

**CITY COUNCIL AGENDA ITEM**  
CITY OF SHORELINE, WASHINGTON

<b>AGENDA TITLE:</b>	Authorizing the City Manager to execute a 99-year ground lease with Catholic Housing Services for city-owned property located at 198 <sup>th</sup> and Aurora Avenue N and to join in a Section 42 Extended Use Agreement for low-income tax credits so as to provide affordable housing with supportive services
<b>DEPARTMENT:</b>	City Manager's Office
<b>PRESENTED BY:</b>	Nathan Daum, Economic Development Manager
<b>ACTION:</b>	<input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing <input type="checkbox"/> Discussion

**PROBLEM/ISSUE STATEMENT:**

In 2017, the City entered into a partnership with King County to develop a request for proposals for affordable housing on the City-owned property located at N 198<sup>th</sup> St and Aurora Ave N, the majority of which is surplus property from the Aurora Corridor Project. In 2020, City Council formally recognized Catholic Housing Services of Western Washington (CHS) as the owner-operator for the project, authorizing the City Manager to award a lease option to CHS. The next step in the process is for the City and CHS to enter into the 99-year ground lease as outlined in the lease option which will enable the project to move forward into the construction phase. In order for the developer to secure permits and financing, City Council approval is needed to authorize the City Manager to execute the long-term ground lease and a Section 42 Extended Use Agreement.

**RESOURCE/FINANCIAL IMPACT:**

Tax Parcel #222730-0025 was purchased for \$1,043,200 and Tax Parcel #222730-0030 was purchased for \$1,043,200, for a total of \$2,086,400. These two properties were purchased using federal grant money for the Aurora Corridor Project in 2012. Tax Parcel #222730-0036, purchased for \$225,000 in 2015, was acquired to create a more buildable assemblage when the City was approached by the owners with a compelling offer. Staff estimates that the current total market value of the three parcels is at least \$2.0 million. The proposed 99-year lease provides the property for the purposes of affordable housing at a rate of one dollar (\$1.00) per year.

**RECOMMENDATION**

Staff recommends that the City Council authorize the City Manager to execute a 99-year ground lease for three (3) parcels located at N 198<sup>th</sup> St and Aurora Ave N to Catholic Housing Services of Western Washington (CHS) for the purposes of developing and operating affordable housing and supportive services, execute Section

42 Extended Use Agreement in order to secure low-income tax credits, and take the necessary steps to complete the transition to CHS use of the site.

Approved By:        City Manager **DT**    City Attorney **MK**

## **BACKGROUND**

The City owns three parcels of property (Tax Parcels #222730-0025, #222730-0030, and #222730-0036), with a total area of 34,360 square feet at the northeast corner of Aurora Ave N and N 198<sup>th</sup> St. A map that includes the parcel numbers is included as Attachment A. Two parcels were bought as part of the Aurora Corridor Project. A third was acquired to create a more buildable assemblage when the City was approached by the owners with a compelling offer. The three parcels together are known as the 198<sup>th</sup> Property.

Once the Aurora Corridor Project was complete, the City determined it would no longer need these parcels for transportation purposes. During the August 8, 2016, City Council meeting, Council discussed what to do with the 198<sup>th</sup> Property, including leasing the property to a third party. Council directed staff to investigate using the property for affordable housing. More information about this discussion can be found here: [Use and Surplus of Real Property](#).

During the March 6, 2017 City Council meeting, Council discussed a massing study to determine the potential of the site as well as a King County Department of Community and Human Services Development Concept. King County also presented on the potential Request for Proposal (RFP) process to select an affordable housing developer and onsite service provider. More information about this discussion can be found here: [Discussion of Affordable Housing Options for 198th Property](#).

King County subsequently conducted the RFP process and chose Community Psychiatric Clinic (CPC) to develop and manage the apartment building with Catholic Housing Services of Western Washington (CHS). City Council was briefed on what was now called the 198<sup>th</sup> Affordable Housing Project at the September 24, 2018, City Council dinner meeting. This included meeting and hearing from representatives of both CPC and CHS. The memo for this discussion can be found here: [Dinner Meeting with Development Partners for the 198th Affordable Housing Project](#).

During the January 14, 2019, City Council meeting, Council authorized the City Manager to provide an option to lease the property in order to allow the project owner, at the time CPC, to move into the financing phase. The staff report for this decision can be found at the following link: [Authorizing the City Manager to Award an Option to Lease the City Owned 198th Property to Community Psychiatric Clinic for Affordable Housing and Supportive Services](#).

Following this Council action in 2019, CPC merged into another nonprofit behavioral healthcare entity, Sound, and was no longer available to serve as project owner. CHS then stepped into the leadership role as both developer and owner-operator of the housing with supportive services planned for the City-owned property at 198<sup>th</sup>. This change in project leadership required redirecting capital funding from CPC to CHS. On June 15, 2020, Council authorized the City Manager to award an option to lease the property to CHS, providing CHS with the evidence of site-control necessary to secure those funds. The staff report for this decision can be found at the following link: [Authorizing the City Manager to Award an Option to Lease the City Owned 198th](#)

[Property to Catholic Housing Services of Western Washington for Affordable Housing and Supportive Services.](#)

## **DISCUSSION**

Since the lease option, staff has been working with CHS to prepare a ground lease (Attachment B) acceptable to both parties. To adequately fund the project, CHS is planning to secure low-income tax credits it is eligible for under Section 42 of the Internal Revenue Code. As owner of the property, the City needs to be a party to an Extended Use Agreement (Attachment C). If City Council authorizes the execution of these documents, the project will be able to secure required financing, permits, and anticipates starting construction Fall 2021 with completion by Winter 2023.

### **Ground Lease Terms**

The proposed ground lease agreement (Attachment B) sets a lease rate of one dollar (\$1.00) per year over a term of 99-years as previously directed by City Council.

The ground lease generally provides for the following:

- Identifies CHS as the sole responsible party for any costs, taxes, or other obligations related to the property;
- Ensures insurance and indemnity to protect the City;
- Ensures the City retains some basic rights, such as the ability to grant easements or liens on the property if needed;
- Specifies the purpose and intent of the lease as affordable housing with supportive services, with the affordability level set at no more than 80% of Area Median Income (AMI).

While the ground lease sets the affordability level at 80%, due to requirements associated with the sources of financing for this project, CHS anticipates exceeding this affordability term, providing 50 of the 100 housing units at rents affordable to households making no more than 30% of AMI, and the remaining 50 units to those making no more than 50% AMI.

### **Housing Finance Commission Agreement**

In addition to the ground lease, the City, as property owner, will need to join with CHS in an Extended Use Agreement (Attachment C) with the Washington State Housing Finance Commission (HFC). This Agreement ensures that CHS can secure low-income tax credits thru Section 42 of the Tax Reform Act of 1985.

The low-income housing tax credit is a dollar-for-dollar tax credit for affordable housing. All properties allocated tax credits must have a recorded Extended Use Agreement. This agreement is for 30 years. The City is shown as the owner of the property and Section 7.4 sets forth City's obligations. Essentially, the City has no liability under the Agreement unless the lease on the Project terminates and the City has succeeded in CHS's interest in the Project. In addition, additional protection is shown in that the Agreement is enforceable against the City only to the extent of its interest in the Project and shall not be enforceable against, subject to execution on, or be a lien on, any other assets of the City. Thus, the City's participation serves to ensure that the covenant can

be recorded on the City property so CHS can receive the tax credits. Otherwise, the City has little to no responsibility/liability.

### **Next Steps**

If Council authorizes the City Manager to execute the ground lease and Extended Use Agreement, CHS will have the necessary agreements in place to secure the permits and financing needed to build the project. If Council rejects the lease, CHS will be ineligible for permits and financing.

### **COUNCIL GOAL(S) ADDRESSED**

This project was initiated in response to the 2018-2020 City Council Goals, specifically: “Goal 1: Strengthen Shoreline’s economic climate and opportunities” which stated in Action Step #5:

“Encourage affordable housing development in Shoreline, including continued promotion of the Property Tax Exemption program, *partnership with King County in the development of affordable housing on the City’s property at Aurora Avenue and N 198th Street*, and identify opportunities for integration of affordable housing at the future community and aquatic center facility.”

### **RESOURCE/FINANCIAL IMPACT:**

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### **RECOMMENDATION**

Staff recommends that the City Council authorize the City Manager to execute a 99-year ground lease for three (3) parcels located at N 198<sup>th</sup> St and Aurora Ave N to Catholic Housing Services of Western Washington (CHS) for the purposes of developing and operating affordable housing and supportive services, execute Section 42 Extended Use Agreement in order to secure low-income tax credits, and take the necessary steps to complete the transition to CHS use of the site.

### **ATTACHMENTS**

- Attachment A: Parcel map of 198<sup>th</sup> Property
- Attachment B: Proposed Lease Agreement
- Attachment C: Extended Use Agreement

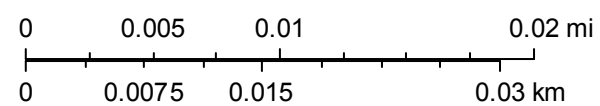
# Attachment A



November 15, 2018

1:480

- ⋮ : City Boundary - outline
- Site Address**
- ⊕ Mailable
- ⊖ Location
- Street**
- Outside Shoreline
- Interstate
- Principal Arterial
- Minor Arterial
- Collector Arterial
- Local Primary
- Local Secondary
- ⋮ Tax Parcel



**GROUND LEASE AGREEMENT**

**THE CITY OF SHORELINE,**  
a Washington municipal corporation

and

**CHS SHORELINE LLC,**  
a Washington limited liability company

SHORELINE MODULAR  
PERMANENT SUPPORTIVE HOUSING PROJECT

## GROUND LEASE AGREEMENT

This Ground Lease Agreement (this "Lease") is dated as of \_\_\_\_\_, 2021, by and between THE CITY OF SHORELINE, a Washington municipal corporation ("Lessor" or "City") and CHS SHORELINE LLC, a Washington limited liability company ("Lessee").

**Recitals**

Lessor is the legal owner of approximately 0.753 acres of real property situated at 19806 Aurora Avenue in the City of Shoreline, King County, Washington, 98133, and legally described in **Exhibit A** attached to this Lease (the "Property").

Lessor acquired the Property as part of the Aurora Corridor Capital Improvement project which received federal transportation funding; the terms and conditions of such federal funding included restrictions on the transfer of the Property for non-public purposes.

Lessee intends to develop the Property as a mixed use structure (the "Building") known as Shoreline Modular Permanent Supportive Housing containing: i) a basement level parking garage consisting of 52 parking stalls (the "Garage"); ii) approximately 5,800 square feet of ground floor area commercial space (the "Commercial Space"); and iii) 100 units of affordable housing and support service space (the "Housing Project" and together with the Garage and Commercial Space, collectively the "Project"). A Site Plan of the Project is attached to this Lease as **Exhibit B**.

Lessor has determined that the Project, specifically the Housing Project, is a public use consistent with the terms and conditions of the federal funding restrictions.

Lessor shall have no responsibility for, and Lessee shall pay all costs associated with, Lessee's development and operation of the Project.

Lessee has or will obtain an allocation of federal low-income housing tax credits for residential rental property in accordance with Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"), for the provision of long-term low-income housing. The Lessor and Lessee will enter into a Regulatory Agreement (Extended Use Agreement) (the "Extended Use Agreement") with the Washington State Housing Finance Commission.

It is Lessor's and Lessee's intent that Lessee shall be treated as the owner of the Project for federal income tax purposes; that at all times during the term of this Lease, Lessee alone shall be entitled to all of the federal tax attributes of ownership of the Project, including, without limitation, the right to claim depreciation or cost recovery deductions and the right to claim all tax credits including, without limitation, the low-income housing tax credit described in Section 42 of the Code; and that Lessee shall have the right to amortize capital costs and to claim any other federal tax benefits attributable to the Project.

Lessor wishes to lease the Property to Lessee, and Lessee wishes to lease the Property from Lessor, under the terms and conditions set forth below.



Certain capitalized terms used herein have the meanings set forth in Exhibit C attached to this Lease, which shall be incorporated fully into the terms of this Lease.

**Agreement**

NOW, THEREFORE, in consideration of the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Grant.** Lessor leases to Lessee, and Lessee leases from Lessor, the Property upon the terms and conditions contained in this Lease.

2. **Rights and Obligations.** Throughout the Term, except as expressly stated elsewhere in this Lease, Lessee shall own the Project and Lessee shall have the following rights and obligations:

(a) unconditional obligation to bear the economic risk of depreciation and diminution in value of the Project to obsolescence or exhausting, and shall bear the risk of loss if the Property and/or the Project is destroyed or damaged;

(b) unconditional right to receive all economic benefits associated with the Project (i.e. appreciation/increase in value), including the right to retain all of the net proceeds from any sale or refinancing of the Project and Lessee's leasehold interest in the Property;

(c) unconditional obligation to construct the Project;

(d) unconditional and exclusive right to the possession and control of the Project;

(e) unconditional obligation to maintain insurance coverage on, and such reserves with respect to, the Project as may be required by the members of Lessee and/or any mortgage lenders with respect to the Project which coverage shall include the mortgage lenders as additional insured;

(f) unconditional obligation to pay all taxes levied on, and assessments made with respect to, the Project and the Property, as well as the right to challenge such taxes and assessments and receive refunds;

(g) unconditional and exclusive right to receive rental and any other income or profits from the Project;

(h) unconditional obligation to pay for all of the capital investment in the Project;

(i) unconditional obligation to pay for all maintenance and operating costs in connection with the Project;

(j) unconditional and exclusive right to include all income earned from the operation of the Project and claim all deductions and credits generated with respect to the Project on its annual federal, and if any state and local, tax returns;

(k) unconditional right to develop the Project and to operate and manage the Project in accordance with this Lease and any and all documents not inconsistent with this Lease executed in connection with the financing, development, operation and management of the Project, as such documents may be amended from time to time (the “Project Documents”);

(l) subject to written approval by the City, to enter into easement agreements and to grant any and all easements in conjunction with the development and operation of and the Project, provided, that Lessor shall have an absolute right to enter into easement agreements related to utilities including but not limited to electric power, telephone, cable television, natural gas, water and sewer services, and drainage so long as such easements do not interfere with operation of the Project; and

(m) unconditional and exclusive right to sublease individual dwelling units in the Project or sublease the Commercial Space, in whole or in part.

In addition, Lessor shall not be entitled to receive any proceeds of any of the loans made to Lessee for the Project or otherwise have any rights, title, interests or benefits from, of or to such loans.

Except for the Permitted Encumbrances, including any lien rights for unpaid taxes and assessments, and easement agreements subject to Lessor approval as identified in Section 2(l) of this Lease, Lessor shall have no power, right or authority to encumber, lien or to grant rights on, in or to the Property.

**3. Use.** Lessee shall use the Housing Project primarily for the purpose of providing Affordable Housing for Qualified Tenants. The Garage and Commercial Space may be used for any lawful use. Any change in the use must be approved by the City, with such approval not unreasonably withheld unless, in the City’s sole opinion, the use is not a public use under the terms of the federal funds utilized by the City to purchase the Property. Lessee shall notify the City in writing at least one hundred eighty (180) days prior to the date Lessee desires the use to change.

**4. Term.** This Lease shall be in effect from the date of mutual and complete execution of this Lease (“Effective Date”) for a 99-year term through \_\_\_\_\_, 2121, unless earlier terminated as herein provided or as otherwise provided by law.

**5. Rent.**

**5.1 Base Rent.** Lessee shall pay to Lessor, at 17500 Midvale Ave N, Shoreline, WA 98133: Attn: Accounts Receivable, or at such other address as Lessor shall specify from time to time, rent in the amount of One Dollar (\$1.00) per year, which rent shall be prepaid as of the date hereof. Subsequent rent is payable by Lessee on each anniversary of the Effective Date of this Lease. Lessee reserves the right to prepay the entire Term or portions thereof, but no acceptance of prepayment shall affect the right of Lessor to terminate this Lease pursuant to other provisions contained herein in this Lease.

**6. “As-Is”; Improvements.**

**6.1** Lessee accepts the Property “as is” for Lessee’s intended use and assumes the risk of any defects in the condition of the Property and acknowledges that the City makes no warranties or representations, expressed or implied, as to condition, suitability, zoning, restrictions, or usability, except as specifically noted herein, for Lessee’s intended use of the Property. Lessee agrees that the City shall have no liability or obligation as a result of any defect or condition of the Property, including without limitation latent defects, to perform any maintenance, repair, or work of any kind except as expressly provided in this Lease.

**6.2** Lessee shall develop the Property consistent with the Site Plan and all permits required by jurisdictions having authority, including but not limited to the City of Shoreline and State of Washington Department of Labor and Industries, except as approved by Lessor and Investor Member, and in compliance with all applicable laws and regulations. Construction of the improvements shall commence no later than December 31, 2021, subject to extraordinary events or circumstances beyond Lessor or Lessee’s control such war, strike, riot crime, epidemic, or extreme weather events.

**6.3** Lessee shall be solely responsible for any utility upgrades necessary to provide services to the Project and for the authorized use, including new connections to water or sewer systems.

**6.4** Lessee shall have the exclusive right to deduct, claim, retain and enjoy any and all rental income appreciation, gain, depreciation, amortization, and tax credits for federal tax purposes relating to the improvements, substitution therefor, fixtures therein and other property relating thereto.

**7. Repairs and Maintenance.** Lessor shall have no responsibility whatsoever for any maintenance, repairs and replacements, whether structural or nonstructural, ordinary or extraordinary, necessary to maintain the Project or the Property. Lessee shall be fully responsible for construction, maintenance, repair and replacement of the Project and upkeep of the Property; will permit no waste, damage, or injury to the Project or the Property; and will maintains the Project and the Property in good condition and repair at all times.

**8. Services.** Lessee shall make arrangements for the provision to the Project of all utilities. Lessee shall directly pay for all utilities supplied to the Project, unless such utilities are billed to the Project, or any subtenants.

**9. Taxes.** Lessee shall pay all real estate taxes and assessments levied or assessed directly against the Project and Property, and all other governmental taxes and assessment related to the Project or the Property including without limitation income and business and occupation taxes, local improvement assessments, fire district or school district levies, and sewer capacity charges. Lessee may at its sole cost and expense, and in its own name, dispute and contest any taxes or assessments charged against the Project or Property.

As authorized by Chapter 82.29A RCW, Chapter 3.25 SMC imposes a leasehold excise tax on the act or privilege of occupying or using publicly owned real property. SMC 3.25.030 adopts the exemptions set forth in RCW 82.29A.130 and .135. RCW 82.29A.130(8) exempts leasehold

interests for which annual taxable rent is less than two hundred fifty dollars (\$250.00) per year. HOWEVER, if during the term of this Lease Chapter 82.29A RCW is amended so as to impose a leasehold excise tax on Lessee's use of the Property, then Lessee shall be responsible for such tax.

## **10. Indemnification.**

**10.1 By Lessee.** During the Term, Lessee agrees to indemnify Lessor, its officers, officials, employees and volunteers and hold Lessor, its members, officers, officials, employees and volunteers harmless from all claims, actions, causes of action, judgments, liabilities, expenses, costs and reasonable attorneys' fees and all limitations, restraints, penalties or obligations pertaining to Lessor or its officers, officials, employees and volunteers arising or alleged to arise out of one or more of the following: a) any failure of Lessee's warranties hereunder to be true, complete and accurate in all material respects; or (b) to the maximum permitted by applicable law, any act, omissions, or neglect in connection with Lessee's (including Lessee's employees, agents, officers, licensees, invitees or other occupants of the Project) actions on or about the Property and/or related to the Project, except where such is a result of the negligence or willful misconduct of Lessor or its officers, officials, employees and volunteers. This paragraph shall survive the termination of this Lease for a period of thirty-six months.

**10.2 By Lessor.** During the Term, Lessor agrees to indemnify Lessee and its members, officers, employees and agents for and hold Lessee and its members, officers, employees and agents harmless from all claims, actions, causes of action, judgments, liabilities, expenses, costs and reasonable attorneys' fees and all limitations, restraints, penalties or obligations pertaining to Lessee or its members, officers, employees and agents arising or alleged to arise out of one or more of the following: a) any failure of Lessor's warranties hereunder to be true, complete and accurate in all material respects; or (b) to the maximum permitted by applicable law, any act, omissions, or neglect in connection with Lessor's or Lessor's officers, officials, employees and volunteers negligence or willful misconduct on or about the Property. This paragraph shall survive the termination of this Lease for a period of thirty-six months.

**10.3 Waiver of Subrogation.** Lessee and Lessor hereby release and discharge each other from all claims, losses, and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the Property. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.

## **11. Insurance; Damage, Destruction**

**11.1** During the Term, Lessee shall, at its own expense, procure and maintain insurance against claims for injuries to persons or damage to property which may arise from or in connection with Lessee's operation of the Project and use of the Property. The City reserves the right to require higher levels of insurance based on market changes or risk assessments during the Term. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII. Lessee shall obtain the following types of insurance:

(a) Commercial General Liability Insurance covering premises, operations, independent contractors' liability and damages for personal injury, property damage,

and sexual misconduct coverage, with a limit of no less than \$2,000,000 each occurrence and \$2,000,000 general aggregate.

(b) During the term of construction of the Project, Builder's Risk Insurance - Physical Damage Insurance that include the perils of "All Risk", but not including Earthquake and Flood coverage, for the full replacement value of the Project. Lessee shall be responsible for any deductibles and any amounts of losses not covered due to coinsurance provisions.

(c) Commencing no later than the date of termination of any builder's risk coverage obtained by Lessee, Property Insurance covering the full value of Lessee's Improvements and personal property with no co-insurance provisions.

(d) The City shall be named as additional insured on Lessee's Commercial General Liability insurance policy. Lessee's Commercial General Liability insurance policy or policies are to contain or be endorsed to contain that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Lessee's insurance and shall not contribute with it. If Lessee maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by Lessee, irrespective of whether such limits maintained by Lessee are greater than those required by this Lease or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by Lessee.

**11.2** Lessee shall furnish the City with original certificates and a copy of any amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Lessee pursuant to this Lease. Lessee shall provide the City with written notice of any policy cancellation no later than five (5) business days of Lessee's receipt of such notice.

**11.3** Failure on the part of Lessee to maintain the insurance as required herein shall constitute a material breach of the Lease, upon which the City may, after giving five (5) business days' notice to Lessee to correct the breach, terminate the Lease or, at the City's sole discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid by the Lessee to the City on demand.

**11.4** Lessee's maintenance of insurance as required by this Lease shall not be construed to limit the liability of Lessee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

**12. Successors.** All covenants, agreements, terms and conditions contained in this Lease shall apply to and be binding upon Lessor and Lessee and their respective permitted successors and/or assigns.

**13. Labor and Material Liens.** Lessee shall pay, when due (or bond over), all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use in the Project or Property, which claims are or may be secured by mechanics' or materialmen's liens against the Project or Property or an interest therein. If Lessee, in good faith, contests the validity

of any lien, claim, or demand, Lessee shall, at its sole expense, defend itself and Lessor and shall satisfy any adverse judgment before its enforcement against Lessor or the Project or Property.

**14. Representations and Warranties.**

**14.1 Representations and Warranties of Lessor.** As of the date hereof, Lessor hereby represents and warrants as follows:

- (a) Lessor is a Washington municipal corporation, duly organized under Title 35A RCW and validly existing under and pursuant to the constitution and laws of the State, and has full power and authority under the constitution and laws of the State to enter into the transactions contemplated on its part by this Lease, and to carry out its obligations hereunder. Lessor has duly authorized the execution and delivery of this Lease and the performance of its obligations under this Lease. This Lease constitutes a valid and legally binding obligation of Lessor, enforceable in accordance with its terms, except as may be limited by laws relating to bankruptcy, insolvency, reorganization or moratorium or other similar laws affecting creditors' rights, and equitable principles.
- (b) Neither Lessor's execution and delivery of this Lease, Lessor's consummation of the transactions contemplated on its part hereby, nor Lessor's fulfillment of or compliance with the terms and conditions or provisions of this Lease conflicts in any material respect with or results in the breach of any of the terms, conditions or provisions of any constitutional provision or statute of the State or of any agreement, instrument, judgment, order or decree to which Lessor is now a party or by which it is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance of any nature upon any property or assets of Lessor prohibited under the terms of any instrument or agreement.
- (c) There is no litigation pending or, to the best of Lessor's knowledge, threatened against Lessor in connection with Lessor's execution, delivery or performance of its obligations under this Lease, or the organization, powers or authority of Lessor, or the right of the officers of Lessor to hold their respective offices.
- (d) Lessor holds fee simple title to the Property, and there are no liens or encumbrances against Property other than Permitted Encumbrances.
- (e) Lessor has obtained required consent, approval, authorization or order of its governmental body for the execution and delivery of this Lease or the fulfillment of and compliance with the provisions hereof.

**14.2 Representations and Warranties of Lessee.** As of the date hereof, Lessee hereby represents and warrants as follows:

(a) Lessee (1) is a limited liability company duly organized and validly existing under the laws of the State, (2) is qualified, licensed, and authorized to conduct affairs in the State; (3) has full power and authority to lease the Property and operate the Project, to carry on its business as now conducted and to enter into and perform its obligations under this Lease; and (4) has duly authorized the execution and delivery of this Lease. This Lease constitutes a valid and legally binding obligation of Lessee, enforceable in accordance with its terms, except as may be limited by laws relating to bankruptcy, insolvency, reorganization or moratorium or other similar laws affecting creditors' rights, and equitable principles.

(b) Neither Lessee's execution and delivery of this Lease and Lessee's consummation of the transactions contemplated hereby, nor Lessee's fulfillment of or compliance with the provisions of this Lease conflicts with or violates in any material respect, or will result in a material breach of any of the terms, conditions or provisions of any agreement, instrument, statute, governmental rule or regulation, court order, judgment or decree to which Lessee is now a party or by which it or any of its property is bound, or constitutes a material default under any of the foregoing which has not been waived or consented to in writing by the appropriate party or parties, or results in the creation or imposition of any lien, charge, security interest or encumbrance of any nature whatsoever upon any of the property or assets of Lessee prohibited under the terms of any such restriction, agreement, instrument, statute, governmental rule or regulation, court order, judgment, or decree. Lessee will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof.

(c) There is no litigation pending or, to the best of Lessee's knowledge, threatened against Lessee affecting its ability to develop the Project or the performance of its obligations hereunder.

(d) No consent, approval, authorization or order of any governmental body is required to be obtained by Lessee for the execution and delivery of this Lease, the fulfillment of and compliance with the provisions hereof, or the development of the Project, except such as have already been obtained or will be obtained in a timely manner.

(e) All tax returns (federal, and state and local if any) required to be filed by or on behalf of Lessee have been filed, and all taxes, if any, shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by Lessee, have been paid or adequate reserves have been made for the payment thereof.

**15. Subordination; Permitted Encumbrances.** Lessor and Lessee acknowledge that this Lease shall be subject to the Extended Use Agreement and upon execution of the Extended Use Agreement, the Extended Use Agreement shall be incorporated herein by reference. Lessee acknowledges that Lessor has or will execute the Extended Use Agreement solely to comply with the requirements of the Code that the covenants contained in the Extended Use Agreement run with the land in order to secure the allocation of low-income housing tax credits for the Project. The Lessor shall have no liability under the Extended Use Agreement unless the Lease has been terminated and the Lessor has succeeded to the Lessee's interest in the Project. So long as the Lease is in effect and the Lessee or a transferee of the Lessee is the lessee, in any action to enforce

the obligations of Lessee to pay any indebtedness or perform any obligations created or arising under the Extended Use Agreement, any judgment or decree shall be enforceable against the Lessor only to the extent of its interest in the Project and shall not be enforceable against, subject to execution on, or be a lien on, any other assets of the Lessor. Lessor shall execute such other documents as the Washington State Housing Finance Commission shall reasonably require to provide evidence of such subordination.

**16. Defaults; Remedies.**

**16.1 Defaults.** Each of the following shall constitute an Event of Default hereunder:

(a) Failure by Lessee to make any required rent or any other payment as and when due hereunder, if the failure continues for a period of fifteen (15) business days after written notice from Lessor or failure of Lessee to comply with or perform any other obligation under this Lease for a period of 90 (ninety) days after written notice from Lessor; provided if Lessee's non-monetary default reasonably requires more than ninety (90) days for its cure, Lessee will not be in default if it commences to cure within the ninety (90) day period and thereafter diligently pursues its completion.

(b) Failure by Lessee to comply with the requirements pursuant to this Lease to provide Affordable Housing for Qualified Tenants for a period of ninety (90) days after written notice from Lessor. If the nature of Lessee's default reasonably requires more than ninety (90) days for its cure, Lessee will not be in default if it commences to cure within the ninety (90) day period and thereafter diligently pursues its completion.

(c) Lessee's making any general assignment or arrangement for the benefit of creditors; the filing by or against Lessee of a petition to have it adjudged a bankruptcy or a petition for reorganization or arrangement under any bankruptcy law (unless any petition filed against Lessee is dismissed or stayed within ninety (90) days); the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets at the Project or its interest in this Lease, if possession is not restored to Lessee within ninety (90) days; or the attachment, execution or other judicial seizure of substantially all of Lessee's assets at the Project or its interest in this Lease, if that seizure is not discharged within ninety (90) days.

(d) Notwithstanding any provision of this Lease to the contrary, no Event of Default shall be deemed to have occurred, no rights or remedies of the Lessor shall be exercised, no right of indemnity shall accrue for the benefit of the Lessor nor shall the Lessee be deemed to have waived any obligations of the Lessor or any of its affiliates whether under this Lease or otherwise for any reason prior to the later of the expiration or the Compliance Period or so long as the Investor Member, or an affiliate thereof, is a member of the Lessee.

**16.2 Remedies.** Upon the occurrence of an Event of Default, Lessor may at any time (subject to the conditions of the Extended Use Agreement and Section 16.2(h) hereof) do any or all of the following:

(a) Subject to the provisions of 16.2(h) below, upon ninety (90) days' written notice to Lessee, Investor Member and each leasehold mortgagee(s) holding a leasehold mortgage encumbering the



Project, and subject to the rights of leasehold mortgagees under Section 20 hereof, Lessor may provide Lessee, the Investor Member and all leasehold mortgagees with a Termination Notice and terminate Lessee's right to possession of the Property and this Lease. Lessor may then re-enter and take possession of and remove all persons or property, and Lessee shall immediately surrender possession of the Property to Lessor. Lessor may recover from Lessee all damages incurred by Lessor resulting from the Event of Default, including but not limited to reasonable attorney's fees and costs.

(b) Maintain Lessee's right to possession, and continue this Lease in force whether or not Lessee has abandoned the Project. Lessor shall be entitled to enforce all of its rights and remedies under this Lease, including the right to recover rent as it becomes due.

(c) Pursue any other remedy available to Lessor under the law.

(d) No remedy conferred upon or reserved to Lessor by this Lease is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity or by statute, and Lessor shall be free to pursue, at the same time, each and every remedy, at law or in equity, which it may have under this Lease, or otherwise.

(e) In the event Lessor exercises its remedies pursuant to this Section 16.2 (e) and terminates this Lease, Lessee may, within ninety (90) days following such termination reinstate this Lease for the balance of the term, by paying to Lessor an amount equal to the actual damages incurred by Lessor as a result of such breach and payment of any actual costs or expenses incurred by Lessor, including reasonable attorneys' fees and reimbursements, as a result of such reinstatement of this Lease.

(f) Notwithstanding anything to the contrary contained herein and subject to Section 20.3, Lessor shall not exercise any of its remedies hereunder without having given notice of the Event of Default to the Investor Member and any leasehold mortgagee, simultaneously with the giving of notice under Section 18.2 to Lessee. The Investor Member and each leasehold mortgagee, shall have the same cure period after the giving of a notice as provided to Lessee, plus an additional period of sixty (60) days, provided that if such cure cannot be completed within such period, and the Investor Member or any leasehold mortgagee is diligently pursuing such cure, this period shall be extended for up to an additional sixty (60) days. If the Investor Member or leasehold mortgagee elects to cure the Event of Default (and nothing hereunder binds such party to do so), Lessor agrees to accept such performance as though the same had been done or performed by Lessee.

(g) The Investor Member shall be deemed a third-party beneficiary of the provisions of (i) this Section 16.2 for the sole and exclusive purpose of entitling the Investor Member to exercise its rights to notice and cure, as expressly stated in this Section 16.2, and (ii) the other provisions of this Lease granting rights to the Investor Member for the purpose of entitling the Investor Member to exercise such rights.

(h) Notwithstanding any provision of this Lease to the contrary, Lessor agrees that (i) Lessor will take no action nor deem an Event of Default to have occurred that would effect a termination of this Lease for any reason prior to the later of (x) the expiration of the Compliance Period or (y)

so long as the Investor Member, or an affiliate thereof, is a member in the Lessee. Notwithstanding the foregoing, Lessor may use its remedies (except termination) to specifically enforce the Lessee's obligation to comply with Section 3 (Use) and Section (12) Insurance and this Lease shall not be terminated without the prior written consent of the Investor Member and any leasehold mortgagee.

**16.3 Default by Lessor.** Lessor is not in default unless it fails to perform obligations required of it within a reasonable time and not later than sixty (60) days after delivery of written notice by Lessee to Lessor specifying Lessor's failures to perform its obligations. If Lessor's obligation reasonably requires more than sixty (60) days for performance or cure, Lessor is not in default if it commences performance or cure within the sixty (60)-day period and thereafter diligently pursues its completion not to exceed ninety (90) days. In the event of default by Lessor, Lessee may pursue all remedies available to it at law or in equity.

**16.4 No Personal Liability.** Notwithstanding any other provision herein, neither Lessee nor any of its members, nor any other party shall have any personal liability for payment of any obligations hereunder.

**17. Use Restrictions.** Subject to the terms and conditions of Section 3, Lessee hereby agrees that the Project is to be owned, managed, and operated pursuant to the uses identified in Section 3 above.

**18. General Provisions.**

**18.1 Severability.** The invalidity of any provision of this Lease as determined by a court of competent jurisdiction will not affect the validity of any other provision.

**18.2 Time of Essence.** Time is of the essence of this Lease.

**18.3 Notices.** Any notice given under this Lease shall be in writing and may be given by personal delivery or by certified mail, postage prepaid, or by air courier, and shall be effective when received. Notices personally delivered are considered received upon delivery. Mailed notices are considered received five days after deposit in the mail (absent strikes or disruption in service). Either party may by notice under this section change its address for notice purposes. Copies of all notices given to Lessor shall be concurrently transmitted to any person designated in writing by Lessor. Any Notice required by the provisions of this Lease to be given to Lessor or Lessee shall be addressed as follows:

(a) To the Lessor:

City of Shoreline  
17500 Midvale AVE N  
Shoreline, WA 98133-4905  
(206) 801-2700  
Attn: City Manager

(b) Lessee:

CHS Shoreline LLC  
c/o Catholic Housing Services  
100 23rd Avenue South  
Seattle, WA 98144  
ChrisJ@ccsw.org  
Attn: Agency Director

With a copy to:

Kantor Taylor  
1200 Fifth Avenue, Suite 1910  
Seattle, WA 98101  
Andrea Y. Sato  
asato@katnortaylor.com

(c) To the Investor Member:

c/o Raymond James Tax Credit Funds, Inc.  
880 Carillon Parkway  
St. Petersburg, Florida 33716  
Attention: Steven J. Kropf, President

With a copy to:

Nixon Peabody LLP  
Exchange Place  
53 State Street  
Boston, MA 02109  
Attn: Nathan A. Bernard

**18.4 Waiver.** Waiver by Lessor of the breach of any provision of this Lease is not a waiver of any subsequent breach by Lessee of the same or any other provision. Lessor's consent to or approval of any act does not make Lessor's consent to or approval of any subsequent act unnecessary. Acceptance of rent by Lessor is not a waiver of any preceding breach of any provision of this Lease other than Lessee's failure to pay the rent so accepted.

**18.5 Covenants and Conditions.** Each provision of this Lease performable by Lessor or Lessee is both a covenant and a condition.

**18.6 Authority.** Each individual executing this Lease on behalf of the respective entities represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of such entity, and that this Lease is binding upon that entity in accordance with its terms.

**18.7 Attorneys' Fees.** In any action to enforce or interpret this Lease the prevailing party is entitled to recover reasonable costs and attorneys' fees from the losing party.

**18.8 Quiet Possession.** Upon paying the rent and observing and performing all of its covenants and conditions, Lessee shall have quiet possession of the Project for the entire term subject to all of the provisions of this Lease.

**18.9 Relationship of Parties.** Nothing herein shall be construed so as to create a partnership, joint venture, or agency relationship between the parties, it being acknowledged that the Lessor and Lessee are parties to other agreements and those other agreements are in full force and effect.

**18.10 Intention of the Parties.** It is the intention of the parties hereto that pursuant to the terms of this Lease, the payments described in Section 5 shall constitute acquisition payments for the Property and that the full burdens and benefits associated with the Project, except those pertaining to ownership for state law purposes, shall pass to Lessee.

**18.11 Consent.** Consent or approval of parties whenever required under this Lease shall not be unreasonably withheld or delayed, unless otherwise specifically provided by the terms of this Lease.

**18.12 Governing Law and Venue.** The validity of this Lease, the interpretation of the rights and duties of the parties hereunder and the construction of the terms hereof shall be governed in accordance with the internal laws of the State. Venue in the event of any dispute shall be in King County, Washington.

**18.13 Memorandum of Lease.** The parties hereto agree to the recording of a Memorandum of Lease in the form of **Exhibit D** hereto. Lessor is a public agency subject to Washington's Public Records Act, chapter 42.56 RCW, and all records produced by Lessor in connection with this Lease may be deemed a public record as defined in the Public Records Act, and if Lessor receives a public records request, unless a statute exempts disclosure or a court order precluding disclosure has been issued, Lessor must disclose the record to the requestor.

**18.14 Estoppel Certificates.** Upon the written request of the Investor Member, any leasehold mortgagee holding a leasehold mortgage encumbering the Project or the other party to this Lease, Lessor or Lessee, as applicable, shall, within ten (10) days of receipt of such written request, provide an estoppel certificate addressing such matters as the requesting party may request in its discretion.

**18.15 No Merger.** During the Compliance Period and at any time that any leasehold mortgagee is holding a leasehold mortgage encumbering the Project, there shall be no merger of the leasehold estate created by this Lease and the fee estate of Lessor merely because both estates have been acquired or become vested in the same person or entity, unless the Investor Member and each such leasehold mortgagee otherwise consents in writing.

**18.16 Right of Entry.** Lessor shall have the right to enter upon the Property during regular business hours to inspect the Property, Project and other improvements subject to all applicable landlord/tenant laws. The City shall not perform any inspection in such a manner so as to unreasonably interfere with Lessee's construction or business operations and shall provide reasonable notice prior to such entry. Any entry upon the Property during construction of the Project shall be subject to all jobsite rules and regulations imposed by Lessee's general contractor.

**18.17 Force Majeure.** Neither Party shall be liable to the other or deemed in breach or default for any failure or delay in performance under this Lease during the time and to the extent its performance is prevented by reasons of Force Majeure. For the purposes of this Lease, Force Majeure means an occurrence that is beyond the reasonable control of and without fault or negligence of the party claiming force majeure and which, by exercise of due diligence of such party, could not have been prevented or overcome. Force Majeure shall include natural disasters, including fire, flood, earthquake, windstorm, avalanche, mudslide, and other similar events; acts of war or civil unrest when an emergency has been declared by appropriate governmental officials; acts of civil or military authority; freight embargoes; epidemics; quarantine restrictions; labor strikes; boycotts; terrorist acts; riots; insurrections; explosions; and nuclear accidents. A party claiming suspension or termination of its obligations due to force majeure shall give the other party prompt written notice, but no more than two (2) working days after the event, of the impediment and its effect on the ability to perform; failure to provide such notice shall preclude recovery under this provision.

**18.18 Nondiscrimination.** In hiring or employment made possible or resulting from this Lease, there shall be no unlawful discrimination against any employee or applicant for employment because of sex, age (except minimum age and retirement provisions), race, color, creed, national origin, citizenship or immigration status (except if authorized by federal or state law, regulation, or government contract), marital status, sexual orientation, honorably discharged veteran or military status, the presence of any sensory, mental, or physical handicap or the use of a trained dog guide or service animal by a person with a disability, unless based upon a bona fide occupational qualification. This requirement shall apply to but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. No person shall be denied or subjected to discrimination in receipt or the benefit of any services or activities made possible by or resulting from this Lease on the grounds of sex, race, color, creed, national origin, age (except minimum age and retirement provisions), citizenship or immigration status (except if authorized by federal or state law, regulation, or government contract), marital status, sexual orientation, honorably discharged veteran or military status, the presence of any sensory, mental or physical handicap, or the use of a trained dog guide or service animal by a person with a disability. If, at an time during the Term of this Agreement federal, state, or local laws are amended to include additional classes for which discrimination is unlawful, this provision shall be deemed to have been amended without the need for an amendment.

**19. Amendments.** Except for as provided in Subsection 18.18 Nondiscrimination, the provisions hereof shall not be amended, revised or terminated except by an instrument in writing duly executed by Lessor and Lessee (or its successors in title). No amendments shall become effective without the prior written consent of Investor Member, which consent shall not be unreasonably withheld. If appropriate, the parties shall record an amendment to the Memorandum of Lease incorporating the changes to this Lease effected by the amendment.

**20. Leasehold Mortgage Provisions.**

**20.1 Leasehold Mortgages Authorized.** Lessee may mortgage or otherwise encumber Lessee's leasehold estate under one or more leasehold mortgages. Notwithstanding anything to the contrary contained in this Lease, no consent or approval of Lessor shall be required

for any transfer of the Project or any portion thereof to a leasehold mortgagee, its successors or assigns or any designee thereof pursuant to a foreclosure under its leasehold mortgage encumbering the Project, whether by judicial or non-judicial proceeding or any power of sale contained therein, or any assignment or conveyance in lieu of foreclosure.

**20.2 Notice of Leasehold Mortgage.** If Lessee shall mortgage Lessee's leasehold estate, Lessee shall provide Lessor with notice of such leasehold mortgage together with a true copy of such leasehold mortgage and the name and address of the leasehold mortgagee. Lessor hereby acknowledges that it has received notice in satisfaction of the requirements of this paragraph that Lessee has granted or shall grant a lien on all of its interest in the Project pursuant to a leasehold mortgage to Umpqua Bank, the City of Shoreline, the State of Washington Department of Commerce and King County.

**20.3 Consent of Leasehold Mortgage Required.** Notwithstanding anything contained in this Lease to the contrary, Lessor shall standstill and not exercise any of its remedies under this Lease other than to specifically enforce the Lessee's obligation to comply with Section 3 (Use) and Section (11) Insurance hereof. In no event will the Lease be terminated without the prior written consent of all leasehold mortgagees.

**20.4 Default Notice.** Lessor, upon providing Lessee any notice of (i) an Event of Default under this Lease, (ii) termination of this Lease, or (iii) failure of Lessee to exercise any renewal option or purchase option prior to the expiration date thereof, shall, at the same time provide a copy of such notice to any leasehold mortgagee. After such notice has been given to a leasehold mortgagee, such leasehold mortgagee shall have the same period, after the giving of such notice upon it, for remedying any Event of Default or causing the same to be remedied, as is given Lessee after the giving of such notice to Lessee, plus in each instance, the additional periods of time specified herein to remedy, commence remedying, or cause to be remedied the Events of Default specified in any such notice. Lessor shall accept such performance by or at the instigation of such leasehold mortgagee as if the same had been done by Lessee. Lessee authorizes each leasehold mortgagee to make any such action at such leasehold mortgagee's option and does hereby authorize entry upon the Project by the leasehold mortgagee for such purpose.

**20.5 Procedure on Default.** If Lessor shall elect to terminate this Lease by reason of any Event of Default of Lessee and subject to the consent of leasehold mortgagees pursuant to Section 20.3, the specified date for the termination of this Lease as fixed by Lessor in its Termination Notice shall be extended for a period of six (6) months, provided that such leasehold mortgagee shall, during such six (6)-month period:

Pay or cause to be paid the rent, additional payments and other monetary obligations of Lessee under this Lease as the same become due, and continue its good faith efforts to perform all of Lessee's other obligations under this Lease, excepting (A) obligations of Lessee to satisfy or otherwise discharge any lien, charge, or encumbrance against Lessee's interest in this Lease junior in priority to the lien of mortgage held by such leasehold mortgagee and (B) past monetary obligations then in default and not reasonably susceptible of being cured by such leasehold mortgagee; and (C) if not enjoined or stayed, take steps to acquire or sell Lessee's interest in this Lease by foreclosure of the leasehold mortgage

or other appropriate means and prosecute the same to completion with reasonable diligence.

If at the end of such six (6)-month period such leasehold mortgagee is complying with this Section, this Lease shall not then terminate; and the time for completion by such leasehold mortgagee of proceedings pursuant to this Section shall continue so long as such leasehold mortgagee proceeds to complete steps to acquire or sell Lessee's interest in this Lease by foreclosure of the leasehold mortgage or by other appropriate means with reasonable diligence and continuity. Following completion of steps to acquire or sell Lessee's interest in this Lease, the new Lessee shall promptly cure any remaining Events of Default. Nothing in this Section however, shall be construed to extend this Lease beyond the original term hereof, nor to require a leasehold mortgagee to continue such foreclosure proceedings after the default has been cured. If the default shall be cured and the leasehold mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Lessee had not defaulted under this Lease.

If a leasehold mortgagee is complying with this Section and if Lessee has failed to discharge any lien, charge or encumbrance against Lessee's interest in this Lease which is junior in priority to the lien of the leasehold mortgage held by such leasehold mortgagee and which Lessee is obligated to satisfy and discharge by reason of the terms of this Lease, then upon the acquisition of Lessee's estate herein by such leasehold mortgagee or its designee or any other purchaser at a foreclosure sale or otherwise this Lease shall continue in full force and effect as if Lessee had not defaulted under this Lease.

**20.6 Condemnation, Casualty and Insurance Proceeds.** Notwithstanding any language to the contrary in this Lease, Lessor and Lessee agree that, in the event of a condemnation or casualty that does not result in the termination of the Lease, the Lease shall continue in effect as to the remainder of the Project, and the award or net proceeds from the condemnation or the proceeds of insurance in connection with a casualty will be allocated to Lessor and Lessee in accordance with the terms of this Lease, provided, however, that all such proceeds payable to Lessee or to which Lessee is otherwise entitled shall be paid to the leasehold mortgagee with the senior-most leasehold mortgage encumbering the Project and applied in accordance with the requirements of such leasehold mortgage or the other loan documents governing the obligations secured thereby.

**20.7 New Lease.** In the event this Lease is terminated for any reason prior to the end of the contemplated term thereof, whether as a result of a Lessee default or in connection with a voluntary or involuntary bankruptcy action by or against Lessee, Lessor shall promptly give each leasehold mortgagee holding a leasehold mortgage encumbering the Project written notice of such termination and shall enter into a new lease ("New Lease") with any such leasehold mortgagee or its nominee covering the Project, provided that such leasehold mortgagee requests such New Lease by written notice to Lessor within ninety (90) days after such leasehold mortgagee's receipt of written notice by Lessor of termination of this Lease. The New Lease shall be for the remainder of the original term of this Lease, effective at the date of such termination, and shall be made on substantially the same terms and at the same rental rates contained in the terminated Lease with Lessee. In connection with a New Lease, Lessor shall assign to such leasehold mortgagee or its nominee, as applicable, all of Lessor's interest in all existing subleases of all or any part of the Project and all attornments given by the sublessees. Lessor shall not terminate or agree to

terminate any sublease or enter into any new lease or sublease for all or any portion of the Project without each leasehold mortgagee's prior written consent, unless each leasehold mortgagee fails to timely deliver a request for a New Lease under this Section. Lessor shall allow to the leasehold mortgagee as Lessee under the New Lease a credit against rent and other amounts due under the New Lease equal to the net income derived by Lessor from the Project during the period from the date of termination of this Lease until the date of execution of the New Lease under this Section. If more than one leasehold mortgagee makes written requests upon Lessor for a New Lease in accordance with this Section, the New Lease shall be entered into pursuant to the request of the leasehold mortgagee whose leasehold mortgage is in the senior-most lien position and thereupon the written requests for a New Lease from any leasehold mortgagee holding a leasehold mortgage junior in lien position shall be deemed to be void and of no force or effect.

**20.8 Limitation of Leasehold Mortgage Liability.** No leasehold mortgagee under any leasehold mortgage encumbering the Project or any third party nominee or designee thereof shall be liable to Lessor as an assignee of this Lease unless and until such leasehold mortgagee or such third party, as applicable, acquires all rights of Lessee under this Lease through foreclosure, a conveyance or assignment in lieu of foreclosure, or as a result of some other action or remedy provided by law or under the rights given such leasehold mortgagee under its leasehold mortgage if the leasehold mortgagee exercises these rights in writing; provided, however, that such leasehold mortgagee or third party shall only be subject to the covenants of this Lease and liable thereunder for obligations arising or accruing during the period beginning at the time such leasehold mortgagee or third party acquires the Lessee's title to the Project and ending upon such leasehold mortgagee's or third party's subsequent transfer of title to the Project to a subsequent purchaser, which such leasehold mortgagee or third party shall be entitled to do without the consent or approval of Lessor. This Section shall also apply to the rights of a leasehold mortgagee in connection with the entry into a New Lease under Section 20.7 above and to the appointment of a receiver on behalf of such leasehold mortgagee. Notwithstanding any terms of this Lease to the contrary, any indemnities or other covenants or liabilities of Lessee with respect to environmental conditions or hazardous materials matters shall not bind or apply to any leasehold mortgagee or any affiliate, assignee or subsequent owner of the Lessee's estate in the Project at any time, except as stated in Section 21.6.

**20.9 Two or More Leasehold Mortgages.** In the event two (2) or more leasehold mortgages holding leasehold mortgages encumbering the Project each exercise their rights under this Lease in connection with their respective leasehold mortgage loans and/or leasehold mortgages and there is a conflict that renders it impossible to comply with all requests of all such leasehold mortgages, the leasehold mortgagee whose leasehold mortgage would have the senior-most priority in the event of a foreclosure shall prevail.

**20.10 Third Party Beneficiary.** Each leasehold mortgagee holding a leasehold mortgage encumbering the Project is and shall be a third party beneficiary of the rights and benefits granted to leasehold mortgagees under this Lease, including, without limitation, under this Section 20, and shall have the right to exercise such rights and benefits directly against Lessor and/or Lessee, as applicable.

**21. End of Term,** At the end of the Term, by expiration, termination or otherwise, Lessee shall turn over the Property and the Project in good condition and repair, reasonable wear



and tear excepted, and from and after the end of the Term, by expiration, termination or otherwise, neither the Lessee nor any person or entity claiming by, through or under the Lessee shall have any further rights, title and/or interest in or to the Property or the Project.

*[Remainder of page left intentionally blank; Signatures begin on following page]*

DRAFT

IN WITNESS WHEREOF, the parties have executed this Lease the date set forth above.

**LESSOR:**

CITY OF SHORELINE

\_\_\_\_\_  
Debbie Tarry, City Manager

STATE OF WASHINGTON

ss.

COUNTY OF KING

I certify that I know or have satisfactory evidence that Debbie Tarry is the person who appeared before me and acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the City Manager of the CITY OF SHORELINE, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington, residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this Lease the date set forth above.

**LESSEE:**

CHS SHORELINE LLC,  
a Washington limited liability company

By: CHS Shoreline Manager LLC  
Its: Managing Member

By: Archdiocesan Housing Authority  
Its: Manager

By: \_\_\_\_\_  
Name: Chris Jowell  
Title: Vice President \_\_\_\_\_

STATE OF WASHINGTON  
  
COUNTY OF KING

ss.

I certify that I know or have satisfactory evidence that Chris Jowell is the person who appeared before me and acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Vice President of Archdiocesan Housing Authority, manager of CHS Shoreline Manager LLC, managing member of CHS SHORELINE LLC of a Washington limited liability company, to be the free and voluntary act of such nonprofit corporation on behalf of such company on behalf of such company for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington, residing  
at \_\_\_\_\_

My appointment expires \_\_\_\_\_

**EXHIBIT A**  
**REAL PROPERTY DESCRIPTION**

The Land referred to herein below is situated in the County of King, State of Washington, and is described as follows:

[Lots 5 and 6 and the South 150 feet of Lot 7, Echo Lake Park, according to the plat thereof recorded in Volume 23 of Plats, page 8, in King County, Washington.

EXCEPTING THEREFROM those portions lying within the boundaries of Aurora Avenue N and N 198th Street]

**EXHIBIT B****DEFINITIONS**

“Affordable Housing” means housing for which a household does not pay more than thirty percent (30%) of its annual income on all costs related to housing, including rent and utilities, as determined in accordance with Section 42 of the Code.

“Code” means the Internal Revenue Code of 1986, as amended, together with corresponding and applicable provisions of the Internal Revenue Code of 1954, as amended, together with corresponding and applicable final, temporary or proposed regulations and revenue rulings issued or amended with respect thereto by the Treasury Department or Internal Revenue Service of the United States. All references herein to sections, paragraphs or other subdivisions of the Code or the regulations promulgated thereunder shall be deemed to be references to correlative provisions of any successor code or regulations promulgated thereunder.

“Compliance Period” shall have such meaning as defined thereto in Section 42 of the Code.

“Condemnation Award” means the total condemnation proceeds actually paid by the condemnor as a result of the condemnation of all or any part of the Project, less the actual costs and expenses, including attorneys’ fees, incurred by Lessee and/or Lessor in obtaining such award.

“Extended Use Agreement” means the Regulatory Agreement (Extended Use Agreement) to be executed and recorded in favor of relating to the allocation of Low-Income Housing Tax Credits with respect to the Housing Project.

“Lease” means this Lease Agreement, which is dated [\_\_\_\_\_ 2021], between Lessor and Lessee.

“Insurance Proceeds” means the total proceeds of casualty insurance actually paid or payable in respect of insurance on all or any part of the Project, less the actual costs and expenses, including attorneys’ fees, incurred by Lessee and/or Lessor in collecting such proceeds.

“Investor Member” means a limited partnership or limited liability company which is controlled, directly or indirectly by Raymond James Tax Credit Fund, Inc. and its successors and assigns.

“Low-Income Housing Tax Credits” means the federal tax credits available to the Project under Internal Revenue Code Section 42.

“Permitted Encumbrances” means, as of any particular time, the liens and encumbrances as set forth in the title policy issued on or about the date of this Lease for Lessee and other encumbrances necessary for the development of the Project reasonably approved by Lessor, and the refinancing of any senior debt which was a Permitted Encumbrance at the time this Lease was executed upon their maturity provided that such refinanced debt shall not exceed the principal balance of the loan being refinanced; and all other liens and encumbrances allowed pursuant to this Lease or approved in writing by or in favor of Lessor, including specifically those identified in the Priority and Subordination Agreement.

“Priority and Subordination and Agreement” means the Priority and Subordination Acknowledgement Agreement relating to the priority among various liens and encumbrances against the Property.

“Project” has the meaning set forth in the Recitals.

“Property” means the real property legally described in Exhibit A to this Lease.

“Qualified Tenants” means individuals and families whose annual income is between zero percent (0%) and eighty percent (80%) of Area Median Income at initial occupancy. Such calculation shall be adjusted for family size and shall be performed in a manner consistent with determinations made pursuant to the United States Housing Act of 1937, as amended, and its implementing regulations. Such Qualified Tenant shall be deemed qualified if they meet the requirements of the Use Covenants.

“State” means the State of Washington.

“Termination Notice” means the notice given by Lessor to any leasehold mortgagee and Investor Member, following the expiration of the period of time given Lessee to cure a default, of Lessor’s intent to terminate this Lease.

“Use Covenants” has the meaning set forth in Section 3.

**EXHIBT C**  
**SITE PLAN**

**EXHIBIT D**

**FORM OF MEMORANDUM OF LEASE**

RECORDED AT THE REQUEST OF  
AND AFTER RECORDING RETURN TO:

Catholic Housing Services  
100 23rd Avenue South  
Seattle, WA 98144

MEMORANDUM OF LEASE

Lessor: City of Shoreline,  
a Washington municipal corporation

Lessee: CHS Shoreline LLC,  
a Washington limited liability company

Legal Description: See Exhibit A

Assessor’s Tax Parcel ID#: 222730-0025-08  
222730-0030-01  
222730-0036-05



## MEMORANDUM OF LEASE

This Memorandum of Lease (this “Memorandum”) is dated [\_\_\_\_\_, 2021], by and between City of Shoreline, a Washington municipal corporation (“Lessor”), and CHS Shoreline LLC, a Washington limited liability company (“Lessee”).

1. Lease Agreement. Pursuant to a Ground Lease Agreement (the “Lease”) dated [\_\_\_\_\_, 2021], Lessor has leased to Lessee and Lessee has leased from Lessor the property located in King County and described on **Exhibit A** attached hereto (hereinafter referred to as the “Property”).
2. Term. The term of the Lease commenced on [\_\_\_\_\_, 2021], and ends on [\_\_\_\_\_, 2120], subject to earlier termination as described therein.
3. Purpose of Memorandum. This Memorandum is prepared for the purpose of recordation to give notice of the Lease. This Memorandum shall not constitute an amendment or modification of the Lease and in the event of any conflict between the terms of this memorandum and the Lease, the terms of the Lease shall control.

*[Remainder of page left intentionally blank; Signatures begin on following page]*

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date set forth above.

**LESSOR:**

CITY OF SHORELINE

\_\_\_\_\_  
Debbie Tarry, City Manager

STATE OF WASHINGTON  
COUNTY OF KING

|  
ss.

I certify that I know or have satisfactory evidence that Debbie Tarry is the person who appeared before me and acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the City Manager of the CITY OF SHORELINE, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington, residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date set forth above.

**LESSEE:**

CHS SHORELINE LLC,  
a Washington limited liability company

By: CHS Shoreline Manager LLC  
Its: Managing Member

By: Archdiocesan Housing Authority  
Its: Manager

By: \_\_\_\_\_  
Name: Chris Jowell  
Title: Vice President \_\_\_\_\_

STATE OF WASHINGTON  
  
COUNTY OF KING

ss.

I certify that I know or have satisfactory evidence that Chris Jowell is the person who appeared before me and acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Vice President of Archdiocesan Housing Authority, manager of CHS Shoreline Manager LLC, managing member of CHS SHORELINE LLC of a Washington limited liability company, to be the free and voluntary act of such nonprofit corporation on behalf of such company on behalf of such company for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington, residing  
at \_\_\_\_\_

My appointment expires \_\_\_\_\_



**EXHIBIT A**  
Legal Description

The Land referred to herein below is situated in the County of King, State of Washington, and is described as follows:

Lots 5 and 6 and the South 150 feet of Lot 7, Echo Lake Park, according to the plat thereof recorded in Volume 23 of Plats, page 8, in King County, Washington.

EXCEPTING THEREFROM those portions lying within the boundaries of Aurora Avenue N and N 198th Street

After recording Return To:  
Washington State Housing Finance Commission  
Multifamily Housing & Community Facilities Division  
1000 Second Avenue, Suite 2700  
Seattle, Washington 98104-1046  
Attn: Yasna Osses

Document Title: Regulatory Agreement (Extended Use Agreement)

Grantor(s): CHS Shoreline LLC (Owner)  
City of Shoreline (Lessor)

Grantee: Washington State Housing Finance Commission

Legal Description (abbreviated form): \_\_\_\_\_

Additional legal description in Exhibit "A" of document.

Assessor's Property Tax Parcel Account Number(s): \_\_\_\_\_

REGULATORY AGREEMENT  
(EXTENDED USE AGREEMENT)

Among

WASHINGTON STATE HOUSING FINANCE COMMISSION

City of Shoreline

And

CHS Shoreline LLC

Dated as of \_\_\_\_\_

WASHINGTON STATE HOUSING FINANCE COMMISSION  
LOW-INCOME HOUSING TAX CREDIT PROGRAM

(CHS Shoreline Project)  
TC or OID NUMBER (As Applicable) 21-68

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- EXHIBIT "A" - LEGAL DESCRIPTION
- EXHIBIT "B" - PROJECT DESCRIPTION
- EXHIBIT "C" - DEFINITIONS
- EXHIBIT "D" - REQUIRED ANNUAL RECORDS
- EXHIBIT "E" - REQUIRED ANNUAL CERTIFICATIONS
- EXHIBIT "F" - LEASE RIDER TO BE ATTACHED TO  
RESIDENT LEASES AND RENTAL  
AGREEMENTS

REGULATORY AGREEMENT  
(EXTENDED USE AGREEMENT)

Washington State Housing Finance Commission

CHS Shoreline Project  
TC or OID Number (As Applicable) 21-68

THIS REGULATORY AGREEMENT (EXTENDED USE AGREEMENT) (“Agreement”), dated as of \_\_\_\_\_ is between the WASHINGTON STATE HOUSING FINANCE COMMISSION, a public body corporate and politic (the “Commission”), City of Shoreline (“Lessor”) and CHS Shoreline LLC, a Washington limited liability company (the “Owner”).

RECITALS

- A. The Commission is the housing credit agency authorized to allocate the federal low-income housing tax credit (the “Credit”) for residential rental property located in Washington, in accordance with Section 42 of the Code;
- B. The Owner submitted an Application dated 1/23/2019, requesting that the Commission issue a Credit Reservation and/or Allocation to the Project;
- C. The Owner and the Commission entered into a Credit Reservation and Carryover Allocation Contract (RAC), whereby the Commission agreed to issue an Allocation to the Project (as described in Section 1 below, provided, that a Credit Reservation and Carryover Allocation Contract (RAC) may not have been entered into for a Qualified Tax-Exempt Bond-Financed Project);
- D. The Owner will acquire, develop, and/or rehabilitate a residential rental property commonly known as CHS Shoreline (the “Project”) located on the property or properties legally described in Exhibit “A” (the “Land”); and
- E. The Lessor is the owner of the Land and the Owner is the lessee of such Land; and
- F. The Lessor will execute this Regulatory Agreement in order to meet the requirements of the Code that this Regulatory Agreement be an enforceable covenant against the land; and
- G. As a condition of having an effective Allocation of Credit, the Owner must enter into this Agreement with the Commission.

## AGREEMENT

Based on the foregoing recitals, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner and Lessor hereby agree to the terms and conditions of this Agreement, and agree that the Owner, the Project and the Land shall be subject to the covenants, conditions, restrictions and terms set forth below in this Agreement, which and are expressly intended to touch and concern, run with and bind the Project and the Land, and which shall inure to the benefit of the Commission, its successors and assigns and be binding upon the Owner, Lessor, and all other Bound Parties.

### SECTION 1. DEFINITIONS

1.1 Capitalized Terms. For purposes of this Agreement terms shall have the meanings set forth in Exhibit “C”. If a capitalized term is not defined in Exhibit “C” it shall have the meaning set forth in the applicable *Policies* in effect as of the effective date of the Credit Reservation and Carryover Allocation Contract (RAC) for the Project or, if the Project is a Qualified Tax-Exempt Bond-Financed Project with no Credit Reservation and Carryover Allocation Contract (RAC), the *Policies* in effect as of the date the Owner submitted the Application to the Commission.

1.2 Credit Reservation and Carryover Allocation Contract (RAC) and Bond Projects. This Agreement contains references to a Credit Reservation Contract and Carryover Allocation Contract (RAC). These agreements may not have been executed in connection with a Qualified Tax-Exempt Bond-Financed Project unless the Project receives an Allocation of Credit subject to Section 42(h)(1) of the Code (i.e., Credit allocated pursuant to the competitive allocation process). If the Project is a Qualified Tax-Exempt Bond-Financed Project that did not receive a competitive Allocation of Credit, references in this Agreement to the Credit Reservation and Carryover Allocation Contract (RAC) shall be inapplicable and the provisions in this Agreement referencing those contracts shall be read and interpreted in a manner consistent therewith.

### SECTION 2. LIMITATION ON CREDIT ALLOCATION

The actual amount of Credit finally allocated to any Qualified Building in the Project will be reflected on an IRS Form 8609 issued with respect to such Building. Prior to issuing a Form 8609, the Commission has made or will make a determination as to the amount of Credit necessary for the financial feasibility and viability of the Project. Further, as part of the Commission’s Credit determination for a Project, the Commission has reviewed or will review the reasonableness of the development and operating expenses associated with the Project as well as the market need and demand. The Commission may require that the Owner submit documentation to substantiate that any or all of a Project’s costs are reasonable and appropriate. The Commission reserves the right, in its sole judgment and discretion, to limit or exclude any development or operating expense included in the Total

Project Costs or proforma for a project as part of the Commission's financial feasibility review and Credit determination for the Project. Further, the determination of the amount of Credit finally allocated to a Building is also subject to the Program Limits in the *Policies*.

### SECTION 3. OWNER'S REPRESENTATIONS AND WARRANTIES

The Owner represents and warrants to the Commission as follows as of the date of this Agreement:

3.1 Noncompliance. There is no Noncompliance with respect to the Project, nor has any event occurred that, with the passage of time or giving of notice or both, would constitute a Noncompliance.

3.2 Feasibility and Viability. The amount of the Credit Reservation and/or Allocation is necessary for the financial feasibility and viability of the Project throughout the Credit Period as a Qualified Low-Income Housing Project.

3.3 Notification of First Position. The Owner has notified in writing all lenders, financing sources and holders of Prior Liens that as a condition of obtaining Credit, this Agreement must be recorded in first position, prior to any monetary liens, or each lender or holder must subordinate its liens and security interest(s) in the Project to the interests of the Commission under this Agreement in a form acceptable to the Commission.

3.4 No Project Changes. There have been no changes in the Project that would alter, amend or make untrue any of the representations or agreements made in the other project documents, except as set forth in amendments thereto executed by the Commission.

3.5 True and Complete Certification. Each Certification submitted with the Application and the Credit Reservation and Carryover Allocation Contract (RAC), and each representation and warranty made therein, is true, complete and accurate as of the date of this Agreement.

3.6 Fee Limitations. The Owner has and shall continue to comply with the limits established by the Commission pertaining to the amount of Developer Fee and Consultant Fees as set forth in the *Policies*. The Owner has made all disclosures required by the Commission with respect to the Owner, each developer, each general partner, each party to a joint venture, and/or any Manager, as the case may be, being a Related Party, having an identity of interest, being affiliated with, or controlled by or in control of other members of the Development Team and Management Team as more fully described in the *Policies*.

3.7 Compliance with Policies. The Owner and/or the Project, as applicable, is in compliance with the Program Limits in the *Policies*.

3.8 Exhibit “B” Project Information. The Project information included in Exhibit “B” is true and accurate.

#### SECTION 4. OWNER’S COVENANTS

4.1 Qualification for Credit. The Owner shall cause each Building in the Project for which a BIN is assigned to qualify for the Credit.

4.2 Compliance with Program Documents and Exhibit “B”. The Owner and each Building in the Project shall comply with all representations and agreements made in the Program Documents with respect to each Building in the Project unless the Owner submits a written request to approve a modification or change and such request is approved in writing by the Commission. Specifically, but without limitation, the Owner and each Building in the Project for which a BIN is assigned is subject to and shall comply with the Credit Set-Aside Category, Additional Low-Income Housing Use Period, Project Compliance Period, Minimum Low-Income Housing Set-Aside, and, if any, the Additional Low-Income Housing Commitment, Housing for Large Households Commitment, Housing for Persons with Disabilities Commitment, Elderly Housing Commitment, Housing for the Homeless Commitment, Farmworker Housing Commitment, and the requirements for preservation of federally assisted low-income housing (if applicable), as set forth in Exhibit “B”. Except as otherwise set forth in this Agreement, the terms and conditions of each of the commitments, restrictions and covenants set forth in Exhibit “B” shall be as set forth in the *Policies* as they exist on the date the Application was filed with the Commission.

Owner expects to obtain rent, operating and/or service subsidies (“Subsidies”) for those units set aside as Housing for Homeless (“Homeless Units”), as set forth in Exhibit “B” hereto. If such Subsidies become unavailable or are reduced, and if sufficient compatible subsidies are not available so that units set aside as Homeless Units can be operated as such and still allow the Project to remain in compliance with coverage standards then in effect, Owner shall give written notice of that fact to the Commission. Owner’s notice to the Commission shall include an estimate of the number of units that need to be rented to households other than Homeless Households as a result of insufficient Subsidies, and the backup detail showing the basis for the estimate. Upon the Commission’s reasonable and timely confirmation of Owner’s estimate, the Owner thereafter may rent one or more of the Homeless Units, as they become available through vacancies, to households that do not meet the eligibility criteria set forth in the Commission’s policies regarding Housing for Homeless (“Homeless Households”), to the extent necessary so that Owner can operate the Property consistent with applicable coverage standards.

For purposes of this subsection, a “compatible subsidy” is one that (a) is provided on terms consistent with the operation of the Property in compliance with this Regulatory Agreement, with all other recorded covenants and loan documents entered into by Owner for the Property

and (b) will not reduce or impair the use of low-income housing tax credits claimed for the Project.

For purposes of this subsection, a “coverage standard” is a financial covenant based on the operating cash flow of the Owner from the Property that is applicable either (a) pursuant to the limited partnership agreement of Owner, under which the Investor then remains a limited partner; or (b) pursuant to an agreement made by Owner for a loan for the Property.

If, at any time, when any Homeless Units are being rented to other than Homeless Households pursuant to the foregoing, in the sole discretion of the Commission, either (a) it becomes possible to rent any of such Housing Units as Homeless Units without breach of coverage standards because of improvements in results of operations or the inapplicability of coverage standards formerly in effect; or (b) new or increased compatible subsidies are available that would permit one or more Housing Units that are not then rented as Homeless Units to again be rented as such, while allowing Owner to operate the Property consistent with applicable coverage standards; then Owner shall promptly, and in any event no later than 30 days after a written request from the Commission, apply for such subsidies for the Property, and Owner shall diligently pursue such subsidies. Owner shall enter into and perform any contracts required to obtain and maintain such subsidies, and if such subsidies are obtained, shall thereafter increase the number of Housing Units that are rented to Homeless Households when made available through vacancy, to the maximum extent consistent with operating in conformity with then applicable coverage standards.

4.3 Additional Low-Income Housing Use Period. The Owner acknowledges that, except as expressly set forth herein, this Agreement shall remain in full force and effect during the Additional Low-Income Housing Use Period. The Owner waives any right to terminate this Agreement with respect to any Building in the Project for the duration of the Additional Low-Income Housing Use Period as may otherwise be available pursuant to Section 42(h)(6)(E)(i)(II) of the Code.

4.4 Number of Housing Units. If this Agreement terminates with respect to any Building in accordance with the terms set forth herein, the minimum number of Housing Units in the Project shall be reduced by the number of Housing Units in such Building at the time of such termination. Notwithstanding the foregoing, all of the provisions of this Agreement shall remain in full force and effect throughout the term of this Agreement with respect to each Building in the Project unless terminated in conformance with this Agreement.

4.5 Credit Set-Aside Commitment. The Commitment to comply with the requirements of this Agreement and the *Policies* for the selected Credit Set-Aside Category identified in Exhibit “B” is binding upon the Owner and all successors in interest regardless of whether the Project received a Credit Reservation and/or Allocation under the selected Credit Set-

Aside Category or the balance of the Annual Authority remaining after the Credit Set-Asides.

4.6 Rental of Units to Maintain Low-Income Commitment(s). The Owner shall rent all Housing Units necessary to maintain the Applicable Fraction of Housing Units devoted to low-income housing only to Residents who are Income eligible for the Low-Income Housing Commitment(s) at the time of their initial occupancy of the Housing Unit. For the Additional Low-Income Housing Commitment, the Owner shall rent all Housing Units necessary to comply with the Additional Low-Income Housing Commitment only to Residents who are Income eligible for the applicable Additional Low-Income Housing Commitment at the time of their initial occupancy of the Housing Unit. This requirement(s) applies to all Housing Units necessary to comply with the Applicable Fraction and, if applicable, the Additional Low-Income Housing Commitment for the initial occupancy and each subsequent vacancy throughout the duration of the Project Compliance Period. The Owner must keep the applicable Housing Units within a building vacant until a Resident is selected who is Income eligible for the Low-Income Housing Set-Aside and/or the Additional Low-Income Housing Commitment, as appropriate.

4.7 Multiple Commitments. If the Project is subject to the Elderly Housing Commitment and the Project is also subject to one or more additional Housing Commitments for Priority Populations, the same Housing Units may be used for more than one Housing Commitment for Priority Populations, so long as the actual Resident is eligible for more than one.

If one hundred percent (100%) of the Housing Units in the Project are subject to the Housing Commitments for Priority Populations, the same Housing Units may be used for more than one Housing Commitment for Priority Populations, so long as the actual Resident is eligible for more than one.

If less than seventy five percent (75%) of the Housing Units in the Project are set aside for Housing for the Homeless and the Project is subject to the Housing Commitment for Persons with Disabilities and/or for Large Households, the same Housing Units shall not be used for more than one Housing Commitment for Priority Populations, regardless of whether a Resident is eligible for more than one. A minimum of twenty percent (20%) of all Housing Units in the Project must be used for each additional Housing Commitment for Priority Populations selected.

4.8 Marketing Units Subject to Certain Commitments. If the Project is subject to a Housing Commitment for Priority Populations or the Farmworker Housing Commitment, when the Project is Placed-In-Service and ready for initial occupancy each Housing Unit subject to such commitment must first be rented to and occupied by a Resident who qualifies for the commitment (for example, in the case of the Farmworker Housing Commitment, by a Farmworker household). If the Housing Unit is subsequently vacated,

the Owner shall undertake good faith efforts to actively market any vacant Housing Units that are necessary to comply with the Housing Commitment(s) for Priority Populations or the Farmworker Housing Commitment to the appropriate group(s) for a minimum of thirty (30) days. The Owner shall not rent any of the Housing Units necessary to comply with the Housing Commitment(s) for Priority Populations or the Farmworker Housing Commitment to anyone who is not eligible for the appropriate Housing Commitment(s) for Priority Populations or the Farmworker Housing Commitment during this thirty (30) day period. In the event the Owner is unable to secure a Resident who is eligible for the appropriate Housing Commitment(s) for Priority Populations or the Farmworker Housing Commitment after thirty (30) days of active marketing, it may rent the Housing Unit to another prospective Resident. The Owner's right to rent a Housing Unit subject to a Housing Commitment for Priority Populations or Farmworker Housing Commitment to a nonqualifying resident following the thirty (30) day recruitment period shall be applicable only to Housing Units that were initially occupied by qualifying Residents.

The recruitment provision applies to all Housing Units included in the Housing Commitment(s) for Priority Populations and the Farmworker Housing Commitment, including both Low-Income Housing Units and Market Rate Housing Units, if applicable. The minimum thirty (30) day recruitment period begins on the first full day that (1) a Housing Unit is vacant and ready for occupancy, and (2) the Owner actively commences to market the Housing Unit.

If the Owner rents a Housing Unit included in the Housing Commitment(s) for Priority Populations to a household who is not eligible for the appropriate Housing Commitment(s) for Priority Populations after the thirty (30) day period, when a comparably sized or larger Housing Unit becomes vacant the Owner must again undertake the good faith efforts to actively market such Housing Unit(s) as described above in this Section 4.8 and shall not rent such Housing Unit(s) for a minimum of thirty (30) days to anyone who is not eligible for the appropriate Housing Commitment(s) for Priority Populations. If the Owner rents a Housing Unit included in the Farmworker Housing Commitment to an ineligible household after the thirty (30) day period, any and all Housing Units that subsequently become vacant, including the Housing Unit rented to the ineligible household, must be rented to a Resident who is eligible for the Farmworker Housing Commitment (subject to the thirty day marketing requirement set forth in the preceding Section).

The thirty (30) day marketing requirements for the Housing Commitment(s) for Priority Populations and the Farmworker Housing Commitment set forth in this Section 4.8 apply to all Housing Units (following initial occupancy by a qualified Resident) which are necessary to comply with the Housing Commitment(s) for Priority Populations and the Farmworker Housing Commitment throughout the Project Compliance Period.

Notwithstanding anything herein to the contrary, for the Elderly Housing Commitment, no Housing Unit may be rented to any person if the result is that the Project would no longer be



an Elderly Housing Project. Also, notwithstanding anything herein to the contrary, for the Housing for the Homeless Commitment, any vacancies in the Commitment must be filled by a Resident who meets the eligibility criteria for that Commitment.

4.9 Selection Criteria for Residents. When selecting Residents for occupancy in Low-Income Housing Units or Housing Units subject to a Housing Commitment(s) for Priority Populations or the Farmworker Housing Commitment, the Owner shall not apply selection criteria to a prospective Resident that are more burdensome than the selection criteria applied to any other Resident or prospective Resident; and the Owner shall take into consideration the rental history of such prospective Resident as evidence of the ability to pay the applicable rent, if: (i) the rental history is of a term of at least one year; and (ii) the history shows that the Resident has paid at least the same percentage of his or her income for rent during that period as s/he will be required to pay for the rent of the Housing Unit for which the Resident is applying.

4.10 No Geographic Segregation. The Low-Income Housing Units and any Housing Units subject to a Housing Commitment(s) for Priority Populations shall not be geographically segregated from other Housing Units in the Project. In addition, the Low-Income Housing Units and Housing Units in a Housing Commitment(s) for Priority Populations shall be substantially the same size as other Housing Units with the same number of bedrooms.

4.11 Unit Configuration. The configuration of Housing Units (e.g. studios, one-bedrooms, two-bedrooms, etc.) used for the Low-Income Housing Units and the Housing Commitments for the Elderly, Persons with Disabilities and the Homeless shall be proportional to the configuration of the Total Housing Units in the Project unless the Owner obtains the prior written approval of the Commission to a different configuration.

4.12 Quality of Unit Construction. Subject to such exceptions as may be permitted by the *Policies* and the Tax Credit Laws, all Low-Income Housing Units and any Housing Units subject to a Housing Commitment(s) for Priority Populations shall be of the same quality construction as all other Housing Units, and shall be equipped and maintained in the same manner as all other Housing Units, with the exception of any additional amenities provided to meet the needs of Resident(s) with Disabilities.

4.13 Notification and Advertising of Unit Availability. The Owner shall at least annually notify, (1) the relevant public housing authority, (2) at least two community agencies in the area of the Project, and (3) the general public of the availability of Low-Income Housing Units and any Housing Units subject to a Housing Commitment for Priority Populations or the Farmworker Housing Commitment. Where no public housing authority exists, notice shall be given to an agency authorized to act in lieu of a public housing authority, if any. Notification to the general public shall be by advertisement(s) of

general circulation in the area of the Project and the advertisement(s) shall conform to the Fair Housing Act, as amended, and state and local law.

4.14 Limitation on Up-Front Rental Charges. The Owner agrees to:

- (i) limit up-front charges and fees for Residents of all Low-Income Housing Units and all Housing Units subject to a Housing Commitment(s) for Priority Populations to:
  - (a) the first month's Gross Rent;
  - (b) a reasonable damage or security deposit no greater than the maximum applicable monthly Gross Rent, plus any reasonable pet deposit; and
  - (c) a reasonable credit check fee; and
- (ii) not charge any other up-front charges or fees, for example, the last month's rent (except as noted below), application fees, and cleaning deposits or fees.

If the household is unable to pay the up-front deposits described in Section 4.14(i)(b), the Owner shall charge no more than 50% of such deposits up-front and then provide a payment plan for the remaining amount over at least a five-month period.

In addition to the above charges and fees, the Owner may collect the last month's Gross Rent in advance only if the payment thereof is made on at least a six (6) month prorated basis beginning on the second month or later (e.g. one-sixth of the last month's Gross Rent due each month from the second month through the seventh month).

4.15 Compliance with Laws. The Owner shall at all times comply with all other federal, state and local laws, rules and regulations now or hereafter applicable to the Owner, the Project or any Building, including but not limited to (i) Tax Credit Laws; (ii) federal housing policy governing nondiscrimination and accessibility, as determined under the Americans with Disabilities Act, the Fair Housing Act, as amended, Architectural Barriers Act of 1968, Housing and Community Development Act of 1974, Civil Rights Act of 1964, Civil Rights Act of 1968, and Age Discrimination Act of 1975; (iii) to the extent applicable, the Housing and Urban Development Act of 1968, the Uniform Relocation and Real Property Acquisition Act of 1970, and the Stewart B. McKinney Homeless Assistance Act; (iv) the State Environmental Policy Act, State Workers Compensation Industrial Insurance Act, Washington Fair Housing Laws, and the Washington State Landlord/Tenant Act; (v) if the Project includes "Federally Assisted Housing" as defined in RCW 59.28.020 (as it may be subsequently amended or renumbered), the written notice requirements specified in RCW 59.28.020 at least twelve (12) months prior to the expiration of the federal rental assistance contract or prepayment of the federal mortgage

or loan; and (vi) all state and local health, safety and building codes and standards. All Units shall at all times be suitable for occupancy and habitable.

4.16 Compliance with Environmental Laws. In the case of a Project which would be considered to be a Federal Action, Federally Subsidized, financed with Federal Funding or require federal approval or a permit, as those terms are defined and interpreted under federal environmental laws (including but not limited to: the National Environmental Policy Act of 1969, the Clean Water Act, the Clean Air Act, the National Historic Preservation Act, the Lead Based Paint Poisoning Prevention Act, and/or the Flood Disaster Protection Act of 1973), the Owner shall at all times comply with any and all applicable federal environmental laws.

4.17 Compliance with Labor Laws. In the case of a Project which receives Federal Funding, the Owner shall at all times comply with any and all applicable federal labor laws, including but not limited to: the Davis Bacon Act; Copeland Anti-Kickback Act; Contract Work Hours and Safety Standards; Hatch Act; and the Conflict of Interest Provisions set forth in 24 CFR 570.611.

4.18 Notification of Adverse Events. The Owner agrees to notify the Commission in writing within five (5) business days of first acquiring knowledge of any of the following:

- (1) A default, that is not timely cured, in payment of any indebtedness incurred in connection with the development of any multifamily housing project or any other real estate development by a Covered Party or any declared default by a Covered Party of any loan incurred in connection with the development of any multifamily housing project, or a default or an alleged default by a Covered Party on any other financial obligation with an outstanding balance which exceeds \$100,000;
- (2) A material default, or alleged material default, that is not timely cured, by a Covered Party of the Tax Credit Laws or any other applicable laws, rules or regulations regarding any Credit project in Washington or any other jurisdiction;
- (3) The application for or consent to an appointment of a receiver or trustee (a) for a Covered Party or, (b) over any portion of the property of a Covered Party; an assignment by a Covered Party for the benefit of creditors; the seizure of any part of the assets of a Covered Party by a judgment creditor; an admission in writing by a Covered Party of its inability to pay its debts as they become due; the insolvency of a Covered Party; or a petition being filed by any Covered Party pursuant to any of the provisions of the United States Bankruptcy Code, as amended;
- (4) A petition being filed against any Covered Party pursuant to any of the provisions of the United States Bankruptcy Code, as amended, or an attachment or sequestration of any property of any Covered Party where the same is not discharged

or bonded within ninety (90) days (items (3) and (4) collectively being referred to as the “Bankruptcy” of a Covered Party);

(5) That a representation or disclosure made to the Commission or to any other Credit allocating agency by any Covered Party is materially false or misleading on the date when such representation or disclosure was made, whether or not that representation or disclosure appears in this Agreement, or that a Covered Party failed to provide any information that makes any such representation or disclosure materially false or misleading;

(6) The filing of an action, in which a Covered Party is a defendant, to foreclose upon a real estate lien (or retake possession under a ground lease) or the transfer by a Covered Party of an interest in real estate by a deed in lieu of foreclosure or similar instrument;

(7) A material adverse change in the condition (financial or otherwise), operations, business, or properties of any Covered Party or the Project;

(8) A pending or threatened lawsuit or claim against a Covered Party which could have a material adverse impact, financial or otherwise, on the operations, business or properties of a Covered Party or the Project; or

(9) The filing of legal action against, or commencement of an examination, or a formal investigation by any governmental authority into, any Covered Party for fraud, theft, misappropriation of funds, false certifications, financial improprieties, or similar wrongdoing, including but not limited to an action alleging securities fraud in connection with a low-income housing tax credit program or an action, examination or investigation in which the government authority is seeking or may seek criminal penalties.

4.19 Government Approvals and Permits. The Owner shall obtain and maintain all necessary state and local licenses, approvals and permits required for the Project or any Building and develop and operate the Project.

4.20 Nondiscrimination. The Owner shall not discriminate in making available Housing Units in the Project for occupancy on the basis of race, creed, color, sex, national origin, religion, familial status, age or disability; provided that the Owner may take such actions as may be necessary to qualify for or to maintain its qualification for the exemption that relates to housing for older persons under the Fair Housing Act, as amended, and 24 CFR Part 100, Subpart E. The Owner shall not discriminate against any Resident or prospective Resident based on his or her sources of income, including but not limited to Section 8 or other public assistance, provided such sources of income are not in contravention of any federal, state or local law; specifically, and without limitation, the Owner shall not refuse

to rent a Low-Income Unit to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 (because of the status of the prospective tenant as such a holder).

4.21 Tenant Lease Rider. The Owner shall include a rider (the “Lease Rider”) in each Resident lease or rental agreement and provide a copy to such Resident in substantially the form set forth in Exhibit “F.” Each Resident must receive a copy of the Lease Rider prior to his or her execution of a lease or rental agreement. The Lease Rider must be signed and dated by a Resident signifying receipt of such Lease Rider and a copy of the signed Lease Rider and the lease or rental agreement to which it is attached must be provided to the Resident promptly following execution thereof. The Owner shall provide the Commission with the master form of lease or rental agreement (together with amendments thereto) and shall maintain all executed leases and rental agreements, with the attached Lease Riders on file for inspection by the Commission.

4.22 Restrictions During Three-Year Period. Throughout the Three-Year Period applicable to a Building, the Owner shall comply with the terms, conditions, obligations, restrictions, prohibitions, covenants, representations and warranties set forth in this Agreement, the Credit Reservation and Carryover Allocation Contract (RAC), and the Tax Credit Laws, including but not limited to Section 42(h)(6)(E)(ii). The Owner acknowledges that the Commission’s requirements with respect to the Three-Year Period are more stringent than those under Section 42 of the Code.

4.23 No Eviction/Nonrenewal Other than for “Good Cause”; Tenant’s Right to Enforce Good Cause and Other Commitments. During the Compliance Period and Extended Use Period, (i) no tenant of a Low-Income Housing Unit may be evicted, and (ii) the owner may not refuse to renew a rental agreement, other than for Good Cause and each rental agreement shall so provide. Further, in addition to any other rights and remedies provided hereunder, any individual who meets the income limitation for a Low-Income Unit (whether a prospective, present or former occupant of the Building) shall have the right to enforce in any State court the requirements of this Section 4.23 and the commitments, restrictions and covenants set forth in Section 4.2 and Exhibit B hereof.

4.24 Eventual Tenant Ownership Commitment. If applicable, at the end of the initial 15-year Compliance Period, the Owner may transfer ownership of units in the Project to tenant ownership; provided that the transfer shall be in accordance with Section 42(i)(7) of the Code and a transfer plan previously approved by the Commission at the time of application for the Credit (the “Transfer Plan”). The purchase price for each unit at time of sale shall be affordable to households with incomes meeting Credit eligibility requirements. To be eligible, the buyer must have had a Credit qualifying income at the time of initial occupancy or time of purchase.

The Commission agrees to take all necessary actions, at Owner's expense, to provide for the partial or full release of this Agreement and the acquisition of unit(s) by eligible tenants.

The Owner shall provide the Commission not less frequently than once every five years, commencing on the fifth anniversary of the date of this Agreement, and upon written request from the Commission, a report describing its progress towards compliance with the Transfer Plan, including, but not limited to, an accounting of balances in any tenant homeownership reserve accounts, number of homeownership counseling sessions held with tenants and number of budget and financial training sessions held.

The Owner agrees that, if it is unable to sell the unit(s) to eligible tenant(s) for any reason at the end of the Project Compliance Period: (a) this Agreement shall remain in full force and effect during the Additional Low-Income Use Period and (b) it shall waive its rights under Section 42(h)(6)(E)(i)(II) and 42(h)(6)(F) to terminate this Agreement if the Commission does not present a Qualified Contract in accordance with Section 10.2 hereof.

4.25 Data Collection. To the extent required of the Commission by federal law, the Owner shall assist the Commission with meeting federal reporting requirements by collecting and submitting information to the Commission annually concerning the race, ethnicity, family composition, age, income, use of rental assistance under section 8(o) of the United States Housing Act of 1937 or other similar assistance, disability status, and monthly rental payments of all low-income households.

## SECTION 5. COMPLIANCE MONITORING AND REPORTING REQUIREMENTS

The Owner shall comply with the compliance monitoring, record keeping, certification, reporting and other requirements described in this Section 5, the Qualified Allocation Plan, WAC 262-01-130(16), the *Policies*, the *Low-Income Housing Tax Credit Compliance Manual*, and the Tax Credit Laws, as the same may be amended. Without limiting the generality of the foregoing, the Owner shall:

5.1 Compliance Monitoring Fee. Pay to the Commission a nonrefundable Annual Compliance Monitoring Fee described in the latest revision of the *Policies*. The Commission shall have the right to increase the Annual Compliance Monitoring Fee and the Owner agrees to pay the increased Annual Compliance Monitoring Fee throughout the remainder of the Project Compliance Period.

For Qualified Tax-Exempt Bond-Financed Projects in which the bonds are not issued by the Commission, the Owner shall pay the Annual Compliance Monitoring Fee annually throughout the Project Compliance Period in the amount described above.

Any amounts not paid to the Commission in accordance with this Agreement shall bear interest at the rate of 1.5% per month accruing from the due date until paid.

5.2 Provide Requested Information. Timely provide all information and documentation reasonably requested by the Commission, its representatives or designees throughout the Project Compliance Period, including, without limitation, all Certifications or other documentation as to the compliance of each Building in the Project with the terms of this Agreement, the Qualified Allocation Plan, WAC 262-01-130(16), the *Policies*, the *Low-Income Housing Tax Credit Compliance Manual*, Tax Credit Laws, and other requirements of the Commission, IRS, state, federal or local authorities.

5.3 Access to Project. Throughout the term of this Agreement, grant the Commission and its representatives access to the Project and to each Building and structure for on-site review and inspection, including but not limited to, such review and inspection as may be required by the Tax Credit Laws and the Qualified Allocation Plan. The rights of the Commission hereunder shall include, without limitation, the right to interview Residents of the Project, to inspect Housing Units, to review Resident applications and financial information in the possession of the Owner (or its agents), and to review information, including without limitation the Owner's books and records relating to the Project, upon a minimum of three (3) days advance notice.

5.4 Workshop Attendance. Attend, together with its property management representative, a tax credit compliance training workshop given by the Commission or its authorized designee prior to commencement of initial rent-up activities for the Project.

5.5 Copies of IRS Filings. Provide to the Commission, true, complete, and fully executed copies of: (i) IRS Form 8609 and attached Schedule A (together with any other attachments) for each Building for the first Year of the Credit Period and for each Year of the Credit Period thereafter; (ii) IRS Form 8586 (together with all attachments) for each Building for the first Year of the Credit Period and for each Year of the Credit Period thereafter; and (iii) each and every other form or document that is required, pursuant to Tax Credit Laws, to be filed by the Owner with the IRS in connection with the Project or any Building in the Project throughout the Project Compliance Period. The copies described above must be filed with the Commission no later than the earlier of the date they are actually filed with the IRS or the date they are legally due to be filed, including extensions, with the IRS.

5.6 Copies of IRS Notices. Throughout the Project Compliance Period, provide to the Commission true and complete copies of any and all notices, correspondence or other documents received by the Owner or its agent from the IRS with regard to the Project, including but not limited to notices, correspondence or other documents responding to or relating to IRS Form 8609, IRS Form 8586 and IRS Form 8823. The copies described in

the immediately preceding sentence must be filed with the Commission no later than fifteen (15) days after being received by the Owner.

**5.7 Maintenance and Retention of Records; Health, Safety and Building Code Violations.** Keep records for the Project (and, as noted, for each Building) that show for each Year throughout the term of this Agreement the information specified on Exhibit “D.” The Owner shall retain the records described in Exhibit “D”: (i) for at least six (6) years after the due date (with extensions) for filing the federal income tax return for that year; and, (ii) with respect to any year for which an income tax return is not filed or does not reflect the Credit for the Project, for at least six (6) years after the end of that year; provided, however, that the records for the first year of the Credit Period as defined under Section 42(f)(1) of the Code must be retained for at least six (6) years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period as defined under Section 42(i)(1) of the Code with respect to a Building in the Project. In addition, the Owner shall retain, for the duration of this Agreement, the original health, safety, or building code violation reports or notices that are issued with respect to the Project by any state or local government unit.

**5.8 Required Certification.** Throughout the Compliance Period, submit at least annually to the Commission a Certification as to the matters described in Exhibit “E.”

## SECTION 6. OWNER’S DUE DILIGENCE; DISCLAIMER BY COMMISSION

**6.1 Owner’s Due Diligence.** The Owner acknowledges that it fully understands, and has conducted its own due diligence with respect to, the risks and issues of developing and operating a Project which will most likely constitute a tax shelter, and the terms, conditions and obligations of participating in the Tax Credit Program. The Owner further acknowledges that it has consulted with, and is relying solely upon, its own legal counsel, tax advisors and professionals with respect to this Agreement, the Owner's federal income tax situation, the Owner's participation in the Tax Credit Program, the qualification of the Project or any Building for Credit, the allocation, use and benefits of the Credit, and the commercial feasibility and viability of any Building in the Project. The Owner acknowledges that the Commission has made and makes no representations or warranties whatsoever with regard to any of such matters.

**6.2 Responsibility for Credit Loss.** The Owner acknowledges and agrees that it is solely responsible for all loss and recapture of Credit with respect to any Building, which loss and recapture shall be determined under Tax Credit Laws as they apply to any Building, the Owner, or any taxpayer, whether due to reduction in the amount of Credit allocated to any Building, noncomplying use of any Building, transfer of the Project or any Building, or termination of any Project Documents.



6.3 Monitoring for Noncompliance. The Commission has adopted procedures set forth in the Qualified Allocation Plan, the *Policies* and the Low-Income Housing Tax Credit Compliance Manual that it or its designee will follow in monitoring for Noncompliance with provisions of the Tax Credit Laws and the Tax Credit Program and in notifying the IRS of such Noncompliance. Such procedures and provisions of the Tax Credit Laws are expressly incorporated herein and shall be binding upon the Owner. The Commission may also make other determinations with respect to Credit, the Project, a Building or the Owner from time to time. Neither the above-described compliance monitoring procedures nor any such determination made by the Commission shall be construed as a representation or warranty by the Commission, nor shall the Commission have liability for any such procedure or determination.

6.4 Conflicting Terms. The Owner acknowledges that it and the Project are subject not only to the Program Documents but also to the *Policies*, the Low-Income Housing Tax Credit Compliance Manual and the Tax Credit Laws. The Owner understands that any particular provision thereof may impose upon the Owner a more restrictive or otherwise more onerous definition, term or condition than is set forth in the other Program Documents, the *Policies*, the Low-Income Housing Tax Credit Compliance Manual or the Tax Credit Laws and the Owner agrees that it shall be bound by and shall comply with the more restrictive or more onerous definition, term or condition as determined by the Commission. The Owner further understands that the *Policies* and the Low-Income Housing Tax Credit Compliance Manual are subject to revision as a consequence of developments in Tax Credit Laws or other applicable laws, and that it is the Owner's obligation to stay informed of, and comply with, all such revisions to the *Policies*.

6.5 Release. The Owner agrees that the Commission and the other Indemnified Parties shall have no liability to the Owner or any other Indemnitor with respect to the Tax Credit Program, or any act, omission or determination by the Commission or any other Indemnified Parties in connection therewith, including without limitation, the Commission's Allocation of the Credit to the Project, the Commission's apportionment of Credit to any Building, the Commission's compliance monitoring, or any Credit loss or recapture.

6.6 No Duty to Tenant. This Agreement is not intended, and shall not be construed, to create a duty or obligation of the Commission to enforce any term or provision of this Agreement or any other Program Document on behalf of, at the request of, or for the benefit of any former, present or prospective Resident. The Commission shall have no direct or indirect obligation to any former, present or prospective Resident for violations by the Owner or any other party of the Agreement, the other Program Documents, Tax Credit Laws, or other applicable laws.

6.7 No Obligation. Except as set forth in Section 10.2, nothing in this Agreement shall impose any duty or obligation on the Commission to take any action, including without

limitation any duty or obligation to find a purchaser for any Building, the Project or any portion thereof or to bring any action enforcing this Agreement. The Commission may exercise its rights under this Agreement in its sole and absolute discretion.

#### SECTION 7. RECORDATION; PRIORITY; LESSOR'S OBLIGATION

7.1 Recording. This Agreement shall be recorded by the Owner in the office of the county auditor or recorder of each county in which a Building in the Project is located. The Owner shall deliver evidence of each such recording to the Commission within fourteen (14) days following the execution of this Agreement.

7.2 Subordination. If any lien (including any mortgage, deed of trust, construction lien or judgment lien) or other monetary encumbrance now or hereafter exists on the Project that, if foreclosed or enforced, would, in the Commission's opinion, terminate, eliminate, or impair this Agreement (collectively, "Prior Liens"), such Prior Liens must be subordinated to this Agreement pursuant to a recorded subordination agreement in form and substance satisfactory to the Commission, and no final Allocation will be made to any Project or Building unless all Prior Liens are so subordinated. If the Owner is leasing the Land, then for the purposes of this Agreement the owner/lessor of the Land shall be treated as a holder of a Prior Lien.

7.3 Subsequent Encumbrances. Each and every contract, deed, lease (other than leases and rental agreements between the Owner and Residents) or other instrument hereafter executed that encumbers or conveys the Project or any portion thereof or interest therein shall be subordinate to this Agreement and Owner. Owner shall provide the Commission, upon request, evidence that such encumbrance is subordinate to this Agreement.

7.4 Obligations of the Lessor; Enforcement Against the Lessor. The Lessor, as the lessor of the land underlying the Project, has executed this Agreement solely to comply with the requirements of the Code that these covenants run with the land in order to secure the Credit Allocation for the Project. The Lessor shall have no liability under this Agreement unless the lease on the Project has been terminated and the Lessor has succeeded to the Owner's interest in the Project. So long as the lease is in effect and the Owner or a transferee of the Owner is the lessee, in any action to enforce the obligations of Owner to pay any indebtedness or perform any obligations created or arising under this Agreement, any judgment or decree shall be enforceable against the Lessor only to the extent of its interest in the Project and shall not be enforceable against, subject to execution on, or be a lien on, any other assets of the Lessor.

#### SECTION 8. DEFAULT; REMEDIES

8.1 Noncompliance, Notice and Correction Period. Except as otherwise provided in Section 8.3, the Owner shall notify the Commission and Lessor within five (5) days after the Owner learns of any Noncompliance or has reason to believe any Noncompliance has occurred or is likely to occur. The Owner shall correct any Noncompliance, to the extent

the Noncompliance is curable, within ninety (90) days after the date the Commission gives the Owner written notice of such Noncompliance (or, if earlier, within ninety (90) days after Owner learns of the Noncompliance); provided, however, the Commission may, in its sole discretion, extend the ninety (90) day correction period for up to six (6) months, but only if the Commission determines there is good cause for granting the extension; and provided further, however, in the event of a foreclosure, deed in lieu of foreclosure, or similar event with respect to the Project or the Land, the correction period for the successor for an existing event of Noncompliance shall be no less than ninety (90) days from the earlier of the date the successor obtains control or becomes the owner of the Project. To the extent that the Noncompliance is not corrected within the above-described period including extensions, if any, granted by the Commission, an event of default shall be deemed to occur. Lessor shall be entitled to notice of the event of default and shall have a reasonable opportunity to cure (for the avoidance of doubt, Lessor does not have any obligation to cure an event of default). If Lessor does not exercise its right to cure, and the Commission may exercise its rights and remedies under Section 8. Regardless of whether the Noncompliance is cured as set forth above, the Commission will report to the IRS events of Noncompliance as required by the Tax Credit Program and Tax Credit Laws, which shall be without prejudice to any of the Commission's rights and remedies under Section 8 and the Tax Credit Program. Further, for the purposes hereof, Noncompliance in the form of a representation, warranty or certification that was untrue in any material respect when made, shall, constitute an act of Noncompliance that is not curable.

8.2 Rights and Remedies. If the Owner and Lessor each fail to cure any Noncompliance within the period set forth under Section 8.1, or if the Noncompliance is of a type not subject to cure, then an event of default shall be deemed to have occurred hereunder and under the other Program Documents and the following provisions shall apply:

8.2.1 The Commission shall be entitled to compel specific performance by the Owner of its obligations under this Agreement and/or to exercise any other rights or remedies it may have, at law or in equity, under this Agreement, the other Program Documents, the *Policies*, the Tax Credit Program or Tax Credit Laws or other applicable law, including recovery of monetary damages.

8.2.2 Subject to the provisions of Section 6.6, any individual who meets the income limitation for a Low-Income Housing Unit or a Housing Unit in the Additional Low-Income Housing Commitment, or who meets the requirements for occupying a Housing Unit subject to a Housing Commitment(s) for Priority Population or the Farmworker Housing Commitment (such individual may be a former, present or prospective Resident of the Project), may institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin such Noncompliance or breach, or to recover monetary damages caused thereby.

8.2.3 With respect to any Noncompliance involving the occupancy of a Low Income Housing Unit (“Occupancy Noncompliance”), the Owner, upon demand by the Commission, the Owner shall pay to the Commission an amount equal to all monies received by the Owner with respect to such noncompliant Low-Income Housing Unit from the time that the Owner or its agents knowingly or negligently permitted the Occupancy Noncompliance to occur until the Occupancy Noncompliance is cured. Notwithstanding the foregoing, the provisions of this Section 8.2.3 are not intended, and shall not be construed, to grant to the Commission a current lien on or a security interest in, the rents, issues and profits from the Project.

8.2.4 Subject to the provisions of Section 6.6, any individual who meets the income limitation for a Low-Income Housing Unit or a Housing Unit in the Additional Low-Income Housing Commitment (such individual may be a former or present Resident of the Project) shall be entitled to cause the Owner to pay such individual an amount equal to the difference between the monies received by the Owner from such individual with respect to a Low-Income Housing Unit and the amount which should have been received by the Owner if the rent collected by the Owner for such Unit was in compliance with the provisions of this Agreement.

8.3 Breach of Section 4.18. The failure of the Owner to give timely notice to the Commission as required by Section 4.18 and the Bankruptcy of the Owner shall each constitute an event of default for the purpose of Section 8.2 and provisions of Section 8.1 above allowing the Owner a period to correct Noncompliance shall not apply in those instances. Further, the mere occurrence (even with timely notice) of any of the other events described in items (1) through (9) of Section 4.18 also may constitute an event of default for the purposes of Section 8.2. Specifically, upon the occurrence of an event described in Section 4.18, the Commission shall have the right to demand that the Owner provide to the Commission adequate assurance that (i) the development and operation of the Project will not be materially impaired or potentially harmed and (ii) the Owner is and will be able to fully perform without default all of its obligations under the Program Documents. If the Owner fails to provide such adequate assurance within ten (10) days from the date that the demand for written assurance is given by the Commission, the Commission may, without further notice or opportunity to cure, declare an event of default and exercise its rights and remedies under Section 8.2.

8.4 Debarment. The Owner understands and acknowledges that under certain circumstances the Owner (and other parties related to the Project) may be barred from participating in the Commission’s Tax Credit Program, which shall be without prejudice to any of the Commission’s rights and remedies under Section 8 and the Tax Credit Program. The debarment rules and procedures are currently set forth in WAC 262-03-040.

## SECTION 9. INDEMNIFICATION

9.1 Indemnity and Hold Harmless. The Owner, each general partner of the Owner, each party to the joint venture (if the Owner is a joint venture), and, in the case of a limited liability company, all Managers (the “Indemnitors”), as applicable, shall jointly and severally at all times defend (with counsel reasonably acceptable to the Commission) indemnify and hold harmless and release the Commission, its successors and assigns, including their respective members, officers, employees, agents and attorneys (the “Indemnified Parties”), from and against any and all claims, suits, losses, damages, costs, expenses and liabilities of whatsoever nature or kind (including but not limited to attorneys’ fees, litigation and court costs, amounts paid in settlement, amounts paid to discharge judgment(s), and any disallowance of tax benefits) directly or indirectly resulting from, arising out of, or related to: (i) the financing, acquisition, construction and/or rehabilitation, syndication, sale, management or operation of the Project; (ii) any Noncompliance or failure to perform any covenant under this Agreement or any other Program Document (whether or not cured); (iii) any breach of a representation, warranty or covenant in Sections 3 or 4 or in any other Program Document; (iv) any other act or omission (whether or not cured) constituting a default under Section 8; or (v) the enforcement by the Commission, its successors and assigns of the Commission’s rights and remedies under this Agreement or any other Program Document.

9.2 Survival. The obligations of the Indemnitors under this Section 9 shall survive any transfer of the Project (whether voluntarily or involuntarily) or termination of this Agreement and any attempted transfer or assignment or termination of any Indemnitor’s interest in Owner or the Project; provided, however, the indemnification obligations of an Indemnitor shall not apply with respect to matters first arising after such Indemnitor has disposed of Indemnitor’s interest in the Project or the Owner, as applicable, in accordance with the provisions of this Agreement.

9.3 Limited Liability for Subsequent Owner. Except for accrued Annual Compliance Monitoring Fees, no successor in interest to the Owner (“Successor Indemnitor”) shall be liable under this Section 9 for: (i) acts or omissions of persons or entities other than the Successor Indemnitor that occurred before the earlier of the date the Successor Indemnitor obtained control or became the owner of the Project; or (ii) events or conditions on or related to the Project or any Building, or defaults under this Agreement or any other Program Document, occurring or existing prior to the earlier of the date such Successor Indemnitor obtained control or became the owner of the Project. Notwithstanding the foregoing, if a Noncompliance or other default exists under this Agreement or any other Program Document that arose before and is continuing after such Successor Indemnitor either obtains control or becomes the owner of the Project (each a “Continuing Default”), then such Continuing Default shall exist under this Agreement and Owner shall be under default under Section 8 only to the extent that the Continuing Default relates to the period commencing on the date the successor Owner obtained control or became the owner of the

Project, in which case, the successor shall have the cure rights, if any, set forth in Section 8. If and so long as the cure of a Continuing Default is prohibited by law (including restrictions on tenant evictions), the successor shall not be in default and shall not be required to cure the Continuing Defaults, but the Commission will nevertheless give the Successor Indemnitor written notice of a Continuing Default and/or report the same to the IRS as provided in Section 8.1.

## SECTION 10. TERM OF THIS AGREEMENT

10.1 Term. This Agreement shall be effective with respect to the Project and the Land upon execution of this Agreement and continue in full force and effect throughout the Project Compliance Period, unless sooner terminated with respect to a Building under Sections 10.2 and 10.3 below; provided, however, that the Indemnitor's obligations under Section 9 shall survive expiration or termination of this Agreement.

10.2 Purchase Request. This Agreement may be terminated with respect to a Building in the Project under the following conditions:

10.2.1 Purchase Request. At any time after the close of the latest to end of: (i) the fourteenth (14th) year of the Compliance Period with respect to a Building; or (ii) one Year prior to the end of the Additional Low-Income Housing Use Period with respect to such Building, if any, the Owner may submit to the Commission a written request ("Purchase Request") that the Commission find a person to purchase the Owner's interest in such Building.

10.2.2 Time Period. The Commission shall have one year from its receipt of a Purchase Request to present a proposed Qualified Contract by a person who agrees to purchase such Building and continue to operate the low-income housing portion of such Building as a qualified low-income building (within the meaning of Section 42 of the Code).

10.2.3 Qualified Contract. If the Commission presents a timely proposed Qualified Contract under Section 10.2.2, the Purchase Request shall become irrevocable and the purchase and sale of the Building shall be carried out pursuant to the terms of the Qualified Contract. If, during the one year period and before the Commission presents a Qualified Contract, the Owner withdraws the Purchase Request: (i) the Owner shall fully reimburse the Commission for its costs incurred in attempting to locate a purchaser, including but not limited to the Commission's advertising costs, broker fees and attorneys' fees; and (ii) this Agreement shall not terminate with respect to such Building. However, the Owner shall not be precluded from having Section 10.2 apply to a subsequent request made thereunder with respect to such Building.

10.2.4 Failure to Present Qualified Contract. If the Commission does not present a proposed Qualified Contract for a Building under Section 10.2.2 by the close of the one year period, then the provisions of this Agreement in effect for such Building, excluding Section 9 above, shall terminate at the end of Three-Year Period in effect with respect to such Building and this Agreement, excluding Section 9 above, shall thereafter be applied by excluding such Building from the Project; provided this Agreement shall continue in full force and effect and shall continue to apply to each Building, the Land, and Project not subject to the Owner's Purchase Request.

10.2.5 Multiple Buildings. If the Project consists of more than one Building, then the terms and requirements for the sale of one or more but not every Building in the Project shall be governed by the Tax Credit Laws and other applicable law. Nothing in this Agreement shall be deemed to permit sale of any Building or any interest in a Building, the Land, the Project or any portion thereof in violation of the Tax Credit Laws or other applicable law, including without limitation state and local subdivision and zoning laws, ordinances and regulations.

### 10.3 Termination Upon Foreclosure.

10.3.1 Foreclosure. In the event title to a Building is transferred during the term of this Agreement by reason of foreclosure or forfeiture under a deed of trust, mortgage or real estate contract, by deed in lieu of foreclosure or by any other similar process, then this Agreement, excluding Section 9 above, shall automatically terminate with respect to such Building and any portion of Land upon which such Building is located (the Building together with any portion of the Land upon which such Building is located (whether owned or leased) are referred to in this Section 10.3.1 as the "transferred property") at the end of the Three-Year Period applicable to such Building. This Agreement shall thereafter be effective as to the Project but excluding the transferred property. In the event a successor in title by reason of the foreclosure, forfeiture or deed in lieu of foreclosure desires to qualify for Credit for such Building, if any, such successor in interest shall execute a revised Regulatory Agreement (Extended Use Agreement) with the Commission and shall perform such acts and execute such other and further contracts or agreements required by the Commission; provided, if for any reason a revised Regulatory Agreement (Extended Use Agreement) is not executed, such successor shall remain subject to, and liable as Owner under, the terms of this Agreement for the Three-Year Period.

10.3.2 Scheme to Terminate. Notwithstanding the foregoing, Section 10.3.1 shall not apply and all provisions of this Agreement shall remain in full force and effect with respect to a transferred property if after an acquisition described in such Section, the Owner or a related party (as defined in Sections 42(d)(2)(D)(iii), 267, 707(b) or 1563(a) of the Code) acquires an ownership interest (for federal income

tax purposes) in such transferred property if the Internal Revenue Service or the Commission determines that such acquisition is part of an arrangement with the Owner, a purpose of which is to terminate this Agreement in whole or in part.

10.3.3 Condemnation. In the event of involuntary transfer with respect to a Building arising as a consequence of seizure, requisition or condemnation by a governmental authority, this Agreement, excluding Section 9 above, shall automatically terminate with respect to such Building and any portion of Land seized, requisitioned or condemned by such governmental authority; and this Agreement shall thereafter be applied by excluding such Building and portion of Land from the Project.

## SECTION 11. MISCELLANEOUS

11.1 Notices; Counting Days. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given three (3) calendar days after the date sent by certified or registered mail, return receipt requested, to the parties at the addresses set forth below, or to such other place as a party may from time to time designate in writing:

Owner: CHS Shoreline LLC

Contact for Legal Notices: Catholic Housing Services of Western Washington  
100 23rd Avenue South  
Seattle WA 98144-2302  
Attn: Timothy May, CFO

With a copy to: Kantor Taylor PC  
1200 Fifth Avenue Suite 1910  
Seattle, Washington 98101  
Attention: Andrea Sato, Esq.

And to: c/o Raymond James Tax Credit Funds, Inc.  
880 Carillon Parkway  
St. Petersburg, Florida 33716  
Attention: Steven J. Kropf, President

with a copy to: Nixon Peabody LLP  
Exchange Place  
53 State Street  
Boston, MA 02109  
Attn: Nathan A. Bernard

Commission: Washington State Housing Finance Commission

Revised April 2021

REGULATORY AGREEMENT (Extended Use Agreement)  
CHS Shoreline (TC or OID # 21-68)



1000 Second Avenue Suite 2700  
Seattle, Washington 98104-1046  
Attn: Executive Director

Except as otherwise set forth herein, “days” as used in this Agreement and all Exhibits hereto shall mean calendar days; provided if the last day of a deadline or other period described herein would otherwise fall on a Saturday, Sunday or Washington State holiday, the last day of such deadline or other period shall extend to the next calendar day that is not a Saturday, Sunday or Washington State holiday; provided, further, if the last day of a deadline or other period is December 31 or any other date that cannot be extended under the law, the deadline or other period shall be the last day prior to the original deadline or other period that is not a Saturday, Sunday or Washington State holiday.

11.2 Amendment. This Agreement may only be amended by a written instrument in recordable form signed by the Commission and the Owner; provided, however, the Owner, all Bound Parties and all Indemnitors acknowledge and agree that certain provisions of the Tax Credit Laws may change or be amended from time to time, and the Commission shall have the right to amend this Agreement, in its sole discretion, to the extent necessary to comply with or be consistent with such changes or amendments. The Owner and all Indemnitors agree that they shall be subject to and bound by such changes and amendments on a prospective basis, and agree to execute an amendment to this Agreement within ten (10) days of the Commission’s request to reflect the same, but their signatures shall not be required for such amendment to be effective.

11.3 Cumulative Rights; Waiver. All rights and remedies of the Commission under this Agreement, the other Program Documents, the *Policies*, the Tax Credit Program, the Tax Credit Laws or other applicable laws are cumulative and may be exercised singularly or concurrently, and the exercise or any one or more of such rights or remedies shall not affect or preclude the exercise of any other rights, powers, or remedies which the Commission may have. Any forbearance, failure, or delay by the Commission in exercising any right, power, or remedy shall not be deemed to be a waiver thereof and any single or partial exercise of any right, power, or remedy shall not preclude the further exercise thereof or the exercise of any other right, power, or remedy.

11.4 Partial Invalidity. Each and every term of this Agreement shall be valid and enforceable to the fullest extent possible. If any term or provision of this Agreement or the application thereof to any person, entity or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons, entities or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

11.5 Further Assurances. The Owner agrees to execute, acknowledge, and deliver any and all documents, instruments, and writings, and to perform other acts as are reasonably necessary to carry out the purposes of this Agreement and the other Program Documents.

11.6 Project Transfer or Assignment. Subject only to the specific exceptions set forth in the *Policies*, and for a foreclosure or deed in lieu of foreclosure, each and every Project Transfer or Assignment shall require the prior written consent of the Commission. Specifically, but without limitation, pursuant to Section 42(h)(6)(B)(iii), the Commission shall not consent to any transfer or disposition of any portion of a Building to any person unless all of the Building is transferred to such person, and any such attempted transfer or disposition is hereby prohibited. Notwithstanding the foregoing, the Commission's consent shall not be required, although advance notice and documentation shall be required, for the removal of the managing member or general partner of Owner, as applicable, in accordance with the terms of any operating agreement or partnership agreement, as applicable, and the replacement thereof with the investor member or limited partner, as applicable, or any of its affiliates or such other entity as may be approved by the Commission.

11.7 Cure by Limited Partner. The Owner's limited partner shall have the right, but not the obligation, to cure any events of defaults of the Owner within the same cure periods provided to the Owner. The Commission shall recognize such cures as if provided by the Owner.

#### SECTION 12. TIME OF THE ESSENCE

Time is of the essence of each of Owner's obligations under this Agreement.

#### SECTION 13. CAPTIONS

Captions used in this Agreement are used for convenience of the Parties only and shall not be deemed to limit, modify or alter any of the substantive provisions of this Agreement.

#### SECTION 14. EXHIBITS AND SCHEDULES

All exhibits and schedules to this Agreement are incorporated herein by this reference.

#### SECTION 15. GOVERNING LAW; EFFECTIVE DATE

This Agreement shall be governed by the laws of the state of Washington. Notwithstanding the date of the Agreement set forth on page one, this Agreement is entered into and shall be effective on the last signature date of the parties hereto.

SECTION 16. VALID EXISTENCE; AUTHORIZATION;  
NO CONFLICT WITH OTHER DOCUMENTS

The Owner warrants that it is validly organized and currently authorized to do business in the state of Washington. The Owner, and each party or person executing this Agreement on behalf of the Owner, represents and warrants as follows: (i) that the execution, delivery and performance of this Agreement have been duly authorized and approved by the appropriate governing body of the Owner; and (ii) that this Agreement, upon execution by each signatory of the Owner as set forth below, constitutes a valid and binding agreement of the Owner. The Owner further warrants that the Owner has not executed and shall not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event this Agreement is controlling as to the rights and obligations in this Agreement and supersedes any other conflicting requirements.

DRAFT

[Be sure to keep all signatures inside the box to be able to record the document.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their respective, duly authorized representatives on day and year first written above.

OWNER: CHS Shoreline LLC  
By: CHS Shoreline Manager LLC  
Its: Managing Member

By: Archdiocesan Housing Authority  
Its: Manager

By: \_\_\_\_\_  
Name: Chris Jowell  
Title: Vice President

Owner's Federal Taxpayer Identification Number: 84-3750808

LESSOR: CITY OF SHORELINE

\_\_\_\_\_  
Debbie Tarry, City Manager

WASHINGTON STATE HOUSING FINANCE COMMISSION

By \_\_\_\_\_  
Steve Walker, Executive Director

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that Chris Jowell is the person who appeared before me and acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Vice President of Archdiocesan Housing Authority, manager of CHS Shoreline Manager LLC, managing member of CHS SHORELINE LLC of a Washington limited liability company, to be the free and voluntary act of such nonprofit corporation on behalf of such company on behalf of such company for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_



\_\_\_\_\_  
Notary Public

Name (print): \_\_\_\_\_

Residing at: \_\_\_\_\_

Commission expires: \_\_\_\_\_

(Use this space for notarial stamp/seal.)

STATE OF WASHINGTON )

) ss.

COUNTY OF KING )

I certify that I know or have satisfactory evidence that Debbie Tarry is the person who appeared before me and acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the City Manager of the CITY OF SHORELINE, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

Notary Public

Name (print): \_\_\_\_\_

Residing at: \_\_\_\_\_

Commission expires: \_\_\_\_\_



(Use this space for notarial stamp/seal.)



EXHIBIT "A"

TO REGULATORY AGREEMENT (EXTENDED USE AGREEMENT)

LEGAL DESCRIPTION

The Land referred to herein below is situated in the County of King, State of Washington, and is described as follows:

Lots 5 and 6 and the South 150 feet of Lot 7, ECHO LAKE PARK, according to the plat thereof recorded in Volume 23 of Plats, page 8, in King County, Washington.

EXCEPTING THEREFROM those portions lying within the boundaries of Aurora Avenue N and N 198th Street.

DRAFT



## EXHIBIT "B"

## TO REGULATORY AGREEMENT (EXTENDED USE AGREEMENT)

PROJECT DESCRIPTION:

1. NAME OF PROJECT: CHS Shoreline
- TC OR OID NUMBER: 21-68
- OWNER: CHS Shoreline LLC
- OWNER'S ADDRESS: 100 23rd Ave S  
Seattle WA 98144
- CONTACT FOR LEGAL NOTICES: Timothy May, CFO  
Catholic Housing Services of Western  
Washington  
100 23rd Avenue South  
Seattle WA 98144-2302
2. PROJECT AND OWNER COMMITMENTS, RESTRICTIONS, COVENANTS:
- CREDIT SET-ASIDE CATEGORY: 2021 King County Tax Credit Allocation Pool
- ADDITIONAL LOW-INCOME HOUSING  
USE PERIOD ELECTED: 22 years
- TOTAL PROJECT COMPLIANCE PERIOD: 37 years
- TOTAL UNITS: 100
- TOTAL COMMON AREA UNITS: 0
- TOTAL MARKET RATE UNITS: 0
- †TOTAL HOUSING UNITS: 100
- \*†PROJECT APPLICABLE FRACTION: 100%
- MINIMUM LOW-INCOME HOUSING SET-  
ASIDE: 40% at 60% AMI
- PERCENT OF AMGI FOR QUALIFIED

LOW-INCOME HOUSING UNITS: 60%

†TOTAL HOUSING UNITS IN LOW-INCOME HOUSING COMMITMENT: 100

	<u>#* OF HOUSING UNITS</u>	<u>% of AMGI</u>	<u>%* OF ALL LIH HOUSING UNITS</u>
†ADDITIONAL LOW-INCOME HOUSING ELECTION:	50	50% AMI	50%
	50	30% AMI	50%

† HOUSING COMMITMENTS FOR PRIORITY POPULATIONS AND FARMWORKER HOUSING PROJECT

FOR HOMELESS 75 75%

The following buildings are of the Tax Credit Type: New Construction without Federal Subsidies

<u>BIN for each Building</u>	<u>Known Street Address as of date of Extended Use Regulatory Agreement</u>	<u>City</u>	<u># of Qualified Low-Income Housing Units by Building†</u>	<u># of Common Area Units</u>	<u># of Market Rate Units by Building</u>
WA-21-00139			100		

\* Based on the lesser of the Unit Fraction or Floor Space Fraction.

† Excludes any Common Area Units

\*\* Owner expects to obtain rent, operating and/or service subsidies (“Subsidies”) for those units set aside as Housing for Homeless (“Homeless Units”), as set forth in Exhibit “B” hereto. If such Subsidies become unavailable or are reduced, and if sufficient compatible subsidies are not available so that units set aside as Homeless Units can be operated as such and still allow the Project to remain in compliance with coverage standards then in effect, Owner shall give written notice of that fact to the Commission. Owner’s notice to the Commission shall include an estimate of the number of units that need to be rented to households other than Homeless Households as a result of insufficient Subsidies, and the backup detail showing the basis for the estimate. Upon the Commission’s reasonable and timely confirmation of Owner’s estimate, the Owner thereafter may rent one or more of the Homeless Units, as they become available through vacancies, to households that do not meet the eligibility criteria set forth in the Commission’s

policies regarding Housing for Homeless (“Homeless Households”), to the extent necessary so that Owner can operate the Property consistent with applicable coverage standards.

For purposes of this subsection, a “compatible subsidy” is one that (a) is provided on terms consistent with the operation of the Property in compliance with this Regulatory Agreement, with all other recorded covenants and loan documents entered into by Owner for the Property and (b) will not reduce or impair the use of low-income housing tax credits claimed for the Project.

For purposes of this subsection, a “coverage standard” is a financial covenant based on the operating cash flow of the Owner from the Property that is applicable either (a) pursuant to the limited partnership agreement of Owner, under which the Investor then remains a limited partner; or (b) pursuant to an agreement made by Owner for a loan for the Property.

If, at any time, when any Homeless Units are being rented to other than Homeless Households pursuant to the foregoing, in the sole discretion of the Commission, either (a) it becomes possible to rent any of such Housing Units as Homeless Units without breach of coverage standards because of improvements in results of operations or the inapplicability of coverage standards formerly in effect; or (b) new or increased compatible subsidies are available that would permit one or more Housing Units that are not then rented as Homeless Units to again be rented as such, while allowing Owner to operate the Property consistent with applicable coverage standards; then Owner shall promptly, and in any event no later than 30 days after a written request from the Commission, apply for such subsidies for the Property, and Owner shall diligently pursue such subsidies. Owner shall enter into and perform any contracts required to obtain and maintain such subsidies, and if such subsidies are obtained, shall thereafter increase the number of Housing Units that are rented to Homeless Households when made available through vacancy, to the maximum extent consistent with operating in conformity with then applicable coverage standards.

## EXHIBIT “C”

## TO REGULATORY AGREEMENT (EXTENDED USE AGREEMENT)

## DEFINITIONS

1.1 “Additional Low-Income Housing Commitment” means the low income housing commitment or commitments elected by the Owner in addition to the Minimum Low-Income Housing Set Aside as set forth in Exhibit B.

1.2 “Additional Low-Income Housing Use Period” means with respect to a Building, the period set forth in Exhibit B which begins immediately following the end of the Compliance Period.

1.3 “Agreement” means this Regulatory Agreement (Extended Use Agreement) as amended or restated from time to time, which Agreement is intended to meet the definition of a “long-term commitment to low-income housing” as required by Section 42(h)(6) of the Code and the requirements of the Tax Credit Program..

1.4 “Allocation” means, for purposes of this Agreement, the maximum amount of Credit available to the Project as a result of an allocation of Credit by the Commission, which will be apportioned to each Qualified Building at the time such Building is Placed-In-Service. Allocation includes (a) Credit allocated (as that term is used in Section 42 of the Code) by the Commission and subject to Section 42(h)(1) of the Code (i.e., Credit allocated pursuant to the competitive allocation process), and (b) Credit attributable to that portion of Eligible Basis financed with tax-exempt bonds (i.e., Credit which, by virtue of Section 42(h)(4) of the Code, is not allocated pursuant to the competitive allocation process).

1.5 “Annual Compliance Monitoring Fee” means the annual fee imposed by the Commission on the Owner of a Project for monitoring of its compliance with the Code, the Tax Credit Program, the Credit Reservation and Carryover Allocation Contract (RAC) and this Agreement.

1.6 “Applicable Fraction” means the lesser of the Unit Fraction or Floor Space Fraction for a Building or the Project, as the context so requires.

1.7 “Application” means the Tax Credit Program Application and amendments thereto, if any, submitted by the Owner with respect to the Project.

1.8 “Bankruptcy” has the meaning set forth in Section 4.18 of this Agreement.

1.9 “BIN” means the Building Identification Number (i.e., the identifying number assigned to a Building in the Project by the Commission).

1.10 “Bound Party” means any and all current and future owners, developers, lessees (other than Residents), easement holders or licensees of all or any portion of or interest in the Property; and their respective heirs, executors, administrators, legal representatives, devisees, successors and assigns.

1.11 “Building” means Residential Rental Property, as defined under Code Section 168 containing residential Housing Units for which a separate BIN is assigned, located on the Land and included in the Application.

1.12 “Carryover Allocation” means an Allocation pursuant to a Carryover Allocation Contract (RAC) which is made with respect to a Building or Project pursuant to Section 42(h)(1)(E) and/or Section 42(h)(1)(F) of the Code, as the case may be, and in conformance with Treasury Regulation Section 1.42-6.

1.13 “Carryover Allocation Contract” means an agreement entered into between the Owner and the Commission, and amendments thereto, if any, wherein subject to the satisfaction by the Owner of the terms, conditions, obligations and restrictions set forth therein and satisfaction of the requirements under Section 42(h)(1)(E) and/or Section 42(h)(1)(F) of the Code, IRS Treasury Regulation Section 1.42-6 and any other applicable law, the Commission makes a Carryover Allocation to the Project. The Credit Reservation and Carryover Allocation Contract (RAC) is a Carryover Allocation Contract.

1.14 “Certifications” means the representations made under penalties of perjury by (i) the Owner, (ii) each developer, (iii) each general partner, (iv) each party to a joint venture, (v) in the case of a limited liability company, each Manager, and/or (vi) each Resident, as applicable, including but not limited to those representations set forth in the Application and the *Certification Regarding Financial Solvency and Litigation Status*; *Certification on Behalf of Nonprofit Organization*; *Certification on Behalf of Profit-Motivated Individual, Business, Corporation or Partnership*; and *Certification of Ability to Contribute Equity to the Project* to the extent such Certifications apply to the Owner and/or the Project. Certifications also mean any and all representations made under penalties of perjury with respect to the Project at any time from the date of submission of the Application and throughout the Project Compliance Period.

1.15 “Code” means the Internal Revenue Code of 1986, as amended, together with corresponding and applicable temporary, proposed, and final Treasury Regulations, and Revenue Rulings and pronouncements issued or amended regarding it by the U.S. Department of the Treasury or IRS or as interpreted by any court of competent jurisdiction, to the extent applicable to the Project.

1.16 “Commission” means the Washington State Housing Finance Commission and any successor or assignee.

1.17 “Commitment” means a representation or agreement of the Owner contained in the Application which is binding upon the Owner and its successor(s) in interest throughout the Project Compliance Period unless otherwise noted in this Agreement, the applicable *Policies*, the Application or agreements entered into with the Commission in connection with the Tax Credit Program.

1.18 “Common Area Unit” means a Unit in the Project, as identified in this Agreement, that is occupied by resident managers or maintenance personnel, or used for the Project's business offices or security personnel, to the extent such use is reasonably required for the Project. A Common Area Unit is not a Housing Unit and is not included in the Total Housing Units for the Project. A Common Area Unit shall not be includible in either the numerator or the denominator of the Unit Fraction, Floor Space Fraction, or Applicable Fraction. At any time during the Project Compliance Period that a Common Area Unit becomes available as a residential rental Unit, such Unit shall fall within the definition of “Housing Unit” hereunder, and such Unit shall be treated as a Qualified Low-Income Housing Unit to the extent such treatment is necessary to maintain the Applicable Fraction for the Building in which said Unit is located at the percentage required to maintain the Applicable Fraction for the Building. In addition, such Unit shall be treated as a Unit subject to the Additional Low-Income Housing Commitment and any Housing Commitment(s) for Priority Populations to the extent such treatment is necessary to maintain the designated percentage of Housing Units subject to such commitments as set forth herein.

1.19 [Reserved]

1.20 [Reserved]

1.21 “Compliance Period” for a Building means a period of fifteen (15) Years beginning with the first Year in which such Building is Placed-In-Service or, if the Owner makes an election under Section 42(f)(1)(B) of the Code, the succeeding Year. In the case of an Existing Building receiving acquisition Credit, the Compliance Period for such Building shall not begin before the Compliance Period for the rehabilitation expenditures for such Building (which are treated as a separate Building), pursuant to Section 42(f)(5) of the Code.

1.22 “Continuing Default” has the meaning set forth in Section 9.3 of this Agreement.

1.23 “Covered Party” and “Covered Parties” means:

- (i) the Owner;
- (ii) if the Owner is a partnership, each general partner of the Owner;
- (iii) if the Owner is a joint venture, each party to the joint venture;
- (iv) if the Owner is a for-profit corporation, any officer, director or majority shareholder of such corporation;
- (v) if the Owner is a nonprofit corporation, any officer of such corporation;
- (vi) if a for-profit corporation is (a) a general partner of the Owner/partnership, (b) a Manager of the Owner/limited liability company, or (c) a party to a joint venture/Owner, any officer, director or majority shareholder of such corporation;
- (vii) if a nonprofit corporation is (a) a general partner of the Owner/partnership, (b) a Manager of the Owner/limited liability company, or (c) a party to a joint venture/Owner, any officer of such corporation;
- (viii) if the Owner is a limited liability company, each Manager of the limited liability company;
- (ix) any other partnership or limited liability company organized or doing business within the state of Washington in which the Owner or any of the foregoing parties, is a general partner or, in the case of a limited liability company, each Manager; and
- (x) the developer for the Project.

The parties identified above are referred to herein collectively as the “Covered Parties” and individually as a “Covered Party.”

1.24 “Credit” means the low-income housing tax credit available for federal income tax purposes under Section 42 of the Code for a Qualified Building.

1.25 “Credit Period” for a Building means the period of ten (10) Years beginning with the Year in which the Building is Placed-In-Service for Credit purposes or, if the Owner makes an election under Section 42(f)(1)(B) of the Code, the succeeding Year; but only if the Building is a “qualified low-income building” (within the meaning of Section 42(c)(2) of the Code) as of the close of the first Year of such period. In the case of an Existing Building receiving acquisition Credit, the Credit Period shall not begin before the Credit Period for the rehabilitation expenditures for such Building (which is treated as a separate Building), pursuant to Section 42(f)(5) of the Code.

1.26 “Credit Reservation” means, to the extent applicable, the reservation of a maximum amount of Credit out of the Credit Ceiling to the Project which will be available for Allocation to such Project and apportioned to each Qualified Building upon meeting the requirements of the Tax Credit Program and Section 42 of the Code. A Credit Reservation is generally not granted if the Project is a Qualified Tax-Exempt Bond-Financed Project.

1.27 “Credit Reservation and Carryover Allocation Contract (RAC)” means the agreement entered into between the Owner and the Commission, and amendments thereto, if any, wherein the Commission granted a Credit Reservation to the Project.

1.28 “Disabilities” means a physical or mental impairment which substantially limits one or more of the major life activities of an individual such as preventing the caring of oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, or learning.

1.29 “Elderly” means persons who are Residents of an Elderly Housing Project.

1.30 “Elderly Housing Project” means a Project that conforms with the Fair Housing Act, as amended, and is operated in compliance with one of the following criteria (as elected by the Owner in the Application) throughout the Project Compliance Period:

- (i) A Project in which all Housing Units are intended for and solely occupied by Residents who are sixty two (62) or older;
- (ii) A Project in which all Housing Units are intended and operated for occupancy by at least one Resident who is fifty-five (55) or older, and where at least eighty percent (80%) of the Housing Units are in fact occupied by at least one Resident who is fifty five (55) or older; OR
- (iii) A Project which is financed, constructed and operated under the RD Section 515 program for the elderly (i.e. where each such Resident is either 62 or older or is a person with a handicap or disability, regardless of age, as such terms are defined in the RD program) or a HUD elderly program.

1.31 “Eventual Tenant Ownership” means at the end of the initial 15-year Compliance Period, the Owner shall transfer ownership of Low-Income Housing Units in the Project to tenant ownership pursuant to a transfer plan approved by the Commission.

1.32 “Extended Low-Income Housing Use Period” for a Building means the period beginning with the first day in the Compliance Period in which such Building is part of a “qualified low-income housing project” (within the meaning of Section 42 of the Code), and ending on the date thirty (30) years thereafter, unless terminated earlier under the provisions of this Agreement.

1.33 “Farmworker” means a household whose Income is derived from farm work in an amount not less than \$3,000 per year and which, at the time of initial occupancy of the Housing Unit at the Project, has an Income at or below fifty percent (50%) of the Area Median Gross Income.



1.34 “Farmworker Housing Commitment” means a percentage of the Housing Units in the Project are set aside for occupancy by Residents who are Farmworkers.

1.35 “Floor Space Fraction” means the fraction of a Project devoted to low-income housing, the numerator of which is the total square footage of floor space in all Low-Income Housing Units in the Project, and the denominator of which is the total square footage of floor space in all Housing Units in the Project, whether or not occupied. Where the context requires, the Floor Space Fraction is determined Building by Building.

For Projects which provide Housing Units for a Housing Commitment for Priority Populations, Floor Space Fraction with respect to a Housing Commitment for Priority Populations is the fraction of a Project devoted to the Housing Commitment for Priority Populations, the numerator of which is the total square footage of floor space in all Housing Units in the Housing Commitment(s) for Priority Populations in the Project, and the denominator of which is the total square footage of floor space in all Housing Units in the Project, whether or not occupied.

1.36 “Good Cause” means (1) serious or repeated violation of material terms of the lease as that phrase is applied with respect to federal public housing at 24 C.F.R. Section 966.4(1)(2) or (2) the failure or refusal to vacate the premises when there is a defective condition or damage that is so substantial that it is economically infeasible to remedy the defect with the tenant in possession.

1.37 “Gross Rent” means the rent received for a Low-Income Housing Unit. The Utility Allowance for a Housing Unit must be included in Gross Rent, but Gross Rent excludes:

- (i) any payments under Section 8 or any comparable rental assistance program;
- (ii) any fees for supportive services (within the meaning of Section 42(g)(2)(B)(iii) of the Code) paid to the Owner (on the basis of the low-income status of the Resident of the Housing Unit) by a governmental assistance program or an organization exempt from federal income tax under Section 501(c)(3) of the Code, if such program or organization provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services; and
- (iii) rental assistance payments to the Owner under RD Section 515 of the Housing Act of 1949.

Gross Rent includes de minimis amounts paid toward purchase of a Housing Unit as described in Section 42(g)(6) of the Code. Gross Rent also includes the amounts imposed on Residents for Required Services even if federal or state law requires that the Services must be offered to Residents by an Owner. The amount of maximum Gross Rent allowed

for a Low-Income Housing Unit is determined annually based upon the Area Median Gross Income determined by HUD. The maximum Gross Rent for any year must be decreased if the Area Median Gross Income for the locality in which the Project is located decreases but such amount will not be reduced below the amount of Gross Rent established pursuant to Revenue Procedure 94-57.

1.38 “Housing Commitment for Priority Populations” means the specified percentage of Housing Units that meets the definition of a Large Household Unit or which are set aside for occupancy by Residents who meet the criteria under the Tax Credit Program for priority populations, as follows: the Elderly, persons with Disabilities and Housing for Homeless.

1.39 “Housing Unit” means a Low-Income Housing Unit and/or Market Rate Housing Unit located in a Building which is available for rent or rented by Residents. A Common Area Unit is not a Housing Unit. “Housing Units” refers to all the Housing Units in the Project, unless the context clearly means all the Housing Units in a Building.

1.40 “Imputed Household Size” means the number of people deemed living in a Housing Unit, determined by the number of bedrooms in the Housing Unit, as follows:

<u>Type of Housing Unit</u>	<u>Imputed Household Size</u>	
Efficiency/Studio (No Separate Bedroom)	1	Person
One Bedroom	1.5	Persons
Two Bedrooms	3	Persons
Three Bedrooms	4.5	Persons
Four Bedrooms	6	Persons
Five Bedrooms	7.5	Persons
Each Additional Bedroom	Add 1.5	Persons

1.41 “Indemnitors” has the meaning set forth in Section 9.1.

1.42 “Indemnified Parties” or “Indemnified Party” has the meaning set forth in Section 9.1 of this Agreement.

1.43 “IRS Form 8609” means the Internal Revenue Service form entitled “*Low-Income Housing Credit Certification*” issued by the Commission with respect to a Qualified Building no later than the end of the calendar year that such Building is Placed-In-Service.

1.44 “Land” means the Land legally described in Exhibit “A”.

1.45 “Large Household” means a group of four (4) or more income qualified Residents who are not necessarily related and who live together in a Low-Income Housing Unit containing three (3) or more bedrooms.

1.46 “Large Household Unit” means a Low-Income Housing Unit containing three (3) or more bedrooms which is occupied by four (4) or more income qualified Residents who are not necessarily related.

1.47 “Lease Rider” means the disclosure statement attached as Exhibit “F”.

1.48 “Low-Income Housing Commitment” means the specified percentage of Housing Units that are both Rent Restricted and occupied by Residents whose Income is at or below the Minimum Low-Income Housing Set-Aside subject to exception for initially qualifying Residents whose Income increases, as set forth in Sections 42(g)(2)(D), 142(d)(3) and 142(d)(4) of the Code.

1.49 “Low-Income Housing Unit” means a Housing Unit which meets the definition of a Qualified Low-Income Housing Unit. In addition, all Housing Units in the Additional Low-Income Housing Commitment are Low-Income Housing Units. Common Area Units are not included.

1.50 “Manager” means (i) in the case of a manager-managed limited liability company, all persons designated as the limited liability company’s manager(s); (ii) in the case of a member-managed liability company, all persons designated as the limited liability company’s managing member(s); and (iii) in the case of a limited liability company not described in clauses (i) and (ii), all members of such limited liability company.

1.51 “Minimum Low-Income Housing Set-Aside” means the minimum percent required under Section 42(g) of the Code of Total Housing Units in the Project to be both Rent-Restricted and occupied by Residents whose Income is at or below a certain percentage of Area Median Gross Income (subject to exception for initially qualifying Residents whose Income increases, as set forth in Sections 42(g)(2)(D), 142(d)(3) and 142(d)(4) of the Code).

1.52 “Noncompliance” means a failure to observe or perform any covenant, condition, or term of this Agreement or the Credit Reservation and Carryover Allocation Contract (RAC), or a failure to meet the requirements of the Tax Credit Laws, the *Policies*, or the Tax Credit Program.

1.53 “Owner” means the entity described in Exhibit B and its successor(s) in interest of the Project and also includes any purchaser, grantee, transferee, owner or lessee of all or any portion of the Project, and the heirs, executors, administrators, devisees, successors

and assigns of any purchaser, grantee, transferee, owner or lessee of all or any portion of the Project, and any other person or entity having any right, title, or interest in the Project. Owner does not include an individual who is merely a Resident of the Project. “Owner” also includes any predecessor in interest in the Project which submitted the Application to the Commission or entered into the Credit Reservation and Carryover Allocation Contract (RAC).

1.54 “Placed-In-Service” means:

- (i) for a New Building or Existing Building used as Residential Rental Property, the date on which such Building is ready and available for its specifically assigned function as evidenced by a certificate of occupancy or,
- (ii) for rehabilitation expenditures that are treated as a separate New Building, the date selected by the owner during the twenty-four (24) month period over which such rehabilitation expenditures are aggregated.

1.55 “Policies” means, as appropriate, (1) the *9% Competitive Housing Tax Credit Policies*, the written interpretive and policy statements issued by the Commission pursuant to RCW 34.05.230(1) and relating to the *Qualified Allocation Plan*, WAC 262-01-130, and the Tax Credit Program in effect as of the date the Owner entered into Credit Reservation and Carryover Allocation Contract (RAC) for the Project or, (2) if the Project is a Qualified Tax-Exempt Bond-Financed Project with no Credit Reservation and Carryover Allocation Contract (RAC), the *Bond/Tax Credit Program Policies* in effect as of the date the Owner submitted the Project's Tax Credit Program Application to the Commission.

1.56 “Prior Lien” has the meaning set forth in Section 7.2 of this Agreement.

1.57 “Program” means the Commission's Tax Credit Program for allocating Credit and taking other action related to Projects for which any Owner claims or plans to claim Credit. The Tax Credit Program includes, without limitation, adopting the *Qualified Allocation Plan*, *Policies* and Allocation Criteria, making Credit Reservations and Allocations, assigning BINs, determining the amount of Credit necessary for the financial feasibility of a Project and its viability as a Qualified Low-Income Housing Project throughout the Credit Period (including such determinations made on behalf of another governmental unit), entering into Regulatory Agreements (Extended Use Agreements) for Projects, monitoring Projects, and notifying the IRS of an Owner's, a Building's, or a Project's Noncompliance.

1.58 “Program Documents” means this Agreement, the Application, the Credit Reservation Agreement, and all other related documents and agreements entered into or delivered by Owner with respect to the Project, as amended or restated from time to time.

1.59 “Project” means the Land and one (1) or more Buildings, structures, or other improvements now or hereafter constructed or located upon the Land. If more than one (1) Building is to be part of the Project, each Building must be financed under a common plan and identified in the manner required under Section 42(g) of the Code.

1.60 “Project Compliance Period” means the period beginning with the year that the first Building of the Project is Placed-In-Service and continuing thereafter until the last to end of the following periods for each Building in the Project: (i) the Compliance Period; (ii) the Extended Low-Income Housing Use Period; or (iii) the Additional Low-Income Housing Use Period.

1.61 “Project Transfer or Assignment” means any direct or indirect sale, contribution, assignment, assumption, lease, exchange, or transfer of, or other change in,

- (i) an interest in the Land, the Project, or any Building;
- (ii) an ownership interest in the entity that is the Owner; or
- (iii) the right, title or interest of the Owner in the Application, the Credit Reservation Contract and Carryover Allocation Contract (RAC), this Agreement, or any other agreement in which the Commission and the Owner are parties.

By way of example, a Project Transfer or Assignment includes (but is not limited to):

- (i) If a limited partnership is the Owner, any direct or indirect sale or transfer of, or change in, the interest of a partner (including the addition, removal, or withdrawal of a partner);
- (ii) If a limited liability company is the Owner, any direct or indirect sale or transfer of, or change in, the interest of a manager, managing member, or member (including the addition, removal or withdrawal of a manager, managing member or member);
- (iii) If a joint venture or general partnership is the Owner, any direct or indirect sale or transfer of, or change in, the interest of a party to the joint venture or partner of the general partnership (including the addition, removal or withdrawal of a party or partner); and
- (iv) If a corporation is the Owner, any direct or indirect change in the ownership of the corporation, including the issuance, redemption or transfer of stock or shares.

1.62 “Purchase Request” has the meaning set forth in Section 10.2.1 of this Agreement.

1.63 “Qualified Building” means a Building which meets the terms, conditions, obligations and restrictions of the Tax Credit Program, the Credit Reservation and

Carryover Contract (RAC) this Agreement and Section 42 of the Code for an Allocation and the issuance by the Commission of IRS Form 8609.

1.64 “Qualified Contract” means a bona fide contract, determined pursuant to Section 42(h)(6)(F) of the Code, to acquire the portion of a Building which is not Rent-Restricted for fair market value and the portion of the Building which is Rent-Restricted for an amount not less than the Applicable Fraction for the Building of the sum of:

- (i) the portion of outstanding indebtedness secured by, or with respect to, the Building which is allocable to such Building;
- (ii) the Adjusted Investor Equity in the Building; and
- (iii) other capital contributions invested in the Building but not reflected in the amounts described immediately above; *reduced by*
- (iv) cash distributed from the Project or available for distribution from the Project, provided that in all cases the purchase price for the Building shall be determined consistent with the requirements of Section 42(h)(6)(F) of the Code.

For purposes of this definition, “Adjusted Investor Equity,” as defined in Section 42(h)(6)(G) of the Code, means, for any calendar year,

- (i) the total amount of cash taxpayers have invested in a Project (“Invested Cash”) *increased by*
- (ii) the amount equal to the Invested Cash multiplied by the cost of living adjustment for that calendar year,

as determined under Section 1(f)(3) of the Code by substituting the calendar year with or within which the first Year of the Credit Period ends for “calendar year 1987”. An amount shall be taken into account as Invested Cash only as far as there was an obligation to invest that amount at the beginning of the Credit Period and as far as that amount is shown in the adjusted basis of the Project.

1.65 “Qualified Low-Income Housing Project” means a Project of Residential Rental Property containing the Minimum Low-Income Housing Set-Aside subject to the exception for initially qualifying Residents whose income increases, as set forth in Sections 42(g)(2)(D), 142(d)(3) and (4) of the Code.

1.66 “Qualified Low-Income Housing Unit” means a Housing Unit that is both Rent-Restricted and occupied by Residents whose Income is at or below the percentage of Area Median Gross Income set forth in Exhibit B, subject to the exception for initially qualifying Residents whose incomes increase, as set forth in Sections 42(g)(2)(D), 142(d)(3) and 142(d)(4) of the Code; provided that:

1.66.1 A Housing Unit shall constitute a Qualified Low-Income Housing Unit only if it is suitable for occupancy taking into account local health, safety and building codes and it is used other than on a transient basis except in the case of Transitional Housing, all as determined under Section 42(i)(3) of the Code);

1.66.2 A Housing Unit in any Building which has four (4) or fewer Units shall not constitute a Qualified Low-Income Housing Unit if any Unit in the Building is occupied by an Owner or a related person (within the meaning of Section 42(i)(3)(C) of the Code) unless such Building is described in Section 42(i)(3)(E) of the Code; and

1.66.3 A Housing Unit shall not be considered to be a Qualified Low-Income Housing Unit if all Residents in the Housing Unit are students (as defined in Section 151(c)(4) of the Code), none of whom file a joint income tax return unless such residents satisfy an exception for students set forth in Section 42(i)(3)(D) of the Code.

1.67 “Qualified Tax-Exempt Bond-Financed Project” means a Project in which a portion of the Eligible Basis of a Building is financed with certain tax-exempt bonds, as described in Section 42(h)(4)(A) and (B) of the Code.

1.68 [Reserved]

1.69 “Rent-Restricted” means that the Gross Rent with respect to a Low-Income Housing Unit does not exceed thirty percent (30%) of the applicable income limitation adjusted by the Imputed Household Size. This income limitation is determined either by (i) the Minimum Low-Income Housing Set-Aside; or (ii) the Additional Low-Income Housing Commitment, as the case may be, for such Low-Income Housing Unit, subject to the exception set forth in Section 42(g)(2)(E) of the Code (relating to certain Housing Units for which federal rental assistance decreases as Resident income increases).

1.70 “Resident” means an individual or group of individuals (other than an Owner) residing in a Low-Income Housing Unit or Market Rate Housing Unit.

1.71 “Rules” means the rules adopted by the Commission governing the Tax Credit Program as codified at Washington Administrative Code 262-01-130.

“”1.72 “Successor Indemnitor” has the meaning set forth in Section 9.3.

1.73 “Tax Credit Laws” means Section 42 of the Code and the regulations promulgated thereunder, as the same may be amended from time to time.

1.74 [Reserved]

1.75 “Three-Year Period” for a Building means:

- (i) the three years following the date of acquisition of that Building by foreclosure or forfeiture under a deed of trust, mortgage or real estate contract or by deed in lieu of foreclosure; or
- (ii) in those circumstances where the Owner has properly and timely submitted to the Commission a Purchase Request, the three-year period commencing upon expiration of the one-year period following the Commission’s receipt of the Purchase Request.

Generally, the Commission has one year after receipt of a Purchase Request to present to the Owner a Qualified Contract for the purchase of the Owner’s interest in a Building. If the Commission fails to do so, the Regulatory Agreement and all of its restrictions and limitations on the use of the Building will terminate at the end of the three-year period following the one-year period.

1.76 “Total Housing Units” means all Housing Units in the Project, including both Market Rate Housing Units and Low-Income Housing Units. Common Area Units are not included. All percentages of Total Housing Units in the Project are based on the lesser of the Project’s Floor Space Fraction (square footage of the Total Housing Units) or Unit Fraction (number of Total Housing Units) unless otherwise specifically noted.

1.77 “Transferee” means the person, organization or entity that is the transferee in connection with a Project Transfer or Assignment.

1.78 “Transferor” means the person, organization or entity that is the transferor in connection with a Project Transfer or Assignment.

1.79 “Unit” means a residential rental Housing Unit located in a Building and also includes a Common Area Unit.

1.80 “Unit Fraction” means the fraction of a Project devoted to low-income housing, the numerator of which is the number of Low-Income Housing Units in the Project, and the denominator of which is the number of all Housing Units in the Project, whether or not occupied. Where the context requires, the Unit Fraction is determined Building by Building.

For Projects which provide Housing Units for a Housing Commitment for Priority Populations, Unit Fraction with respect to each Housing Commitment for Priority Populations is the fraction of the Project devoted to the Commitment for Priority



Populations, the numerator of which is the number of Housing Commitment for Priority Populations Housing Units in the Project, and the denominator of which is the number of all Housing Units in the Project, whether or not occupied.

1.81 “Utility Allowance” means the utility allowance as computed pursuant to a methodology set forth in the Commission’s Tax Credit Compliance Procedures Manual.

1.82 “Year” means the taxable year of the Owner.

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## EXHIBIT “D”

RECORDS REQUIRED TO BE MAINTAINED  
PURSUANT TO SECTION 5.7

- (i) The total number of Housing Units in each Building (including the number of bedrooms and the size in square feet of each Housing Unit).
- (ii) The percentage and number of Housing Units in each Building that are Low-Income Housing Units.
- (iii) The percentage and number of Housing Units in the Project that are subject to the Additional Low-Income Housing Commitment requirements.
- (iv) The percentage and number of Housing Units in the Project that are subject to each of the Housing Commitment(s) for Priority Populations or the Farmworker Housing Commitment requirements.
- (v) The Gross Rent charged for each Low-Income Housing Unit in the Project (including any Utility Allowances).
- (vi) The number of Residents in each Low-Income Housing Unit.
- (vii) The number of Residents in each Housing Unit subject to a Housing Commitment for Priority Populations related to household size.
- (viii) The Low-Income Housing Unit vacancies in each Building and information that shows when, and to whom, the next available Housing Units were rented.
- (ix) The vacancies of any Additional Low-Income Housing Commitment in the Project and information that shows when, and to whom, the next available Housing Units were rented.
- (x) The vacancies of any Housing Units subject to a Housing Commitment for Priority Populations or the Farmworker Housing Commitment in the Project and information that shows when, and to whom, the next available Housing Units were rented.
- (xi) The annual Income Certification of each low-income Resident;
- (xii) Documentation to support each low-income Resident's Income Certification.
- (xiii) Documentation to support that each Resident who resides in a Housing Unit that is subject to a Housing Commitment for Priority Populations or the Farmworker Housing Commitment meets the Commission's eligibility criteria for such Housing Commitment(s) for Priority Populations or the Farmworker Housing Commitment.
- (xiv) The Eligible Basis and Qualified Basis of each Building at the end of the first year of the Credit Period.
- (xv) The character and use of the nonresidential portion of each Building included in the Building's Eligible Basis under Section 42(d) of the Code.

- (xvi) The date that a Resident initially occupies a Housing Unit and the date that a Resident moves-out of a Housing Unit.
- (xvii) Documentation that demonstrates compliance with the marketing requirements for the Housing Commitment(s) for Priority Populations and the Farmworker Housing Commitment as set forth in Sections 4.8 and 4.9 of the Regulatory Agreement.
- (xviii) Documentation that demonstrates compliance with the requirements with regard to the limitation or up-front rental charges set forth in Section 4.14 of the Regulatory Agreement.
- (xix) Documentation that demonstrates compliance with the annual notification and advertising requirements set forth in Section 4.13 of the Regulatory Agreement.
- (xx) Documentation that demonstrates compliance with the Lease Rider requirements as set forth in Section 4.21 of the Regulatory Agreement.
- (xxi) If the Owner received Allocation Criteria Points for preservation of federally assisted low-income housing, documentation that demonstrates compliance with that commitment.
- (xxii) Compliance with each and every other covenant and obligation of the Owner under this Agreement, the Credit Reservation and Carryover Allocation Contract (RAC) and/or the Tax Credit Program.

\*In addition, for the duration of the term of the Regulatory Agreement, the Owner must retain the original health, safety, and building code violation reports or notices that are issued by any state or local government unit.

## EXHIBIT “E”

ANNUAL CERTIFICATION REQUIRED  
PURSUANT TO SECTION 5.8

The annual certification shall be in a form acceptable to the Commission and shall provide that at all times during the preceding twelve (12) month Certification Period the following was true:

1. The Project met the requirements of:
  - (i) the 20-50 test under Section 42(g)(1)(A) of the Code, or the 40-60 test under Section 42(g)(1)(B) of the Code, whichever Minimum Low-Income Housing Commitment test is applicable to the Project; or if applicable to the Project, the 15-40 test under Section 42(g)(4) and Section 142(d)(4)(B) of the Code for “deep rent skewed” projects;
  - (ii) If applicable to the Project, any Additional Low-Income Housing Commitment;
  - (iii) If applicable to the Project, any Housing Commitment(s) for Priority Populations or the Farmworker Housing Commitment; and
  - (iv) If applicable to the Project, requirements for preservation of federally assisted low-income housing.
2. There was no change in the Applicable Fraction of any Building in the Project, or that there was a change, and a description of the change.
3. The Owner has received an initial annual Income Certification for each new low-income household and documentation to support that the Certifications met applicable income set-aside requirements; and any annual re-certifications of income that may be required by the Commission.
4. Each Low-Income Housing Unit in the Project was Rent-Restricted.
5. All Housing Units in the Project were for use by the general public, and no finding of discrimination under the Fair Housing Act occurred with respect to the Project.
6. All Low-Income Housing Units in the Project were used on a nontransient basis (except as otherwise permitted by Section 42 of the Code).

7. Each Building in the Project was suitable for occupancy, taking into account local health, safety, and building codes and Uniform Physical Condition Standards (UPCS) as defined by HUD and the state or local government unit responsible for making local health, safety, or building code inspections did not issue a violation report for any Building or Low-Income Housing Unit in the Project. If a violation report or notice was issued by the governmental unit, the Owner must attach a statement summarizing the violation report or notice or a copy of the violation report or notice to the Certification submitted to the Commission and must state whether the violation has been corrected.

8. There was no change in the Eligible Basis (as defined in Section 42(d) of the Code) of any Building in the Project, or if there was a change, a written explanation of the change.

9. All functionally related and subordinate facilities included in the Eligible Basis under Section 42(d) of the Code of any Building in the Project, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without a separate fee to all Residents in the Building.

10. If the income of a low-income household increased above the limit allowed in Section 42 (g)(2)(D)(ii), the next available Housing Unit of comparable size or smaller in the building was rented to an income qualified household.

11. If a Housing Unit subject to a Housing Commitment for Priority Populations or the Farmworker Housing Commitment in the Project was vacated, that the Owner complied with the requirements specified in Section 4.8 of the Regulatory Agreement (describing good faith efforts to actively market vacated Housing Units and holding the Housing Units open).

12. The Owner complied with the up-front rental charge limitations described in Section 4.14 of the Regulatory Agreement.

13. The Regulatory Agreement was in effect as an extended low-income housing commitment as described in Section 42(h)(6) of the Code.

14. As required under Section 42(h)(6)(B)(iv) of the Code, the Owner has not refused to lease a Housing Unit in the project to an applicant who holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437.

15. Pursuant to IRS Revenue Ruling 2004-82, the Owner has not evicted any residents, or refused to renew any leases, except for good cause.

16. The Project is in compliance with the Fair Housing Accessibility Guidelines as issued in the Federal Register Vol. 56, No. 44, issued March 6, 1991.

17. The Project was a Residential Rental Property in compliance with all applicable federal, state and local housing laws, regulations and policies governing nondiscrimination and accessibility, including but not limited to: the Americans with Disabilities Act; Fair Housing Act, as amended; Architectural Barriers Act of 1968; Housing and Community Development Act of 1974; Civil Rights Act of 1964; Civil Rights Act of 1968; and Age Discrimination Act of 1975 and no Resident or prospective Resident was discriminated against on the basis of race, creed, color, sex, national origin, familial status, religion, marital status, age or disability; provided that the Owner may take such actions as may be necessary to qualify for or to maintain its qualification for the exemption that relates to housing for older persons under the Fair Housing Act, as amended, and 24 CFR Part 100, Subpart E. Furthermore, no Resident or prospective Resident was discriminated against on the basis of that Resident's or prospective Resident's: (i) sources of income, including but not limited to public assistance, provided such sources of income were not in contravention of any federal, state or local law; or (ii) receipt of Section 8 or any comparable rental assistance.

18. There were no changes in the Project that would alter or amend the representations or agreements made in the Program Documents, except as the documents and agreements have been previously amended by the Owner or its predecessor in interest with the written approval of the Commission.

19. The Owner has no actual or constructive knowledge of the occurrence of any event that would require the Owner to notify the Commission pursuant to Section 4.18 of the Regulatory Agreement.

20. When selecting Residents for occupancy in Low-Income Housing Units or Housing Units subject to a Housing Commitment for Priority Populations or the Farmworker Housing Commitment, the Owner did not apply selection criteria to a prospective Resident that was more burdensome than selection criteria applied to any other Resident or prospective Resident.

21. The Low-Income Housing Units and any Housing Units subject to a Housing Commitment for Priority Populations were not at any time geographically segregated from other Housing Units in the Project.

22. Except for the Housing Commitment for Large Households, the configuration of any Housing Units used for the Low-Income Housing Units and any Housing Commitment for Priority Populations were proportional to the

configuration of the Total Housing Units in the Project (unless a different configuration was approved by the Commission in writing) and the Housing Units used for the Low-Income Housing Units and any Housing Commitment(s) for Priority Populations were substantially the same size as other Housing Units with the same number of bedrooms.

23. All Low-Income Housing Units and any Housing Units subject to a Housing Commitment for Priority Populations were of the same quality and construction as all other Housing Units and were equipped and maintained in the same manner as all other Housing Units, with the exception of any additional amenities provided to meet the needs of Resident(s) with Disabilities and subject to the exceptions permitted by the *Policies* and the Tax Credit Laws.

24. The Owner notified the relevant public housing authority and at least two (2) community agencies in the area of the Project of the availability of Low-Income Housing Units and any Housing Units subject to a Housing Commitment for Priority Populations or the Farmworker Housing Commitment or, if no public housing authority existed, notice was given to an agency authorized to act in lieu of a public housing authority.

25. The Owner notified the general public, via advertisements in newspapers of general circulation in the area of the Project, of the availability of Low-Income Housing Units and any Housing Units subject to a Housing Commitment for Priority Populations or the Farmworker Housing Commitment, and such advertisement(s) conformed with the Fair Housing Act, as amended, and state and local law.

26. The Owner provided a copy of the Lease Rider (in substantially the form set forth in Exhibit "F") to each Resident prior to the execution of each lease or rental agreement for the Project and a Lease Rider has been signed and dated by each Resident and is on file with the Owner for inspection by the Commission.

27. The Project has not and does not contain a commercial facility except to the extent previously approved in writing by the Commission.

28. As may be requested by the Commission in the future, any other factual matters that reflect compliance by the Owner and/or the Project with each and every other covenant and obligation under this Agreement, the Credit Reservation and Carryover Allocation Contract (RAC) and/or the Tax Credit Program.

## EXHIBIT "F"

**Lease Rider for Tax Credit Property**  
(to be attached to resident leases)

Property Name	CHS Shoreline	OAR/OID #	21-68
Household Name		Unit #	

Dear Applicant or Existing Resident:

**Summary**

The owner(s) of this property rents residential units under the federal Low-Income Housing Tax Credit Program (the "program") as administered by the Washington State Housing Finance Commission (the "Commission"). Under the program, the owner(s) can qualify for federal IRS tax credits by renting some or all of the units in the property to low-income households and restricting the rents for those units. In addition the owner *may* have agreed to reserve some of the units in the property for priority populations. (See the priority populations section below.) This rider was prepared to help residents understand the program.

**Income and Rent Limits**

The Commission gives the owner(s) new income and rent limit tables each year. This property has agreed to reserve some or all of the units for households at or below the 30, 35, 40, 45, 50 or 60% income limits found on these tables. The rent tables show the maximum rent a property can charge for a unit based on a household's income, number of bedrooms in the unit or the number of people in the household. Some properties have more than one income limit. Ask the property representative for specific information.

**Annual Recertification**

To be eligible for a rent- and income-restricted unit, all income and assets of any household members 18 years and older must be documented and verified. The owner(s) or manager of this property will give you the required forms to declare and verify income and assets from all sources. They *may* also ask you for supporting documentation. The program requires each existing household to recertify or complete a new set of the required forms at least once every 12 months.

Since this program involves IRS tax credits, the Commission and everyone involved with this program is under growing pressure to prevent fraud. Your forms must be prepared carefully, with every question answered. Annually, you will be signing a document under penalty of perjury, saying that the information and verifications submitted are correct. Section 8-subsidized households which do not properly complete their annual recertification process may lose their rental subsidy. Other households which do not properly complete their annual recertification process may be required to vacate their income- and rent-restricted unit.

A property that has more than one income/rent limit *can* switch a household to a higher or lower income/rent limit, based on the household's income at recertification. Ask the property representative for specific information.



**Priority Populations**

The owner(s) of this property *may* have chosen to reserve some of the program units for households that are priority populations. Units *could* be reserved for households that meet the program definition for large household, disabled, elderly, homeless housing or farmworker. Households or individuals applying for one of these priority population units will be required to verify their eligibility. Ask your property representative for specific information.

**Full-time Student Households**

A household where each member is a full-time student *may not* qualify for an income- and rent-restricted unit. A household where everyone becomes a full-time student after move-in *may no longer* qualify for an income- and rent-restricted unit. Ask your property representative for specific information.

**Property Standards**

The property must comply with federal housing policy governing nondiscrimination and accessibility. In making an apartment available, the owner(s) *cannot* discriminate against you because of your race, creed, color, sex, national origin, marital status, age, disability or familial status. Furthermore, the owner(s) *cannot* discriminate against you based on the sources of your income (including Section 8 subsidy), provided the sources of income do not violate any federal, state or local law. Additional state, local laws or ordinances may also apply. When selecting residents, the owner(s) *cannot* apply standards to a potential resident that are more burdensome than standards applied to any other potential or existing resident.

**Good Cause Evictions/Nonrenewals**

The owner is prohibited from evicting you, and is prohibited from refusing to renew your lease or rental agreement, other than for “good cause”. Generally, good cause shall mean the serious or repeated violation of material terms of the lease or a condition that makes your unit uninhabitable. Any termination or non-renewal notice must state the specific factual violations. Under federal law, you have the right to enforce this requirement in state court as a defense to any eviction action brought against you.

By signing below, I indicated I have read and discussed information included in this lease rider. I have been given a copy of this lease rider along with my lease.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Property Representative Name (*print*) (signature) Date

Further questions should be addressed to: \_\_\_\_\_ Telephone #: \_\_\_\_\_

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\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Resident or Applicant Name (*print*) (signature) Date

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Resident or Applicant Name (*print*) (signature) Date

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Resident or Applicant Name (*print*) (signature) Date