

AFTER RECORDING RETURN TO:
MULTNOMAH COUNTY, OREGON
Div. of School and Community Partnerships
421 S.W. Oak Street, Suite 200
Portland, Oregon 97204
B167/R200

LOW INCOME HOUSING DEVELOPMENT AGREEMENT

Dated: _____, 2010

The Parties:

COMMUNITY VISION, INC.; an Oregon non-profit corporation, headquartered 1750 SW Skyline Blvd., Suite 102; Portland, OR 97221 (“CVI”); and **MULTNOMAH COUNTY, OREGON**, a Political Subdivision of the State of Oregon; located at 501 SE Hawthorne, Portland, Oregon 97214 (“County”); collectively referred to herein as the “Parties”.

Recitals:

- A. The County as required under state law obtains title to real property that is foreclosed for failure to pay lawfully imposed taxes and assessments.
- B. As authorized under ORS 271.330, the County may elect to donate property acquired through tax-foreclosure to qualified, non-profit corporations; provided such non-profits use the donated property for low income housing. For purposes of this Agreement, “Low income housing” means either providing low income rental unit(s) or home ownership opportunities to eligible persons or families with incomes adjusted for family size at or below 80% of the median income in Multnomah County, Oregon (“Eligible Buyers” or “Eligible Individuals”).
- C. CVI is an Oregon non-profit corporation, is qualified under ORS 271.330 to receive the donation of tax-foreclosed property by the County for the use as low income housing.
- D. The County and CVI have agreed to the transfer of certain real property “AS IS, WHERE IS”; that is located at 5734 NE Sumner, Portland, Oregon and more particularly described as:

LOT 4 BLOCK 3 PRIMROSE PARK

hereinafter referred to as “the Property.”

- E. The consideration for the donation of the Property is CVI’s stipulation and commitment as evidenced by its duly authorized representative’s signature below, to use the Property solely for low income housing purposes for a period of not less than thirty (30) years from the date of transfer.
- F. The restrictions contained herein are intended to limit the use of the Property to the use as the primary residence of Eligible Individual(s) and to require for a period of 30 years and that subsequent buyers of the Property only resell it to Eligible Buyers who occupy the Property as

their primary residence. It is the policy of the County to ensure that safe, decent and affordable housing is made available to qualifying individuals at affordable prices throughout the entire term of this Agreement in order to ensure the long-term availability of affordable housing in Multnomah County, Oregon.

G. The property on the date of this transfer is presently occupied by an individual by the name of Douglas L. Misner, who is the adult son of the former owner. Mr. Misner qualifies as an Eligible Individual as discussed herein. The desire of the Parties at the time of this transfer is that Mr. Misner be allowed to continue to occupy the Property for as long as he is able, provided the improvements thereon are safe, and suitable for human habitation.

H. Further, the Parties stipulate that the Property and its improvements has not been the subject of any examinations or inspections at the time of this transfer and their existing condition are unknown, and that the transfer of the Property is “AS IS, WHERE IS”.

Agreement

Therefore, in consideration of the promises and covenants set forth herein and of other valuable consideration, the receipt and sufficiency of which is acknowledged, CVI and the County agree as follows:

Section 1: Incorporation of Recitals.

1. Recitals. The foregoing recitals are incorporated into this Agreement by this reference.

Section 2: Representations and Warranties of CVI.

2. Representations and Warranties. The CVI represents and warrants as follows:

2.1 Non-Profit. The CVI is (i) a duly organized non-profit corporation under the laws of the state of Oregon, (ii) qualified to transact business in the state of Oregon, (iii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iv) has the full legal right, power, and authority to execute and deliver this Declaration.

2.2 No Violation of Law or Contract. The execution and performance of this Agreement by the CVI (i) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, (ii) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the CVI is a party or by which it or the Project is bound, and (iii) will not result in the creation or imposition of any prohibited encumbrance of any nature.

2.3 Financial Status. There is no action, suit, or proceeding at law or in equity, or by or before any governmental instrumentality or other agency now pending, or to the knowledge of the CVI, threatened against or affecting it, or any of its properties or rights, which if adversely determined, would materially impair its right to carry on business substantially as now conducted and as now contemplated by this Agreement or would materially adversely affect its financial condition.

2.4 Property. CVI covenants that it will forever defend rights hereunder and the priority of this Agreement against the adverse claims and demands of all persons.

2.5 Impositions. CVI will pay when due all taxes, assessments, fees, and other governmental and nongovernmental charges of every nature now or hereafter assessed against any part of the Property (the "Impositions"); however, if by law any such Imposition may be paid in installments, CVI may pay the same in installments, together with accrued interest on the unpaid balance thereof, as they become due. CVI will furnish to County promptly on request satisfactory evidence of the payment of all Impositions. County is hereby authorized to request and receive from the responsible governmental and nongovernmental personnel written statements with respect to the accrual and payment of all Impositions. As of the date of transfer there are no ad valorem real property tax liens against the Property.

2.6 Liens. CVI will pay when due all claims for labor and materials that, if unpaid, might become a lien on the Property.

Section 3: Property Use.

3.1 Low Income Housing. As soon as practicable upon transfer to CVI the Property shall be used for low income housing purposes, which condition is satisfied by the continued occupancy of the present occupant identified in the Recitals herein. The Parties acknowledge the CVI shall as soon as possible thereafter examine and inspect the property to determine its habitability under applicable codes and regulations.

3.2 Renovation or New Construction. If CVI in its reasonable best judgment determines the existing improvements at the Property need major renovation, CVI shall renovate the single-family residence on the Property to a safe and sanitary standard in compliance with all applicable codes and regulations in a timely and responsible manner. If CVI in its reasonable best judgment determines the existing improvements at the Property are in such condition that renovation is infeasible, then CVI shall pursue the timely and safe removal of all or any portion of the existing improvements and shall reconstruct residential dwelling unit(s) to a safe and sanitary standard in compliance with all applicable codes and regulations in a timely and responsible manner.

3.3 Resale. Any resale of the Property by CVI during the 30 year term of this Agreement shall be to one or more individual purchasers whose aggregate income is equal to or less than eighty percent (80%) of the area median income, as adjusted for family size, for Multnomah County, Oregon as established from time to time during the term of this Agreement by the United States Department of Housing and Urban Development, or any successor agency ("Area Median Income"). During the 30 year term of this Agreement, all subsequent owners who desire to sell the Property may sell the Property provided, however, that the Property is sold for occupancy as the principal residence of the purchaser or purchasers and then only to one or more individuals whose aggregate income is at or below eighty percent (80%) of the then current Area Median Income.

3.4 Occupancy. During the term of this Agreement, at least one of the then current owners or occupants of the Property, except for CVI, shall at all times occupy the Property as his or her primary personal residence, except for such periods of time that repair, renovation, demolition or reconstruction or similar activities shall make occupancy impractical; provided that this exception shall be based on a reasonable schedule for completion of such activities, and that any undue period of vacancy shall be deemed a default.

3.5 Inspections and Documentation.

3.5.1. CVI shall permit the County, or any duly authorized representative of the County, during normal business hours and upon reasonable notice to inspect the Property.

3.5.2. CVI shall submit any other information, documents, or certifications requested by the County that the County in its reasonable discretion shall deem necessary or appropriate to substantiate the CVI's continuing compliance with the provisions of this Agreement.

3.6 Maintenance. The CVI shall maintain the Property in good repair, working order and condition, including without limitation maintaining the Property in compliance with any nuisance abatement standards which may apply to the Property. CVI will not commit or suffer any waste or strip of the Property.

3.7 Damage or Destruction. If the improvements on the Property are damaged or destroyed, the CVI shall use its best efforts, subject to the rights of any mortgagee, to repair and restore improvements on the Property to substantially the same condition as existed prior to the event causing such damage or destruction, and specifically with respect to damage or takings in Condemnation as provided in Section 8; and thereafter to operate the Property in accordance with the terms of this Agreement.

3.8 Environmental Compliance.

3.8.1. For purposes of this section, *Environmental Law* means any federal, state, or local law or regulation now or hereafter at any time pertaining to Hazardous Substances or environmental conditions. For purposes of this section, *Hazardous Substance* includes, without limitation, any substance that is or becomes classified as hazardous, dangerous, or toxic under any federal, state, or local law or regulation.

3.8.2. CVI will not use, generate, store, release, discharge, or dispose of on, under, or about the Trust Property or the groundwater thereof any Hazardous Substance and will not permit any other person to do so, except for storage and use of Hazardous Substances (and in such quantities) as may commonly be used for household purposes, as long as those substances are stored and used in compliance with all Environmental Laws. CVI will keep and maintain the Property in compliance with all Environmental Laws.

3.8.3 If any investigation, monitoring, containment, cleanup, or other remedial work of any kind is required on the Property under any applicable Environmental Law or by any governmental agency or person in connection with a release of a Hazardous Substance, CVI will promptly complete all that work at CVI's expense.

3.8.4 All representations, warranties, and covenants in this Section 3.8 are to survive beyond the term of the Agreement.

3.9 Limitations of Use. CVI will not initiate or consent to any replatting, partitioning, or rezoning of the Property or any change in any covenant or other public or private restrictions limiting or defining the uses that may be made of the Property without the prior written consent of County, which shall not be unreasonably withheld.

Section 4: Recording and Filing; Covenants To Run With the Land.

4. Recording and Filing. This Agreement shall be recorded and filed in the Deed Records of Multnomah County, Oregon.

4.1 Covenants to Run With the Land. Upon recording and for the duration of the thirty (30) year term of this Agreement; the terms and conditions set forth in this Agreement regulating and restricting the use, occupancy and transfer of the Property (i) shall be and are covenants running with the Property, including all improvements on the Property, encumbering the Property for the term of this Agreement, binding upon the CVI's successors in title and all subsequent owners; (ii) are not merely personal covenants of the CVI and its successors and assigns; and (iii) shall bind the CVI and its successors and assigns during the term of this Agreement with the benefits inuring to the County.

4.2. Compliance with Law. CVI agrees that any and all requirements of the laws of the state of Oregon to be satisfied in order for the provisions of this Agreement to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full, and that any requirements or privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the Property, including all improvements thereon, for the term of this Agreement. The covenants contained herein shall survive and be effective regardless of whether such contract, deed, or other instrument hereafter executed conveying the Property, or a portion thereof, provides that such conveyance is subject to this Agreement.

Section 5: Default.

5.1 Defined. The failure by the CVI to perform or comply with any term, covenant or condition of this Agreement within 30 days after written notice from the County to perform or satisfy the term, covenant or condition, or if the performance or compliance cannot be completed within such 30-day period through the exercise of reasonable diligence, the failure to commence the required performance or compliance with diligence to completion shall constitute an event of default ("Event of Default").

5.2 Remedies. Upon the occurrence of an Event of Default, the County, its successors and assigns may institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin any such violation or attempted violation, or to recover monetary damages caused by such violation or attempted violation, such damages to include but not be limited to all costs, expenses including but not limited to staff and administrative expense, fees including but not limited to all

reasonably attorneys' fees which may be incurred by the County or any other party in enforcing or attempting to enforce this Agreement following such Event of Default on the part of the CVI or its successors, whether the same shall be enforced by suit or otherwise.

Section 6: Term.

The term of this Agreement commenced as of the date first set forth above and shall end at 11:59 p.m. on May 1, 2040.

Section 7: Insurance.

7.1 Property and Other Insurance. CVI will obtain and maintain during the term of this Agreement Basic Form property insurance, in an amount not less than the amount of the full replacement cost of the Property, without reduction for coinsurance.

7.2. Insurance Companies and Policies. All insurance must (a) be written by a company or companies reasonably acceptable to County, (b) require 10 days' prior written notice to County of cancellation or reduction in coverage. CVI will furnish to County on request a certificate evidencing the coverage required under this Agreement and a copy of each policy.

7.3 Casualty/Loss Restoration.

7.3.1. After the occurrence of any casualty to the Property, whether or not covered by insurance, CVI will give prompt written notice thereof to County. County may make proof of loss if CVI fails to do so promptly and to County's satisfaction.

7.3.2. All insurance proceeds with respect to the Property must be applied to the renovation, repair, restoration or reconstruction of the Property for the purpose of reinstating the authorized use of the Property. Provided, CVI shall have reasonable discretion to renovate or rebuild improvements differently than the existing structure on site in a manner in its professional judgment, best suited to accomplish viable, sustainable low income housing at the Property.

Section 8: Condemnation.

If the Property or any part of it is taken or damaged by reason of any public improvement, eminent domain, condemnation proceeding, or in any other manner (a "Condemnation"), or if CVI receives any notice or other information regarding such action, CVI will give immediate notice thereof to County. All compensation, awards, relocation assistance and other payments or relief therefore ("Condemnation Proceeds") up to the full amount of the value of the Property shall be applied first to the restoration of the Property and the intended use thereof as low income housing; provided, that if the intended use of the Property is no longer reasonably capable as a direct result of the Condemnation; towards the purchase of suitable residential property to relocate the then occupants for the purpose to continue the provision of low income housing at such new residential property.

Section 9: General Provisions.

9.1 Severability. The invalidity of any clause, part, or provision of this Agreement shall not affect the validity of the remains provisions thereof.

9.2 Amendment. The County, together with the CVI and the then current CVI of the Property, if other than the CVI, may execute and record any amendment to, or modification of, this Agreement, and such amendment or modification shall be binding on parties and their successors and assigns.

9.3 Notices. All notices or other communications to be given pursuant to the Agreement, shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the recipient at the address first set forth above, or to such other address as a party may from time to time designate by notice given as provided in this Section.

9.4 Governing Law. This Agreement shall be governed by the laws of the State of Oregon without regard to the conflict of law provisions.

9.5 Venue. Venue for any suit or action commenced to enforce or interpret this Agreement shall be in the Circuit Court of Multnomah County, Oregon.

9.6 Indemnity. CVI will, to the fullest extent allowed by law, hold County, its respective, officers, employees, agents, and lawyers harmless from and indemnify them for any and all claims, demands, damages, liabilities, and expenses, including but not limited to attorney fees and court costs, arising out of or in connection with County's interests and rights under this Agreement.

9.7 Time is of the Essence. Time is of the essence with respect to all covenants, terms and conditions of CVI under this Agreement.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first set forth above.

FOR COMMUNITY VISION, INC.:

FOR MULTNOMAH COUNTY:

By: _____
Joe Wykowski, Executive Director
of Community Vision, Inc.

BOARD OF COMMISSIONERS
MULTNOMAH COUNTY, OREGON

By: _____
Jeff Cogen, Chair

REVIEWED:

Matthew O. Ryan, Assistant County Attorney

Acknowledgments

STATE OF OREGON)
)ss.
County of Multnomah)

The foregoing instrument was acknowledged before me this _____ day of _____, 2010, by Joe Wykowski, as Executive Director of Community Vision, Inc., an Oregon non-profit corporation, on behalf of its Board of Directors.

Notary Public for Oregon
My Commission expires:

STATE OF OREGON)
)ss.
County of Multnomah)

This instrument was acknowledged before me on this _____ day of _____, 2010, by Jeff Cogen, Chair, Board of Commissioners, Multnomah County, Oregon, on behalf of its Board of County Commissioners; and that the said instrument is the free act and deed of said County.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first in this, my certificate, written.

Notary Public for Oregon
My Commission expires: