

APPENDIX K: Promissory Note

SECURED PROMISSORY NOTE

\$000,000.00

Date: _____, 202__

FOR VALUE RECEIVED, the undersigned _____, a Utah _____, whose address is, _____ (Maker), promises to pay to the order of SALT LAKE COUNTY, a body corporate and politic of the State of Utah, with an address of 2001 South State Street, S2100, Salt Lake City, Utah 84190, (together with its successors and assigns, "Holder"), in lawful money of the United States of America, the principal sum of _____ Dollars (**\$000,000.00**).

1. Payment Terms. Maker shall make yearly payments on this Note in the amount of _____ Dollars (\$00,000.00), due on the 31st day of December of each year, commencing on December 31st, 202__, and continuing thereafter on the 31st of December of every year without the need of any notice, demand or presentment until paid in full.. Any payment paid later than ten (10) days after its due date shall incur a late fee of five percent (5%) per month, compounded monthly. Maker shall have the right to prepay the entire principal sum hereof, or any part of the principal sum without penalty.

2. Interest. Interest shall accrue at the rate of _____ percent (___%) per annum, with an amortization of _____ (___) years. If payments are not made when due, or if a default has occurred that it is not cured within the applicable cure period set forth in the Agreement, if any, a default interest rate of _____ (**%) will be charged on the outstanding unpaid principal compounded annually until the unpaid principal along with all late fees, costs, fees, interest and expenses are paid in full. If payment is not received within forty-five (45) days of the due date, this shall be an event of default giving Holder the right to declare a default and to accelerate the Note without notice.

3. Security Interest. This Promissory Note ("Note"), is secured by a certain Trust Deed, whereby Maker has pledged as security for repayment of this Note all of Maker's right to title and interest in certain property described in the Trust Deed. The Trust Deed describes the nature and extent of the security and the rights of Holder with respect to such security. This Note is also secured by that certain Deed Restriction, whereby Maker has pledged as security for the full and faithful execution of the Deed Restriction, all of Maker's right to title and interest in certain property described in the Deed Restriction. The Deed Restriction describes the nature and extent of the security and the rights of Holder with respect to such security.

4. Loan Agreement. This Note is made with Funds received by Holder from the United States Department of Housing and Urban Development under the HOME Investment Partnership Program pursuant to the Cranston-Gonzales National Housing Act of 1992, as set

forth in that certain Subgrant Agreement, dated _____, 20__ by and between the Maker and the Holder (the “Subgrant Agreement.”) The HOME funds shall be advanced by Holder to Maker subject to the terms and conditions of the Subgrant Agreement, this Note, and the accompanying Trust Deed and Deed Restriction (the “Loan Documents”), including Covenants restricting the occupancy, rents, operation, ownership and management of the _____, an affordable housing development. Capitalized terms used herein but not otherwise defined shall have the meanings given such terms in the Subgrant Agreement.

5. Default. The occurrence of any one or more of the following, at Holder’s sole option, shall constitute a “Default” under this Note:

- A.** If the Maker voluntarily or involuntarily transfers, sells or assigns its right, title and interest in and to the real property, without the consent of the Holder, which consent shall not be unreasonably withheld, conditioned or delayed; or
- B.** If the Maker fails to make payments when due; or
- D.** If the Maker fails to pay any taxes due on the Property; or
- E.** If the Maker fails to comply with any material provision of the Loan Documents; or
- F.** If Maker fails to comply with any affordability requirements set forth in that certain Subaward Agreement (CC No. _____) dated _____, 2024, the terms and conditions of which are incorporated herein by this reference and made a material part of this Note.

6. Nonperformance; Right to Cure. Maker shall be deemed to have failed to observe or perform any term, covenant, promise, or agreement under any Loan Document, if Maker has not cured said default within thirty (30) days following the receipt by Maker of notice, as set forth in Section 13 of this Note of such non-performance from Holder. Notwithstanding the foregoing, if the default cannot be reasonably cured within that thirty (30) day period, Maker shall not be in default so long as Maker commences to cure the default within that thirty (30) day period and diligently continues such cure until completed. This section does not apply to the failure to make a payment when due under this Note.

7. Remedies. The remedies of Holder shall be cumulative and concurrent, and may be pursued singularly, successively or together, at the sole discretion of Holder, and may be exercised as often as occasion therefore shall arise. Failure to exercise any right, remedy or recourse shall not be deemed a waiver or relinquishment of Holder’s rights pursuant to the Loan Documents unless specifically waived in writing by Holder. A waiver or release with reference to any one event shall not be construed as continuing, as a bar to, or as a waiver or release of, any subsequent right, remedy or recourse as to a subsequent event. Upon the occurrence of a Default (not cured as provided above), Holder may, in addition to any other remedies set forth in the Loan Documents, or any remedies now or hereafter existing at law, in equity, or by statute, exercise any one or more of the following rights and remedies as it, in its sole discretion, may deem necessary or appropriate.

A. Possession. Subject to the rights of any senior lien holders, Holder may either, in person or by agent, with or without bringing any action or proceeding or by a receiver appointed by a court, and without regard to the adequacy of security, enter upon and take possession of the Property, or any part thereof, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Property, or any part thereof; and, with or without taking possession of the Property, to sue for or otherwise to collect the rents, issues and profits thereof, including, without limitation, those past due and unpaid, and to apply the same, less costs and expenses of operation and collection, including, without limitation, attorneys' fees, to any obligations secured hereby, all in such order as Holder may determine.

B. Substitute Performance. Should the Default (not cured as provided above) include the failure of Maker to perform any of Maker's material obligations under the Loan Documents, including, without limitation, the obligation to pay any amount due to any person, corporation, partnership, other entity or any governmental agency when required, either Holder or Trustee, as identified in the Trust Deed, may, but shall not be obligated to, perform the same without notice to or demand upon Maker, without regard to the adequacy of its security and without prejudice to its right to declare a default hereunder. Any amounts so paid and all costs and expenses incurred by Holder or Trustee in connection with such payment or performance, including, without limitation, reasonable attorneys' fees, and any other amounts for which Maker is specifically obligated to reimburse Holder or Trustee or which Trustee or Holder is authorized to advance, pursuant to provisions hereof, shall be payable by Maker to Holder or Trustee on demand, with interest at the rate set forth in this Note from the date paid by Holder or Trustee, and shall be secured by this Note.

C. Power of Sale. Holder may exercise the power of sale as established by state law for the foreclosure of trust deeds, or, at Holder's option, in the manner provided by law for the foreclosure of mortgages on real property.

D. Acceleration. Upon the occurrence of any Event of Default, at Holder's option and in addition to any other remedy Holder may have under the Note or any other Loan Document or at law or in equity or by statute, Holder may declare all sums secured hereby immediately due and payable and elect to have the Property sold in the manner provided by law and set forth in the Trust Deed. In the event Holder elects to sell the Property, Holder or Trustee shall initiate foreclosure proceedings in the manner provided by law for sale of trust property. In the alternative, Holder shall have the option to foreclose the Trust Deed in the manner provided by law for the foreclosure of mortgages on real property, and Holder shall be entitled to recover in such proceedings all costs and expenses incident thereto, including reasonable attorney's fees and costs in such amounts as shall be fixed by the court..

E. Specific Performance. Maker explicitly acknowledges that monetary damages will not make County whole, since the reason for the County entering into the Loan Agreement is to provide low income housing to the citizens of Salt Lake County. Therefore, Maker agrees that County has the right to enforce the Loan Agreement through an action for specific performance from Maker and Maker's successors and assigned.

9. Attorneys' Fees. If one or more events of Default (not cured as provided above) shall occur (or any act which with notice or passage of time or both would constitute a Default) under this Note, Maker promises to pay all collection costs, including but not limited to all reasonable attorneys' fees, court costs, and expenses of every kind incurred by Holder in connection with such collection or the protection or enforcement of any or all of the security for this Note, whether or not any lawsuit is filed with respect thereto.

10. Waiver. Maker hereby waives all valuation and appraisal privileges, presentment and demand for payment, protest, notice of protest and nonpayment, dishonor and notice of dishonor, bringing of suit, lack of diligence or delays in collection or enforcement of this Note and notice of the intention to accelerate, the release of any liable party, the release of any security for the debt, and any other indulgence or forbearance, and is and shall be directly and primarily liable for the amount of all sums owing and to be owed hereon, and agrees that this Note and any or all payments coming due hereunder may be extended or renewed from time to time without in any way affecting or diminishing Maker's liability hereunder.

11. Severability. If any provision of this Note or any payments pursuant to the terms hereof shall be invalid or unenforceable to any extent, the remaining provisions of this Note and any other payments hereunder shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.

12. Governing Law. This Note shall be governed by and construed under the laws of the State of Utah without giving effect to the choice of law provisions thereof.

13. Notices. All notices, approvals, consents, requests and demands upon the respective parties hereto shall be in writing and shall be deemed to have been given or made when delivered or three (3) days after deposit in the United States mail, postage prepaid, certified or registered mail, return receipt requested, to the addresses given below or to such other addresses as may be furnished in writing for such purposes, with a copy to one additional person each, as specified herein:

To Holder: Housing Trust Fund Program Manager
2001 South State Street, S2100
Salt Lake City, Utah 84190

With copy to: Civil Division Administrator
Salt Lake County District Attorney's Office
35 East 500 South
Salt Lake City, Utah 84111

To Maker:

With copy to:

IN WITNESS WHEREOF, Maker has executed and delivered this Note as of the date first above written.

MAKER:

By: _____

Its: _____

STATE OF UTAH)

: ss.

COUNTY OF)

On the ___ day of _____, 2024, personally appeared before me, _____, being by me, duly sworn, did say that s/he is the _____ of said corporation, and that the foregoing instrument was signed by him/her on behalf of said corporation by authority of a Resolution and the said _____ acknowledged to me that said corporation executed the same.

NOTARY PUBLIC

SAMPLE