City of Palo Alto (ID # 6308)

City Council Staff Report

Report Type: Consent Calendar **Meeting Date: 12/7/2015**

Summary Title: BAO for Colorado Park Apartments Loan

Title: Adoption of Budget Amendment Ordinance to Appropriate $203,561 from the Residential Housing Fund for Rehabilitation of the Colorado Park Apartments Consistent with Prior Loan Approval

From: City Manager

Lead Department: Planning and Community Environment

Recommendation

Staff recommends that Council appropriate $203,561 for the rehabilitation of Colorado Park Apartments via the attached Budget Amendment Ordinance (BAO) (Attachment A), consistent with a September 2014 loan approval.

Background & Discussion

On September 8, 2014, the City Council approved a $203,561 loan (Attachment B) and an associated Budget Amendment Ordinance from the Residential Housing In-Lieu Fund to the Palo Alto Housing Corporation (PAHC) for the rehabilitation of Colorado Park Apartments (Staff Report 4924). In exchange for the loan PAHC entered into a Regulatory Agreement guaranteeing the long term affordability of the project. Under the agreement, monies are to be remitted to PAHC against the fund as the rehabilitation is completed. No General Fund monies are to be used for this housing activity.

PAHC has proceeded with the rehabilitation and has requested the loan of $203,561 to be processed. Council's appropriation in Fiscal Year 2015 to support this work lapsed at the end of the fiscal year. It is recommended that Council approve the attached BAO to appropriate $203,561 to cover this previously approved loan.

Resource Impact

There is sufficient fund balance available in the Residential Housing In-Lieu Fund (Fund 233) for the commitment of $203,561. This loan from the Residential Housing In-Lieu Fund was approved by the City Council in September 2014. The funding for this loan lapsed at the conclusion of FY 2015. A request to re-appropriate this funding to FY 2016 was inadvertently not submitted, necessitating a renewed authorization for this expense. The terms of the loan

include a simple interest at 3% per annum with payments made from the residual receipts over and above the project's net operating expenses and will be divided among other funding agencies based on the City's proportionate share of its funding to development costs. No interest will accrue and no payments will be required until after the rehabilitation work is completed.

Environmental Review

The work completed under the loan agreement is in the nature of maintenance and rehabilitation of the existing facility, which is exempt from review under the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15301.

Attachments:

- Attachment A: BAO XXXX - Colorado Park Apartments (DOCX)
- Attachment B: Colorado Park Loan Agreement (PDF)

Ordinance No. XXXX

ORDINANCE OF THE COUNCIL OF THE CITY OF PALO ALTO AMENDING THE BUDGET FOR FISCAL YEAR 2016 TO PROVIDE ADDDITIONAL APPROPRIATION OF $203,561 FROM THE RESIDENTIAL HOUSING IN-LIEU FUND FOR A LOAN OT THE PALO ALTO HOUSING CORPORATION (PAHC) FOR THE COLORADO APARTMENTS REHABILITATION

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. The Council of the City of Palo Alto finds and determines as follows:

A. Pursuant to the provisions of Section 12 of Article III of the Charter of the City of Palo Alto, the Council on June 15, 2015 did adopted a budget for Fiscal Year 2016; and

B. In 2014, the City Council approved a $200,000 loan to the Palo Alto Housing Corporation (PAHC) for the rehabilitation of the Colorado Park Apartments from the Residential Housing In-Lieu Fund (Fund 233); and

C. The final loan agreement amount with the PAHC approved by the City Council in 2014 totaled $203,561; and

D. The terms of the loan include simple interest at 3% per annum to be paid from residual receipts that exceed the project's net operating expenses, with no interest accrual and no payments required until the completion of the rehabilitation work; and

E. $200,000 of the necessary funding was identified for this purpose and set aside in the Residential Housing In-Lieu Fund in Fiscal Year 2015; and

F. The City Council's appropriation to support this work lapsed at the end of Fiscal Year 2015; and

G. The PAHC has proceeded with the rehabilitation and requested the processing of the $203,561 loan;

SECTION 2. Therefore, the sum of two hundred three thousand five hundred and sixty-one dollars ($203,561) is hereby appropriated in the Residential Housing In-Lieu Fund for the rehabilitation of the Colorado Park Apartments, offset by a corresponding reduction to ending fund balance in the Residential Housing In-Lieu of two hundred three thousand five hundred and sixty-one dollars ($203,561).

SECTION 3. As provided in Section 2.04.330 of the Palo Alto Municipal Code, this ordinance shall become effective upon adoption.

SECTION 4. The Council of the City of Palo Alto hereby finds that this is not a project under the California Environmental Quality Act and, therefore, no environmental impact assessment is necessary.

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INTRODUCED AND PASSED: Enter Date Here

AYES:

NOES:

ABSENT:

ABSTENTIONS:

NOT PARTICIPATING:

ATTEST:

_____
City Clerk

_____
Mayor

APPROVED AS TO FORM:

APPROVED:

_____
Senior Assistant City Attorney

_____
City Manager

_____
Director of Planning &
Community Environment

_____
Director of Administrative Services

AFFORDABLE HOUSING FUND LOAN AGREEMENT

FOR

LOW-INCOME HOUSING DEVELOPMENT REHABILITATION

Colorado Park
1141 Colorado Avenue, Palo Alto, California

AFFORDABLE HOUSING FUND LOAN AGREEMENT
FOR
LOW-INCOME HOUSING DEVELOPMENT REHABILITATION

Colorado Park
(1141 Colorado Avenue, Palo Alto, California)

This Agreement (the "Agreement") is entered into as of Sept. 8, 2014, (the "Effective Date"), by and between by and between the City OF PALO ALTO, a chartered city and a municipal corporation ("City"), and COLORADO PARK HOUSING CORPORATION, a California nonprofit public benefit corporation ("Owner"). The City and the Owner are referred to in this Agreement individually as a "Party" and collectively as the "Parties".

RECITALS

A. The City has established an Affordable Housing Fund for the purpose of increasing and preserving the supply of affordable rental housing in the City.

B. Owner has fee title to that certain real property located at 1141 Colorado Avenue, Palo Alto, California, as further described in Exhibit A attached to this Agreement (the "Property"). The Property contains sixty (60) dwelling units (the "Project"). Owner has requested a loan from the Affordable Housing Fund in the amount of Two Hundred Three Thousand Five Hundred Sixty One Dollars ($203,561) (the "Loan") for repairs to the Project.

C. All affordability restrictions that run with the land expired in 2012 on twenty-three (23) units in the Project. As a material consideration for the Loan, this Agreement requires the Owner to enter into a regulatory agreement (the "Regulatory Agreement") with the City to ensure that the twenty-three (23) rental units on which the affordability restrictions have expired, as further described in Exhibit B attached to this Agreement (the "Affordable Units"), are maintained for occupancy by very low income households at affordable rents for a fifty-five (55)-year period.

D. There is a severe shortage of rental housing affordable to households with very low incomes in the City and nearby areas. The requirements of this Agreement will improve the Project and result in the long-term affordability of the entire Project and is consistent with the City's Affordable Housing Fund Guidelines and the City's affordable housing goals as outlined in the City's Housing Element of the Comprehensive Plan.

E. The Loan is being made to the Owner at an interest rate below the market rate in order to increase the supply of affordable rental housing in the City. In consideration for the Loan, the Owner has agreed to observe all the terms and conditions set forth below.

AGREEMENT

In consideration of the recitals and the mutual promises and covenants set forth in this Agreement, the Parties agree as follows. The foregoing recitals are hereby incorporated by reference and made part of this Agreement.

ARTICLE 1.
DEFINITIONS

Section 1.1 When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1 wherever used in this Agreement, attached Exhibits, or the Loan Documents.

(a) "Affordable Units" is defined in Recital C.

(b) "Agreement" is this Affordable Housing Fund Loan Agreement for Low-Income Housing Development Rehabilitation.

(c) "Area Median Income" is the area median income for Santa Clara County as published and periodically updated by the State of California pursuant to California Code of Regulations, Title 25, Section 6932, or successor provision, adjusted for Actual Household Size or Assumed Household Size as specified in this Agreement.

(d) "City" is defined in the first paragraph of this Agreement.

(e) "Completion Date" is defined in Section 3.3.

(f) "Deed of Trust" is the deed of trust to the City on the Property that secures repayment of the Loan and the performance of all covenants of the Loan Documents.

(g) "Default Rate" is defined in Section 2.3.

(h) "Effective Date" is defined in the first paragraph of this Agreement.

(i) "Existing Financing" includes the following deeds of trust encumbering the Property:

(1) Deed of trust dated as of November 19, 2012 and recorded on November 29, 2012 in the Official Records as Instrument No. 21975882, to secure Three Million Dollars ($3,000,000) to Avidbank as beneficiary and lender.

(2) Deed of trust dated as of November 19, 2012 and recorded on November 29, 2012 in the Official Records as Instrument No. 21975883, to secure One Million Dollars ($1,000,000) to Avidbank as beneficiary and lender.

(j) "Hazardous Materials" means any hazardous or toxic substances, materials, wastes, pollutants, or contaminants which are defined, regulated, or listed as "hazardous substances," "hazardous wastes," "hazardous materials," "pollutants," "contaminants," or "toxic substances," under federal or state environmental and health and safety laws and regulations, including without limitation: petroleum and petroleum byproducts, flammable explosives, urea formaldehyde insulation, radioactive materials, asbestos, and lead. Hazardous Materials do not include substances that are used or consumed in the normal course of developing, operating, or occupying a housing project, to the extent and degree that such substances are stored, used, and disposed of in the manner and in amounts that are consistent with normal practice and legal standards at the time of such use.

(k) "Loan" is defined in Recital B.

(l) "Loan Documents" are collectively this Agreement, the Note, the Deed of Trust, and the Regulatory Agreement, as they may be amended, modified, or restated from time to time, along with all exhibits and attachments to these documents.

(m) "Note" means the promissory note from the Owner in favor of the City in the amount of Two Hundred Three Thousand Five Hundred Sixty One Dollars ($203,561) evidencing the Loan, as well as any amendments to, modifications of, or restatements of the Note.

(n) "Official Records" are the Official Records of Santa Clara County.

(o) "Owner" is defined in the first paragraph of this Agreement.

(p) "Project" is defined in Recital B.

(q) "Property" is defined in Recital B.

(r) "Regulatory Agreement" means the agreement executed by Owner and City and recorded against the Property prior to or contemporaneously with the Loan which regulates the Affordable Units.

(s) "Term" is the term of this Agreement, which shall commence on the date that the Deed of Trust and the Regulatory Agreement are recorded in the Official Records and shall continue until the fifty-fifth (55th) anniversary of that date.

(t) "Title Company" means the title company selected by the City to issue the lender's title policy.

(u) "Very Low Income Household" is a household whose income does not exceed the very low income limits applicable to Santa Clara County, as published and periodically updated by the California Department of Housing and Community Development under Section 50105 of the California Health and Safety Code, or successor provision, with adjustments for Actual Household Size.

(v) "Work Write-Up" means the detailed description of the proposed repairs developed by the Owner and approved by the City describing the repairs to the Project, as shown in Exhibit C, attached to this Agreement.

Section 1.1 Exhibits.

The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

EXHIBIT A: Legal Description of the Property

EXHIBIT B: Affordable Units

EXHIBIT C: Work Write-Up

ARTICLE 2.
TERMS OF THE LOAN

Section 2.1 Loan. Subject to satisfaction of the conditions contained in Section 2.8 below, the City shall lend to the Owner the Loan in the principal amount of Two Hundred Three Thousand Five Hundred Sixty One Dollars ($203,561) for the purposes set forth in Section 2.4 of this Agreement. The Owner's obligation to repay the Loan shall be evidenced by the Note.

Section 2.2 Interest. Subject to the provisions of Section 2.3, the Note shall bear no interest on the outstanding principal balance of the Loan until paid.

Section 2.3 Default Interest. In the event of a Default, interest on the Loan will begin to accrue, as of the date of Default and continuing until such time as the Loan is repaid in full or the Default is cured, at the default rate of the lesser of eight percent (8%) per annum compounded annually (the "Default Rate") and the highest rate permitted by law.

Section 2.4 Use of Loan Funds. The Owner shall use all of the Loan to pay for actual and reasonable hard and soft costs of the repairs shown in the Work Write-up, including without limitation costs of architectural, engineering and related professional services needed for the preparation of plans and specifications and work write-ups, testing for and remediation of lead based paint and other Hazardous Materials on the Property, and the costs of required permits for the performance of the repairs to the Property. Owner shall not use the Loan for any other purpose without the prior written consent of the City. The Loan shall not be used for project reserve accounts, replacement and operating cost reserves, monitoring, servicing and origination fees, or expenditures made or incurred after the completion of the repairs.

Section 2.5 Term and Repayment of Loan. The principal of and all accrued interest on the Loan shall be due and payable on the earlier of: (a) the expiration of the Term, or (b) a Default by Owner which has not been cured as provided for in this Agreement.

Section 2.6 Security. The Owner shall secure its obligation to repay the Loan, as evidenced by the Note, by executing the Deed of Trust, and recording it as a lien against the Property senior in lien priority to all other deeds of trust recorded against the Property except the Existing Financing.

Section 2.7 Prepayment. The Owner may prepay the Loan at any time without penalty.

Section 2.8 Conditions to Disbursement of Loan Proceeds. The City shall not be obligated to make any disbursements of the Loan or take any other action under the Loan Documents, as defined below, unless the following conditions precedent are satisfied prior to or simultaneously with the disbursement of the Loan:

(a) No Default. There exists no Default nor any act, failure, omission or condition that would constitute an Default under this Agreement.

(b) Organizational Documents. Owner has delivered to the City copies of all of Owner's organizational documents, a certificate of status for the Owner dated within thirty (30) days of the Effective Date, and a copy of a corporate authorizing resolution authorizing Owner's execution of the Loan Documents.

(c) Execution and Delivery of Documents. Owner has executed and delivered to the City the Note, the Deed of Trust, the Regulatory Agreement and any other documents and instruments required to be executed and delivered by Owner.

(d) Recordation. The Title Company is prepared to record the Deed of Trust and the Regulatory Agreement as an encumbrance against the Property prior to the initial disbursement of the Loan, and is prepared to issue or cause the issuance to the City an American Land Title Association policy of lender's title insurance with mechanic's lien coverage in the amount of the Loan, together with such endorsements as the City may require, which shall insure the Deed of Trust and Regulatory Agreement as liens upon the Property subject only to such exceptions and exclusions as may be reasonably acceptable to the City.

(e) Permits and Approvals. The Owner has obtained any and all permits and approvals required by the City or other governmental agency for the repairs to the Property.

(f) Construction Contracts. The Owner has submitted to the City one or more construction contracts with a duly licensed, insured and bonded contractor or contractors reasonably acceptable to the City providing for the repairs to the Property in conformance with the terms of this Agreement.

(g) Insurance. The Owner has presented evidence to the City of the insurance coverage meeting the requirements of Section 4.1.

(h) Environmental Reports. Owner has delivered to City all reports on the environmental condition of the Property as required by Section 2.10(a) of this Agreement.

(i) Relocation of Tenants. Owner shall provide to the City plans for temporary or permanent relocation of tenants, if temporary or permanent relocation shall occur, in conformance with all applicable local, state, and federal statutes and regulations.

(j) Representations and Warranties. All representations and warranties of Owner contained in this Agreement are true and correct.

(k) Request for Payment. Owner has submitted a request for payment on a form supplied by the City, together with invoices from contractors and subcontractors, lien releases as applicable, and any other requested information and documents, and has certified that the work for which disbursement is requested has been completed.

(l) Inspection of Work. The City has inspected the work for which the payment is being requested and has determined that such work has been completed in accordance with this Agreement and the approved Work Write-up and has been completed in a satisfactory manner in accordance with the standards of the construction industry.

Section 2.9 Assumption of Loan. Except in connection with transfers approved or permitted under Section 7.4 of this Agreement, the Loan shall not be assignable or assumable by successors and assigns of Owner. In no event, however, shall the Loan be assigned except in connection with the conveyance of the Property to a person or entity that acquires the Property.

Section 2.10 Condition of the Property. The following requirements shall apply to the Property:

(a) Environmental Condition Prior to Loan Disbursement. Except as otherwise disclosed in reports obtained by or provided to the City, the Owner represents to the City that it is not aware of, to the best of its actual knowledge, and it has not received any notice or communication from any governmental agency having jurisdiction over the Property, notifying it of the presence of Hazardous Materials in, on, or under the Property, or any portion thereof. Owner knows of no circumstances, conditions or events that may, now or with the passage of time, give rise to any environmental claim against or affecting the Property. Owner represents that any inspection reports with respect to the Property, environmental audits, reports and studies which concern the Property, or inspection reports from applicable regulatory authorities with respect to the Property, which Owner has received, have been delivered to the City. The City's reasonable approval of the environmental condition of the Property is a condition precedent to the disbursement of the Loan.

(b) Indemnification. Owner shall save, protect, pay for, defend, indemnify and hold harmless the City and its officers, employees, representatives and agents, from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants' fees, investigation and laboratory fees, attorneys' fees and remedial and response costs) (the foregoing are hereinafter collectively referred to as "Liabilities") which may now or in the future be incurred or suffered by the City or its officers, employees, representatives or agents by reason of, resulting from, in connection with or arising in any manner whatsoever as a direct or indirect result of (i) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from the Property of any Hazardous Materials, (ii) the environmental condition of the Property, and (iii) any Liabilities relating to Hazardous Materials.

(c) Release. The Owner hereby waives, releases and discharges forever the City and its employees, officers, agents and representatives, from all present and future claims, demands, suits, legal and administrative proceedings and from all liability for damages, losses, costs, liabilities, fees and expenses, present and future, arising out of or in any way connected with the City's or the Owner's use, maintenance, ownership or operation of the Property, any Hazardous Materials on the Property, however they came to be placed there, except that arising out of the negligence or misconduct of the City or its employees, officers, agents or representatives.

The Owner acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

In relation to this Section 2.10, the Owner hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

_____

(Owner's initials)

Section 2.11 Non-Recourse. Except as provided below, neither Owner, nor any partner of Owner, has any personal liability for payment of the principal of, and interest on, the Loan.

Following recordation of the Deed of Trust, the sole recourse of the City with respect to the principal of, or interest on, the Note will be to the property described in the Deed of Trust; provided, however, that nothing contained in the foregoing limitation of liability limits or impairs the enforcement of all the rights and remedies of the City against all such security for the Note, or impairs the right of City to assert the unpaid principal amount of the Note as demand for money within the meaning and intendment of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation to repay the principal and interest on the Note. Except as hereafter set forth; nothing contained herein is intended to relieve Owner of its obligation to indemnify the City under Sections 2.10, 4.2, 4.5, and 4.6 of this Agreement, or liability for (i) loss or damage of any kind resulting from waste, fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by Owner other than in accordance with the Deed of Trust; and (iv) the misappropriation of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property.

ARTICLE 3.
REHABILITATION OF THE PROPERTY

Section 3.1 Rehabilitation of the Property. The Owner agrees to repair the Property in accordance with the Work Write-Up.

Section 3.2 Commencement of Rehabilitation. The Owner shall commence repairs to the Project within thirty (30) days after receiving all building permits and governmental approvals necessary to proceed with the repairs but in no event later than May 31, 2015.

Section 3.3 Completion of Rehabilitation.The Owner shall diligently prosecute to completion the repairs to the Project and shall complete the repairs to the Project no later than twelve (12) months following commencement of the repairs or by May 31, 2016, subject to extensions approved by the City Manager (the "Completion Date"). The Owner further covenants and agrees to diligently prosecute to completion the repairs to the Project in accordance with the approved Work Write-up and to file a Notice of Completion pursuant to California Civil Code Section 3093 by the Completion Date.

Section 3.4 Cost of Rehabilitation. The proceeds of the Loan shall be used solely for the cost of the repairs to the Property as shown in the Work Write-Up. Any further funds necessary to complete the work shown in the Work Write-Up shall be at the sole cost and expense of the Owner.

Section 3.5 City and Other Governmental Permits. Before commencement of the repairs to the Property, the Owner shall secure or cause its contractor to secure any and all permits which may be required by the City or any other governmental agency, including without limitation building permits. The Owner shall pay all necessary fees and timely submit to the City final drawings with final corrections to obtain such permits.

ARTICLE 4.
INDEMNITY AND INSURANCE

Section 4.1 Insurance. The Owner shall maintain the following insurance coverage for the Property and the Project throughout the Term of the Loan:

(a) Workers' Compensation insurance to the extent required by law, including Employer's Liability coverage, with limits not less than One Million Dollars ($1,000,000) each accident.

(b) Comprehensive General Liability insurance with limits not less than One Million Dollars ($1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations.

(c) Comprehensive Automobile Liability insurance with limits not less than One Million Dollars ($1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable.

(d) Property Insurance for the Property and the Project, in a form appropriate for the nature of the Project, covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the City. Flood insurance shall be obtained if required by applicable federal regulations.

(e) The required insurance shall be provided under an occurrence form, and Owner shall maintain the coverage described in subsections (a) through (d) continuously throughout the Term. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be three times the occurrence limits specified above.

(f) Comprehensive General Liability, Comprehensive Automobile Liability and Property insurance policies shall be endorsed to name as an additional insured the City and its officers, agents, employees and members of the City Council.

(g) All policies shall contain (i) the agreement of the insurer to give the City and Agency at least thirty (30) days notice prior to cancellation (including, without limitation, for non-payment of premium) or any material change in said policies; (ii) an agreement that such policies are primary and non-contributing with any insurance that may be carried by the City and Agency; (iii) a provision that no act or omission of the Owner shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; (iv) a waiver by the insurer of all rights of subrogation against the City and its authorized parties in connection with any loss or damage insured against; and (v) a lender's loss payable endorsement in a form approved by City.

(h) The City Manager is authorized to modify the requirements of this Section 4.1 upon a finding that the requirements are unnecessary or commercially unavailable.

Section 4.2 Indemnity. The Owner shall indemnify, defend and hold the City and its councilmembers, employees, agents, successors and assigns harmless against any and all claims, suits, actions, losses and liability of every kind, nature and description made against it

and expenses (including reasonable attorneys' fees) which arise out of or in connection with this Agreement, including but not limited to the repairs to the Project, except to the extent such claim arises from the grossly negligent or willful misconduct of the City and its councilmembers, employees, agents, successors and assigns. The provisions of this Section shall survive the expiration of the Term and the reconveyance of the Deed of Trust.

Section 4.3 Entry by the City.

(a) Owner shall permit the City, through its officers, agents or employees, at all reasonable times to enter onto the Property and inspect the work to determine that the same is in conformity with the Work Write-Up and all the requirements hereof.

(b) Owner agrees to coordinate inspections with all tenants and to ensure the City has sufficient access to perform its inspections in a timely manner. In the event, the City is denied reasonable access by Owner, Owner's tenants or agents, such occurrence shall treated as an "Default" as provided in Section 6.1 below.

(c) Owner acknowledges that the City is under no obligation to supervise, inspect, or inform Owner of the progress of construction. Any inspection by the City is not for the purpose of determining or informing Owner of the quality or suitability of construction. Owner shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, contractors, subcontractors, and material suppliers.

Section 4.4 Taxes and Assessments. The Owner shall pay prior to delinquency all ad valorem real estate taxes and assessments on the Property, subject to the Owner's right to contest in good faith any such taxes. The Owner may apply for and receive any exemption from the payment of property taxes or assessments on any interest in or to the Property without the prior approval of the City.

Section 4.5 Relocation. Owner has represented to the City that the repairs to be financed with the Loan will not result in any permanent displacement or relocation of the tenants residing in the Project but may result in temporary relocation. To the extent that the repairs result in any temporary or permanent displacement or relocation of the tenants residing in the Project, Owner agrees to comply with all applicable local, state, and federal statutes and regulations, (including without limitation the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, California Government Code Section 7260 et seq., and accompanying regulations) with respect to preparation of a relocation plan, relocation planning, advisory assistance, and payment of monetary benefits. Owner shall be solely responsible for payment of any relocation benefits to any displaced persons and any other obligations associated with complying with such relocation laws. Owner shall indemnify, defend and hold harmless (with counsel reasonably acceptable to the City) the City and its councilmembers, employees, agents, successors and assigns against any claim for damages, compensation, fines, penalties, relocation payments or other amounts and expenses (including reasonable attorneys' fees) arising out of the failure or alleged failure of any person or entity (including Owner or the City) to satisfy relocation obligations related to the repairs to the Property. This obligation to indemnify shall survive the termination of this Agreement and the reconveyance of the Deed of Trust.

Section 4.6 Compliance with Laws; Prevailing Wages.

(a) Owner shall comply with all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, including (without limitation and where applicable) the prevailing wage provisions of Sections 1770 et seq., of the California Labor Code and implementing rules and regulations as set forth below, in completing the repairs on the Property.

(b) This Agreement has been prepared with the intention that City assistance under this Agreement does not require payment of state prevailing wages in connection with construction work that is paid for in whole or in part out of public funds; provided, however, that nothing in this Agreement constitutes a representation or warranty by the City regarding the applicability of the provisions of Labor Code Section 1720 et seq., and the hiring of apprentices pursuant to Labor Code Sections 1777.5 et seq., to the Loan. To the extent applicable, Owner shall pay and shall cause the general contractor and subcontractors to pay prevailing wages in connection with the repairs to the Project, as those wages are determined pursuant to Labor Code Sections 1720 et seq., to employ apprentices as required by Labor Code Sections 1777.5 et seq., and the implementing regulations of the Department of Industrial relations ("DIR"). Owner shall and shall cause the consultants and contractors to comply with any other applicable provisions of Labor Code Sections 1720 et seq., 1777.5 et seq., and implementing regulations of the DIR. Owner shall cause the contractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Sections 1720 et seq., and apprentices have been employed are required by Labor Code Sections 1777.5 et seq. Copies of the currently applicable current per diem prevailing wages are available from DIR.

(c) Owner shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Owner, its contractor and subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., and implementing regulations of the DIR or to comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1777.5 et seq., and the implementing regulations of the DIR in connection with the repairs to the Project. The requirements in this subsection (c) shall survive the termination of this Agreement and the reconveyance of the Deed of Trust.

Section 4.7 Liens and Stop Notices. The Owner shall not allow to be placed on the Property or any part thereof any lien or stop notice. If a claim of a lien or stop notice is given or recorded affecting the Property the Owner shall within thirty (30) days of such recording or service or within five (5) days of the City's demand whichever last occurs: pay and discharge the same; or effect the release thereof by recording and delivering to the City a surety bond in sufficient form and amount, or otherwise; or provide the City with other assurance which the City deems, in its sole discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of City from the effect of such lien or bonded stop notice.

ARTICLE 5.
CONTINUING OBLIGATIONS

Section 5.1 Operation of Property. Owner shall lease, operate and manage the Project in full conformance with the terms of the Regulatory Agreement.

Section 5.2 Affordable Units. In consideration for the Loan to be provided to the Owner on below-market terms, the Owner hereby agrees that the twenty-three (23) Affordable Units shall be affordable to Very Low Income Households for fifty-five (55) years as further specified in the Regulatory Agreement. The Owner shall record the Regulatory Agreement against the Property prior to the disbursement of any Loan funds.

Section 5.3 Non-Discrimination. Owner covenants by and for itself and its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, nor denial of the benefits of this Agreement to, any person or group of persons, including employees, applicants for employment, and contractors, on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability or medical condition (including cancer, HIV and AIDS) or political affiliation or belief. In addition to the foregoing general obligations, Owner shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to Owner services or works required of City by the State of California pursuant to agreement between City and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and Owner and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

ARTICLE 6.
DEFAULT AND REMEDIES

Section 6.1 Events of Default. A "Default" by Owner shall occur under this Agreement when the Owner fails to perform any condition, covenant, warranty, promise or representation contained in this Agreement or in any of the Loan Documents, or if a default is declared under any other financing for the Property or Project, and such Default shall continue for a period of forty-five (45) days after written notice to the Owner without the Owner curing such breach, or if such breach cannot reasonably be cured within such forty-five (45) day period, commencing the cure of such breach within such forty-five (45) day period and thereafter diligently proceeding to cure such breach; provided, however, that if a different period or notice requirement is specified for any particular breach under any other paragraph of this Agreement, the specific provision shall control. Notwithstanding the above, if a default is declared under any other financing for the Property or Project, the indebtedness evidenced by the Note shall accelerate automatically, without the need for any action by the City.

Section 6.2 Remedies. The occurrence of any Default following the expiration of all applicable notice and cure periods shall give the City the right to proceed with any and all remedies set forth in this Agreement and/or the Loan Documents, including an action or proceeding for specific performance to require the Owner to perform its obligations and covenants under the Loan Documents or to enjoin acts or things which may be unlawful or in violation of the provisions of the Loan Documents, and the right to terminate this Agreement. In addition, the occurrence of any Default by Owner will relieve the City of any obligation to perform under this Agreement, including without limitation to make, disburse, or continue the Loan, and the right to cause all indebtedness of the Owner to the City under this Agreement and the Note, together with any accrued interest, to become immediately due and payable.

Section 6.3 Remedies Cumulative. No right, power, or remedy given to the City by the terms of this Agreement or the Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the City by the terms of any such instrument, or by any statute or otherwise against Owner and any other person.

Section 6.4 Waiver of Terms and Conditions. The City may, in its sole discretion, waive in writing any of the terms and conditions of this Agreement. Waivers of any covenant, term, or condition contained in this Agreement shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

Section 6.5 Non-Liability of City Officials and Employees. No member, official, employee or agent of the City shall be personally liable to the Owner, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Owner or its successors, or on any obligations under the terms of this Agreement.

ARTICLE 7.
GENERAL PROVISIONS

Section 7.1 Time. Time is of the essence in this Agreement.

Section 7.2 Notices. Any notice requirement set forth in this Agreement shall be made, in writing, and shall be sent by the United States mail, certified, return receipt requested or by express delivery or overnight courier service with a delivery receipt, and shall be deemed given as of the date shown on the delivery receipt as the date of delivery or the date on which delivery was refused, and shall be addressed to the following addresses:

Owner:

Colorado Park Housing Corporation
c/o Palo Alto Housing Corporation
725 Alma Street
Palo Alto, CA 94301
Attn: Executive Director

City:

City of Palo Alto
Office of the City Clerk
PO Box 10250

Palo Alto, CA 94303

With a copy to:

City of Palo Alto
Director, Department of Planning & Community Environment
PO Box 10250
Palo Alto, CA 94303

These addresses may be changed by notice to the other Party given in the same manner as provided above.

Section 7.3 Representations and Warranties of Owner. Owner hereby represents and warrants to the City as follows:

(a) Organization. Owner is duly organized, validly existing, and in good standing under the laws of the State of California and has the power and authority to own the Property and carry on their business as now being conducted.

(b) Authority of Owner. Owner has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, under this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, under this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of the Owner, and all actions required under the Owner's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, under this Agreement, have been duly taken.

(d) Valid Binding Agreements. This Agreement and the Loan Documents and all other documents or instruments which have been executed and delivered under this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Owner enforceable against it in accordance with their respective terms.

(e) Pending Proceedings. Owner is not in default under any law or regulation or under any order of any court, board, City or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Owner, threatened against or affecting Owner or the Property, at law or in equity, before or by any court, board, City or agency whatsoever which might, if determined adversely to Owner, materially affect Owner's ability to repay the Loan or impair the security to be given to the City under this Agreement.

(f) Title to Land. At the time of recordation of the Deed of Trust, Owner will have good and marketable fee title to the Property and there will exist no mortgage, lien, pledge or other encumbrance of any character whatsoever other than liens for current real property

taxes and assessments not yet due and payable, and liens in favor of the City or approved in writing by the City.

(g) Hazardous Materials. To the best of Owner's knowledge, except as disclosed in writing by Owner to the City: (i) no Hazardous Material has been disposed of, stored on, discharged from, or released to or from, or otherwise now exists in, on, under, or around, the Property, (ii) no aboveground or underground storage tanks are now or have ever been located on or under the Property, (iii) neither the Property, nor Owner, is in violation of any hazardous materials law; and (iv) neither the Property, nor Owner, is subject to any existing, pending or threatened hazardous materials claims.

Section 7.4 Transfer

(a) Transfer. For purposes of this Agreement, "Transfer" is any sale, assignment, or transfer, whether voluntary or involuntary, of (i) any rights and/or duties under this Agreement, and/or (ii) any interest in the Project, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Project is transferred and the Owner retains title. "Transfer" shall exclude the leasing of any single unit in the Project to an occupant and the transfer of an easement interest in the Property for utility purposes. The City Manager or his/her designee is authorized to execute assignment and assumption agreements on behalf of the City to implement any approved Transfer.

(b) City Interest. City is entering into this Agreement based on the experience, skill, and ability to perform of Owner. The Owner recognizes that its qualifications and identity are of particular concern to the City, in view of: (i) the importance of affordable housing to the general welfare of the community; (ii) the reliance by the City upon the unique qualifications and ability of the Owner to ensure the quality of the affordability, use, operation, and maintenance of the proposed Project; (iii) the requirement that the Property be used for affordable housing; and (iv) Owner's representation that the Property is not to be acquired or used for speculation, but only for use by the Owner for affordable housing.

(c) City Consent. No Transfer not specifically authorized in this Section shall be permitted without the prior written consent of the City, which the City may withhold in its sole discretion. The Loan shall automatically accelerate and be due in full upon any Transfer made without the prior written consent of the City. The City hereby approves the Transfer of this Agreement to a limited partnership, of which Palo Alto Housing Corporation or its wholly controlled affiliate is the general partner, provided Owner gives written notice to City of such assignment or transfer at least ten (10) days before such assignment or transfer.

Section 7.5 Successors and Assigns. This Agreement shall run with the land, and all of the terms, covenants and conditions of this Agreement shall be binding upon the Owner and the permitted successors and assigns of the Owner. Whenever the term "Owner" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

Section 7.6 No Third Parties Benefited. This Agreement is made and entered into for the sole protection and benefit of the City, its successors and assigns, and Owner, its permitted successors and assigns, and no other person or persons shall have any right of action hereon.

Section 7.7 No Claims. Nothing contained in this Agreement shall create or justify any claim against the City, by any person Owner may have employed or with whom Owner may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Project.

Section 7.8 Entire Understanding of the Parties. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the Loan.

Section 7.9 Partial Invalidity. If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired

Section 7.10 Governing Law. This Agreement and the Loan Documents and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California. Any references herein to particular statutes or regulations shall be deemed to refer to successor statutes or regulations, or amendments thereto.

Section 7.11 Amendment. This Agreement may not be changed orally, but only by agreement in writing signed by Owner and the City.

Section 7.12 Further Actions. The Parties agree that they will take such further actions, and execute such further documents, as may be necessary or appropriate in order to carry out the purposes of this Agreement.

Section 7.13 Approvals. Where an approval or submission is required under this Agreement, such approval or submission shall be valid for purposes of this Agreement only if made in writing. Where this Agreement requires an approval or consent of the City, such approval may be given on behalf of the City by the City Manager. The City Manager is hereby authorized to take such actions as may be necessary or appropriate to implement this Agreement, including without limitation the execution of such documents or agreements as may be contemplated by this Agreement. The City Manager is authorized to execute amendments to this Agreement so long as such amendments do not materially increase the costs to be incurred by the City or materially decrease the revenues to be received by the City.

Section 7.14 Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date and year set forth above.

CITY:

CITY OF PALO ALTO, a chartered city and municipal corporation

By: _____

Its: City mgr

APPROVED AS TO FORM BY CITY ATTORNEY

_____
Cara Silver
Senior Asst. City Attorney

OWNER:

COLORADO PARK HOUSING CORPORATION, a California nonprofit public benefit corporation

By: _____

Its: Exec. Secretary

ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
)
COUNTY OF SANTA CLARA)

On 12/9, 2014, before me, DONNA M. HARTMAN, a Notary Public, in and for the State of California, personally appeared James R. Keene, Jr.,

who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name ~~is/are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity~~(ies)~~, and that by ~~his/her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

DONNA M. HARTMAN
COMM. # 1918543
NOTARY PUBLIC - CALIFORNIA
SANTA CLARA COUNTY
MY COMM. EXP. DEC. 31, 2014

EXHIBIT "A"
LEGAL DESCRIPTION

The land referred to is situated in the County of Santa Clara, City of Palo Alto, State of California, and is described as follows:

PARCEL ONE:

Portion of Lots 150 and 151, as shown upon that certain map entitled, "Map of C.M. Wooster Company's Subdivision of the Clarke Ranch", which was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on November 11, 1912, in Book "O" of Maps, Page 16, and more particularly described as follows:

Beginning at a point in the centerline of Colorado Avenue, formerly Stanford Avenue, distant thereon North 54°30'00" East 350.03 feet from the point of intersection thereof with the centerline of Marian Road; thence from said point of beginning North 51°59'37" West 31.286 feet to the true point of beginning; thence from said true point of beginning and along the Northwesterly line of Colorado Avenue, as described in the parcels of land in the deeds to the City of Palo Alto, recorded August 9, 1960, in Book 4881, Page 307, and recorded April 12, 1960, in Book 4761, Page 129, North 54°30' East 340.84 feet to a point in the Southwesterly line of the parcel of land described in the deed to Lee Denton, recorded May 10, 1948, in Book 1618, Official Records, Page 1; thence leaving said Northwesterly line of Colorado Avenue and running North 52°00'23' West along said Southwesterly line of said parcel deeded to Denton 388.81 feet to the Westernmost corner thereof in the Southeasterly line of that certain parcel of land conveyed to the City of Palo Alto, by deeds recorded in Book 1332, Official Records, Page 447, Book 1352 Official Records, Page 6, and Book 1332, Official Records, Page 448, Santa Clara County Records; thence South 54°27'26" West along said Southeasterly line of land conveyed to the City of Palo Alto 340.68 feet to the point of intersection thereof with the Northeasterly line of that certain parcel of land described in the deed to Morton L. Wolfe, et al, recorded May 27, 1964, in Book 6519, Official Records, Page 13, Santa Clara County Records; thence South 51°59'37" East along said Northeasterly line of said land deeded to Wolfe 388.52 feet to the true point of beginning.

Said parcel is also shown on that certain Parcel Map filed for record March 1, 1971, in Book 279 of Parcel Maps, at Page 26.

PARCEL TWO:

Beginning at the most Westerly corner of Lot 151 of the C.M. Wooster Company's Subdivision of the Clarke Ranch, which map was filed for record on November 11, 1912, in Book "O" of Maps, at Page 16, records of Santa Clara County, California;

Thence South 51°45' East (shown as South 52° East on said map) 3.13 feet to the true point of beginning;

Thence North 54°43'50" East parallel to the Northwesterly line of said Lot 151, 290.82 feet to the Northwesterly prolongation of the Southwesterly line of the parcel of land described in the Deed to Lee Denton, recorded May 19, 1948, in Book 1618 Official Records, Page 1, Santa Clara County Records, California; Thence South 51°45' East along said prolongation 28.16 feet to the Southeasterly line of that certain parcel of land conveyed to the City of Palo Alto by deeds recorded in Book 1332 Official Records, Page 447, Book 1352 Official Records, Page 6, and Book 1332 Official Records, Page 448, Santa Clara County Records, California; Thence South 54°43'50" West, 340.82 feet along said Southeasterly line to the Northeasterly line of that certain parcel of land described in the deed to Morton L. Wolfe, et al, recorded May 27, 1964, in Book 6519 Official Records, Page 13, Santa Clara County, California;

Thence North 51°45' West along said Northeasterly line and its prolongation 28.16 feet;

Thence North 54°43'50" East 50.00 feet to the true point of beginning.

APN: 127-01-154

EXHIBIT "B"
AFFORDABLE UNITS

Number of Bedrooms	Number of Units
One	2
Two	13
Three	7
Four	1

EXHIBIT "C"
WORK WRITE-UP

Termite fumigation:	$29,161
Balcony repairs (16 units) @ $10,900/balcony:	$174,400