a security interest in the membership interest of Obligor in the CDE and other collateral (collectively, the "Collateral") pledged by the Security Agreement, subject only to the Subordination and Standstill Agreement between City and Washington Mutual Bank dated _____, the encumbrances permitted in accordance with Sections 2.4, and subject to any other encumbrances, modifications, partial releases or substitutions of security that the OED Director may authorize in writing, in the discretion of the OED Director. The liens and security interests granted pursuant to the Security Agreement shall be perfected, to the extent possible, by filing under the Washington Uniform Commercial Code, and Obligor agrees to take all action reasonably



CITY CLERK

requested by the City or Custodian, and to pay all fees and costs reasonably required to continue such perfection so long as the Loan or any of Obligor's other obligations under the Loan Documents remain outstanding.

(b) Reserve Accounts. Obligor's obligations under the Loan Documents also shall be secured by all funds and investments in all of the accounts now or hereafter established under the Loan Documents, including without limitation, the Custodial Agreement, relating to the Obligor and specifically including without limitation, the respective subaccounts related to the Obligor Note in the Guaranteed Loan Funds Account, the Guaranteed Loan Funds Investment Account, the Loan Repayment Account, the Loan Repayment Investment Account, and the BEDI Grant Reserve Account (all such accounts are collectively referred to herein as the "Reserve Accounts," and to the extent that the Custodian maintains any account for the purpose of more than one loan, all references to any such account, unless the context clearly requires otherwise, shall refer to the subaccount thereof related to the Obligor Note). Obligor hereby pledges to the City, and grants the City a security interest in, all right, title and interest of Obligor, if any, in and to the funds and investments now or hereafter in the Reserve Accounts, and all earnings thereon and proceeds thereof. Obligor agrees that such funds and other assets shall constitute "cash collateral" as described in the United States Bankruptcy Code. Obligor shall promptly take such actions as shall be reasonably requested by the City or Custodian, and pay all fees and costs reasonably required in order to perfect and continue perfection as a first priority lien and security interest, so long as the Loan remains outstanding, the City's security interest in such accounts, the funds and investments therein, and the proceeds thereof. Obligor agrees that, in addition to all other rights and remedies with respect to Reserve Accounts and otherwise under the Loan Documents, immediately upon acceleration of the balance owing on the Loan, whether upon an Event of Default or any other circumstance permitting acceleration, the City shall have the absolute right, without notice or demand, to apply all funds and assets pledged under this Section to amounts owing under the Loan Documents, and for such purpose to liquidate or cause to be liquidated any investments in any commercially reasonable manner, and irrevocably authorizes any Custodian, upon notice from the City of an Event of Default or any other circumstance permitting acceleration, to comply with the City's directions to so apply any or all such funds and assets and to liquidate investments for such purpose.

(c) Rights of City With Respect to Security. Obligor irrevocably agrees that, to the full extent permitted by applicable law, the City may realize upon any security for the Loan in any order, either before, concurrently with, or after either (1) any action to realize upon any other form of security, including without limitation the Collateral pledged by the Security Agreement or (2) any suit or other proceeding on the Obligor Note, in each case without affecting the status of or waiving any rights or remedies under the Loan Documents or with respect to any security. Obligor consents to any and all actions that the City or Custodian may take to release, subordinate, accept substitution for, modify, compromise or waive any or all security with respect to the Loan, and Obligor agrees that no such action shall impair any rights or remedies of the City or Custodian under the Loan Documents.

(d) Perfection of Security Interests. Obligor shall promptly take such actions as shall be reasonably requested by the City or Custodian, and pay all fees and costs reasonably



CITY CLERK

required, in order to perfect and continue the perfection and priority of any and all security interests granted hereunder or pursuant to this Agreement, so long as the Loan remains outstanding. Obligor agrees that, in addition to all other rights and remedies otherwise under the Loan Documents, immediately upon acceleration of the balance owing on the Loan, whether upon an Event of Default or any other circumstance permitting acceleration, the City shall have the absolute right, without notice or demand, to apply all funds and assets granted as security hereunder or otherwise for the Loan, to amounts owing under the Loan Documents, and for such purpose to liquidate or cause to be liquidated any investments in any commercially reasonable manner, and irrevocably authorizes any Custodian, upon notice from the City of an Event of Default or any other circumstance permitting acceleration, to comply with the City's directions to so apply any or all such funds and assets and to liquidate investments for such purpose.

1.5 Loan Fee. Obligor shall pay to City a loan fee of Twenty Three Thousand Nine Hundred Eighty Seven Dollars ($23,987), representing one percent (1%) of the amount of the Loan, payable to or as directed by the City upon and from the first disbursement of Loan funds hereunder, payment of which loan fee is in addition to Obligor's duty to pay City's costs and fees pursuant to Section 1.6 of this Agreement.

1.6 Obligor's Payment of Costs and Fees. Obligor shall pay to City or at City's direction, as and when due, all other costs and fees of whatever nature incurred by City (whether or not with recourse to the City) in connection with the Loan, including without limitation, fees and costs incurred by the City pursuant to the HUD Contract and City Note (except for those items estimated below, to be allocated on a pro rata basis according to the total principal amount outstanding on the Obligor Note and the City Note at the time fees or costs are incurred from time to time). The costs and fees payable by Obligor shall include, without limitation, (i) any and all charges and costs billed by the Fiscal Agent in respect of the Corresponding Portion of the City Note under the Amended and Restated Master Fiscal Agency Agreement among HUD and The Chase Manhattan Bank (now known as JPMorgan Chase Bank) as Fiscal Agent ("Fiscal Agent") dated as of May 17, 2000; (ii) on and after the Conversion Date, any charges and costs in respect of the Corresponding Portion of the City Note billed by the trustee under that certain Trust Agreement by and between HUD and Chemical Bank, as Trustee, dated as of January 1, 1995, as now and hereafter amended and supplemented, and under any other trust agreement or similar instrument that may be executed by HUD in connection with a public offering conducted with respect to notes guaranteed by HUD under the Section 108 program (each such offering is referred to herein as a "Public Offering") that involves the City Note, (iii) fees and costs of the Custodian in connection with the Custodial Agreement, Letter Agreements and BEDI Grant Reserve Account; (iv) fees and costs of the City's outside counsel and the Custodian's outside counsel; and (v) costs in connection with Closing. Such fees and costs as of the date of Closing are estimated (but not guaranteed) to be as follows: Custodian's initial fee and first annual fee: $356.16; City's counsel fees and costs: $_____; Custodian's outside counsel fees and costs: $N/A; Fiscal Agent fee: $70; escrow and other costs: $_____; Bank fees and costs: _____. These estimates do not include the following, which shall also be paid by Obligor: the fees described in Section 1.5; fees and costs of the Custodian, if any, other than the initial set-up fee; and any fees or costs of the City's outside counsel or Custodian's outside counsel incurred after the date of Closing, including without limitation, in connection with a Public Offering, and as may be incurred in case of breach or failure



CITY CLERK

to perform by Obligor or in case of any litigation arising in connection with this Agreement. The City agrees that, if Obligor is in full compliance with the terms of this Agreement and subject to HUD approval, funds in the amount of up to One Hundred Six Thousand Two Hundred Forty-Three Dollars ($106,243) may be disbursed from the BEDI Grant Reserve Account to cover fees and costs described above in this paragraph. Each such payment from such account shall constitute a grant of BEDI funds to Obligor.

1.7 City Funds Not Obligated. The Loan will be made only from non-City funds that the Custodian receives under the HUD Contract and City Note, and interest subsidy payments in accordance with Section 4.5(b) hereof will be made only from funds deposited in the BEDI Grant Reserve Account. In accordance with RCW 35.21.735, the City Note, and any payments or obligations under the HUD Contract and any documents or agreements relating thereto, including without limitation this Loan Agreement shall be a valid claim only against and payable solely from, the Accounts held by the Custodian and from the security pledged under the HUD Contract, and shall not be an obligation of The City of Seattle or the State of Washington, and neither the faith and credit nor the taxing power of the City or State or any municipal corporation or subdivision of the State or any agency of any of the foregoing is pledged to the payment of principal, interest or premium, if any, on the City Note or for any amounts due under the HUD Contract or any documents or agreements relating thereto including without limitation this Agreement. Nothing herein shall constitute a debt or indebtedness of the City payable from public funds within the meaning of any constitutional or statutory limitation on the incurrence of debt. Obligor agrees and acknowledges that this Agreement does not create any recourse to or claim upon the City's general fund, or any other funds of the City, and Obligor hereby disclaims any such claim.

1.8 Application of Payments. So long as the City or the Custodian shall have received, in immediately available funds and in the manner required hereunder, timely payments of interest and principal on the Obligor Note in the amounts required thereunder, the City shall apply or cause the Custodian to apply such payments to payment of interest on and the principal of the City Note, as such interest and principal shall become due.

1.9 Acceleration on Certain Events. The City shall have the absolute right, in its discretion, to declare all or any part of the principal balance owing on the Loan immediately due and payable in the event that:

(a) HUD or any court of competent jurisdiction shall determine that the Loan or the issuance of the City Note must be terminated, canceled or rescinded for failure to comply with the Act or other applicable law, or that for any reason any City Note cannot be issued or cannot be guaranteed by HUD; or

(b) HUD shall notify the City that any or all of the City Note cannot be included in the pool of notes for purposes of a scheduled Public Offering for any reason, and that HUD or the holder of the City Note is not willing to allow the interim terms of the City Note to remain in effect pending a later public offering;



Ens CITY CLERK

provided, that unless otherwise required by HUD or by the effect of a court order, Obligor shall be allowed a period of ninety (90) days after notice to Obligor thereof to seek to have such determination reversed or rescinded, or the effect thereof stayed, prior to acceleration of all or any part of the principal balance. If any such stay is obtained, then the City shall have the right to accelerate all or part of the principal balance immediately upon the lifting or termination of such stay.

## ARTICLE II – OBLIGOR'S REPRESENTATIONS, WARRANTIES AND COVENANTS

In order to induce City to make the Loan and to cause the Custodian to draw funds subject to the HUD Contract, Obligor represents, warrants and covenants as set forth below in this Article II as of the date hereof, as of the date of Closing, and at all times any of the principal of or interest on the Loan remain outstanding. These representations, warranties and covenants shall survive the execution, delivery and performance of the Loan Documents.

2.1 Organization of Obligor; Authority to Enter into Agreement. Obligor is a limited liability company, duly organized and validly existing pursuant to the laws of the State of Washington. Obligor has the right and power to own all of its properties and to transact the business in which it is currently engaged or proposes to engage, and Obligor has full power and authority to enter into this Agreement, to borrow money as contemplated herein and to execute and perform the provisions of the Loan Documents. The execution, delivery and performance of this Agreement, and the other Loan Documents have been duly authorized by all necessary corporate action, and no other action of Obligor or any other party is required for the execution, delivery and performance of this Agreement or the other Loan Documents. This Agreement and the other Loan Documents constitute valid and binding obligations of Obligor, each enforceable in accordance with their respective terms.

2.2 Nondiscrimination, Fair Contracting Practices, WMBE.

(a) During the performance of this Loan Agreement, Obligor and any party contracting with Obligor in connection with the Project (whether or not to be paid from Loan funds) shall not discriminate on the basis of race, color, sex, religion, national origin, creed, marital status, sexual orientation, gender identity, age or the presence of any sensory, mental or physical handicap in employment or application for employment or in the administration or delivery of services or any other benefits under this Loan Agreement. The Obligor shall comply fully with, and ensure that each such other party complies fully with, all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit such discrimination. These laws include, but are not limited to, Chapter 49.60 of the Revised Code of Washington, Titles VI and VII of the Civil Rights Act of 1964 and Chapter 14.04 of the Seattle Municipal Code.

(b) Each party is required to comply with the Fair Contracting Practices Ordinance of The City of Seattle (Ordinance 119601), as amended. Conduct made unlawful by that ordinance constitutes a breach of contract. Engaging in an unfair contracting practice may also result in the imposition of a civil fine or forfeiture under the Seattle Criminal Code as well as various civil remedies.



CITY CLERK

(c) Affirmative Efforts to Utilize WMBEs. The City encourages the utilization of minority owned businesses ("MBEs") and women-owned businesses ("WBEs") (collectively, "WMBEs"), in contracts funded by the City. The City encourages, and Obligor shall encourage with respect to the Project, the following practices to open competitive opportunities for WMBEs:

(1) Attending a pre-bid or pre-solicitation conference, if scheduled by the City or Obligor, to provide project information and to inform WMBEs of contracting and subcontracting opportunities.

(2) Placing all qualified WMBEs attempting to do business in the City on solicitation lists, and providing written notice of subcontracting opportunities to WMBEs capable of performing the work, including without limitation all businesses on any list provided by the City, in sufficient time to allow such businesses to respond to the written solicitations.

(3) Breaking down total requirements into smaller tasks or quantities, where economically feasible, in order to permit maximum participation by small businesses including WMBEs.

(4) Establishing delivery schedules, where the requirements of this contract permit, that encourage participation by WMBEs.

(5) Providing WMBEs that express interest with adequate and timely information about plans, specifications, and requirements of the contract.

(6) Utilizing the services of available minority community organizations, minority contractor groups, local minority assistance offices, the City, and other organizations that provide assistance in the recruitment and placement of WMBEs.

Obligor shall maintain, for at least twelve (12) months after completion of the Project, all bids or proposals from general contractors for the Project, and relevant records and information necessary to document level of utilization of WMBEs and other businesses as subcontractors and suppliers on the Project. Obligor shall require that the general contractor maintain and provide to the City on request all written quotes, bids, estimates, or proposals submitted to the contractor by all businesses seeking to participate as subcontractors or suppliers on the Project. The City shall have the right to inspect and copy such records. Obligor and the general contractor shall comply with all record-keeping requirements set forth in any federal rules, regulations or statutes included or referenced in this Agreement or the contract documents. Nothing in this Section shall be construed to require or authorize any discrimination or preferential treatment contrary to applicable law.

2.3 No Litigation. There are no actions, suits or proceedings pending, or to the knowledge of Obligor threatened, against or affecting Obligor or the Property in any court of law or in equity, or before or by any governmental or municipal authority.



ens CITY CLERK

2.4 Title. Obligor is, or shall be prior to the release of any proceeds of the loan from the escrow established for the disbursement thereof, the owner of the Collateral. The QALICB shall be the owner in fee simple absolute of the Property.

(a) The Collateral is and shall be subject to no liens or encumbrances except the Subordination and Standstill Agreement between City and Washington Mutual Bank dated _____;

(b) The Property is and shall be subject to no liens or encumbrances except:

(i) The Deed or Deeds of Trust held by ESIC New Markets Partners XXI Limited Partnership, a Maryland limited partnership, securing one or more loans to QALICB in the cumulative amount not to exceed $10,701,867, with a term loan of no less than seven (7) years;

(ii) Use covenant recorded against the Property that requires the Project to have, for minimum period of 20 years, at least 59 dwelling units on the Property, and in any event no less than 51% of the total dwelling units on the Property which will be initially occupied by low- and moderate-income households as defined in 24 C.F.R. Section 570.3 ("LMIHs"), and at least 11,000 net rentable square feet for neighborhood retail, professional and personal services, restaurants and office space that support development of the 23rd and Jackson business node.

(iii) Any other encumbrances in favor of the City;

(iv) Liens for property taxes or assessments on the Property not yet due; and

(v) Any other liens approved in writing by the City and, to extent required by the HUD Contract, HUD.

2.5 Covenants, Zoning, Codes and Permits. Obligor covenants that from and after _____, 2014, the Property and its uses will at all times comply in all material respects with, all applicable zoning and land use codes, building and construction codes, fire codes, environmental statutes and regulations, and other laws, ordinances, and regulations applicable to the development and operation of the Property, including without limitation, the Americans with Disabilities Act. All permits, consents, approvals or authorizations by, or registrations, declarations, withholding of objections or filings with any governmental body necessary in connection with the valid execution, delivery and performance of this Agreement, or necessary for the present and intended operations of the Property, have been obtained or will be obtained in due course as required to permit timely completion and continuous operation of the Project thereafter, and shall be valid, adequate and in full force and effect.

2.6 Description of the Project. The description of the Project set forth in Attachment B hereto is accurate and complete in all material respects. The Project shall be carried out as



BOS CITY CLERK

described in Attachment B, subject to all of the conditions and requirements of this Agreement and the other Loan Documents.

2.7 Compliance With Documents. Obligor is and will remain in full compliance with all of the terms and conditions of this Agreement and the other Loan Documents, and any and all other material agreements, instruments or other documents affecting the Property, and no occurrence has or shall have occurred and be continuing, which, with the passage of time or the giving of notice, or both, would constitute a default under any of the foregoing.

2.8 Taxes Are Paid. Obligor has filed all material tax returns that are required and has paid or made provision for the payment prior to the last day on which payment may be made without interest or penalty of all taxes that have or may become due pursuant to said returns or pursuant to any assessments levied against the Obligor or its personal or real property by any taxing agency, federal, state or local, and Obligor has withheld any paid over to proper authorities all withholding taxes required by law. No due or overdue tax liability or lien has been asserted by the Internal Revenue Service or other taxing agency, federal, state or local, and the Obligor knows of no basis for any such deficiency assessment or lien.

2.9 TIN. Obligor's federal tax identification numbers is:_____.

## ARTICLE III – CONDITIONS PRECEDENT TO LOAN CLOSING

The City's obligation to perform its duties under this Agreement, including without limitation causing disbursement of any funds, shall be subject to the full and complete satisfaction of the following conditions precedent:

3.1 Documents. City shall have received fully executed originals of each of the following, each of which shall have been duly authorized, executed (and acknowledged where appropriate) and delivered by the parties thereto, and shall be in form required by this Agreement, with such modifications as may be approved by the City in accordance with the Ordinance: this Agreement; the Obligor Note; the Security Agreement; any other security documents required by the City pursuant to Section 1.4 hereof, and such other documents as City shall reasonably request.

3.2 Evidence of Establishment of BEDI Grant Reserve Account. The City shall have received evidence satisfactory to it that the BEDI Grant Reserve Account has been established as an irrevocable reserve for the payment of interest on the Loan and City Note, and other costs allowed hereunder, under terms consistent with the provisions of Section 4.5 of this Agreement and otherwise satisfactory to the City in form and substance.

3.3 Evidence of Authority; Officer's Certificate. City shall have received evidence satisfactory to it that Obligor and the persons signing on behalf of Obligor have the capacity and authority to execute and deliver Loan Documents on behalf of Obligor, including, but not limited to, a copy of Obligor's operating agreement and appropriate resolutions authorizing the transactions contemplated hereby, all as certified by an officer of Obligor as true, complete and in full force and



CITY CLERK

effect. City shall have received a Certificate of Obligor, executed by a duly authorized officer of Obligor, in form and content acceptable to the City.

3.4 Legal Opinions.

(a) City shall have received a legal opinion, containing reasonable and customary exclusions and qualifications, and in form and content reasonably satisfactory to City and the City's counsel, and sufficient to support such counsel's opinion as required by HUD, from Obligor's counsel, who shall be satisfactory to City, confirming among other matters reasonably requested by the City, that:

(1) Obligor is duly organized and validly existing as a limited liability company in the State of Washington;

(2) Obligor has the corporate power and authority to execute and deliver the Loan Documents to be executed by Obligor and to perform all of its obligations thereunder;

(3) The execution and delivery of the Loan Documents by Obligor do not, and the transactions contemplated by the Loan Documents will not, violate any laws or regulations applicable to Obligor and will not conflict with and will not cause a default under (i) any provisions of the Obligor's charter, bylaws or other governing documents, or (ii) any other material agreements, instruments, judgments, decrees, orders or undertakings known to such counsel after reasonable inquiry by which Obligor is bound or to which the Collateral is subject; and

(4) The Loan Documents have been duly authorized, executed and delivered by Obligor, and constitute the legal, valid, binding obligations of Obligor, enforceable in accordance with their terms.

(b) The City shall have received such additional items as may be required pursuant to the HUD Contract, including without limitation, an opinion of counsel to the City.

3.5 Additional Conditions Precedent to Each Advance of Funds.

As conditions to any right of Obligor to any advance hereunder:

(a) The City shall have received such additional documents and further assurances as it may reasonably request or which are required by HUD or any federal, state or county regulatory agency.

(b) Obligor shall be in full compliance with, and shall not be in breach or default under, this Agreement, any of the other Loan Documents; provided, however, that City may, in its discretion, elect to make advances notwithstanding the existence of Obligor's noncompliance or default, and any advance so made shall be deemed to have been made pursuant to this Agreement and secured by the Security Agreement.



CITY CLERK

(c) Neither the Property nor any part thereof shall have been materially damaged, destroyed, condemned or threatened with condemnation.

(d) No order or notice shall have been made by, or received from, any governmental agency having jurisdiction stating that the Property, its current or intended uses, or the Project, is or will be in violation of any law, ordinance, code or regulation affecting the Property.

(e) The representations and warranties of Obligor contained herein shall remain accurate in all material respects as of the date of the requested disbursement.

(f) Neither HUD nor any court of competent jurisdiction shall have determined that the issuance of the City Note or the making of the Loan must be terminated, canceled or rescinded for failure to comply with the Act or other applicable law, or that for any reason any City Note cannot be issued or cannot be guaranteed by HUD.

ARTICLE IV – LOAN DISBURSEMENTS AND REPAYMENTS; RESERVE ACCOUNTS

4.1 Single Disbursement to Finance Non-Construction Development Soft Costs. Conditioned upon receipt of proceeds of the City Note and satisfaction of all other applicable conditions to Loan disbursements under this Agreement, Loan funds in the amount of Two Million Three Hundred Ninety Eight Thousand Seven Hundred Ninety Four Dollars ($2,398,794), less any fee charged by HUD or the Fiscal Agent for such disbursement, shall be applied to non-construction development soft costs of the Project, the Loan fee payable to the City in accordance with Section 1.5 of this Agreement, and other fees and costs due and payable pursuant to Section 1.6 of this Agreement. To the extent that final information as to any costs payable by Obligor hereunder is not available at the time of Loan closing, the City may instruct the closing agent or Custodian to hold back a reasonable amount, as determined by the City, to cover such costs when known, and after such costs have been determined and paid, to disburse any remainder first to the Obligor to reimburse any eligible acquisition or Closing costs paid by Obligor from other funds, and then the residue, if any, to the Loan Repayment Account. Borrower shall not be entitled to any subsequent disbursement of Loan funds. The City acknowledges that all or a portion of the costs to be covered by the Loan may be initially funded with loan proceeds provided by Enterprise Community Loan Fund, Inc. ("Enterprise"), and the Loan will reimburse Enterprise for its initial funding of such costs.

4.2 Other Conditions to Disbursement. Each of following is a condition to any right of Obligor to disbursement of Loan funds (along with all other applicable conditions to Loan disbursements under this Agreement):

(a) The OED Director has determined that Obligor has submitted a written disbursement request with sufficient documentation itemizing non-construction development soft costs that have been initially funded by Enterprise or have yet to be funded, together with invoices supporting the disbursement request.



CITY CLERK

(b) Obligor establishes or causes to establish a cash account (on terms acceptable to the City) in the amount of $141,437, which amount the OED Director has determined is needed for the Property to maintain a debt service coverage ratio of 1.2. The cash account may be released upon the OED Director's determination that over a minimum period of three consecutive years, the net operating income from the Project is sufficient to meet or exceed a debt service coverage ratio of 1.2.

(c) Obligor establishes or causes to establish separate cash accounts (on terms acceptable to the City) in the amount of $50,000, representing a capital reserve for the Project, and in the amount of $25,000, representing an operating reserve for the Project.

4.3 Request for Interim Funding Advance; Interest to Run from City Note Funding; Cancellation upon Failure to Satisfy Closing Conditions; Payment of City's Costs. Obligor acknowledges and confirms that it has requested that the City request of HUD an advance on the City Note to be made in the maximum amount of the Loan hereunder. The City has submitted a request for funds to HUD, but the City shall not be liable or responsible for any failure or delay by HUD, the Fiscal Agent or the interim purchaser of the City Note, or for any delay in the process of transferring funds to the Custodian and to the escrow agent. Regardless of the actual date of funding of the development of the Property, interest shall run from the date of the advance on the City Note. If funds are disbursed by HUD on the City Note, but the conditions to disbursement of funds to Obligor are not fully satisfied within fifteen (15) days thereafter, then the City shall have the right to cancel this Agreement, and Obligor shall then pay on demand all fees and costs of the Custodian and Fiscal Agent, and shall reimburse the City for all reasonable fees and costs of its outside counsel and consultants incurred in connection with this Loan, but shall not be liable for the Loan fee described in Section 1.5 of this Agreement. In addition, if this Loan Agreement shall be canceled under this Section after proceeds of the City Note shall have been disbursed to the Custodian, then the Obligor shall pay to the Custodian on demand an amount equal to all interest that shall accrue on the Corresponding Portion of the City Note from the date of such disbursement to the date of redemption thereof, less net earnings actually received (if any) by the Custodian on the proceeds of the City Note disbursed to the Custodian for this Loan, prior to such redemption.

4.4 Reserved.

4.5 Loan Repayment Account.

(a) Monthly Deposits. Commencing in the first month disbursement of principal of the City Note in respect of the Obligor Note is to be made, Obligor shall make monthly installment payments to the Custodian for deposit in an account maintained by the Custodian for the accumulation of funds for payments on the Obligor Note (the "Loan Repayment Account," established under the Custodial Agreement and Letter Agreements), in order that the Custodian shall have sufficient funds to pay installments on the Obligor Note as they come due (each such due date being an "Obligor Note Payment Date"). Obligor shall pay to the Custodian on each Deposit Day, the Interest Component and the Principal Component, each for deposit into the Loan Repayment Account. Funds in the Loan Repayment Account shall be used to make payments on



BDS CITY CLERK

the City Note as they come due. Each such monthly deposit shall be due and payable, in immediately available funds, on the "Deposit Day," which shall be the fifteenth (15th) day of the month, or if such day is not a Business Day, then on the previous Business Day; subject to adjustment in respect of any Conversion Date. Subject to the provisions of Section 4.5(b) hereof, the Interest Component payable each month shall be in an amount equal to the interest accrued and to accrue on the Obligor Note during that entire calendar month, except that the Interest Component shall be adjusted ratably in any month the Loan is not outstanding for the entire month. Each Principal Component shall be one-twelfth (1/12th) of the total principal coming due on the Obligor Note on the next Obligor Note Payment Date on which principal shall become due, except that (i) the Principal Component on each Deposit Day during the period from the date hereof to the first such Obligor Note Payment Date shall be the principal amount then falling due divided by the number of Deposit Days scheduled to occur during such period; and (ii) the Principal Component for each Deposit Day after July 15, 2026 shall be limited (but not reduced below zero) so that the total of the Principal Component and Interest Component does not exceed the total of such amounts required on the last Deposit Day falling on or before July 15, 2026. Except as provided in Section 4.5(b) below, Obligor shall not be entitled to any reductions in, or credits against, deposits to the Loan Repayment Account based upon interest or earnings credited to the Loan Repayment Account, the Loan Repayment Investment Account or the BEDI Grant Reserve Account. The Obligor hereby irrevocably assigns all of its right, title and interest, if any, in funds deposited in the subaccounts of the Loan Repayment Account, Loan Repayment Investment Account and BEDI Grant Reserve Account related to the Obligor Note, to the Custodian and the City, and shall have no residual interest in any portion of such Reserves.

(b) Interest Subsidy. The City agrees that funds in the amount of One Hundred Forty-Two Thousand Three Hundred Twenty Three Dollars ($142,323), derived solely from a BEDI Grant, shall be used to pay interest first coming due on the Corresponding Portion of the City Note. Each such payment of interest shall constitute a grant to the Obligor when the funds are applied to payment on the Obligor Note under Section 4.5(c). Obligor shall not be required to deposit an Interest Component until the month before the month in which the cumulative interest accruing on the Corresponding Portion shall exceed the amount set forth above in this subsection (b).

(c) Transfers Authorized; Crediting Payments on Obligor Note. The Custodian is hereby irrevocably authorized to transfer from the Loan Repayment Investment Account to the Loan Repayment Account on each Obligor Note Payment Date, funds in the full amount due on the Obligor Note on each such date, and so long as no Interest Component is required from the Obligor, to transfer from the BEDI Grant Reserve Account, the amount of the Interest Component that would be required from the Obligor but for the terms of Section 4.5(b). The Custodian is then authorized and directed to apply funds in the Loan Repayment Account to the timely payment of amounts due on the Corresponding Portion of the City Note. The Obligor further agrees that upon direction of the City, the Custodian may apply funds in the BEDI Grant Reserve Account to make any payments on the Corresponding Portion for which there are insufficient funds in the Loan Repayment Account as a result of failure by Obligor to pay funds to the Custodian for deposit therein as required hereunder, but no application of any funds in any account to payments on the Obligor Note shall waive or reduce any such required payments from Obligor. Obligor's monthly



CITY CLERK

installment payments into the Loan Repayment Account shall not constitute payments under the Obligor Note. Obligor shall be credited with the payment of interest and principal on the Obligor Note only when and solely to the extent that funds on deposit and/or transferred to the Loan Repayment Account under this Section 4.5(c), not including any amounts in the Loan Loss Reserve, are applied to the payment of the Corresponding Portion of the City Note, except that if all amounts necessary to pay all amounts owing on the Obligor Note are on deposit in the Loan Repayment Account on the final maturity date of the Obligor Note, such amounts shall be credited on such maturity date. The Custodian is further irrevocably authorized by Obligor to liquidate investments in the Loan Repayment Investment Account and BEDI Grant Reserve Account, in the Custodian's discretion, and without liability for any loss on any such liquidation, for the purposes described in this Section 4.5(c). The authorization by Obligor in this Section 4.5(c) is in addition to, and not in limitation of, the authorization in Section 1.4 above.

(d) Investment of Funds; Earnings Remain on Deposit. Funds in the Loan Repayment Account and BEDI Grant Reserve Account shall be invested at the direction of City, but only in instruments that mature (or are redeemable without penalty) within six (6) months and in any event no later than five (5) Business Days before the next Obligor Note Payment Date, and that are guaranteed as to payment of principal by the United States Government, or in money market funds that invest solely in such instruments. All earnings in the Loan Repayment Account and BEDI Grant Reserve Account shall remain therein until applied in accordance with this Agreement, or until all amounts owing under the Loan Documents have been paid in full, or in the case of the BEDI Grant Reserve Account, until any earlier date when any right of the Obligor to have amounts in such Account applied for its benefit shall have terminated hereunder. When all amounts owing under the Loan Documents have been paid in full, then the remaining balance shall be disbursed to or upon the order of the City.

(e) Late Charge. If any deposit required to be made into the Loan Repayment Account is not received within ten (10) days after the date when such deposit is due, in addition to additional interest required to be paid in accordance with the Obligor Note, Obligor agrees to pay a late charge equal to five percent (5.0%) of the amount past due, as compensation to the City and Custodian for the staff time and resources required to handle such delinquencies, and not as a penalty. Such late charges shall not be credited to the Loan Repayment Account, but shall be retained by the City and/or Custodian. Late charges under this Section are in addition to, and not in substitution for, the other remedies provided in the Loan Documents.

4.6 Application of Payments. Any amounts to be applied to the Obligor Note in accordance with this Agreement shall be applied first to accrued interest on the Obligor Note, next to any premium then due, and the balance, if any, to reduction of principal.



CITY CLERK

## ARTICLE V – OBLIGOR'S LOAN COVENANTS

In addition to other obligations of the Obligor hereunder, Obligor covenants and agrees as follows:

5.1 General. From and after the date hereof and so long as any amount remains unpaid on the Obligor Note, or for so long as any commitment exists to extend credit hereunder, Obligor covenants and agrees that it will:

(a) Promptly pay principal, interest and premium (if any) pursuant to the Obligor Note as and when the same becomes due and payable, and make any and all other payments and deposits required by the Loan Documents;

(b) Preserve and keep in full force and effect its existence as limited liability companies under the laws of the State of Washington;

(c) Maintain and preserve the Collateral, and from and after _____, 2014, maintain, preserve and keep the Property, improvements thereon, and all equipment used in connection therewith in good repair, working order and condition, ordinary wear and tear excepted, and from time to time make all necessary repairs, renewals, replacements and additions thereto so that at all times the efficiency thereof shall be fully preserved and maintained.

5.2 Commencement and Completion of Construction. Permanent certificates of occupancy for all space in the rehabilitated buildings on the Property shall be obtained no later than December 31, 2008.

5.3 Compliance with Laws. Conduct its business affairs in a reasonable and prudent manner and in compliance with all applicable laws, ordinances, rules and regulations and executive orders of federal, state, county or municipal governments or agencies now in force or which may be enacted hereafter. From and after _____, 2014, all use and operation of the Property and Project, and all work performed in connection with the Property and Project shall comply in all material respects with all applicable laws, ordinances, rules and regulations and executive orders of federal, state, county or municipal governments or agencies now in force or which may be enacted hereafter.

5.4 Inspections. Permit the City and its representatives at any reasonable time to inspect any and all Collateral and Obligor's other properties and to examine or audit Obligor's books, accounts, and records and to make copies and memoranda of Obligor's books, accounts and records. From and after _____, 2014, City and its representatives shall have the right, subject to the rights of tenants on the Property, at all reasonable times after three (3) days' prior written notice during regular business hours (and at any time in the event of an emergency) to enter upon the Property and inspect the Property to determine that the same is in conformity with this Agreement and all laws, ordinances, rules and regulations. City shall have the further right, from time to time, to inspect and copy Obligor's books and records relating to the Property. Without limiting the foregoing, Obligor shall permit City to examine and copy all books, records and other



CITY CLERK

papers relating to Obligor's use of the Loan proceeds and to Obligor's compliance with this Agreement, the Act and applicable provisions of federal, state, and local laws, ordinances, rules and regulations.

5.5 Notify City of Litigation or Complaints. Obligor shall promptly notify City in writing of all litigation or threatened litigation involving the Collateral, the Property or any part of the Property, and any other litigation that reasonably could have a material adverse affect on the financial condition of Obligor, and of all complaints or charges made by any governmental authority affecting the Property or Obligor which may require changes in the development or use of the Property.

5.6 Waiver of Immunity.

**Obligor waives, after mutual negotiation, and with respect to the City only, its immunity under RCW Title 51, Industrial Insurance.**

**Initials: Obligor: ____ City: _____**

5.7 Federal Regulations. Obligor acknowledges that the Loan is to be made with funds received by the Custodian under the Section 108 program of the Act and that such funds are subject to CDBG program regulations of HUD, and certain other federal laws and regulations. Accordingly, Obligor agrees, represents and warrants that Obligor shall comply with all applicable requirements under HUD regulations for the CDBG program and under other laws and regulations applicable to loans of such federal funds, including without limitation those cited in this Section 5.7, and shall comply with all of the provisions below, some of which extend beyond federal requirements:

(a) Benefit to Low- and Moderate Income Individuals. Loan funds shall be used for acquisition, after rehabilitation, of the Property. Use of funds shall satisfy the CDBG national objective of benefit to low- and moderate-income individuals (as defined by HUD for CDBG purposes) and the eligible activity criteria of acquisition under 24 CFR 570.703(a).

For a twenty (20) year period following the issuance of a final certificate of occupancy, at least fifty-one percent (51%) of the residential units of the Project shall be rented to and occupied by households with incomes at or below eighty (80%) percent of Median Income at rents affordable to households with incomes at 80% of Median Income. Rents shall be considered affordable to such households if the total monthly rent, plus a reasonable allowance approved by the City for any utilities to be paid by the tenant, does not exceed one-twelfth of thirty percent (30%) of 70% of Median Income for a presumed family size based on the size of unit, as follows: studio -- one person; one-bedroom, 1.5 persons; two bedrooms 3 persons; three bedrooms 4.5 persons; four bedrooms 6 persons. Where the presumed family size is not an integer, the average of the income limits for the next higher and lower integral family sizes will be used. Obligor shall use the definition of annual income set forth in subsection (1) (i) in the definition of "income" under 24 CFR 570.3. "Median Income" means annual median family income, as published from time to time by HUD, for the Seattle-Bellevue-Everett Primary Metropolitan Statistical Area, or for the



EDS CITY CLERK

Seattle-Bellevue-Everett Division of the Seattle-Tacoma-Bellevue Metropolitan Statistical Area, whichever is then generally used by HUD to establish income limits for federal programs, or such other area including Seattle as HUD may use from time to time for the purpose of publishing median income, and as adjusted for household size according to the method used by HUD for income limits in subsidized housing. If, at any time, Median Income for a household size cannot be determined under the foregoing sentence based on data published by HUD for the Seattle area within the most recent thirteen months, then the City may determine "Median Income" for such household size based on any data for the Seattle area or an area including Seattle, published or reported by a federal, state, or local agency, as the City shall select in its sole discretion, adjusted for household size in such manner as the City shall determine in its sole discretion.

The Project shall also result in the creation of at least twelve (12) new permanent jobs (full-time equivalent) at the Property. The Project is located in a census block group having a poverty rate of at least 20% and is not located within the City's central business district. As such, all jobs created for the Project will be presumed to benefit low- and moderate-income individuals, pursuant to Section 570.208(a)(4)(iv) and (v).

(b) Nondiscrimination. No person shall on the grounds of race, color, national origin, religion or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with CDBG funds. Obligor shall comply fully with all requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., which provides that no person in the United States shall on the ground of race, color or national origin, be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance; and with Department of Housing and Urban Development ("HUD") regulations implementing such requirements, 24 C.F.R. Part 1.

Obligor shall comply with all of the requirements and prohibitions of 24 C.F.R. Section 570.602, implementing the nondiscrimination requirements of Section 109 of the Housing and Community Development Act of 1974, as amended; those of the Americans with Disabilities Act, and regulations at 28 C.F.R. Parts 35 and 36 thereunder; those of HUD regulations under the Age Discrimination Act of 1975, 42 U.S.C. Section 6101 et seq., at 24 C.F.R. Part 146; and those of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794), and implementing regulations at 24 C.F.R. Part 8. Obligor shall include, in any instrument effecting or recording any transfer of its interest in the Property, the covenant required by 24 C.F.R. Section 8.50 with regard to compliance with regulations under Section 504 of the Rehabilitation Act of 1973.

Obligor shall ensure compliance with Executive Order 11246, entitled "Equal Opportunity", as amended, and the regulations issued pursuant thereto, 41 C.F.R. Part 60, which provide that no person shall be discriminated against because of race, color, religion, sex or national origin in all phases of employment during the performance of federal contracts and subcontracts, and Obligor shall take affirmative action to ensure fair treatment in employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training or apprenticeship. The



CITY CLERK

"equal opportunity clause" set forth in 41 C.F.R. Section 60-1.4(a) is hereby incorporated by reference as though fully set forth, with Obligor as "Contractor" thereunder. Obligor shall cause the appropriate "equal opportunity clause" to be set forth in each "federally assisted construction contract" (as defined in 41 CFR Section 60-1.3, including subcontracts) for the Project, except as expressly exempted under 41 C.F.R. Part 60.

No otherwise qualified handicapped individual in the United States shall, solely by reason of handicap, be excluded from the participation in, be denied the benefits, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(c) Conflict of Interest. Obligor shall ensure compliance with the provisions of 24 CFR Section 570.611, which provide generally that no officer, agent, employee, consultant or elected or appointed official of The City of Seattle, or of a designated public agency, or of any subrecipient receiving CDBG funds, who exercises or has exercised any functions or responsibilities with respect to activities assisted by CDBG funds or who is in a position to participate in a decision-making process or gain inside information with respect to these activities, shall obtain any financial interest or benefit from, or have any financial interest in, the activity funded under this Loan Agreement or any contract or subcontract or agreement with respect thereto or the proceeds thereof, for himself or herself or those with whom he or she has business or immediate family ties; nor shall (s)he for one year after completion of his or her tenure with the City or such subrecipient obtain or have any such financial interest or benefit. Obligor shall incorporate in all such contracts or subcontracts a provision prohibiting any conflict of interest prohibited by this subsection.

(d) Debarred Contractors. No portion of the Loan shall be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund, any contractor or subrecipient during any period of debarment, suspension, or placement in ineligibility status of such contractor or subrecipient under the provisions of 24 C.F.R. Part 24. Obligor represents and warrants that neither Obligor nor its principals is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in federal assistance programs under such regulations or Executive Order 12549, "Debarment and Suspension." Obligor shall obtain, and shall require contractors and subcontractors to obtain, the certification required by appendix B of 24 CFR part 24 from each prospective contractor or subcontractor on the Project.

(e) Lobbying. Obligor hereby certifies and agrees as follows, in accordance with 31 U.S.C. Section 1352, to the best of its knowledge and belief:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of Obligor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;



CITY CLERK

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal loan, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

(3) It will require that the language of this Section be included in the award documents for subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is made a prerequisite for making or entering into this transaction by section 1352, title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

(f) Davis-Bacon and Related Acts. Obligor shall comply with any and all applicable requirements of the Davis-Bacon Act and related acts. These requirements include, but are not limited to: language within each contract for construction work; payment of prevailing wages and fringe benefits; the submittal of various documents as evidence of compliance; withholding of funds; equal employment opportunity; and work hours.

The requirements are defined in the: Davis-Bacon Act, 40 U.S.C. Section 276(a) et seq.; Contract Work Hours and Safety Standards Act, 40 U.S.C. Section 328 et seq.; Copeland Act (Anti-Kickback Act), 18 U.S.C. Section 874; the Fair Labor Standards Act, and regulations under such Acts, including 29 C.F.R. Parts 3 and 5. If under other applicable law or any other agreement with respect to the Project, minimum levels of wages or benefits are required, then Obligor shall ensure compliance with such levels, and if both Davis-Bacon Act requirements and any other such requirements shall apply, then Obligor shall ensure compliance with higher of the applicable levels.

(g) Economic Opportunities for Low- and Very Low-Income Persons. Obligor shall comply, and cause all contractors and subcontractors to comply, with any and all applicable provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, the purpose of which is to ensure that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. Obligor shall comply, and shall require all contractors and subcontractors to comply, with all applicable provisions of regulations issued pursuant thereto by the Secretary of HUD and set forth in 24 C.F.R. Part 135, and with all applicable rules and orders of HUD issued thereunder.

(h) Relocation and Acquisition. Obligor represents, warrants and agrees that no residential tenants have been or will be displaced in connection with the Project and the Obligor has taken and shall take all reasonable steps to minimize the displacement of persons (families,



CITY CLERK

individuals, businesses, nonprofit organizations, and farms) in connection with the Project. If the Obligor or its affiliate has acquired or entered into an agreement to acquire real property for the Project, then Obligor represents and warrants that prior to making an offer for such property, (1) Obligor or such affiliate clearly advised the owner in writing that it lacked the power of eminent domain and therefore was unable to acquire the property in the event negotiations failed to reach an amicable agreement, and (2) it informed the owner in writing of what Obligor or such affiliate believed to be the fair market value of the property. Obligor represents and warrants that Obligor has provided to City a complete and accurate list of all occupants of the Property as of the date that Obligor obtained site control, and Obligor shall provide a complete and accurate list of all persons occupying the Property at any time after site control and through the date of full occupancy after Project completion. Obligor shall comply fully, at Obligor's sole expense, with the City's Residential Anti-displacement and Relocation Assistance Plan ("RARAP"). If the Project involves the temporary and/or permanent displacement of persons, Obligor represents, warrants and agrees that Obligor has provided and shall provide, at a minimum, all relocation assistance required by 24 CFR Section 42; the federal Uniform Relocation Act and regulations thereunder, 49 CFR Part 24; 24 CFR Section 570.606 and any other applicable federal laws or regulations, and shall maintain complete and accurate records demonstrating such compliance. Obligor agrees that any determination by City of the amount of relocation assistance due to any person shall be final and binding upon Obligor, unless a different determination is made by HUD at the request of such person, in which case the HUD determination shall be final and binding on Obligor. Obligor agrees that the City may, at its option, provide relocation assistance directly to any person in connection with the Project and that any payment by the City for such person shall, at City's option, constitute an advance on the Loan, without any requirement for a draw request by, or consent of, Obligor. If, as a result of any such direct payments, the amount advanced by City shall exceed the maximum Loan amount stated herein, then the excess shall be immediately due and payable by Obligor to City, at City's demand. Obligor represents and warrants that, except as expressly stated in a relocation plan submitted by Obligor to City in connection with this Loan, no residential tenants have been required to vacate or will be required to vacate the Property permanently because of the Project. Obligor shall carry out the terms of any relocation plan approved by City, but the terms of any such plan shall not limit Obligor's obligations under this Loan Agreement or applicable laws or regulations, and no such approval by City shall be construed as a waiver or modification of any requirement of this Agreement or applicable laws or regulations.

(i) Architectural Barriers. Obligor shall ensure that the Property, upon completion of the Project, shall comply with the applicable requirements of the Architectural Barriers Act of 1968 (see 42 U.S.C. Sections 4151-57), and shall comply with the Uniform Federal Accessibility Standards (Appendix A to 24 CFR part 40 for residential structures, and Appendix A to 41 CFR part 101-19, subpart 101-19.6, for general type buildings).

(j) Flood Insurance Protection. If the Property is in a special flood hazard area as identified by the Federal Emergency Management Agency, then Obligor represents, warrants and agrees that flood insurance is and shall remain in effect, at Obligor's expense, in accordance with Section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. Section 4001), so long as any amount is outstanding on the Obligor Note.



CITY CLERK

(k) Records. Obligor shall maintain and make available to the City and HUD all records reasonably required to demonstrate compliance with all of the requirements of this Agreement, for at least four (4) years after full repayment of the Loan.

(l) Disclosures. Obligor represents, warrants and agrees that it has provided to the City any and all disclosures required by the HUD Reform Act, 42 U.S.C. Section 3545, and regulations thereunder, 24 CFR Part 4; that it will provide timely updated disclosures to OH to the extent required by such act and regulations; and that all such disclosures are and shall be complete and accurate.

(m) Prior Actions. Obligor represents and warrants that in all actions related to the Project to date Obligor and each of its affiliates involved in the acquisition of the property, each has complied with all requirements referred to in this Section 5.7.

(n) Indemnity. Obligor shall indemnify and hold harmless the City from any loss, damage, expense, claim or demand resulting from Obligor's failure to comply with any federal requirement to be complied with pursuant to this Agreement or failure to maintain adequate records to demonstrate such compliance. This provision shall survive expiration of this Agreement.

5.8 Reports. Obligor shall deliver to the City reports and information as City may require for purposes of monitoring and evaluating the performance of the Obligor, which may include copies of tenant certifications, rent rolls, leases, property management agreements and any other contracts affecting the Property.

5.9 Liens or Claims of Liens. Obligor shall keep the Collateral free from liens and encumbrances of all kinds, except for those permitted pursuant to Section 2.4 above. From and after _____, 2014, Obligor shall keep the Property free from liens and encumbrances of all kinds, except for those permitted pursuant to Section 2.4 above. If any claims of lien shall be asserted against the Collateral or the Property other than as permitted by this Section, Obligor, regardless of any action that City may otherwise be authorized to take, shall obtain a release and satisfaction of such lien claim, bond the lien claim, procure title insurance satisfactory to City protecting City from any loss relating to such lien claim, or otherwise provide to City assurances and security satisfactory to City that the lien claim will be paid or satisfied not later than ten (10) days after a judgment on the lien claim. Provided Obligor complies with the previous sentence, Obligor may in good faith contest any worker's or material supplier's lien in legal proceedings that will prevent enforcement of the lien claim and prevent foreclosure of the Property. If such a lien claim is not released or satisfied or a bond or other security satisfactory to City provided within forty-five (45) days of written request from City to Obligor, then the failure to do so shall allow the City to declare an Event of Default (as defined in Section 6.1 below).

Nothing in this Section shall be construed to imply that property of a public corporation may be subject to a statutory mechanic's or materialmen's lien or other involuntary lien, nor be construed as consent by Obligor or the City to any such lien.



CITY CLERK

5.10 Political Activity. No portion of the Loan shall be used for any political activity or to further the election or defeat of any candidate for public office or to influence the approval or defeat of any ballot issue or legislation.

5.11 Further Actions. Obligor will at any time and from time to time upon request of City take or cause to be taken any action, execute, acknowledge, deliver or record any further documents, opinions, or other instruments or obtain such additional insurance as City is required to do or obtain by HUD or other federal, state or county regulatory agency.

5.12 Other Agreements. Obligor shall fully comply in a timely manner with all other agreements for the financing of the Project, including without limitation construction loans, bridge loans, and equity investment contracts ("Other Agreements"), and to the extent that any Other Agreements are the obligations of one of the Owners, the Obligor shall ensure that the Owner complies in a timely manner with the terms thereof, but nothing in this Section shall be construed to waive, or excuse noncompliance with, and provisions of this Agreement or any applicable City ordinances or permits. Obligor shall timely satisfy, and shall ensure that each Owner timely satisfies, all conditions under any Other Agreements to the receipt of funding for the Project and for qualification for historic rehabilitation tax credits under the Internal Revenue Code.

5.13 Payment of Compensation of Custodian. Obligor shall be responsible for and pay its pro rata portion of the fees of the Custodian as provided under the Custodial Agreement. The Custodian's acceptance fee, prorated first annual fee and counsel fees and expenses shall be disbursed to Custodian from the Guaranteed Loan Funds Account at the time of initial Loan disbursement. Thereafter, Obligor shall promptly pay the Custodian's fees and expenses directly to the Custodian.

5.14 Payment of Other Indebtedness. Obligor shall timely pay the principal, interest and all other amounts due on any other indebtedness or liability now or hereafter owing by the Obligor to any person and secured by the Property; provided, that nothing in this Section shall authorize Obligor to make any payment from any funds or assets pledged to the City hereunder.

5.15 Transfer of Property. Obligor shall not cause or permit any transfer of the Collateral or any interest of Obligor therein, voluntary or involuntary, without the advance written consent of the City. Obligor shall not cause or permit any transfer of the Property or any interest of Obligor therein, voluntary or involuntary, without the advance written consent of the City, except for the creation of liens, encumbrances or leases that are expressly permitted under the Loan Documents without the City's consent.

## ARTICLE VI – DEFAULT AND REMEDIES

6.1 Events of Default. Upon the occurrence of any of the following events and prior to the complete cure thereof by Obligor in a manner satisfactory to the City, the City shall have the right to declare an Event of Default hereunder, without notice or demand by City, except as expressly provided in this Section:



CITY CLERK

(a) Any failure to pay when due any deposit into the Loan Repayment Account in respect of principal or interest on the Obligor Note;

(b) Any failure to make a payment or deposit of money required by any of the Loan Documents, other than amounts referred to in Section 6.1(a) above, that is not cured within ten (10) days of the due date of such payment or deposit (or within ten (10) days of demand in case of amounts due on demand);

(c) Any transfer of the Collateral or the Property or any interest therein, voluntary or involuntary, contrary to Section 5.15 of this Loan Agreement;

(d) Any failure to comply with the terms of Section 5.9 of this Loan Agreement (relating to lien claims) within the time period permitted by such Section;

(e) Any breach or nonperformance by Obligor of any provision of any of the Loan Documents not included within any of Subsections (a)-(d) above that is not cured within sixty (60) days after notice to Obligor of such breach or nonperformance, or such longer cure period as may be permitted under the specific terms of the Loan Document; provided, however, that unless HUD shall otherwise require, if (1) such breach or nonperformance is susceptible to cure but cannot reasonably be cured within such cure period, (2) Obligor shall commence to cure such breach or nonperformance within such cure period and shall thereafter diligently and expeditiously proceed to cure the same, and (3) Obligor shall inform the City in writing of the status of the cure at the expiration of such cure period and every thirty days thereafter, then such cure period may be extended in the sole discretion of the OED Director for such time as the OED Director determines is reasonably necessary for Obligor to cure such breach or nonperformance;

(f) A petition in bankruptcy or for reorganization or for an arrangement under any bankruptcy or insolvency law or for a receiver or trustee for any of Obligor's property is filed by Obligor, or is filed against Obligor and is not dismissed within ninety (90) days, or if Obligor makes an assignment for the benefit of creditors or becomes insolvent or unable to pay its debts as they mature or any attachment or execution is levied against a substantial portion of the property of Obligor and is not discharged within ninety (90) days, or if any law or court order shall require the City, Custodian or any other party to refund or otherwise relinquish any portion of any amount paid under the Obligor Note or this Agreement as a preference or for any other reason except refund of duplicative payment;

(g) Any representation, warranty or disclosure made to City by Obligor, or contained in any information submitted by Obligor to City or to any government agency in connection with the Loan or the Property, proves to be materially false or misleading as of the date when made or reaffirmed, whether or not such representation or disclosure appears in this Agreement; and

(h) Any default by Obligor of its obligations under the Certificate and Indemnity, giving effect to any applicable notice and cure provisions thereunder.



CITY CLERK

6.2 Declaration of Event of Default. City's declaration of an Event of Default hereunder shall be made by notice to Obligor pursuant to Section 7.15 of this Agreement and shall be effective as provided therein.

6.3 Remedies.

(a) Upon declaring an Event of Default, City may, in addition to any other remedies which City may have hereunder or under the Loan Documents or by law, at its option and without prior demand or notice take any or all of the following actions:

(1) Immediately terminate any further advances of Loan funds hereunder and revoke any instructions to any third party holding any such funds;

(2) Declare the Loan immediately due and payable in full;

(3) Beginning on and after _____, 2014, demand foreclosure under the Deed of Trust held by the CDE, judicially or nonjudicially;

(4) Apply any or all funds in the Reserve Accounts to amounts due under the Loan Documents, whether by reason of acceleration or otherwise, and cause investments in such accounts to be liquidated for such purpose;

(5) Proceed to enforce the Security Agreement and apply or realize on any other collateral or security;

(6) Set off any amounts then owing from the City to Obligor;

(7) Give notice to any person owing any obligation to the Obligor that has been assigned as security for the Loan, that further payments are to be made to the City; and

(8) Seek judicial appointment of a receiver.

(b) All remedies of City provided for herein and in any other Loan Documents are cumulative and shall be in addition to all other rights and remedies provided by law. The exercise of any right or remedy by City hereunder shall not in any way constitute a cure or waiver of default hereunder or under any other Loan Document or invalidate any act done pursuant to any notice of default, or prejudice City in the exercise of any of its rights hereunder or under any other Loan Documents unless, in the exercise of said rights, City realizes all amounts owed to it under such Loan Documents.

6.4 No Default Prior to Declaration. No default or Event of Default shall exist under this Agreement or the Obligor Note until the same shall have been declared by the City or other party authorized to make such declaration; provided, that failure to declare, or delay in declaring, a default hereunder shall not constitute a waiver of any rights or remedies or excuse any failure by Obligor to strictly comply with its obligations under all of the Loan Documents.



BOS CITY CLERK

## ARTICLE VII – MISCELLANEOUS

7.1 No Waiver. No waiver of any noncompliance or breach by Obligor hereunder shall be implied from any failure by City to take action on account of such noncompliance or breach, and no express waiver shall affect any breach or noncompliance other than as specified in the waiver. Any waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by City to, or of, any act by Obligor requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to, or of, any subsequent similar act.

7.2 Successors and Assigns; Delegation to Custodian; Changes in Custodian and Custodial Agreement. This Agreement is made and entered into for the sole protection and benefit of City, HUD, and Obligor, their successors and assigns, and no other person or persons shall have any right of action hereunder. The terms hereof shall inure to the benefit of the successors and assigns of the parties hereto; provided, however, that the Obligor's interest hereunder cannot be assigned or otherwise transferred without the prior written consent of City. Obligor acknowledges and agrees that City may assign to HUD or any custodian or trustee for HUD any or all of City's rights under this Agreement and any of the Loan Documents and may direct that any payment or performance be provided directly to HUD or such custodian or trustee, whether or not the Obligor Note or this Agreement have been assigned. Obligor agrees that City may delegate to the Custodian the right to make demands and give directions on behalf of City under the Loan Documents, but that the scope of any such delegation shall be strictly limited to the terms of a written instrument duly signed on behalf of the City. Obligor further acknowledges that the Custodial Agreement may be modified or terminated, or a substitute Custodial Agreement executed, or a successor Custodian appointed, in each case without the consent of Obligor so long as the obligations of Obligor are not increased and the rights of the Obligor under the Loan Documents are not adversely affected in any material respect. Except for minor modifications to the Custodial Agreement not affecting Obligor, City agrees to give reasonable advance notice to the Obligor of any action as described in the preceding sentence, and agrees in each case to provide a copy of any modification or substitute Custodial Agreement to Obligor within fifteen (15) days after the execution thereof.

7.3 No Defense Based on City Regulatory Actions. Obligor understands that (a) the operations of Obligor in the Property and elsewhere are subject to numerous laws, regulations, ordinances and permits, including those of City and other governmental bodies relating to land use, environmental hazards, and other regulatory matters, and (b) the modification, interpretation, application, or revocation of such laws, regulations, rules or permits could adversely affect economic return to Obligor from the Property. Obligor has conducted its own investigation and relied on the advice of its own counsel and experts as to all such matters in connection with Obligor's acquisition of the Property. Obligor acknowledges that by entering into this Agreement the City does not make, and that the City expressly disclaims, any representation or assurance whatever as to (1) the present or future status of the Property or the uses thereof under applicable laws or regulations, including those of the City; or (2) the availability, issuance or continuation of any permits, approvals, or interpretations of any kind that may be required or desired by Obligor or



CITY CLERK

any other party in connection with the Property. Obligor agrees that notwithstanding any regulatory action or omission of City affecting Obligor or affecting the use or development of the Property (whether or not such action or omission shall be determined to be consistent with applicable law in any proceeding), no defense, offset or reduction of liability shall be available to Obligor, at law or in equity.

7.4 Time. Time is of the essence of all provisions of the Loan Documents.

7.5 Entire Agreement; Amendments. This Agreement, the other Loan Documents, and the documents, laws and regulations incorporated by reference herein constitute the entire agreement of the parties hereto with respect to the Loan and supersede any prior agreements or understandings, written or oral, with respect to the Loan. Obligor is not relying upon any promises, representations or understandings, written or oral, in entering into the Loan Documents, other than as expressly set forth in the Loan Documents. The obligations of Obligor under the Loan Documents are not conditioned upon, and shall not be affected by, any other agreement, understanding, performance or nonperformance by the City or any other party, and in any proceeding to enforce any of Obligor's obligations under the Loan Documents, Obligor shall not be entitled to assert, by way of excuse, offset, counterclaim, grounds for equitable relief, or otherwise, any actual or alleged action or inaction by or on behalf of the City except to the extent that any such action or inaction is expressly required of the City by, and is made a condition of Obligor's obligation by, the Loan Documents. No amendment, modification, or termination of any provisions of this Agreement or of any of the Loan Documents shall in any event be effective unless the same shall be in writing and signed by a duly authorized officer of City and by Obligor, and no such writing shall be construed to modify, waive, or affect the terms of the Loan Documents except to the extent that such document expressly so provides.

7.6 Headings. The article and section headings in no way define, limit, extend or interpret the scope of this Agreement or of any particular article or section.

7.7 Number and Gender; Joint and Several Obligations. When the context in which the words are used in this Agreement indicates that such is the intent, words in the singular number shall include the plural and vice-versa. References to any one gender shall also include the other gender if applicable under the circumstances. If Obligor comprises more than one person or entity, then each such person or entity shall be bound jointly and severally by this Agreement and the Loan Documents except to the extent otherwise expressly provided therein.

7.8 Validity. In the event that any provision of this Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Agreement.

7.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, and The City of Seattle, except to the extent federal law applies.



bns CITY CLERK

7.10 Survival. All agreements, representations and warranties made herein and in the Obligor Note shall survive the execution and delivery of this Agreement and of the Loan Documents and the making of the Loan hereunder and continue in full force and effect until the obligations of Obligor hereunder and the indebtedness evidenced by the Obligor Note have been fully paid and satisfied, and thereafter to the extent provided in the Loan Documents, regardless of whether the Obligor Note is surrendered or marked as canceled or paid in full.

7.11 Venue and Forum. In the event that any legal action should be filed by either party against the other, the venue and forum for such action shall be the Superior Court of the State of Washington for the County of King.

7.12 Attorney's Fees. In the event either party shall bring an action to enforce the terms and conditions of this Agreement, the prevailing party shall be entitled to recover all of its costs and expenses, including, but not limited to, reasonable attorney's fees as determined by the court.

7.13 Duplicate Originals; Counterparts. This Agreement shall be executed in duplicate and each of the parties hereto shall receive an original. Each original shall constitute one and the same agreement. This Agreement may be executed in counterparts, and each such counterpart shall be deemed to be an original.

7.14 Construction. The Loan Documents shall be construed so as to conform to the requirements of the HUD Contract and applicable federal laws and regulations. The Loan Documents are the product of negotiation between the parties and therefore shall not be construed strictly in favor of, or against, either party except as may be specifically provided in the Loan Documents with respect to particular provisions thereof.

7.15 Notices; Administration by City. Any notice, demand or request required hereunder shall be given in writing at the addresses set forth below by personal service, by facsimile transmission, or by first class mail. The addresses may be changed by notice to the other party given in the same manner as provided above. Notices personally served or sent be facsimile shall be effective when actually received during normal business hours, and otherwise on the following Business Day. If notice is given by mail, it shall be deemed received on the earlier of: (i) if by certified mail, the date of receipt as shown on the return receipt, or (ii) three (3) days after its deposit in the U.S. mail.

If to Obligor: _____

_____

If to City: Office of Economic Development



CITY CLERK

City of Seattle
P.O. Box 94708
Seattle, Washington 98124-4708
Attn: Director
fax: (206) 684-0379

Unless the City otherwise notifies Obligor, in writing, the OED shall be responsible for performance of the obligations of the City under this Agreement and the other Loan Documents, and for oversight of performance of such agreements by Obligor, and references hereinafter made to the City shall be deemed to mean the City, acting through OED.

7.16 Additional Terms and Conditions

The terms of this Section are intended to be in addition to, and not in substitution for, the terms and conditions set forth above, but in case of any irreconcilable conflict, the terms of this Section shall control. The inability of Obligor to satisfy any condition below for any reason shall not excuse any failure to comply in a timely manner with any other provision hereof. All provisions and conditions in this Section, and all other conditions to disbursement set forth in this Agreement, are for the benefit only of the City (and where applicable, HUD) and may be waived in whole or in part by the OED Director in his or her discretion, but no waiver shall be valid unless in writing signed by the OED Director.

(a) Assumption of Loan. At the end of the seven year New Markets Tax Credit period, it is anticipated that the Central Area Development Association will assume the obligations of Obligor under the Loan.

(b) Asset Management and Loan Monitoring. Obligor acknowledges that it has reviewed the City's Section 108 loan monitoring and asset management policies, and agrees to provide information and otherwise comply with the requirements of such policies. Furthermore, no later than February 1st of each year of the Loan, Obligor agrees to pay an asset management and loan monitoring fee, in the annual amount of Three Thousand Dollars ($3,000), until all amounts owing hereunder shall have been paid in full. It is anticipated that the loan monitoring and asset management duties will be performed by a private entity under contract to OED, and Obligor shall make payment directly to such private entity according to instructions provided by OED.

IN WITNESS WHEREOF, Obligor and City have executed this Agreement as of the date first written above by and through their duly authorized representatives.

CITY:
THE CITY OF SEATTLE, a
Washington municipal corporation

By: _____
Susan C. Shannon



Ens CITY CLERK

Director of Office of Economic Development



CITY CLERK

OBLIGOR:

By: _____
Name: _____
Title: _____

| | |
|---|---|
| Attachment A | Legal Description for Property |
| Attachment B | Description of Project |
| Attachment C | Form of Obligor Note |
| | Exhibit 1: Schedule of Obligor Note Payment Dates |
| | Exhibit 2: City Note |



BDS CITY CLERK

ATTACHMENT A

LEGAL DESCRIPTION FOR PROPERTY

Parcel "41" – Lots 7, 8, 9, 10, 11, 12, 13, 14, and 15, Block 19, Hill Tract Addition to the City of Seattle, according to the plat recorded in Volume 8 of Plats, page 42, records of King County, Washington.



BMS CITY CLERK

ATTACHMENT B

DESCRIPTION OF PROJECT

**Description of Project**

The 17th and Jackson Project is located at 1700 South Jackson Street in the Central Area neighborhood. 17th and Jackson, LLC, a Washington limited liability company managed by CADA Equities, Inc., will develop the property into 59 units of rental housing and 11,000 square feet of commercial/rental space.

Obligor has requested from City a loan of federal Section 108 loan proceeds in the amount of Two Million Three Hundred Ninety Eight Thousand Seven Hundred Ninety Four Dollars ($2,398,794) in order to invest in ESIC New Markets Partners XXI Limited Partnership, a Maryland limited partnership ("CDE") to finance the Project, which qualifies for the New Markets Tax Credit allowed by Sections 38 and 45D of the Internal Revenue Code of 1986, as amended (the "Code").

Section 108 funds will be used to cover non-construction, development soft costs of the Project. The Project will provide affordable housing for minimum period of 20 years with no less than 51% of the total dwelling units on the Property which will be occupied by low- and moderate-income households as defined in 24 C.F.R. Section 570.3 ("LMIHs").

Subject to receipt and HUD approval, BEDI grant funds in the amount of $479,759 will be used as interest subsidy (up to $142,323) and the balance as a Loan Loss Reserve The Loan Loss Reserve is maintained solely for the benefit of the City and HUD, and the Obligor shall have no interest therein or claim thereon.

Construction of the Project shall be completed by December 31, 2008.



CITY CLERK

ATTACHMENT C

FORM OF OBLIGOR NOTE

VARIABLE/FIXED RATE PROMISSORY NOTE

Seattle, Washington $2,398,794.00
_____, 2007

FOR VALUE RECEIVED, 17th & Jackson Investment Fund LLC ("Obligor"), a Washington limited liability company, promises to pay to THE CITY OF SEATTLE, WASHINGTON ("Payee"), a Washington municipal corporation, or order, at the time or times provided herein, in lawful money of the United States, the sum of Two Million Three Hundred Ninety-Eight Thousand Seven Hundred Ninety Four Dollars ($2,398,794), with interest as provided herein.

This Note is given to evidence a loan (the "Loan") made pursuant to the Loan Agreement dated as of _____, 2007 (as supplemented or amended from time to time, the "Loan Agreement"), between the Obligor and the Payee. The funds used by the Payee to make the Loan have been obtained by Payee exclusively through the issuance of a note in the maximum commitment amount of $2,398,794 issued by the Payee, a copy of which note, with a schedule of Principal Due Dates as established by agreement of the City and HUD, is attached hereto as Exhibit 2 and incorporated herein by this reference (including any note issued in replacement therefor or for a portion thereof that includes the amount disbursed in order to fund the Loan evidenced hereby, the "City Note") pursuant to Section 108 of the Housing and Community Development Act of 1974, as amended (42 USC §5308) and 24 CFR 570.700, *et seq.*, pursuant to which the Payee has entered into certain agreements, including, but not limited to, (a) with the United States Department of Housing and Urban Development ("HUD"), a Contract for Loan Guarantee Assistance (as it may be amended, the "HUD Contract") which contract incorporates by reference an Amended and Restated Master Fiscal Agency Agreement between HUD and JPMorgan Chase Bank (formerly known as The Chase Manhattan Bank), (b) with HUD, the BEDI Grant Agreement, (which documents, as amended or amended from time to time, may be referred to collectively as the "Master Agreement"); and (c) with The Bank of New York Trust Company, N.A., an Indenture of Trust and Custodial Agreement (as it may be amended, the "Custodial Agreement"). The Obligor acknowledges and agrees that the Loan is made subject to all of the terms and conditions of the HUD Contract, Master Agreement and the City Note. Any capitalized terms not defined herein shall have the meanings provided in the City Note, the Loan Agreement, the Custodial Agreement or the Master Agreement as applicable.

Each portion of principal outstanding on this Note shall bear interest from the date hereof at the rate applicable to the Corresponding Advance of principal under the City Note. For each installment of principal shown on Exhibit 1 hereto, the Corresponding Advance consists of an equal amount of principal on the City Note maturing in the same year as such installment of principal hereunder.



DS CITY CLERK

Interest on this Note shall be due and payable on the 15th day of each calendar month next preceding each of the following dates if interest on the City Note is scheduled to become due and payable on such date: February 1, May 1, August 1, and November 1 of each year. The amount of interest payable on this Note on each such 15th day shall include interest accrued through such date and interest to accrue through the end of the month in which the interest payment becomes due under this Note. Interest on this Note also shall be due 15 days before any other date when interest shall become due on the Corresponding Portion of the City Note, and the amount of interest then payable on this Note shall include interest accrued and to accrue up to such date when interest shall become due on the City Note. Interest on the City Note is due and payable quarterly in arrears prior to the Conversion Date, on the Conversion Date, and semiannually thereafter. Principal on this Note is due and payable as set out on Exhibit 1 attached hereto and incorporated herein by this reference. Each date upon which principal or interest, or both, is due and payable hereunder is an "Obligor Note Payment Date."

The principal amount due under this Note on each Obligor Note Payment Date shall be as set forth on the attached Exhibit 1, except to the extent such principal amount shall have been reduced by prepayment before such Obligor Note Payment Date as provided herein. Although no principal amounts shall be due to Payee prior to July 15, 2014, Obligor shall be required to make or cause to make payments in the cumulative amount of $_____ into a "sinking fund" cash account (on terms acceptable to Payee) in the following annual amounts by the ___ day of _____ of each year: $ in 2008; $ in 2009; $ in 2010; $ in 2011; $ in 2012; $ in 2013; and $ in 2014.

On and after the Conversion Date (whether conversion to a fixed rate or rates is effected with the consent of the Obligor or otherwise), as more fully set forth in the City Note, each Corresponding Advance will accrue interest on the City Note at the fixed rate that the underwriters of the City Note, or securities representing participation interests in a pool of notes guaranteed by HUD, including the City Note, determine will enable them to sell the City Note or such participation interests under then prevailing market conditions as of the Conversion Date at one hundred percent (100%) of the aggregate amount thereof.

Notwithstanding the foregoing, following the occurrence of any default hereunder or under the Loan Agreement, which default is not cured as permitted by the Loan Agreement, the outstanding principal balance of the Loan and this Note shall bear interest at the greater of the rate set as provided above or twelve percent (12%) per annum.

Interest payable on or before the Conversion Date shall be calculated on the basis of a 360-day year and the actual number of days elapsed. Interest after the Conversion Date shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

Anything herein to the contrary notwithstanding, all principal, interest, fees, costs and other charges that Obligor is obligated to pay in connection with this Note and the Loan shall be due and payable, in full, no later than July 15, 2027.



CITY CLERK

This Note and other obligations of Obligor under the Loan Documents are secured by a Security Agreement - Pledge (as supplemented or amended from time to time, the "Security Agreement"), of even date herewith, from the Obligor for the benefit of the Payee. This Note and other obligations of Obligor under the Loan Documents are secured by other collateral, including without limitation security interests in the monies and investments held in certain Reserves established in accordance with the Loan Agreement and Master Agreement.

The principal hereof and any interest accrued hereon may be prepaid, subject in the case of principal to approval by HUD of prepayment by the Payee of an equal amount of each respective Corresponding Advance on the City Note, and provided, however, that any prepayment shall be applied to the principal installment(s) with latest maturity unless otherwise agreed in writing by the holder hereof and by HUD, and provided, further:

(a) On or before the Conversion Date, this Note may be prepaid in whole or in part upon thirty (30) days prior written notice to the Payee and with, and only with, the consent of HUD. Any prepayment of the principal hereof shall be accompanied by all accrued interest thereon to the date of prepayment, and partial prepayments shall be credited against the principal amount last becoming due hereunder.

(b) After the Conversion Date, Obligor shall give 90 days prior written notice of its intention to make any prepayment. No partial prepayment shall relieve the Obligor of the obligation to make any future payments due after the date of any prepayment. Obligor shall pay, in addition to the principal amount of any prepayment, a premium sufficient so that the total amount paid is sufficient to defease the Corresponding Advances on the City Note, as provided in the Master Agreement. If in the event of any prepayment, the Payee incurs any costs, expenses, fees, charges, premiums or losses, the Obligor shall pay such items upon demand in addition to the principal and interest due hereunder.

After default, any payment by Obligor or any third party, or recovery from the disposition of any collateral, to the extent applied to amounts of principal that were not yet scheduled to fall due according to Exhibit 1, may be applied to such installments of principal as the holder hereof shall elect in its discretion, and shall be deemed a prepayment of such installment for purposes of the premium and other obligations set forth in paragraph (b) above, and Obligor shall pay all such amounts on demand, or the holder hereof may apply amounts so paid or collected to such other obligations, in the holder's discretion.

In the event of any default by Obligor in any term or condition of this Note, the Loan Agreement, the Security Agreement, or any other document executed in connection herewith, which default is not cured as permitted by the applicable document, the entire principal and accrued interest hereunder shall become immediately due and payable without notice or demand at the option of the holder of this Note. If the entire balance of principal and interest shall be declared due and payable after the Conversion Date, then the Obligor shall pay to the holder hereof, in addition to all other amounts owing, any further amount required in order that the holder is able to fully defease, solely from the payments by Obligor hereunder and without costs to such holder, all of the outstanding Corresponding Advances under the City Note. Obligor



CITY CLERK

acknowledges that such additional amount, if any, is intended to protect the holder hereof from potential loss resulting from the enforcement of the terms hereof after default, and not as a penalty.

If Obligor is in default under the provisions of this Note, the Loan Agreement, the Security Agreement, or any other document executed in connection herewith and Payee or other holder of this Note commences any action to enforce collection hereof or foreclosure under any security document or guaranty given in connection herewith or therewith, the Obligor agrees to pay all costs and expenses incurred by Payee or such holder, including but not limited to Payee's or such holder's reasonable attorneys' fees.

Demand, protest, and notice of demand and protest are hereby waived, and the Obligor, to the extent authorized by law hereby waives any and all homestead or other exemption rights which otherwise might apply to the obligation evidenced by this Note, and/or any property covered by any security document given in connection herewith. The Obligor executes this Note as a principal and not as a surety.

**ORAL AGREEMENTS, OR ORAL COMMITMENTS TO LEND MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

OBLIGOR:

By: _____
Name: _____
Title: _____



BDS CITY CLERK

STATE OF WASHINGTON )
) ss.
County of KING )

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath, stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____ _____, to be the free and voluntary act of such _____ _____ for the uses and purposes mentioned in the instrument.

DATED: _____, 2007.

_____
NOTARY PUBLIC
Print Name: _____
Residing at: _____
My appointment expires: _____



BDS CITY CLERK

Exhibit 1 to Obligor Note

Principal repayment schedule.

| Principal Due Date | Amount of Principal |
|---|---|
| July 15, 2008 | $ 0 |
| July 15, 2009 | 0 |
| July 15, 2010 | 0 |
| July 15, 2011 | 0 |
| July 15, 2012 | 0 |
| July 15, 2013 | 0 |
| July 15, 2014 | 251,000 |
| July 15, 2015 | 105,000 |
| July 15, 2016 | 110,000 |
| July 15, 2017 | 115,000 |
| July 15, 2018 | 135,000 |
| July 15, 2019 | 145,000 |
| July 15, 2020 | 155,000 |
| July 15, 2021 | 160,000 |
| July 15, 2022 | 175,000 |
| July 15, 2023 | 180,000 |
| July 15, 2024 | 195,000 |
| July 15, 2025 | 205,000 |
| July 15, 2026 | 225,000 |
| July 15, 2027 | 242,794 |
| | Total: $2,398,794 |



BDS CITY CLERK

**EXHIBIT C TO ORDINANCE**

# U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT SECTION 108 LOAN GUARANTEE PROGRAM

## VARIABLE/FIXED RATE NOTE

NOTE NUMBER:

BORROWER:

CITY OF SEATTLE

DATE OF NOTE: _____

PRINCIPAL DUE DATES AND PRINCIPAL AMOUNT: Before the Conversion Date, the aggregate of Advances made for each applicable Principal Due Date specified in the Commitment Schedule to this Note; on or after the Conversion Date, the Principal Amount (if any) listed for each Principal Due Date in Schedule P & I hereto.

MAXIMUM COMMITMENT AMOUNT: $2,398,794

COMMITMENT AMOUNTS: See Commitment Schedule attached hereto.

VARIABLE INTEREST RATE: As set forth below.

REGISTERED HOLDER: AFTERWATCH & CO
As Nominee for
Money Market Obligations Trust
on behalf of its Government Obligations Fund

## I. Terms Applicable Before the Conversion Date

### A. Advances

For value received, the undersigned, the City of Seattle (the "Borrower", which term includes any successors and assigns), a public entity organized and existing under the laws of the State of Washington promises to pay to the Registered Holder (the "Holder," which term includes any

CITY CLERK

successors or assigns), at the time, in the manner, and with interest at the rate or rates hereinafter provided, such amounts as may be advanced under this Note from time to time by the Holder for disbursement to, or on behalf of, the Borrower (individually, an "Advance", and collectively, "Advances"). The Holder shall make Advances upon the written request of the Borrower and the approval of the Secretary of Housing and Urban Development or his designee (the "Secretary"), pursuant to the Contract for Loan Guarantee Assistance (as further defined in Section IV.A. of this Note, the "Contract"), and the Amended and Restated Master Fiscal Agency Agreement (the "Fiscal Agency Agreement") dated as of May 17, 2000, between The Chase Manhattan Bank (now known as JPMorgan Chase Bank), as Fiscal Agent (the "Fiscal Agent"), and the Secretary. The total amount of Advances made for each Principal Due Date under this Note shall not exceed the applicable Commitment Amount for such Principal Due Date set forth on the Commitment Schedule attached hereto. The aggregate of all Advances under this Note for all Principal Due Dates shall not exceed the Maximum Commitment Amount specified on the attached Commitment Schedule. The Fiscal Agent shall record the date and amount of all payments and Advances on this Note and maintain the books and records of all such Advances and Commitment Amounts for each corresponding Principal Due Date, and all payments. No Advances shall be made on this Note after its Conversion Date.

As used herein, "Conversion Date" means the date (if any) upon which this Note is (i) delivered by the Holder to the Fiscal Agent against payment therefore by the purchasers selected by the Secretary to make such payment; and (ii) assigned to JPMorgan Chase Bank (or any successor thereto) acting in its capacity as Trustee (the "Trustee") pursuant to a Trust Agreement between the Secretary and the Trustee, dated as of January 1, 1995, as such agreement may be amended or supplemented (the "Trust Agreement"). Upon the occurrence of both (i) and (ii) in the previous sentence, Section III of this Note applies, thereby converting this Note to a fixed rate obligation.

B. Variable Rate of Interest

From and including the date of each Advance to but excluding the earlier of (i) the Conversion Date, and (ii) the date of redemption or prepayment of such Advance pursuant to Section I.D. below (each such date of redemption or prepayment, a "Prepayment Date") interest shall be paid quarterly at a variable interest rate (as set forth below) on the unpaid principal balance of each Advance on the first day of each February, May, August and November (each, an "Interim Payment Date"), commencing on the first Interim Payment Date after the initial Advance is made under this Note. Interest also shall be paid on each applicable Conversion Date, Prepayment Date or Principal Due Date. The amount of interest payable on each Interim Payment Date will represent interest accrued during the three-month period ending immediately prior to such Interim Payment Date, or in the case of the first Interim Payment Date following each Advance that is not made on an Interim Payment Date, the period from and including the date of such Advance to but excluding the first Interim Payment Date following such Advance. The amount of interest payable on this Note's Conversion Date, Prepayment Date, or on any Principal Due Date that precedes such Conversion Date will represent interest accrued during the



CITY CLERK

period from the last Interim Payment Date to such Conversion Date, Prepayment Date, or Principal Due Date, respectively.

The initial variable interest rate for each Advance will be set on the date of such Advance and will be equal to 20 basis points (0.2%) above the Applicable LIBO Rate (as hereinafter defined) and thereafter will be adjusted monthly on the first day of each month (each, a "Reset Date") to a variable interest rate equal to 20 basis points (0.2%) above the Applicable LIBO Rate (such interest rate, as reset from time to time, the "Standard Note Rate"). If the Conversion Date for this Note has not occurred by the March 1 following the initial Advance under this Note, then the terms of Appendix A shall be used to set the variable interest rate. If the Fiscal Agent does not receive notice of either a Negotiated Special Interest Rate or Holder Determined Special Interest Rate (as defined in Appendix A attached hereto) from the Secretary or Holder, respectively, by the times specified in Appendix A to this Note, then the Standard Note Rate shall apply for the period to which such Negotiated Special Interest Rate or Holder Determined Special Interest Rate would otherwise apply. The Fiscal Agent may conclusively rely on any such notice as to the correctness of any matters set forth therein. Appendix A shall be inapplicable to this Note on or after the Conversion Date.

"LIBO Rate" for any given Business Day means, except in the case of manifest error, the interest rate per annum published on that day in the Eastern Edition of The Wall Street Journal or any successor publication ("WSJ"), published by Dow Jones & Company, Inc., in the section titled "Money Rates" (or any successor section) and opposite the caption "London Interbank Offered Rates (LIBOR) -- three months" (or any successor caption). If such rate does not appear in WSJ on a given Business Day, for each interest period, the LIBO Rate shall be the interest rate, converted to a bond-equivalent yield basis, for deposits in U.S. dollars for three months which appears on Telerate Page 3750 or such other page as may replace Page 3750 on that service or such other service or services as may be nominated by the British Bankers' Association for the purpose of displaying such rate (together, "Telerate Page 3750") as of 11:00 a.m., London time, on the day (the "Determination Date") that is two London Banking Days preceding the relevant Reset Date or Advance. If such rate does not appear on Telerate Page 3750 on such Determination Date, such rate shall be obtained from the Reuters Screen ISDA Page as of 11:00 a.m., London time, on such Determination Date. If, in turn, such rate does not appear on the Reuters Screen ISDA Page on such Determination Date, the offered quotation from each of four reference banks (expressed as a percentage per annum) as of approximately 11:00 a.m., London time, on such Determination Date for deposits in U.S. dollars to prime banks on the London interbank market for a 3-month period, commencing on the Reset Date or date of such Advance, shall be obtained. If at least two such quotations are provided, the LIBO Rate for such Reset Date or date of such Advance will be the arithmetic mean of the quotations, rounded to five decimal places. If fewer than two such quotations are provided as requested, the LIBO Rate for that Determination Date shall be the rate for the most recent day preceding such Determination Date for which the LIBO Rate shall have been displayed on Telerate Page 3750. The LIBO Rate for any interest period shall be converted to a bond-equivalent yield basis by multiplying such rate by the actual number of days in such interest period and dividing that number by 180.



BHS CITY CLERK

"Applicable LIBO Rate" means: (1) with respect to the initial interest rate for the first Advance hereunder, the LIBO Rate two London Banking Days before the date of such first Advance; (2) with respect to the initial interest rate for any subsequent Advance made before the first Reset Date, the interest rate borne by the first Advance; (3) with respect to the initial interest rate for any subsequent Advance made after the first Reset Date, the LIBO Rate two London Banking Days before the immediately preceding Reset Date; and (4) with respect to the subsequent interest rate at any Reset Date for any Advance, the LIBO Rate two London Banking Days before such Reset Date.

"London Banking Day" means any day in which dealings in deposits in United States dollars are transacted in the London interbank market. Interest payable on or before the Conversion Date shall be calculated on the basis of a 360-day year and the actual number of days lapsed.

C. Principal Amount

Prior to the Conversion Date, the aggregate amount of Advances under this Note for each specified Principal Due Date shall be the Principal Amount paid by the Borrower on such Principal Due Date (as assigned to such Advances by the Secretary's instructions to the Fiscal Agent in accordance with the Contract and the Fiscal Agency Agreement), except to the extent such Principal Amount shall have been reduced by redemption before such Principal Due Date as provided below.

D. Redemption before Conversion Date

At any time on or before the Conversion Date, the Borrower, with the consent of the Secretary, may redeem this Note, in whole or in part, upon fourteen calendar days notice to the Fiscal Agent and the Secretary, at the purchase price of one hundred percent (100%) of the unpaid Principal Amount to be redeemed, plus accrued interest thereon to the date of redemption. Partial redemptions shall be credited against the applicable Principal Amount(s). The related Commitment Amounts and the Maximum Commitment Amount shall be adjusted concurrently with any such redemptions in accordance with the Secretary's instructions to the Fiscal Agent pursuant to the Contract and the Fiscal Agency Agreement.

## II. Conversion

The following events shall occur on the Conversion Date:



BDS CITY CLERK

A. Schedule P&I

On the Conversion Date all Advances owed by the Borrower under this Note with the same Principal Due Date shall be aggregated into a single Principal Amount which will accrue interest at the fixed rate applicable to such Principal Due Date. Such Principal Amount may be adjusted by the Fiscal Agent in accordance with the following paragraph or paragraph IV.H, as applicable. Whether or not adjusted, each Principal Amount, the fixed rate applicable to each Principal Amount, and the applicable Principal Due Date, shall be listed by the Secretary in Schedule P&I. Schedule P&I will be provided by the Secretary to the Fiscal Agent and attached to this Note by the Fiscal Agent upon the Fiscal Agent's receipt of this Note on the Conversion Date.

B. Conversion Date Advances

If, on or prior to the Conversion Date, the Borrower has not utilized the entire Commitment Amount indicated on the Commitment Schedule attached hereto for a given Principal Due Date, the Borrower may, in accordance with the Fiscal Agency Agreement and the Contract, and with the approval of the Secretary, utilize such Commitment Amount on the Conversion Date to obtain a Conversion Date Advance. A "Conversion Date Advance" shall mean any amount by which the Secretary instructs the Fiscal Agent to increase a Principal Amount on Schedule P&I for a given Principal Due Date, effective as of the Conversion Date of this Note. Conversion Date Advances shall be funded by the sale of this Note to the purchaser selected by the Secretary. The proceeds of a Conversion Date Advance (net of any applicable fees) shall be distributed to or on behalf of the Borrower on the Conversion Date. The total amount of Conversion Date Advances hereunder shall not exceed the sum of any unused Commitment Amounts for all Principal Due Dates.

## III. Terms Applicable Upon Conversion

The following terms shall apply to this Note from the Conversion Date (if any) until this Note is canceled, or matured and paid in full:

Commencing on the Conversion Date, the Borrower promises to pay to the Holder on the applicable Principal Due Date each Principal Amount set forth on the attached Schedule P&I, together with interest on each such Principal Amount at the rate applicable thereto specified on the Schedule P&I. Interest shall be calculated and payments shall be made in the manner set forth below.

Interest on each scheduled Principal Amount of this Note due as of a given date specified on Schedule P&I hereto shall accrue at the related per annum rate specified on Schedule P&I from (and including) the Conversion Date to (but excluding) such Principal Due Date or, if applicable, to the applicable Interest Due Date on which an Optional Redemption (as defined below) occurs. Each interest amount accrued on each unpaid Principal Amount of this Note shall be due semiannually as of February 1 and August 1 of each year (each such February 1 and



EDS CITY CLERK

August 1, an "Interest Due Date") commencing on the first such date after the Conversion Date, until each Principal Amount listed on Schedule P&I to this Note is paid in full. Interest shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

Certain Principal Amounts that are indicated as being eligible for Optional Redemption on Schedule P&I may be paid, in whole or in part, at the option of the Borrower as of any Interest Due Date on or after the date specified in such schedule (an "Optional Redemption"). In order to elect an Optional Redemption of such a Principal Amount, the Borrower shall give notice of its intention to prepay a Principal Amount to the Trustee and the Secretary not less than 60 days and not more than 90 days prior to the Interest Due Date as of which the Borrower intends to prepay the Principal Amount. The Trustee shall apply any payments received in respect of Optional Redemptions in accordance with written instructions of the Borrower, as approved by the Secretary. Principal Amounts that are not indicated as being eligible for Optional Redemption on Schedule P&I may not be prepaid.

## IV. General Terms

### A. Additional Definitions

For purposes of this Note, the following terms shall be defined as follows:

"Business Day" shall mean a day on which banking institutions in New York City are not required or authorized to remain closed and on which the Federal Reserve Bank and the New York Stock Exchange are not closed. If any payment (including a payment by the Secretary) is required to be made on a day that is not a Business Day, then payment shall be made on the next Business Day.

"Contract" shall mean the Contract for Loan Guarantee Assistance, and any amendments thereto, among the Secretary and the Borrower, the designated public entity named therein (if applicable), and the State named therein (if applicable), that refers to and incorporates this Note by the number hereof.

"Principal Amount" shall mean: (i) before the Conversion Date for this Note, the aggregate amount of Advances made for each Principal Due Date specified in the Commitment Schedule attached to this Note, less the amount of any redemptions pursuant to Section I.D. hereof, and any principal repayment; and (ii) on or after the Conversion Date, the principal amount (if any) stated for each Principal Due Date in Schedule P&I attached hereto, less the amount of any principal repayment and any Optional Redemptions made pursuant to Section III hereof and the Trust Agreement.



LDS CITY CLERK

B. Timely Payment to Fiscal Agent or Trustee

Notwithstanding anything contained in Section I, Section II, or Section III, the Borrower, in accordance with the Contract, shall be required to make all payments of interest and principal, including any Optional Redemption payment, directly to the Fiscal Agent or the Trustee (as applicable) on the seventh Business Day prior to the appropriate Interim Payment Date, Interest Due Date, Principal Due Date, Prepayment Date, or date of Optional Redemption, as applicable.

C. Interest on Late Payments

If a payment of principal or interest herein provided for shall not be made by either (i) 2:30 p.m. on an Interest Due Date or Principal Due Date; or (ii) 2:30 p.m. on the second Business Day (as herein defined) next succeeding an Interim Payment Date, then interest shall accrue on the amount of such payment at the then applicable interest rate or rates payable on this Note, from the relevant due date, as the case may be, until the date such payment is made. Nothing in the immediately preceding sentence shall be construed as permitting or implying that the Borrower may, without the written consent of the Holder and the Secretary, modify, extend, alter or affect in any manner whatsoever the right of the Holder timely to receive any and all payments of principal and interest specified in this Note.

D. Applicability of Fiscal Agency Agreement or Trust Agreement

Prior to the Conversion Date, this Note and Advances and payments made hereunder shall be administered pursuant to the terms of the Fiscal Agency Agreement and are subject to such agreement. On or after the Conversion Date, this Note and Advances and payments made hereunder shall be administered pursuant to the Trust Agreement and are subject to such agreement. The terms and provisions of the Fiscal Agency Agreement or the Trust Agreement, insofar as they affect the rights, duties and obligations of the Holder and/or the Borrower, are hereby incorporated herein and form a part of this Note. The Borrower hereby agrees to be bound by all obligations of the Borrower to the Fiscal Agent set forth in the Fiscal Agency Agreement. Capitalized terms not defined in this Note shall have the meanings ascribed to them in the Fiscal Agency Agreement or Trust Agreement, as applicable. The Fiscal Agency Agreement provides for the Fiscal Agent to perform certain duties, including the duties of (i) paying agent and calculation agent for this Note until its Conversion Date, and (ii) registrar for this Note until this Note is canceled or a new registrar appointed, each in accordance with the Fiscal Agency Agreement. The Trust Agreement provides for the Trustee to perform certain duties, including the duties of collection agent for this Note after its Conversion Date until a new Trustee is appointed in accordance with the Trust Agreement. This Note may be surrendered to the Fiscal Agent for registration of transfer or exchange, as provided in the Fiscal Agency Agreement. The Fiscal Agent and Trustee each shall permit reasonable inspection to be made of a copy of the Fiscal Agency Agreement or Trust Agreement kept on file at its respective corporate trust office. Neither the Fiscal Agency Agreement nor the Trust Agreement shall change the Borrower's payment obligations under this Note.



CITY CLERK

E. Applicability of Contract and Secretary's Guarantee

This Note evidences indebtedness incurred pursuant to and in accordance with the Contract and pursuant to Section 108 of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. § 5308) (the "HCD Act"). This Note is subject to the terms and provisions of the Contract, to which Contract reference is hereby made for a statement of said terms and provisions and for a description of the collateral security for this Note. The payment of principal on the applicable Principal Due Dates and interest on the applicable Interim Payment Dates or Interest Due Dates under this Note is unconditionally guaranteed by the Secretary to the Holder through a guarantee (the "Guarantee"). Execution of the Secretary's Guarantee is required before this Note is effective, and such Guarantee shall be issued pursuant to and in accordance with the terms of the Contract and Section 108 of the HCD Act.

F. Default

A default under this Note shall occur upon failure by the Borrower to pay principal or interest on this Note when due hereunder. If a Borrower defaults on the payment of any interest or Principal Amounts when due, or if the Secretary gives notice of a final decision to declare the Borrower in default pursuant to the following paragraph of this Section IV.F, the Secretary may, but is not obligated to, make on any date on or prior to the Conversion Date with fourteen calendar days prior notice to the Fiscal Agent, or on the seventh Business Day preceding any Interest Due Date on or after the first permissible Optional Redemption date with seven Business Days prior notice to the Trustee, an acceleration payment to the Fiscal Agent or the Trustee, as applicable, equal to the Aggregate Principal Amount of the Note, together with accrued and unpaid interest thereon to such acceleration payment date or Interest Due Date, as applicable. In the event that any such acceleration payment is made from sources other than funds pledged by the Borrower as security under the Contract (or other Borrower funds), the amounts paid on behalf of the Borrower shall be deemed to be immediately due and payable to the Secretary. Nothing in this paragraph shall be construed as permitting or implying that the Borrower may, without the written consent of the Holder and the Secretary, modify, extend, alter or affect in any manner whatsoever the right of the Holder timely to receive any and all payments of principal and interest specified in this Note.

In addition, the Secretary may declare the Borrower in default under this Note if the Secretary makes a final decision in accordance with the provisions of 24 C.F.R. § 570.913 (or any successor regulation thereof), including requirements for reasonable notice and opportunity for hearing, that the Borrower has failed to comply substantially with Title I of the HCD Act. Following the giving of such reasonable notice, the Secretary may take the remedial actions specified as available in the relevant provisions of the Contract pending the Secretary's final decision.



CITY CLERK

G. Holder's Reliance on Guarantee

Following a default by the Borrower under the terms of this Note, the Holder agrees to rely wholly and exclusively for repayment of this Note upon the Guarantee. The enforcement of any instruments or agreements securing or otherwise related to this Note shall be the sole responsibility of the Secretary, and the Holder shall not be responsible for the preparation, contents or administration of such instruments and agreements, or for any actions taken in connection with such instruments and agreement. The Holder, to the extent it is legally able to do so, shall bind or cause to be bound its successors and assigns to all limitations imposed upon the Holder by this Note.

H. Amendment

This Note may only be amended with the prior written consent of the Secretary and the Borrower. No such amendment shall reduce, without the prior written consent of the Holder of this Note, in any manner the amount of, or delay the timing of, payments required to be received on this Note by the Holder, Fiscal Agent or Trustee, including Guarantee Payments; provided that prior to the Conversion Date, the Commitment Amounts on the Commitment Schedule attached hereto, and the Principal Amounts due on the corresponding Principal Due Dates may be rescheduled pursuant to written instructions given to the Fiscal Agent by the Secretary with the written agreement of the Borrower and the Secretary absent the consent of the Holder.

I. Waivers

The Borrower hereby waives any requirement for presentment, protest or other demand or notice with respect to this Note. The Borrower hereby waives notice of default and opportunity for hearing for any failure to make a payment when due.

J. Delivery and Effective Date

This Note is deemed issued, executed, and delivered on behalf of the Borrower by its authorized official as an obligation guaranteed by the Secretary pursuant to Section 108 of the HCD Act, effective as of the date of the Secretary's Guarantee.

## V. Borrower-Specific Provisions

IN ACCORDANCE WITH RCW 35.21.735, THIS NOTE SHALL BE REPAID SOLELY FROM ONE OR MORE SPECIAL FUNDS HELD BY ONE OR MORE CUSTODIANS APPOINTED PURSUANT TO SUCH STATUTE AND FROM THE SECURITY PLEDGED UNDER THE CONTRACT. THIS NOTE IS NOT AN OBLIGATION OF THE CITY OF SEATTLE OR THE STATE OF WASHINGTON, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OR ANY MUNICIPAL CORPORATION OR SUBDIVISION OF THE STATE, OR ANY AGENCY OF ANY OF THE FOREGOING, IS PLEDGED TO THE PAYMENT OF PRINCIPAL, INTEREST, OR PREMIUM, IF ANY, ON



EDS CITY CLERK

THIS NOTE. NOTHING HEREIN SHALL CONSTITUTE A DEBT OR INDEBTEDNESS OF THE BORROWER PAYABLE FROM PUBLIC FUNDS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION ON THE INCURRING OF DEBT. ANY OBLIGATIONS OF BORROWER UNDER DOCUMENTS INCORPORATED HEREIN ARE SUBJECT TO THE LIMITATION OF LIABILITY SET FORTH IN THE CONTRACT.

**THE UNDERSIGNED**, as an authorized official of the Borrower, has executed and delivered this Note.

_____
BORROWER

By: _____
(Signature)

_____
(Name)

_____
(Title)



CITY CLERK

## ASSIGNMENT AND TRANSFER

For value received, the undersigned assigns and transfers this Note to

_____
(Name and Address of Assignee)

_____

_____
(Social Security or Other Identifying Number of Assignee)

and irrevocably appoints _____
attorney-in-fact to transfer it on the books kept for registration of the Note, with full power of substitution.

Dated: _____

_____
Note: The signature to this assignment must correspond with the name as written on the face of the Note without alteration or enlargement or other change.

Signature Guaranteed:

_____
Qualified Financial Institution

By: _____
Authorized Signature

[This page to be completed by the Fiscal Agent for transfer of the Note by the Holder as of the Conversion Date pursuant to the last paragraph of Section I.A. of this Note.]



BDS CITY CLERK

# APPENDIX A

## Special Pre-Conversion Interest Rates.

(a) The Holder and the Secretary contemplate that the majority of the outstanding Variable/Fixed Rate Notes will be purchased by underwriters selected by the Secretary for sale in public offerings to occur each year. If a public offering including this Note has not occurred by each March 1 following the initial Advance under this Note, the Secretary shall, upon request, advise the Holder as to when a public offering including this Note is expected to occur, and the Holder and the Secretary agree to consult with each other as to what the interest rate on this Note will be after May 1 of that year if a public offering has not occurred by such May 1. The Holder shall notify the Secretary if such consultation has not occurred by April 1 of that year. If no public offering including this Note has occurred on or before such May 1, the applicable interest rate on this Note from such May 1 shall be the rate (if any) negotiated and agreed upon by the Secretary and the Holder. Such rate may be the Standard Note Rate or some other rate agreed upon by the Holder and the Secretary at least two Business Days before such May 1 (such other rate, the "Negotiated Special Interest Rate"). The Secretary shall notify the Fiscal Agent and the Holder in writing of any Negotiated Special Interest Rate within two Business Days of the determination thereof.

(b) If the Secretary and the Holder do not, by the April 15th preceding such May 1, negotiate and agree under Section (a) of this Appendix on an interest rate applicable to this Note, then the Holder may, on or before the April 20th preceding such May 1, give written notice to the Secretary of its intent to change the interest rate on this Note and, if such notice was given during such period, the Holder may, on such May 1, unilaterally determine (subject to the terms of this paragraph) the interest rate that this Note will bear (such rate, the "Holder Determined Interest Rate") from and including such May 1 to but excluding the earliest of: (i) the Conversion Date; (ii) the date that this Note is purchased by a new Holder (as described in Section (c) below) or (iii) a Monthly Special Reset Date (as defined below). Interest from and including such May 1 to but excluding the Public Offering Date shall be paid on the unpaid principal balance of all outstanding Advances under this Note at the rate(s) to be determined by the Holder which, based upon then prevailing market conditions and taking into account all the circumstances, will enable the Holder to sell this Note at one hundred percent (100%) of the aggregate amount of all Advances hereunder prior to the date of such sale. Such interest rate shall be determined as of such May 1 and shall be determined again on the foregoing basis on the first of each month thereafter (the first of each month after such May 1, a "Monthly Special Reset Date"). The Holder shall notify the Fiscal Agent and the Secretary in writing

CITY CLERK

within two Business Days following such dates of the determination of the Holder Determined Interest Rate and each applicable interest rate determined on a Monthly Special Reset Date.

(c) If the Secretary and the Holder have failed to agree upon an interest rate pursuant to Section (a) of this Appendix A, the Secretary, upon seven calendar days notice to the Holder, may arrange for the purchase of this Note in full by another entity on the following May 1 or any Business Day thereafter. If such a purchase occurs, the Holder shall sell and assign this Note to the purchaser thereof without recourse to the Holder and deliver this Note and its Guarantee to the Fiscal Agent for registration in the name of the purchaser thereof in accordance with the Secretary's written instructions. The purchase price for this Note shall be 100% of the aggregate amount of all Advances owing hereunder plus accrued interest to the date of purchase. Payment to the Holder of the purchase price for this Note shall be made by the purchaser thereof in Federal funds at the offices of the Holder, or at such other place as shall be agreed upon by the Holder and the Secretary, at 10:00 a.m., New York time, on the date of purchase. After such purchase date this Note shall bear a rate of interest negotiated between the Secretary and the new interim Holder (the "New Purchaser Special Interest Rate"). The Secretary shall notify the Fiscal Agent and the new purchaser in writing of any New Purchaser Special Interest Rate within two Business Days following the date of determination thereof.

(d) Notwithstanding Sections (a) through (c) (inclusive) of this Appendix, no Borrower is obligated to pay interest at a variable rate exceeding the maximum rate permitted by generally applicable law of the Borrower's state (such rate, the "Maximum Rate"). If the Borrower receives notice of a variable interest payment that exceeds the Maximum Rate, then the Borrower shall timely pay such amount as does not exceed the Maximum Rate, and concurrently shall notify the Secretary and the Fiscal Agent of the reason for any interest non-payment.



CITY CLERK

# COMMITMENT SCHEDULE

Note No. _____

| Principal Due Date | Commitment Amount |
|---|---|
| August 1, 2008 | $ 0 |
| August 1, 2009 | 0 |
| August 1, 2010 | 0 |
| August 1, 2011 | 0 |
| August 1, 2012 | 0 |
| August 1, 2013 | 0 |
| August 1, 2014 | 251,000 |
| August 1, 2015 | 105,000 |
| August 1, 2016 | 110,000 |
| August 1, 2017 | 115,000 |
| August 1, 2018 | 135,000 |
| August 1, 2019 | 145,000 |
| August 1, 2020 | 155,000 |
| August 1, 2021 | 160,000 |
| August 1, 2022 | 175,000 |
| August 1, 2023 | 180,000 |
| August 1, 2024 | 195,000 |
| August 1, 2025 | 205,000 |
| August 1, 2026 | 225,000 |
| August 1, 2027 | 242,794 |
| Maximum Commitment Amount | $2,398,794 |

CITY CLERK

## SCHEDULE P&I*

Note No. _____

| Principal Amount | Principal Due Date | Interest Rate | Optional Redemption Available | |
|---|---|---|---|---|
| | | | YES | NO |
| $ | August 1, 2008 | | | X |
| | August 1, 2009 | | | X |
| | August 1, 2010 | | | X |
| | August 1, 2011 | | | X |
| | August 1, 2012 | | | X |
| | August 1, 2013 | | | X |
| | August 1, 2014 | | | X |
| | August 1, 2015 | | | X |
| | August 1, 2016 | | | X |
| | August 1, 2017 | | | X |
| | August 1, 2018 | | X | |
| | August 1, 2019 | | X | |
| | August 1, 2020 | | X | |
| | August 1, 2021 | | X | |
| | August 1, 2022 | | X | |
| | August 1, 2023 | | X | |
| | August 1, 2024 | | X | |
| | August 1, 2025 | | X | |
| | August 1, 2026 | | X | |
| | August 1, 2027 | | X | |
| $_____ | = Aggregate Principal Amount | | | |

Principal Amounts due on or after August 1, 2018, may be redeemed, subject to the terms contained herein and in the Trust Agreement, on any Interest Due Date on or after August 1, 2017.

*This schedule will not be completed when initially executed and delivered by the Borrower for Guarantee for interim, variable-rate financing. It will be completed when assigned by the Holder at the request of the Borrower for conversion to Fixed Rates on the Conversion Date. The first date shown above on which Optional Redemption is available is expected to be the same when this schedule is completed, if the Borrower participates in the initial Section 108 public offering after receiving an interim financing Advance hereunder. If the Borrower participates in a later public offering, the first date on which Optional Redemption is available is expected to be correspondingly later.

CITY CLERK

# City of Seattle

Gregory J. Nickels, Mayor

**Office of the Mayor**

July 31, 2007

Honorable Nick Licata
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Licata:

I am pleased to transmit the proposed Council Bill that authorizes the Office of Economic Development, on behalf of the City, to make a $2,398,794 Section 108 loan to 17th and Jackson Investment Fund, LLC. The 108 loan will finance the development of 59 residential rental units and 11,000 square feet of commercial/retail space at 1700 Jackson Street in the Central Area neighborhood. This legislation also authorizes the disbursement of a companion Brownfields Economic Development Initiative (BEDI) Grant, in the amount of $479,759, to reduce interest costs and serve as a loan loss reserve on the Section 108 loan.

If approved, this will be the second project in a $10,000,000 Section 108 loan fund and companion $2,000,000 BEDI Grant, previously approved by Council in June 2006. The 108 loan will be instrumental in helping to make the project feasible, will further longstanding City priorities to add housing and retail/commercial services in the 23rd and Jackson area, and will help revitalize the underused Jackson Street corridor between 14th and 23rd Avenue.

Should you have any questions, please contact Ken Takahashi of the Office of Economic Development at 684-8378.

Sincerely,

GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 7th Floor, P.O. Box 94749, Seattle, WA 98124-4749
Tel: (206) 684-4000, TDD: (206) 615-0476 Fax: (206) 684-5360, Email: mayors.office@seattle.gov
An equal employment opportunity, affirmative action employer. Accommodations for people with disabilities provided upon request.

Ens CITY CLERK

ORDINANCE _____

AN ORDINANCE relating to development in the Central Area neighborhood; amending Ordinance 121740; authorizing a loan of federal Section 108 loan proceeds to finance development of 1700 South Jackson Street; appropriating and authorizing the disbursement of Brownfields Economic Development Initiative grant ("BEDI Grant") funds to reduce debt service obligations on the loan, to provide loan loss reserves and to finance project costs associated with the loan; authorizing and ratifying loan documents, amendments, replacements and related documents and actions; authorizing use of the Central Area Capital Fund Program as additional security for the loan; and authorizing amendments to the City's 2005-2008 Consolidated Plan to reflect the transactions contemplated by this ordinance.

WHEREAS, Ordinance 121740 authorized the OED Director to transfer ownership of the Property to the Central Area Development Association ("CADA"); and

WHEREAS, pursuant to Ordinance 122139, in order to support certain eligible activities under the federal Section 108 program, including the acquisition and development of certain properties within the City, the City is authorized to issue a note in the principal amount not to exceed Ten Million Dollars ($10,000,000), or multiple notes in a total principal amount not exceeding that sum, without recourse to general funds, and enter into a contract with the United States Department of Housing and Urban Development ("HUD") for a Section 108 guaranty of the note and agreements with a custodian (the "Custodian") to establish separate accounts to handle disbursements and receipts, which documents allowed the City to request funds under the note from time to time; and

WHEREAS, Ordinance 122139 also authorized loans of a portion of the note proceeds and authorized acceptance of a companion Brownfields Economic Development Initiative ("BEDI") Grant in the amount of Two Million Dollars ($2,000,000); and

WHEREAS, the Director of the Office of Economic Development and the City's Loan Committee have approved a loan in the amount of Two Million Three Hundred Ninety Eight Thousand Seven Hundred Ninety Four Dollars ($2,398,794) from the note proceeds and a companion BEDI Grant in the amount of Four Hundred Seventy Nine Thousand Seven Hundred Fifty Nine Dollars ($479,759), to finance development costs of 1700 South Jackson Street in the Central Area neighborhood; and

WHEREAS, subsequent to the passage of Ordinance 121740, CADA determined that it could construct the Project on a portion of the Property and requested that it be permitted to sell the remainder of the Property and use the sale proceeds to offset increased development costs of the Project; and



EDS CITY CLERK

WHEREAS, the OED Director determined that the sale of the Property to CADA and the application of the proceeds from the sale of that portion of the Property that is surplus to CADA's needs to development costs of the Project is necessary to the successful development of the Project; and

WHEREAS, the City's participation in the Section 108 loan guaranty program and the expenditure of guaranteed loan proceeds thereunder is authorized by RCW 35.21.735; and

WHEREAS, the Office of Economic Development has given public notice of the proposed loan and the City Council has held a public hearing with respect to the proposed loan;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 1 of Ordinance 121740 is hereby amended to read as follows:

The Mayor or Director of the Office of Economic Development ("OED Director") is authorized, on behalf of the City of Seattle, to execute, deliver, administer and cause to be performed a Contract for Sale of Real Estate ("Agreement") with the Central Area Development Association (CADA), a Washington nonprofit corporation ("CADA") based on the form attached as Attachment A, with such additions, modifications and amendments as the Mayor or OED Director decide are necessary or advisable to carry out the purposes of this ordinance, together with such ancillary and related documents as the Mayor or OED Director may deem necessary or advisable to carry out the purposes of this ordinance. The Agreement shall provide for the transfer of the land legally described as:

Parcel "40" - Lots 1 and 2, except the North 70 feet thereof and except the South 16 feet for alley, in Block 19, Hill Tract Addition to the City of Seattle, according to the plat recorded in Volume 8 of Plats, page 42, records of King County, Washington; and

The South 36 feet of the North 70 feet of Lot 1 and the South 36 feet of the North 70 feet of the West 10 feet of Lot 2, in Block 19, Hill Tract Addition



DIS CITY CLERK

to the City of Seattle, according to the plat recorded in Volume 8 of Plats, page 42, records of King County, Washington;

and

Parcel "41" - Lots 7, 8, 9, 10, 11, 12, 13, 14, and 15, Block 19, Hill Tract Addition to the City of Seattle, according to the plat recorded in Volume 8 of Plats, page 42, records of King County, Washington

(the "Property") to CADA, or an assignee permitted by the City, on the terms and subject to the conditions authorized in this ordinance. Consideration for the transfer of the Property shall be SEVEN HUNDRED FIFTY THOUSAND and no/100 dollars ($750,000.00). The City Council determines that such amount, payable on the terms authorized herein, is adequate in light of the factors described in RCW 35.81.090. The Agreement shall provide that the Property shall be transferred subject to restrictions of record, and to development and use conditions that the City shall impose as a condition of the sale, which shall include, but not be limited to, substantially those described in Section 3 of this ordinance; provided, however, that because the Project will be constructed entirely on Parcel 41, the OED Director is authorized, on behalf of the City, to execute and deliver a release of said use covenants recorded against Parcel 40 conditioned on CADA's, or its assignee's, agreement that all proceeds from the sale of Parcel 40 shall be applied to development costs of the project. The Agreement shall provide for the consideration to be paid by applying the nonrefundable earnest money to be delivered to the City upon signing of the Agreement, and the balance according to the terms of a nonrecourse promissory note secured by a deed of trust on the Property. The promissory note shall be on the terms described in an exhibit to Attachment A, with such modifications and insertions as the Mayor or OED Director may deem necessary or appropriate to carry out the intent of this ordinance, and shall have a maturity date approximately 15 years from the anticipated date of completion of the



BNS CITY CLERK

improvements on the Property required by the Agreement, provided that the Mayor or OED Director may agree to a later maturity date if necessary to accommodate other financing.

Section 2. Section 6 of Ordinance 121740 is hereby amended to read as follows:

The Mayor or the OED Director is authorized, on behalf of the City, to lend and cause the disbursement to CADA, pursuant to the Loan Agreement authorized in Section 7 of this ordinance, of up to ~~SEVEN HUNDRED FIFTY THOUSAND DOLLARS ($750,000)~~ ONE MILLION TWO HUNDRED FOUR THOUSAND NINE HUNDRED NINETY TWO DOLLARS ($1,204,992) of funds previously appropriated for the Community Equity Fund component of the Central Area Capital Fund Program ("Equity Fund"), which program was authorized in Ordinance 117729, as amended by Ordinance 119224. Such loan funds shall be used to finance the earnest money payment to the City required by the Agreement and other costs related to the proposed acquisition and redevelopment of the Property, including predevelopment costs. The loan shall be payable on the terms set forth in the form of promissory note attached as Attachment B to this ordinance, with such insertions and modifications as the Mayor or OED Director may determine are necessary or appropriate to carry out the intent of this ordinance~~, and except that the Loan Agreement may provide that if the Agreement shall terminate without the Property having been conveyed to the purchaser, under circumstances in which the earnest money is retained by the City and there is no liability of either party, then an amount of the loan up to $450,500 may be forgiven~~. The maturity date of the loan shall be approximately 15 years from the anticipated date of completion of the improvements on the Property required by the Agreement, provided that the Mayor or OED Director may agree to a later maturity date if necessary to accommodate other financing. At any time prior to the



BUS CITY CLERK

maturity date and upon written request of CADA, up to ~~$300,000~~ 754,992 of the loan amount may be forgiven provided that the principal amount has not previously become due; the redevelopment of the Property has been timely completed; at least 51% of residential units have been occupied by low- and moderate-income households, at least 8,000 net rental square feet have been maintained as a neighborhood commercial/retail center; CADA, or an entity in which CADA has a direct interest, remains the legal and equitable owner of the Property; and CADA remains in compliance with the terms of the Agreement and all other agreements with the City regarding the property. To the extent the loan terms and conditions described in this ordinance and in Attachment B hereto differ from those set forth in the policies for the Central Area Capital Fund adopted in Ordinance 117729, as amended by Ordinance 119224, the terms and conditions of this ordinance and Attachment B shall govern.

Section 3. The Mayor or OED Director is authorized, on behalf of The City of Seattle, to issue a non-recourse promissory note ("Note") in the principal amount not to exceed Two Million Three Hundred Ninety Eight Thousand Seven Hundred Ninety Four Dollars ($2,398,794), based on the form attached as Exhibit C to this ordinance, and with such modifications, additions or amendments as HUD may require or the Mayor or OED Director may deem necessary or advisable to carry out the purposes of this ordinance. The Note shall provide for a schedule of maturities of principal approximately as stated in Exhibit A, with such modifications and amendments as HUD may require or the Mayor or OED Director deem necessary or advisable to carry out the purposes of this Ordinance. The Mayor or OED Director is further authorized, on behalf of the City, to lend and cause the disbursement of the Note proceeds to the 17th & Jackson Investment Fund LLC ("Obligor" or "NMTC Investment Fund"), or a substitute entity approved by the Mayor or OED Director. Obligor is an entity formed by



CITY CLERK

Washington Mutual Community Development, Inc., as investor member, and ESIC Community Partners, Inc., as managing member, and such entity shall serve as the New Markets Tax Credit investment fund that will assist in financing development of the Property. The Mayor or OED Director is further authorized, on behalf of The City of Seattle, to cause there to be drawn from the federal treasury and deposited in the Special Purpose Grants Fund, No. 17820, companion Brownfields Economic Development Initiative ("BEDI") Grant funds in the amount of Four Hundred Seventy Nine Thousand Seven Hundred Fifty Nine Dollars ($479,759), and pursuant to the appropriation in Section 7 of this ordinance, to cause the disbursement of such amount for the benefit of Obligor, for the purposes of reducing debt service obligations on the loan, to provide loan loss reserves and to finance project costs associated with the Section 108 loan. The amount of such BEDI Grant funds is based on the ratio of the maximum amount of the Section 108 loan ($2,398,794) to the maximum proceeds of the City's Note (i.e., $10,000,000).

Section 4. The Mayor or the OED Director is authorized, on behalf of The City of Seattle, to execute, deliver, administer and cause to be performed: (1) a Loan Agreement with the Obligor based on the form attached as Exhibit B to this ordinance and the terms outlined in Attachment B to Exhibit B, with such adjustments as HUD may require or the Mayor or OED Director deem necessary or advisable to carry out the purposes of this ordinance; and (2) such amendments and related documents as the Mayor or OED Director may deem necessary or advisable to carry out the purposes of this ordinance. The Section 108 loan shall be secured by an assignment and pledge for security purposes of the interest of Obligor in the CDE. As a condition of the 108 loan, the Loan Agreement shall require Obligor to cause the CDE to secure one or more deeds of trust, in form and content acceptable to the OED Director, against the Property.



CITY CLERK

Section 5. The Mayor or the OED Director is authorized, on behalf of The City of Seattle, to use the Equity Fund as additional security for the 108 loan, in an amount up to $1,800,000. The OED Director shall have the discretion to release such security when the OED Director has determined that the 17th and Jackson project has completed construction and has achieved sufficient lease-up to meet stabilized vacancy levels (i.e., 5% vacancy for residential space and 10% vacancy for commercial/retail space). Appropriation is authorized from the Equity Fund as follows, and unspent funds so appropriated shall carry forward to subsequent fiscal years until the OED has determined that conditions of Section 5 of this ordinance have been met, or such funds are otherwise exhausted or abandoned by ordinance:

| Fund | Department | Budget Control Level | Amount |
|---|---|---|---|
| Housing and Community Development Revenue Sharing Fund No. 17810 (Project No. XDIURI77, Central Area Equity Fund) | Office of Economic Development | 6XD10 | $1,800,000 |

Section 6. The Loan Agreement shall provide, consistent with HUD regulations, that the Obligor shall take affirmative steps to assure that minority and women's business enterprises are used when possible, that Obligor shall maintain records of those steps, and that nothing in the Loan Agreement shall be construed to require or authorize any discrimination or preferential treatment contrary to applicable law.



CITY CLERK

Section 7. To the extent that BEDI Grant funds are received by the City in the Special Purpose Grants Fund, the appropriation for the following in the 2007 Budget is increased from the fund shown, as follows:

| Fund | Department | Budget Control Level | Amount |
|---|---|---|---|
| Special Purpose Grants Fund, No. 17820 | Office of Economic Development | 6XD20 | $479,759 (BEDI Grant funds) |

Section 8. The Mayor or OED Director may require the Obligor to pay a loan origination fee of no more than one percent (1%) of the loan amount, i.e., no more than Twenty Three Thousand Nine Hundred Eighty Seven Dollars ($23,987). The OED Director is authorized to cause all or a portion of this fee to pay the National Development Council for consulting services related to the loans authorized hereby, in accordance with the City's existing contract with the National Development Council, and to pay for the City's legal fees and any other costs related to the issuance and placement of the Note and the administration of the transactions authorized by this Ordinance, that are not paid by Obligors pursuant to loan agreements. The OED Director is authorized to cause any remaining portion of such fee to be applied to payment of expenses incurred in the administration of any federally guaranteed or federally funded economic development loan or program administered by the OED Director or to be remitted to the City and deposited in the Housing and Community Development Revenue Sharing Fund.

Section 9. The Director of the Human Services Department ("HSD Director") is authorized to further amend the City's 2005-2008 Consolidated Plan to reflect the transactions contemplated by this Ordinance and provide OED with technical assistance to ensure compliance with Community Development Block Grant ("CDBG") regulations applicable to the Section 108



CITY CLERK

loan program. The Mayor, OED Director, and the HSD Director are authorized to take such other actions as they shall deem necessary to implement the actions authorized by this Ordinance.

Section 10. This Ordinance is not intended to create, and shall not be construed to create, any contractual or otherwise binding obligation upon, or commitment by, the City for the benefit of Washington Mutual, CADA, or any other party interested in the acquisition or development of the Property. The commitments authorized by this Ordinance, subject to the limitations herein and under applicable law, shall become effective only if and when the agreements authorized hereby are duly executed and delivered by the City and other necessary parties.

Section 11. Any act pursuant to the authority and prior to the effective date of this ordinance is hereby ratified and confirmed. If any provision of this ordinance is determined to be invalid or unenforceable the remainder shall nonetheless remain in full force and effect.



CITY CLERK

Section 12. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2007, and signed by me in open session in authentication of its passage this _____ day _____, 2007.

_____
President _____ of the City Council

Approved by me this _____ day of _____, 2007.

_____
Gregory J. Nickels, Mayor

Filed by me this _____ day of _____, 2007.

_____
City Clerk

(Seal)

Exhibits:

A. Schedule of Maturities
B. Form of Loan Agreement
   - Attachment A Legal Description for Property
   - Attachment B Description of Project
   - Attachment C Form of Obligor Note
C. Form of Note



CITY CLERK

## EXHIBIT A TO ORDINANCE

**Schedule of Maturities for**
**City Note in the Amount of $2,398,794**

| Principal Due Date | Amount of Principal |
|---|---|
| August 1, 2008 | $ 0 |
| August 1, 2009 | 0 |
| August 1, 2010 | 0 |
| August 1, 2011 | 0 |
| August 1, 2012 | 0 |
| August 1, 2013 | 0 |
| August 1, 2014 | 251,000 |
| August 1, 2015 | 105,000 |
| August 1, 2016 | 110,000 |
| August 1, 2017 | 115,000 |
| August 1, 2018 | 135,000 |
| August 1, 2019 | 145,000 |
| August 1, 2020 | 155,000 |
| August 1, 2021 | 160,000 |
| August 1, 2022 | 175,000 |
| August 1, 2023 | 180,000 |
| August 1, 2024 | 195,000 |
| August 1, 2025 | 205,000 |
| August 1, 2026 | 225,000 |
| August 1, 2027 | 242,794 |
| | Total: $2,398,794 |

BMS CITY CLERK

122487

# STATE OF WASHINGTON – KING COUNTY

--ss.

215854 No. TITLE ONLY

CITY OF SEATTLE,CLERKS OFFICE

## Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:122483-88,90,92-94

was published on

09/27/07

The amount of the fee charged for the foregoing publication is the sum of $ 167.40, which amount has been paid in full.

Subscribed and sworn to before me on

09/27/07

Notary public for the State of Washington,
residing in Seattle

# State of Washington, King County

## City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on September 10, 2007, and published here by title only, will be mailed upon request, or can be accessed electronically at http://clerk.ci.seattle.wa.us. For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 122494

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

ORDINANCE NO. 122493

AN ORDINANCE relating to the selection of providers of and standards for indigent public defense services and amending Ordinance 121501.

ORDINANCE NO. 122492

AN ORDINANCE stating the City Council's intent not to propose or to enact any ordinance that would have the effect of approving any amendment to the Premises Use & Occupancy Agreement between the City of Seattle and the Professional Basketball Club, L.L.C. allowing the Seattle SuperSonics to vacate the KeyArena prior to September 30, 2010.

ORDINANCE NO. 122490

AN ORDINANCE authorizing the Fleets and Facilities Department Director to execute an amendment to a lease agreement with the General Services Administration of the U.S. Government for warehouse space at Federal Center South, 4735 East Marginal Way South, in Seattle.

ORDINANCE NO. 122488

AN ORDINANCE relating to the Department of Parks and Recreation, authorizing the grant of an easement over an 11,928 square foot parcel of land at the southwest corner of Discovery Park to allow the continued maintenance of a seawall that has existed since before the creation of the Park and to allow the maintenance and landscaping of the area behind the seawall in a manner that is not incompatible with the natural environment of the adjoining portion of Discovery Park, finding that this transaction is not subject to the requirements of Ordinance 118477; and in consideration of the agreement by the National Parks Service to release the area of this easement from the Declaration of Restrictions in the deed conveying this land to the City of Seattle, authorizing the acceptance of a Deed of Release and the execution of a new Declaration of Restrictions to limit the use of the land known as the Kiwanis Ravine Green Space to public park purposes; and authorizing acceptance of funds in exchange for the easement.

ORDINANCE NO. 122487

AN ORDINANCE relating to development in the Central Area neighborhood; amending Ordinance 121740; authorizing a loan of federal Section 108 loan proceeds to finance development of 1700 South Jackson Street; appropriating and authorizing the disbursement of Brownfields Economic Development Initiative grant ("BEDI Grant") funds to reduce debt service obligations on the loan, to provide loan loss reserves and to finance project costs associated with the loan; authorizing and ratifying loan documents, amendments, replacements and related documents and actions; authorizing use of the Central Area Capital Fund Program as additional security for the loan; and authorizing amendments to the City's 2005-2008 Consolidated Plan to reflect the transactions contemplated by this ordinance.

ORDINANCE NO. 122486