

FILE NOTE May 13, 2003

By: Teresa J. Wilson, County Counsel



Agenda Item: HACSA/ITMO Entering into a Loan Agreement with the City of Eugene for Rehabilitation of Abbie Lane Apartments

This file note is for the purpose of letting the Board know that, while I have reviewed the documents in the Board packet, I have NOT seen or reviewed documents that are described as attachments to the Loan Agreement—specifically, Exhibits B and C (Trust Deed and Construction Contract Agreement).

The documents presented are legal. They do present risks in that if any loan payment is missed, the entire debt can be called immediately due and payable. And while there is no interest charged until April 1, 2004, and then interest is only 2% per year for 30 years, if the rehabilitation is not complete by April 1, 2004, the Lender can bump the interest rate to 12% per year. The issue for the Board is whether the risk is such that it wishes to forego the opportunity for the money, or whether the Board believes that the HASCA's past management of projects and funds is sufficient reassurance to mitigate that risk.

The limitation on my opinion is simply that I have not reviewed the entire transaction or all documents. Thus, I can opine that the documents I've seen are legal, with the risks as identified above, but I cannot offer a complete transaction opinion. Nor, to the best of my knowledge, is there outside counsel involved as is the case with tax credit projects.

cc: Chris Todis
 Don Williams

HACSA MEMORANDUM

TO: HACSA Board of Commissioners

FROM: Don Williams, Housing Director

AGENDA ITEM: ORDER/In the Matter of Entering into a Loan Agreement with the City of Eugene for Rehabilitation of Abbie Lane Apartments.

AGENDA DATE: May 21, 2003

I. MOTION :

IT IS MOVED THAT THE ORDER BE APPROVED ALLOWING THE AGENCY TO ENTER INTO A LOAN AGREEMENT WITH THE CITY OF EUGENE FOR REHABILITATION OF ABBIE LANE APARTMENTS.

II. ISSUE

Board approval is required to borrow up to \$500,000 from the City of Eugene to be used for exterior rehabilitation at Abbie Lane Apartments in Eugene.

III. DISCUSSION

A. Background:

The Agency built the 25 unit Abbie Lane Apartments in 1979, financed by the State of Oregon's Section 8 new construction funds. Abbie Lane Apartments, located at 1101 Abbie Lane in Eugene, are evaluated annually by the State for contract compliance which also includes a physical inspection of the entire complex. These annual inspections over the past few years have noted that the exterior siding has begun to delaminate and needs to be repaired.

B. Analysis

The Agency's architect has reviewed the original drawings and visited the site numerous times. He has determined that the delamination of the siding was caused

by design flaws and age, and is not repairable by just painting and patching the aged siding. The only solution at this time is to replace the existing siding after repairing the design flaws. In addition, while we replace the siding we will also need to do some dry rot repair, replace the original windows, replace some of the existing insulation, and do seismic upgrading and repairs.

The architect's estimate of our scope of work is as follows:

Siding	\$195,000
Painting	25,000
Windows	100,000
Sheathing, dry rot repairs, general requirements, and related work	<u>180,000</u>
	<u>\$500,000</u>

The loan from the City would be up to \$500,000 with a term of 30 years and interest at 2%.

C. Alternatives/Options

The Board may approve the loan or direct staff to explore additional options.

D. Recommendation

Approval of the proposed Motion.

E. Timing

Upon approval by the Board, the Executive Director will execute the necessary loan documents.

IV. IMPLEMENTATION/FOLLOW-UP

Same as in item III. D.

V. ATTACHMENTS

Loan Documents

**IN THE BOARD OF COMMISSIONERS OF THE
HOUSING AND COMMUNITY SERVICES AGENCY
OF LANE COUNTY, OREGON**

ORDER NO.

**)In the Matter of Entering into a Loan Agreement
)with the City of Eugene for Rehabilitation of
)Abbie Lane Apartments**

WHEREAS, HACSA has significant need to rehabilitate the exterior of Abbie Lane Apartments; and


WHEREAS, funds are not currently available to finance the project; and

WHEREAS, the City of Eugene has offered HACSA a loan up to \$500,000 for the needed rehabilitation of Abbie Lane Apartments; NOW THEREFORE, IT IS HEREBY

ORDERED, that a loan up to \$500,000 from the City of Eugene for rehabilitation of Abbie Lane Apartments is approved, and the HACSA Executive Director is authorized to execute the necessary loan documents.

DATED this _____ day of _____, 2003

Peter Sorenson, Chair
HACSA Board of Commissioners

APPROVED AS TO FORM
Date 5/13/03 LANE COUNTY

OFFICE OF LEGAL COUNSEL

In the Matter of Entering into a Loan Agreement with the City of Eugene for Rehabilitation of Abbie Lane Apartments

PROMISSORY NOTE
Rental Rehabilitation Loan

FROM: Housing and Community Services Agency of Lane County, (Borrower)
an Oregon public corporation

TO: City of Eugene, an Oregon municipal corporation (Lender)

AMOUNT: \$500,000

DATE: May 1, 2003

PROPERTY: Abbie Lane Apartments

LOAN NUMBER: 177/0403/867/26

Borrower and Lender have entered into a Rehabilitation Loan Agreement of even date herewith ("Loan Agreement"), under the terms of which Lender has agreed to loan, and Borrower has agreed to borrow the principal amount indicated above. Terms and provisions not otherwise defined herein shall have the same meaning as provided in the Loan Agreement.

1. **Indebtedness.** For value received, Borrower promises and agrees to pay to the order of Lender at Finance Department, P.O. Box 1967, Eugene, Oregon 97440 (or at such other address as may be furnished in writing by Lender to Borrower), the principal sum of Five Hundred Thousand Dollars (\$500,000.00) together with simple interest on the unpaid principal balance as provided below.
 - 1.1 Interest at the rate of two percent (2.0%) per annum shall begin to accrue on the entire principal balance on April 1, 2004. No interest shall be charged in the interim.
 - 1.2 The applicable interest rate, at Lender's option, shall be increased to twelve percent (12.0%) per annum if Borrower fails to complete the Rehabilitation on or before March 31, 2004.
 - 1.3 The entire principal balance of the loan plus any accrued but unpaid interest will be immediately due and payable under the following circumstances:
 - 1.3.1 If the Rehabilitation is being performed on rental property and Borrower fails to satisfy the covenants set forth in paragraph 8 of the Loan Agreement.
2. **Payment.** Borrower shall pay the entire amount of the indebtedness evidenced by this Note in 360 equal monthly installments of principal and interest in the amount of \$1,845 beginning on May 1, 2004, and continuing on the first day of each month thereafter until the entire principal and accrued interest is paid in full.
 - 2.1 In the event of an interest adjustment pursuant to paragraph 1.2, the amount of each monthly payment shall be adjusted to result in full amortization of the balance hereof within the number of months specified in this paragraph.
 - 2.2 In the event of a reduction in the principal amount of the balance, the amount of each monthly payment shall not be adjusted.
3. **Prepayment.** Borrower shall have the privilege of prepayment of the unpaid balance hereunder, or any part thereof. Prepayments shall be applied first to accrued interest and the remainder to the principal balance. No partial prepayment shall excuse or relieve Borrower from paying any installment required hereunder.
4. **Default.**
 - 4.1 In the event of default by Borrower in the payment of any installment when due or in the performance of any other obligation of Borrower set forth in the Loan Agreement or in the Trust Deed given by Borrower pursuant to paragraph 5 of the Loan Agreement, the entire indebtedness evidenced by this Note shall be immediately due and payable, at the option of Lender, upon five days prior written notice from Lender to Borrower.
 - 4.2 In the event of default, Lender shall have, in addition to acceleration of the indebtedness, all rights and remedies provided in the Loan Agreement or in the Trust Deed, as well as those provided by law or equity.

- 4.3 Failure of Lender to exercise any available remedy in the event of default shall not constitute a waiver by Lender of its right to exercise that remedy in the event of any subsequent default.
- 4.4 If Lender obtains a judgement against Borrower for the balance of this Note, the judgement amount shall bear the higher of the statutory interest rate on judgements or the applicable interest rate at the time of default.
5. **Attorney Fees.** If Lender employs an attorney for collection of this Note, Borrower agrees to pay the reasonable costs thereof, whether or not suit, action or other proceeding is filed. If suit, action or other proceeding is instituted to collect the amount of this Note or any portion thereof, Borrower promises and agrees to pay, whether or not the matter proceeds to final judgement or decrees, in addition to costs and disbursements allowed by law, such sum as the court may adjudge reasonable as an attorney fee in such suit, action or other proceeding, including appeal or review thereof. Such sum shall include an amount estimated by the court as the reasonable costs and fees to be incurred by Lender in collecting any monetary judgement or award, or otherwise enforcing any order, judgment or decree entered in such suit, action or other proceeding.
6. **Applicable Law.** This Note shall be construed and enforced in accordance with the laws of the state of Oregon, except those laws which, if applied, would cause application of the laws of any state other than Oregon.
7. **Continuing Liability.** Every person at any time liable for payment of this Note waives presentment for payment, demand, notice of dishonor, protest and notice of protest, and consents that the Lender may extend the time of payment or otherwise modify the terms of payment of any part or the whole amount of this Note at any time at the request of any other person or legal entity now or hereafter liable for the payment hereof.
8. **Other Agreements.** This Note is made pursuant to the terms of the Loan Agreement, and repayment is secured as provided therein. Any default by Borrower under the terms of the Loan Agreement or any security instrument provided for therein shall constitute a default of this Note.

BORROWER

Housing and Community Services Agency of Lane County

By: _____
Chris Todis, Executive Director

LOAN AGREEMENT
Rental Rehabilitation Loan

BETWEEN: Housing and Community Services Agency of Lane County (Borrower)
an Oregon public corporation

AND: City of Eugene, an Oregon municipal corporation (Lender)

AMOUNT: \$500,000

DATE: May 1, 2003

PROPERTY: Abbie Lane Apartments

LOAN NO: 177/0403/867/26

RECITALS

- A. Borrower owns, and holds for use as permanent rental housing, the 25-unit Abbie Lane Apartments located at 1101 Abbie Lane, Eugene, Oregon (the "Property").
- B. Borrower desires to borrow, and Lender has agreed to loan, the amount set forth below for the business purpose of repairing the Property in accordance with the following plans, specifications, drawings, bid documents, purchase order, or other agreements (the "Repair Documents"), the terms of which are incorporated herein:
1. Scope of work outlined in the approved drawings and specifications
 2. Construction Contract and attachments provided by Borrower and approved by Lender
 3. Notice(s) to Proceed provided by Borrower and approved by Lender
 4. Federal Labor Standards Provisions and General Wage Decision, approved by Lender and attached to each construction contract by Borrower
- C. Lender is willing to loan funds to Borrower in accordance with terms of this Agreement and the following additional documents, the terms and conditions of which are further described below:
- Exhibit A: Promissory Note
Exhibit B: Trust Deed with Exhibit A
Exhibit C: Construction Contract Agreement
- D. Borrower does intend to engage the services of a general contractor to perform the Repair work on the Property and complete the Repair work on or before March 31, 2004.
- E. The Property will be occupied during performance of the Repair work.

AGREEMENT

1. **Loan.**
Lender agrees to loan up to Five Hundred Thousand Dollars (\$500,000.00) (the "Loan") to Borrower for the purpose of repairing Property according to the Repair Documents (the "Repair").
2. **Disbursements.**
Lender shall disburse proceeds of the Loan in accordance with the following provisions, subject to Borrower's satisfaction of the conditions precedent in this Agreement.
- 2.1 **Request.** Except as may otherwise be determined by Lender in its reasonable discretion, Lender shall make disbursements of the Loan proceeds upon Borrower's request to pay authorized expenses of performing the Repair. Borrower's request shall be in writing, in a form preapproved by Lender, accompanied by documentation of work performed and expenses incurred which, in the reasonable judgment of Lender, demonstrates performance in accordance with the Repair Documents. All work shall be subject to inspection by Lender prior to any disbursement.

- 2.2 **When Made.** Disbursements of loan proceeds may be made on Friday of any week (unless such day falls on a holiday). Borrower shall make written request for disbursements not later than the Wednesday seven business days prior to the Friday on which disbursement is desired. Because of inspection requirements, processing time, and factors beyond Lender's control, Lender cannot guarantee to make disbursements as requested. Borrower is encouraged to make requests for disbursements as early as possible.
- 2.3 **Recipient.** If Borrower does not engage the services of a general contractor, disbursements will typically be made to Borrower. If Borrower does retain the services of a general contractor, disbursements will typically be made jointly to Borrower and Borrower's general contractor.
- 2.4 **Direct Disbursement.** Lender reserves the right, and Borrower hereby expressly authorizes Lender, to make some or all disbursements, or portions thereof, directly to the general contractor, subcontractors or suppliers, as appropriate, in those instances in which Lender, in its reasonable discretion, determines that the following conditions exist:
- 2.4.1 Such general contractor, subcontractor or supplier has performed work or supplied materials or services in accordance with the Repair Documents; and
 - 2.4.2 Lender has reason to believe that such contractor or supplier has not been, or will not be, paid in a timely manner for any reason.

Borrower expressly waives any claim it may have against Lender for exercise of Lender's discretion in making disbursements under this paragraph 2.4. Nothing in this paragraph shall be construed to require Lender to make a direct disbursement, or to render any general contractor, subcontractor or supplier a third party beneficiary of this Agreement.

- 2.5 **Cessation of Disbursements.** Lender may, but shall have no obligation to, disburse Loan proceeds if:
- 2.5.1 Borrower dies, becomes insolvent or incompetent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt;
 - 2.5.2 An Event of Default occurs, as described in paragraph 12; or
 - 2.5.3 Lender, for any reason and in the exercise of its reasonable discretion, deems itself insecure even though no Event of Default has occurred.
- 2.6 **Retainage.** Lender's disbursements shall be subject to retainage in payments to the general contractor thereunder. Regardless of any other provision of this Agreement, Lender shall not be obligated to make any disbursement in excess of the amount then payable to the general contractor pursuant to the Contract Agreement.

3. **Repayment.**

The obligation of Borrower to repay the Loan shall be evidenced by a promissory note (the "Note") of even date herewith.

3.1 **Interest.**

- 3.1.1 Interest at the rate of two percent per annum (2.00 %) shall begin to accrue on the entire principal balance on April 1, 2004. No interest shall be charged in the interim.
- 3.1.2 If Borrower fails to satisfy the covenant set forth in paragraph 8, the interest rate shall, at Lender's option, be increased to twelve percent per annum (12.00 %) per annum as of the date of noncompliance, and shall remain at twelve percent per annum until the Loan is repaid in full.
- 3.1.3 If the Repair, as certified by the mutually agreed upon Project Architect or other suitable design professional, is not complete on or before March 31, 2004 the interest rate, at Lender's option, shall thereafter be increased to twelve percent (12.00%) per annum.

3.2 **Installments.**

In accordance with the terms of the Note, Borrower shall repay the entire amount of the Loan in 360 monthly payments of \$1,845 principal and interest beginning on May 1, 2004, as described in paragraph 3.1, and will continue on the first day of each month thereafter until the entire principal balance and any accrued but unpaid interest is paid in full.

- 3.2.1 Borrower shall pay the entire amount of the indebtedness evidenced by the Note in full immediately upon sale or change in use of the Property.
 - 3.2.2 In the event of an interest adjustment pursuant to paragraph 3.1, the amount of each monthly payment shall be adjusted to result in full amortization of the Loan within the number of months specified in this paragraph.
 - 3.2.3 In the event of a reduction in the principal amount of the Loan by agreement with Lender, the amount of each monthly payment may be adjusted to result in full amortization of the Loan within the number of months specified in this paragraph.
 - 3.2.4 In the event of an interest adjustment pursuant to paragraph 3.1, adjusted monthly payments of interest and principal shall become due and payable on the first day of the month following the increase in interest rate, and a like amount shall be due and payable on the first day of each month thereafter. The amount of each monthly payment shall be adjusted to result in full amortization of the Loan within the remaining loan term.
- 3.3 **Prepayment.** Borrower may prepay all or any portion of the Loan at any time without penalty. Any partial prepayment shall be applied first to interest accrued at the date of payment and the remainder to principal. No partial prepayment shall release or excuse Borrower from making any regular installment payments when due.

4. **Conditions Precedent to Disbursement.**

The obligation of Lender to disburse the Loan proceeds or any portion thereof is contingent upon the occurrence or performance of the following, unless expressly waived by Lender:

- 4.1 **Corporate/Partnership Resolutions.** If Borrower is a corporation, Borrower has delivered corporate resolutions in form and substance satisfactory to Lender authorizing Borrower to enter into this Agreement. If Borrower is a partnership, Borrower has delivered a true copy of the partnership agreement and a resolution executed by each general partner authorizing Borrower to enter into this Agreement and acknowledging the joint and several liability of each general partner for repayment of the Loan.
- 4.2 **Trust Deed.** Borrower has executed and delivered to Lender the Trust Deed of even date herewith described in paragraph 5 of this Agreement.
- 4.3 **Bid Documents and Purchase Order.** If Borrower has engaged the services of a contractor to perform the Repair, Borrower and contractor have executed and delivered to Lender an original counterpart of a Construction Contract in the form attached hereto as Exhibit C.
- 4.4 **Compliance.** Borrower has paid all required Loan fees and is in compliance with paragraph 8 of this Agreement.
- 4.5 **Insurance.** Borrower has submitted evidence of insurance on the Property in compliance with the Trust Deed and paragraph 7 of this Agreement.
- 4.6 **Written Request.** Borrower has submitted a written request for disbursement in a form acceptable to Lender, and Lender has determined after inspection if necessary, that the Repair was performed properly in accordance with the Repair Documents.
- 4.7 **Compliance.** Borrower is otherwise in compliance with the terms, covenants and conditions of this Agreement, the Note, and any instrument or agreement arising thereunder.

5. **Security.**

- 5.1 **Trust Deed.** As security for payment of the Note and performance by Borrower of the remaining obligations of this Agreement, Borrower shall execute and deliver to Lender a trust deed in the form attached hereto as Exhibit B ("Trust Deed").
- 5.2 **Priority.** Borrower warrants and represents that the Trust Deed shall be a lien against the Property superseded in priority only by the \$759,500 loan evidenced by the Deed of Trust and Regulatory Agreement granted to the Housing Division of the State of Oregon Department of Commerce and recorded July 8, 1981, and the \$99,900 loan evidenced by the Deed of Trust granted to the State of Oregon Housing and Community Services Department and recorded May 17, 1995. Borrower shall pay costs of recording the Trust Deed and exhibits.

5.3 **Title Insurance.** Concurrent with execution of this Agreement or as soon thereafter as reasonably practical, Borrower shall provide to Lender, at Borrower's expense, a standard mortgage's policy of title insurance, naming Lender as the insured, insuring the lien of the Trust Deed subject only to the usual printed exceptions in such policies; any easements, conditions, restrictions, and permits of record; and the loans described in paragraph 5.2 above.

6. **Representations and Warranties of Borrower.**

Borrower represents and warrants to Lender as of the date of this Agreement and as of the date of each disbursement of Loan proceeds:

6.1 **Organization.** If Borrower is a corporation, Borrower is duly organized, existing and in good standing.

6.2 **Financial Information.** All financial information of Borrower supplied to Lender truly discloses Borrower's financial condition as of the date thereof, and there has been no material adverse change in Borrower's financial condition subsequent to the date of the most recent financial information supplied to Lender.

6.3 **Litigation.** No litigation or claim (including unpaid taxes) against Borrower is pending or threatened, and except as has been disclosed in writing to Lender, no other event has occurred which materially adversely affects Borrower's financial condition.

6.4 **Environmental Hazards.** There has been no production, storage, transport, treatment or disposal upon the Property of any hazardous waste or toxic materials. Borrower has taken all necessary and appropriate action to obtain permits for any underground storage tanks located on the Property.

6.5 **Compliance with Laws.** Borrower, Borrower's general contractor, if any, and suppliers shall be in compliance with all applicable federal, state and local laws, rules and regulations pertaining to performance of the Repair.

7. **Insurance.**

Borrower shall maintain fire and public liability insurance, and flood insurance if required, with respect to the Property in form, amounts, coverages and with insurance companies reasonably acceptable to Lender. Borrower will deliver to Lender upon request from time to time policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be canceled or diminished without at least ten days prior written notice to Lender.

8. **Use of Property.**

Borrower covenants and agrees to satisfy and keep satisfied any and all conditions imposed by Lender with regard to use of property, affirmative marketing of units, nondiscrimination, conversion of the property to condominiums, payment of taxes and maintenance of insurance.

Borrower is responsible for ensuring subject property remains in its existing residential use and that rents remain affordable. Therefore, rents for the units in the Property shall not exceed the established rent plus annual adjustment factor as determined by the United States Department of Housing and Urban Development ("HUD") for the appropriate calendar year. The portion of such rent payable by the residents will not exceed 30% of the resident household adjusted annual income. Also, borrower shall affirmatively market all vacant units for a period of ten years and shall not discriminate against or deny occupancy to any tenant or prospective tenant by reason that the tenant has a minor child or children who will be residing with them, unless the property is reserved for elderly tenants.

9. **Compliance with HUD Requirements.**

Funds for the Loan come from the United States Department of Housing and Urban Development ("HUD"). Borrower, Borrower's general contractor, and suppliers shall comply with all federal, state and local rules and regulations applicable to use of such funds, including, without limitation, local loan program guidelines and federal requirements regarding displacement of tenants. Copies or summaries of applicable rules and regulations are available from Lender.

9.2 **Borrower as Contractor.** If Borrower has elected not to engage the services of a general contractor, Borrower, and not Lender, shall have the complete responsibility to perform all aspects of the Rehabilitation in accordance with this Agreement and applicable building codes and regulations, including without limitation, providing or arranging for all labor, materials, supplies, and building permits.

9.2.1 Borrower shall permit inspections by agents of Lender as deemed necessary by Lender to ensure timely and workmanlike completion of the Rehabilitation.

10. Relationship Between Borrower and Lender.

10.1 Lender Not an Agent. With respect to Borrower, Lender is only a secured lender of funds for performance of the Repair in accordance with this Agreement. Lender shall not be deemed to be an agent, partner or representative of, or be obligated to assist, Borrower with respect to any contractor, supplier or other lender involved in the Repair, if any.

10.2 Borrower as Contractor. Borrower has engaged the services of a contractor, and Borrower, not Lender, shall have the complete responsibility to cause completion of all aspects of the Repair in accordance with this Agreement and applicable building codes and regulations, including without limitation, providing or arranging for all labor, materials, supplies, and building permits.

10.2.1 Borrower shall permit inspections by agents of Lender as deemed necessary by Lender to ensure timely and workmanlike completion of the Repair.

10.2.2 Disbursements prior to completion of the Repair shall be subject to a ten percent (10%) retainage. The final disbursement shall not be due until Borrower has delivered to Lender, in a form satisfactory to Lender, a complete release of all liens that could arise out of performance of the Repair, or, in the alternative, receipts for all labor and materials for which a lien could be filed. Disbursements otherwise due may be withheld on account of defective work not remedied, liens filed and not cleared, failure to make timely payment to subcontractors, suppliers or laborers.

11. Assignment.

Borrower shall not assign, transfer or convey this Agreement, or any right or obligation hereunder, in whole or in part; or the Property or any interest therein, in whole or in part, without the express prior written consent of Lender, which consent shall not be unreasonably withheld. If the Property or any portion thereof is sold, agreed to be sold, assigned or otherwise conveyed without the prior written consent of Lender, then, at Lender's option, the entire amount of the Loan plus accrued but unpaid interest shall be immediately due and payable.

12. Events of Default.

Each of the following acts or failures to act shall constitute an Event of Default under this Agreement:

12.1 Default on Loan. Failure to pay when due any installment of principal or interest on the Loan.

12.2 Other Breaches. Failure to comply with or to perform any provisions of this Agreement, the Note or the Trust Deed, or any other agreement between Borrower and Lender. If such failure is curable and if Borrower has not been given prior notice of a breach of the same provision, it may be cured (and no Event of Default will have occurred) if Borrower, after receiving written notice from Lender demanding cure of such failure (a) cures the failure within 10 days; or (b) if the cure requires more than 10 days, immediately initiates steps sufficient to cure the failure and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

12.3 False Statements. Any representation, warranty or statement made or furnished to Lender by or on behalf of Borrower under this Agreement is, or at the time made or furnished was, false or misleading in any material respect.

12.4 Defective Collateralization. The Trust Deed given to Lender in connection with the Loan shall at any time and for any reason cease to be in full force and effect.

12.5 Insolvency. The commencement of a proceeding under bankruptcy or insolvency laws by or against Borrower; insolvency; appointment of a receiver for any part of Borrower's property; any assignment for the benefit of creditors; or, if the Repair is being performed on rental property, dissolution or termination of Borrower's existence as a going business, or the death of any partner of or in Borrower.

13. Effect of an Event of Default.

If any Event of Default shall occur, all commitments of Lender under this Agreement shall immediately terminate (including any obligation to make Loan disbursements). At the option of Lender, the Loan shall become immediately due and payable upon ten days' written notice from Lender to Borrower. Lender may exercise any and all legal or equitable remedies available by law,

including foreclosure of the Trust Deed by any legal means. Available remedies shall be cumulative and not mutually exclusive in nature, and exercise or nonexercise of any available remedy shall not be a waiver of that or any other remedy.

14. **Indemnification.**

Borrower shall indemnify and hold Lender, its officers, agents and employees, harmless from and against any and all claims, actions, liabilities, costs (including attorney fees and other costs of defense), arising out of or in any way related to performance of the Repair, or resulting from any misrepresentation, breach of warranty or covenant, or nonfulfillment of any agreement by Borrower hereunder.

15. **Waiver of Breach.**

Any waiver by Lender of an Event of Default will not constitute a waiver of Lender's right to declare a default under similar or identical circumstances. No amendment, modification, waiver, or consent with respect to any provision of this Agreement by Lender shall be effective unless it is in writing and signed and delivered by Lender to Borrower, and then any such amendment, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

16. **Notices.**

Any notices permitted or required by this Agreement shall be in writing and shall be deemed given when personally delivered or upon deposit in the United States mail, postage prepaid, certified, return receipt requested, addressed to the parties designated at the foot of this Agreement. Either party may change its address by notice given to the other in accordance with this paragraph. If there is more than one Borrower, notice to any Borrower shall constitute notice to all Borrowers.

17. **Compliance with Laws.**

Borrower shall comply with all applicable federal, state and local laws, rules, ordinances and resolutions in performing the repair of the Property.

18. **Arbitration.**

Any controversy regarding the terms or conditions of this Agreement, other than the enforcement of any obligation hereunder, shall be submitted to arbitration. Any party may request arbitration by giving written notice to the other. If the parties cannot agree on a single arbitrator within 15 days from the giving of notice, each party shall within five days select a person to represent that party and the two arbitrators shall immediately select an impartial third person to complete a three-member arbitration panel. If the two arbitrators cannot agree within 15 days on the third arbitrator, then either party may petition the Presiding Judge of Lane County Circuit Court to select the third arbitrator. The panel shall conduct the arbitration in accordance with provisions of ORS Chapter 33, or the corresponding provisions of any such future law. The arbitrator(s) shall award the costs of the arbitration, including attorney fees, to the prevailing party.

19. **Attorney Fees.**

If an Event of Default occurs, Borrower agrees to reimburse Lender for reasonable attorneys' fees and costs incurred by Lender with respect to the default, whether or not a suit, action or other proceeding is commenced. If a suit, action or other proceeding is commenced to enforce any of the terms of this Agreement, the Note or the Trust Deed, prevailing party shall be entitled to receive, and the losing party agrees to pay, in addition to costs and disbursements allowed by law, the reasonable attorney fees incurred by the prevailing party in such suit, action or other proceeding, including any appeal or review thereof; plus the amount incurred by the prevailing party in collecting or enforcing any judgment obtained in such suit, action or other proceeding.

20. **Liability.**

If there is more than one Borrower under this Agreement, all obligations of such Borrower shall be joint and several.

21. **Conflict of Interest.**

No member, officer, or employee of Lender, or its designees or agents, no member of the City Council of Lender, and no other public official of Lender who exercises any functions or responsibilities with respect to Lender's Community Development Block Grant Program during his or her tenure or for one year thereafter, shall have any pecuniary interest, direct or indirect, in any contract or subcontract or the proceeds thereof involving the Loan proceeds.

22. **Successors and Assigns.**

Notwithstanding paragraph 11, this Agreement shall be binding upon Borrower and Lender and their respective heirs, successors and assigns, and shall inure to the benefit of Borrower and Lender and the successors and assigns of Borrower and Lender.

23. **Severability.**

If any clause or provision of this Agreement shall be held by a court to be invalid, the invalid clause or provision shall not affect the validity of any other clauses or provisions that shall remain in full force and effect.

24. **Integration.**

This Agreement and the documents, instruments and agreements described herein constitute the entire agreement of the parties with respect to the Loan. This Agreement and such related documents, instruments and agreements supersede all prior communications, representations and agreements between the parties, either oral or written.

26. **Interpretation.**

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Oregon.

LENDER:

City of Eugene

By _____
Dennis M. Taylor, City Manager

Address:
99 West 10th Avenue, Eugene, OR 97401

BORROWER:

Housing and Community Services Agency
of Lane County

By: _____
Chris Todis, Executive Director

Address:
177 Day Island Road, Eugene, OR 97401

**EXHIBIT 'A' TO TRUST DEED
Rental Rehabilitation Loan**

DATE: May 1, 2003
PROPERTY: Abbie Lane Apartments
LOAN NUMBER: 177/0403/867/26

1. Conversion of Dwelling Units. The Grantor agrees to maintain units in the Property in public nonprofit ownership and in primarily residential use. The Grantor further agrees not to convert the dwelling units in the Property to condominium ownership or to any form of cooperative ownership wherein rents are not affordable to lower income households (as these terms "affordable" and "lower income households" may be defined by the beneficiary).

2. Nondiscrimination. The grantor agrees not to discriminate against or deny occupancy to any tenant or prospective tenant by reason of their receipt of, or eligibility for, housing assistance under any federal, state or local housing assistance program and not to discriminate against or deny occupancy to any tenant or prospective tenant by reason that the tenant has a minor child or children who will be residing with them, unless the property be one reserved for elderly tenants. Grantor agrees that the initial occupants after repair of the residential units will be low income tenants as defined as tenants with incomes eighty percent (80%) or less of Eugene's median income. Grantor agrees to adopt and comply with the affirmative marketing procedures and requirements set forth in the Affirmative Marketing Agreement. If it is determined grantor transfers any interest or right in and to the property, or has discriminated by reasons listed above or converts any units to condominium units the full amount of the debt evidenced by this Trust Deed shall become immediately due and payable.

3. Receiver. If grantor defaults on any obligation secured by this trust deed and if such default continues for more than 10 days after written notice by beneficiary to grantor, then it is expressly agreed that beneficiary may have a receiver appointed by a court or competent jurisdiction. The receiver shall be entitled to immediate possession of the property with such authority to lease and manage the property so long as such default continues and to account for and pay the net income there from first inpayment of receiver's reasonable fees, then in satisfaction of the obligation owed to the beneficiary, and the remainder, if any, to the person entitled to possession of the property during the term of the receivership or otherwise as ordered by the court.

Grantor agrees that if displacement of tenants occurs prior to completion of the repair work any benefits due the tenant according to the Uniform Relocation Act are the sole responsibility of the Grantor. If necessary, the City of Eugene may forward the cost of those benefits and borrower agrees to reimburse the City of Eugene for any costs incurred to meet requirements of the Uniform Relocation Act.

GRANTOR:

Housing and Community Services Agency of Lane County

By: _____
Chris Todis, Executive Director

**CONTRACT AGREEMENT
Rental Rehabilitation Loan**

BY: Housing and Community Services Agency of Lane County, (Owner)
an Oregon public corporation

TO: City of Eugene, an Oregon municipal corporation (City)

DATE: May1, 2003

PROPERTY: Abbie Lane Apartments

CONTRACT AMOUNT: \$500,000.00

FOR AND IN CONSIDERATION OF the mutual promises herein contained, the City of Eugene, Oregon, a municipal corporation, hereinafter called "CITY" and the Housing and Community Services Agency of Lane County, hereinafter called "OWNER", agree as follows:

1. This Contract Agreement consists of this Agreement, General Wage Decision OR020007, and Owner's approved plans, specifications, drawings and bid documents for the proposed work as applicable. This Contract Agreement shall be incorporated into the total rental rehabilitation loan package.
2. OWNER shall be responsible for purchasing and maintaining fire and liability insurance, naming the CITY as an additional insured with respect to the liability insurance. The said insurance shall be for an amount approved by the CITY, and the said liability insurance shall remain in force until all aspects of this contract are completed. OWNER shall furnish to CITY proof that such insurance is in force prior to undertaking any work pursuant to this contract.
3. OWNER agrees to provide all necessary labor, without remuneration to install all materials to be furnished with funds provided by the CITY under this Contract, and OWNER shall use his/her best skill and attention for performing all portions of the work under this Contract in a good, workmanlike manner.
4. OWNER shall be responsible for securing all necessary permits required by the CITY required for the work called for in this Contract. OWNER agrees to complete all work in accordance with the existing building codes of the CITY and said OWNER understands and agrees that if said work is not completed according to the relevant CITY codes and specifications attached hereto, the OWNER assumes all responsibility and shall bear all costs to make necessary corrections to said work.
5. OWNER expressly agrees that he/she shall allow and permit CITY inspectors to inspect the work from time to time. OWNER expressly agrees that if said work fails to conform to the requirements of this Agreement, or the relevant City codes during the progress of the work, the OWNER shall immediately take steps to remedy any defects at the OWNER'S sole expense.
6. It is understood and agreed that OWNER shall assume all responsibility for actions of any and all persons performing any labor related to the work called for in this Contract, and shall advise all such persons that they are not and cannot consider themselves to be employees of CITY by reason of labor performed under this Contract.
7. All parties understand and agree that financing in whole or in part of this agreement is made with Federal funds and each of the parties agree to abide by all Federal regulations and statutes concerning the use of Federal monies in connection with construction work on properties.
8. OWNER shall comply with 24 CFR 35, 36, 37 concerning Lead Based Paint Regulation. A copy of EPA brochure EPA747-K-94-001, "Protect Your Family Form Lead in Your Home" is attached hereto and incorporated herein by reference. OWNER shall execute a certification of compliance with 24CFR prior to receipt of final payment.
9. CITY Shall pay either directly to the material supplier or to OWNER upon presentation of paid receipts for payment of said materials, for materials used in the completion of this Contract, provided the total sum of such monies shall not exceed Five Hundred Thousand Dollars (\$500,000.00).

10. It is understood and agreed that all work called for in this Contract shall be completed by March 31, 2004.

11. OWNER shall execute all Contract documents and financial agreements for the total repair assistance package and cause all work items contained in this Contract Agreement to be complete by the agreed upon completion date.

12. That if the said described work or any portion thereof is not fully completed in accordance with the specifications contained herein by the agreed upon completion date, the undersigned agrees that the CITY may, through its Development Division, hire a contractor to complete the unfinished work and if the undistributed funds are not sufficient to pay the costs of the said contractor to complete the unfinished work, the undersigned agrees to pay the difference.

13. There fore, in consideration of the terms and conditions stated herein, CITY shall remit the following sum for the purchased and installed materials to complete the attached work, upon OWNER'S submission to CITY of said receipts for said materials and upon inspection by CITY and approval of same that all material has been installed in a workmanlike manner and according to the codes of CITY.

OWNER:

Housing and Community Services Agency of Lane County

By: _____
Chris Todis, Executive Director

