AFFORDABLE RENTAL DEVELOPMENT PROGRAM AGREEMENT
DEVELOPER/OWNER

This Agreement is made among ECG Moss Grove SLP, LLC, whose address is 118 16th Avenue S., Suite 200, Nashville, Tennessee 37203 (“Developer”), ECG Moss Grove, LP (“Leasehold Owner”), and the City of Knoxville, a municipal corporation organized and existing under the laws of the State of Tennessee, acting by and through its Community Development Department, having its office at 400 Main Street, City County Building, Knoxville, Tennessee 37902 (“City”), and is executed for the purpose of providing funding in the form of a deferred payment loan to Developer, to be loaned by Developer to the Leasehold Owner, through the City’s Affordable Rental Development Program (“Program”) for the development of 32 units of affordable housing located at 265 and 266 Moss Grove Boulevard, Knoxville, Tennessee 37922 (“Property”).

IN CONSIDERATION OF DEVELOPER’S COMPLIANCE WITH THIS AGREEMENT, THE CITY AGREES TO PROVIDE DEVELOPER THE FOLLOWING FUNDING FOR DEVELOPMENT OF THE PROPERTY:

A conditional, deferred payment loan not to exceed $950,000.00 to ECG Moss Grove SLP, LLC (“SLP”). The Loan funds shall be loaned to the Leasehold Owner, and said loan shall be referred to herein as the “SLP Loan.” The program funding will be provided in the form of a loan that will be forgiven over a 20-year period, provided that Developer and Leasehold Owner comply with all terms, covenants, and obligations contained in this Agreement, the Developer complies with all terms, covenants, and obligations contained in the Promissory Note and the Unlimited and Unconditional Guaranty of Payment and Performance (executed herewith), and Leasehold Owner complies with the terms of the Leasehold Deed of Trust securing the Property and given by Leasehold Owner for the benefit of Developer, as assigned to the City, and the Restrictive Covenant. The source of the loan funds is the City’s general funds designated for the Program. The City’s performance and obligation to pay under this Agreement is contingent on an annual appropriation of the source of funds.

DEVELOPER AGREES TO THE FOLLOWING TERMS AND CONDITIONS.

1. **Use of Loan Funds.** Developer will use the loan proceeds to make a loan to Leasehold Owner. Leasehold Owner shall use the SLP Loan for customary and reasonable project-specific expenses necessary for the development of a multi-family structure located on the Property.

2. **Budget.** Developer and Leasehold Owner agree to adhere to the budget, which is attached hereto as Exhibit A and incorporated by reference, in carrying out the construction project described in this Agreement. Any line-item changes in the budget require submission of a written budget amendment request to the Community Development Department. If approved, the Community Development Department will respond with a written letter of approval to Leasehold Owner and will keep a record of the budget amendment on file.
3. **Performance Requirements.** All work will be performed by qualified contractors in accordance with industry standards, local codes, ordinances, permit and inspection requirements, and local and federal requirements regarding accessibility for persons with disabilities. All construction must conform to all applicable City housing and building codes and zoning requirements. Contractors hired to undertake work on behalf of Leasehold Owner must be licensed professionals as required by the State of Tennessee (see TENNESSEE CODE ANNOTATED § 62-2-100 et seq.) for any services in this Agreement requiring such licensure. All project work will be performed in accordance with the Standard Building, Plumbing, Gas, and Mechanical Codes and the National Electric Code. All work carried out under this Agreement will be of first quality and performed in a workmanlike manner.

4. **Affordability.** For a period of 20 years beginning on the date construction of all units on the Property is completed which is anticipated to be February 1, 2042 (“Affordability Period”), all assisted rental unit(s) in the Property will be occupied only by households that are eligible as very low-income families and will meet the requirements to qualify as affordable housing set forth in 24 C.F.R. § 92.252. Specifically, the assisted rental unit(s) must meet the following requirements to qualify as affordable housing:

A. The rent charged for the assisted unit(s) must not exceed the maximum HOME rents. The maximum HOME rents are the lesser of:

i. The fair market rent for existing housing for comparable units in the area as established by HUD under 24 C.F.R. § 888.111 (Fair Market Rents for Existing Housing under the Section 8 Housing Program), minus a monthly allowance for tenant-paid utilities, which will be determined by the City for each individual project by using the HUD Utility Schedule Model; or

ii. A rent that does not exceed 30% of the adjusted income of a family whose annual income equals 65% of the median income for the area, as determined by HUD, with adjustments for the number of bedrooms in the unit, minus a monthly allowance for tenant-paid utilities that will be determined by the City for each individual project by using the HUD Utility Schedule Model. The HOME rent limits provided by HUD will include average occupancy per unit and adjusted income assumptions to be used in calculating the maximum rent under this paragraph.

B. In rental projects with 5 or more assisted rental units, 20% of the assisted units must be occupied by very low-income families and meet one of the following rent requirements:

i. Rents may not exceed 30% of the gross income of a family whose income equals 50% of the median income for the area, as determined by HUD, adjusted for family size, minus an allowance for tenant-paid utilities that will be determined by the City for each individual project by using the HUD Utility Schedule Model; or

ii. Rents may not exceed 30% of a family’s adjusted income, unless otherwise allowed in 24 C.F.R. § 92.252(b)(2).
C. After review and approval by the City, the following parameters have been established for this project.

i. The assisted units are identified as twelve one-bedroom units with an average of 723 square feet, seventeen two-bedroom units with an average of 1,053 square feet, and three three-bedroom units with an average of 1,253 square feet.

ii. None of the units will have HIGH HOME rent unit requirements.

iii. All thirty-two units will have LOW HOME rent unit requirements. The initial maximum rent that has been established for these units is $687 (for the one-bedroom units), $848 (for the two-bedroom units), and $1,119 (for the three-bedroom units), less an allowance for tenant paid utilities, or, if the unit receives a federal or state project-based rental subsidy and the very low-income family pays as a contribution not more than 30% of the family’s adjusted income, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the federal or state project-based rental subsidy program.

iv. All assisted units are floating units.

v. Developer and/or Leasehold Owner agree that the address of each assisted unit will be provided no later than the time of initial occupancy.

D. Developer and/or Leasehold Owner agree to reexamine the income of each tenant household at least annually and provide the City with annual recertifications of the incomes of all tenants residing in assisted units.

E. Maximum low and high rents for each unit's bedroom size will be computed annually by HUD. Developer and/or Leasehold Owner shall annually recalculate all rent and utility allowances for assisted units for review and approval by the City. Should the maximum allowable rent amount decrease from the previous year's calculation, the rents for assisted units shall be decreased accordingly for all new or renegotiated leases. If the maximum allowable rent amount increases, Developer and/or Leasehold Owner may determine whether to implement a rent increase for any new or renegotiated leases. Before any annual rent increase may be implemented, tenants must be given at least 30-days’ written notice of the increase. Increases in rent are also subject to all other governing provision(s) of the lease agreement.

F. Assisted units will qualify as affordable despite a temporary noncompliance with Paragraphs A, B, or C of this Section 4 if the noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to HUD are taken to ensure all vacancies are filled in accordance with this Section 4 until the noncompliance is corrected. Tenants who no longer qualify as low income families must pay a rent, adjusted for tenant-paid utilities, not less than 30% of the family's adjusted monthly income as recertified annually, or the amount payable by the tenant under state or local law.
G. Neither Developer nor Leasehold Owner may refuse to lease assisted units to a certificate or voucher holder under 24 C.F.R. part 982—Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program or the holder of a comparable document evidencing participation in a HOME tenant-based assistance program because of the status of the prospective tenant as a holder of such certificate, voucher or other HOME tenant-based assistance document.

H. The assisted unit(s) must be occupied only by households that qualify as very low-income families except for temporary noncompliance caused by increases in the incomes of existing tenants if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with C.F.R. § 92.252 until the noncompliance is corrected.

I. The assisted unit(s) must meet the affordability requirements throughout the Affordability Period. The affordability requirements apply without regard to the term of any mortgage or transfer of ownership, except that, the affordability requirements may terminate upon foreclosure or transfer in lieu of foreclosure. The affordability restrictions shall be revived according to the original terms if, during the original Affordability Period, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or Property.

J. Developer must repay the full amount of HOME match funds or City general funds invested in the project if the project fails to meet the affordability requirements for the full Affordability Period.

K. Developer and/or Leasehold Owner must utilize a property management firm with Low-Income Housing Tax Credit (“LIHTC”) property management or equivalent experience. The firm must be approved in advance by the City.

5. Procurement. Developer and/or Leasehold Owner agrees to solicit competitive bids for the construction work and to provide evidence to the City of the bids received, the amount of each bid, and the method of selection. Developer and/or Leasehold Owner may select a contractor who has successfully provided services to Developer and/or Leasehold Owner in similar, previous multi-family projects, subject to City’s review of the contractor’s past performance related to work quality, timeliness, and pricing.

6. Property Standards. Upon completion of the work, and for the duration of the Affordability Period, all construction must meet the City’s Neighborhood Housing Standards, which include the most current ICC Property Maintenance codes adopted by the City, existing housing codes related to health and safety, major system repair, lead-based paint, accessibility requirements, and cost-effective energy conservation measures, and all other requirements within 24 C.F.R. § 92.251. Developer and Leasehold Owner agree that the City, its agents, or representatives shall have the right to inspect the property from time to time at any reasonable hour of the day to determine Developer’s and/or Leasehold Owner’s compliance with this requirement. After construction completion, Developer and/or Leasehold Owner must maintain the funded units as decent, safe, and sanitary housing in good
repair. Developer and/or Leasehold owner must also meet the City’s Ongoing Property Standards, which include compliance with the most current ICC Property Maintenance Code adopted by the City.

7. **Scope of Work and Timetable.** Developer and/or Leasehold Owner agrees to comply with the following scope of work and timetable so that the City’s responsibilities as delineated therein may be carried out in a timely manner.

<table>
<thead>
<tr>
<th>Date</th>
<th>Developer Task</th>
<th>City</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 2020</td>
<td>Sign City loan documents and Program Agreement and construction contract. Issue Notice to Proceed.</td>
<td>N/A</td>
</tr>
<tr>
<td>April 2020</td>
<td>Construction begins.</td>
<td>N/A</td>
</tr>
<tr>
<td>April 2020 – January 2022</td>
<td>Request disbursements. Provide paid invoices/receipts and documentation that work has been satisfactorily completed with each disbursement request.</td>
<td>Monitor construction. Request funds from City Finance Department.</td>
</tr>
<tr>
<td>January 2022</td>
<td>Construction completion.</td>
<td>Inspect project before release of final payment.</td>
</tr>
<tr>
<td>January 2022 – April 2022</td>
<td>Execute leases, provide initial tenant documentation to City.</td>
<td>Review tenant documentation for compliance.</td>
</tr>
</tbody>
</table>

8. **Accomplishment of Work.** Developer and/or Leasehold Owner agrees to carry out the construction work specified in this Agreement with all practical dispatch in a sound, economical, and efficient manner. At its option, the City reserves the right to cancel and terminate the Agreement if Developer and/or Leasehold Owner fails or refuses to cause commencement of physical work on the Property after a period of ninety days from the date of execution of this Agreement, or if Developer and/or Leasehold Owner fails or refuses to complete such improvement work within a reasonable time.

The City's failure to exercise its right to terminate this Agreement due to the Developer’s and/or Leasehold Owner’s failure or refusal to cause commencement of or to complete the physical work on the Property will not be deemed a waiver thereof.

9. **Eligibility.** Developer and/or Leasehold Owner agrees that it is in compliance with the following statement of eligibility.

All housing developers who develop new or retrofitted multi-family housing containing all or some affordable units may be eligible to receive assistance. Developers must have successful experience in the type of project proposed and must have financial capacity to complete the project.

Developers must be current on all property taxes, have good maintenance and management history with existing rental properties, and have no record of fair housing violations.
10. **Federal Requirements.** This Agreement will be administered pursuant to the federal statutes and regulations as outlined below. Developer and Leasehold Owner understand and agree that these federal requirements reflect City policy and will therefore be met in fulfilling this Agreement, regardless of whether they would otherwise apply to Developer and/or Leasehold Owner. Developer and Leasehold Owner and all contractors and subcontractors will comply with these statutes and regulations, and Developer and Leasehold Owner will incorporate this Section 10 requiring compliance with federal requirements into all contracts and subcontracts related to this Agreement.

A. **Title VI of the Civil Rights Act of 1964 (P.L. 88-352)** provides that no person in the United States shall be excluded from participation in the Program, denied the benefits of the Program, or subjected in any way to discrimination under the Program on the basis of race, color, or national origin. This requirement will apply for the period during which the Property is improved and the rehabilitation loan is outstanding.

B. **Title VIII of the Civil Rights Act of 1968 (P.L. 90-284), as amended,** where applicable, requires that the Program be carried out in a manner that will affirmatively further fair housing, including all activities relating to sales, rentals, additional financing, and brokerage services.

C. **Executive Order 11063** requires the provision of equal opportunity in housing and nondiscrimination in the sale and rental of housing improved under the Program.

D. **Executive Order 11246** requires that no person shall be discriminated against during the performance of construction contracts under the Program based on race, color, religion, sex, or national origin. Contractors and subcontractors participating in the Program shall take affirmative action to ensure fair treatment in employment; promotion; demotion; transfer; recruitment and recruitment advertising; lay-off and termination; rates of pay and compensation; and selection for training and apprenticeships.

E. The "Anti-Kickback Act", as amended, prohibits the contractor and all subcontractors from inducing, in any manner, an employee to give up any part of the compensation to which he/she is entitled under the contract of employment.

F. **The Age Discrimination Act of 1975.** Prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973 states that "no otherwise qualified individual with handicaps in the United States . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance . . . ." As detailed in 24 C.F.R. 8, Sec. 8.23 Alterations of Existing Housing Facilities, when a project contains fifteen or more units and the rehabilitation cost equals or exceeds seventy-five percent of the replacement cost of the completed facility, the project must comply with Sec. 8.22, requiring a minimum of five percent of the units, or at least one unit, to be accessible for persons with mobility impairments. Projects containing five or more dwelling units must comply with Sec. 504 to the maximum extent feasible. "Maximum extent feasible" means that compliance in rehabilitation shall be required unless doing so would impose an undue financial and administrative burden. It does not require that alterations be made solely to comply if those alterations cannot be undertaken without removing or altering a load-bearing structural member.
G. Executive Orders No. 11625, 12432, and 12138 require the contractor to take affirmative steps to encourage the use of minority and women's business enterprises when subcontracts are let. Such efforts should include the following elements or other appropriate actions:

1. Include qualified minority and women's businesses on bid solicitation lists, and assure that minority and women's businesses are solicited whenever they are potential sources of materials or services;

2. When economically feasible, divide total contract requirements into small tasks or quantities, or extend delivery schedules, to permit maximum minority and women's business participation; and

3. Use the services and assistance of the Minority Business Development Agency of the Department of Commerce (local office, 618 W. Church Street, Room 104, 673-6030) and the Interagency Committee on Women's Business Enterprises, as needed.

H. Developer and Leasehold Owner further agree that the rehabilitation work financed in whole or in part with funds provided through City shall not be performed by any contractor if it, or its principals, are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the rehabilitation activity by any federal department or agency.

I. According to the Flood Disaster Protection Act of 1973, Developer and Leasehold Owner agree that no funds provided by City shall be used to rehabilitate the Property if it is located in an area identified by the Federal Emergency Management Agency as having special flood hazards unless Developer and/or Leasehold Owner obtains and maintains flood insurance under the National Flood Insurance Program.

11. Maintenance and Insurance; Inspections. Developer and Leasehold Owner agree to secure, maintain, and insure all new buildings in compliance with all local code requirements for the duration of this Agreement and for five years after construction completion. Developer and Leasehold Owner agree that the City, its agents, and/or its representatives will have the right to inspect the Property at any reasonable hour of the day to determine Developer’s and Leasehold Owner’s compliance with this requirement and any other requirements of the Contract Documents.

12. Tenant and Participant Protections.

A. Lease clause prohibitions. Developer and/or Leasehold Owner agree to execute written lease documents for all assisted units during the Affordability Period. Such lease may not be for a period of less than one year, unless a lesser period is mutually agreed to by Developer and/or Leasehold Owner and the tenant. The lease may not contain any of the following provisions.
i. Agreement to be sued. Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the Developer and/or Leasehold Owner in a lawsuit brought in connection with the lease.

ii. Treatment of property. Agreement by the tenant that the Developer and/or Leasehold Owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The Developer and/or Leasehold Owner may dispose of this personal property in accordance with state law.

iii. Excusing Developer and/or Leasehold Owner from responsibility. Agreement by the tenant not to hold the Developer and/or Leasehold Owner or the Developer’s and/or Leasehold Owner’s agents legally responsible for any action or failure to act, whether intentional or negligent.

iv. Waiver of notice. Agreement of the tenant that the Developer and/or Leasehold Owner may institute a lawsuit without notice to the tenant.

v. Waiver of legal proceedings. Agreement by the tenant that the Developer and/or Leasehold Owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.

vi. Waiver of a jury trial. Agreement by the tenant to waive any right to a trial by jury.

vii. Waiver of right to appeal court decision. Agreement by the tenant to waive the tenant’s right to appeal, or to otherwise challenge in court, a court decision in connection with the lease.

viii. Tenant chargeable with cost of legal actions regardless of outcome. Agreement by the tenant to pay attorneys’ fees or other legal costs even if the tenant wins in a court proceeding by the Developer and/or Leasehold Owner against the tenant. The tenant may, however, be obligated to pay costs if the tenant loses.

ix. Mandatory supportive services. Agreement of the tenant requiring the tenant to accept supportive services. This prohibition, however, does not apply to residents of transitional housing.

Developer and/or Leasehold Owner further agree not to terminate the tenancy, or refuse to renew the lease, of a tenant residing in an assisted unit except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable federal, state, or local law; or for other good cause. Written notice must be provided at least 30 days in advance of any termination or refusal to renew that specifies the grounds for the action. A tenant’s failure to participate in any required
supportive services of transitional housing is a permissible basis for terminating tenancy or refusing to renew a lease.

B. **Tenant selection policy.** Developer and/or Leasehold Owner also agree to adopt and adhere to written tenant selection policies and criteria that:

   i. Are consistent with the purpose of providing housing for very-low-income and low-income families;

   ii. Are reasonably related to Program eligibility and the applicant’s ability to perform the obligations of the lease;

   iii. Provide for:

       a. The selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and

       b. The prompt written notification to any rejected applicant for tenancy of the grounds for rejection.

C. **Fee prohibitions.** Developer and/or Leasehold Owner agree to only charge fees that are customarily charged in rental housing. Developer and/or Leasehold Owner may not charge uncustomary fees like laundry room access fees or servicing, origination, processing, inspection, or other such fees for the costs of providing homeownership assistance. However, Developer and/or Leasehold Owner may charge:

   i. Reasonable application fees to prospective tenants;

   ii. Parking fees to tenants, only if such fees are customary for rental housing projects in the neighborhood; and

   iii. Fees for services such as bus transportation or meals, as long as such services are voluntary.

13. **Nondiscrimination.** Developer and Leasehold Owner hereby agree that they:

   A. Shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, familial status, or national origin;

   B. Shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex, age, disability, familial status, or national origin;

   C. Shall in all solicitations or advertisements for employees placed by or on behalf of themselves, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, disability, familial status, or national origin; and

   D. Shall include these provisions in every subcontract or sublease let by or for them.
Developer and Leasehold Owner additionally agree not to discriminate against prospective tenants on the grounds of race, color, national origin, religion, sex, handicap, or familial status. Developer and Leasehold Owner also agree not to discriminate against prospective tenants due to their receipt of or eligibility for housing assistance under any federal, State, or local housing assistance program. In addition, Developer and Leasehold Owner agree to comply with Executive Order No. 11246 and 11375, which prohibit discrimination in employment regarding race, color, religion, sex, or national origin, Title VI of the Civil Rights Act of 1964, the Copeland Anti-Kickback Act, the Contract Work Hours and Safety Standards Act, Section 402 of the Vietnam Veterans Adjustment Act of 1974, Section 503 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990, all of which are incorporated as conditions of funding by reference.

14. Ethical Standards. Developer and Leasehold Owner take notice of and represent that they are not in violation of, or have not participated and will not participate in, the violation of any of the following ethical standards prescribed by the Knoxville City Code.

(A) **Sec. 2-1048. Conflict of Interest.**

It shall be unlawful for any employee of the city to participate, directly or indirectly, through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering advice, investigation, auditing or otherwise, in any proceeding or application, request for ruling or other determination, claim or controversy or other matter pertaining to any contract or subcontract and any solicitation or proposal therefor, where to the employee's knowledge there is a financial interest possessed by:

(1) The employee or the employee's immediate family;
(2) A business other than a public agency in which the employee or a member of the employee's immediate family serves as an officer, director, trustee, partner or employee; or
(3) Any other person or business with whom the employee or a member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment.

(B) **Sec. 2-1049. Receipt of Benefits from City Contracts by Councilmembers, Employees and Officers of the City.**

It shall be unlawful for any member of council, member of the board of education, officer or employee of the city to have or hold any interest in the profits or emoluments of any contract, job, work or service, either by himself or by another, directly or indirectly. Any such contract for a job, work or service for the city in which any member of council, member of the board of education, officer or employee has or holds any such interest is void.

(C) **Sec. 2-1050. Gratuities and Kickbacks Prohibited.**

Gratuities. It is unlawful for any person to offer, give or agree to give to any person, while a city employee, or for any person, while a city employee, to solicit, demand, accept or agree to accept from another person, anything of a pecuniary value for or because of:

(1) An official action taken, or to be taken, or which could be taken;
(2) A legal duty performed, or to be performed, or which could be performed; or
(3) A legal duty violated, or to be violated, or which could be violated by such person while a city employee.

Anything of nominal value shall be presumed not to constitute a gratuity under this section.

Kickbacks. It is unlawful for any payment, gratuity or benefit to be made by or on behalf of a subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

(D) Sec. 2-1051. Covenant Relating to Contingent Fees.

(a) Representation of Contractor. Every person, before being awarded a contract in excess of ten thousand dollars ($10,000.00) with the city, shall represent that no other person has been retained to solicit or secure the contract with the city upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for bona fide employees or bona fide established commercial, selling agencies maintained by the person so representing for the purpose of securing business.

(b) Intentional violation unlawful. The intentional violation of the representation specified in subsection (a) of this section is unlawful.

(E) Sec. 2-1052. Restrictions on Employment of Present and Former City Employees.

Contemporaneous employment prohibited. It shall be unlawful for any city employee to become or be, while such employee, an employee of any party contracting with the particular department or agency in which the person is employed.

For violations of the ethical standards outlined in the Knoxville City Code, the City has the following remedies:

(1) Oral or written warnings or reprimands;
(2) Cancellation of transactions; and
(3) Suspension or debarment from being a Contractor or subcontractor under city or city-funded contracts.

The value of anything transferred in violation of these ethical standards shall be recoverable by the City from such person. All procedures under this section shall be in accord with due process requirements, included but not limited to a right to notice and hearing prior to imposition of any cancellation, suspension or debarment from being a Contractor or subcontractor under a city contract.

15. Requests for Disbursement of Funds. Developer and/or Leasehold Owner may request disbursement of funds for reasonable expenses incurred during the construction work. What constitutes a “reasonable expense” will be determined solely and exclusively by the City. However, requests may not be submitted more frequently than every fourteen calendar days unless approved in advance by City staff. The City reserves the right to retain up to 20% of funds available until work is inspected and certified complete. Disbursement of funds will be contingent upon Developer’s and/or Leasehold Owner’s and contractors’ compliance with this Agreement, the Promissory Note executed herewith, the Leasehold Deed of Trust securing the Property, the Unlimited and Unconditional
Guaranty of Payment and Performance, and any other agreements related to this project, including any agreements between Developer and/or Leasehold Owner and contractors.

16. **Records.** For a period of five years following completion of the improvements specified in this Agreement, Developer and Leasehold Owner agree to keep the following records: all loan documents; contracts; invoices; materials; personnel and payroll records; conditions of employment; books of account; tenant leases; tenant income verifications; and any other documentation pertinent to the improvement of the Property, the occupancy and rental of the Property, and the disposition of the loan proceeds. Developer and Leasehold Owner will permit City and its designees to have full and free access to these records for the purpose of making audits, examinations, excerpts, and transcriptions.

17. **Security and Loan Termination.** This loan will be evidenced by a Promissory Note executed by Leasehold Owner, and secured by a Leasehold Deed of Trust on the Property, of the same date, and duly recorded in the Register's Office for Knox County, Tennessee (as assigned to the City). In addition, Developer will provide the City with an Unlimited and Unconditional Guaranty of Payment and Performance for the sole benefit of the City as additional security for the City’s loan to Developer. Leasehold Owner and the City shall also enter into an agreement creating restrictive covenants encumbering the Property that shall restrict the occupancy and the rents of the Property for the duration of the Affordability Period, as more specifically described in Section 4 of this Agreement.

The City may, by written notice of default to Developer, terminate the whole or any part of the loan and this Agreement and may foreclose on its Collateral Assignment of Deed of Trust if Developer and/or Leasehold Owner fails to perform any provisions of this Agreement, the Promissory Note, the Leasehold Deed of Trust given by Leasehold Owner for the benefit of Developer, as assigned to the City, the Unlimited and Unconditional Guaranty of Payment and Performance, or the Restrictive Covenant executed by Leasehold Owner and does not cure such failure within a period of 10 days (or such longer period as the City may authorize in writing) after receipt of said notice from the City specifying such failure. If the loan and this Agreement are terminated due to Developer’s and/or Leasehold Owner’s default, the full amount of any monies included in the loan that have been advanced to the Developer by the City will be due and payable by the Developer to the City on demand. Developer will be in default if any of the following occur, without limitation:

(a) The construction is not carried out with reasonable diligence, or is discontinued at any time for any reason other than strikes; lockouts; acts of God; fires, floods, or other similar catastrophes; riots; war; or insurrection;

(b) Developer and/or Leasehold Owner makes material changes in the project plans and specifications or enters into another contract or subcontract for work on the Property without the prior written approval of City;

(c) All Developer’s principals die, become legally incapacitated, or otherwise become legally unable to act before the completion of the construction;

(d) Leasehold Owner abandons the Property; fails to keep insurance and taxes current; fails to obtain permits; violates building code; or otherwise fails to maintain the Property;
(e) The sale, lease, or other transfer of any kind or nature of the Property before the completion of the construction funded by this Agreement without the prior written consent of City, excluding (i) the creation of a purchase-money security interest for household appliances, or (ii) a transfer by devise, descent, or operation of law upon the death of a joint tenant, and (iii) the deed of trust in favor of Truist Bank and/or Fannie Mae and/or any refinancing thereof;

(f) Developer and/or Leasehold Owner defaults on any covenant, agreement, term, or condition of this Agreement; Developer defaults on any covenant, agreement, term, or condition of the Promissory Note to the City or the Unlimited and Unconditional Guaranty of Payment and Performance; the Leasehold Owner defaults under the terms of the Leasehold Deed of Trust for the benefit of Developer, as assigned to the City, or the Restrictive Covenant executed by Leasehold Owner; or any other agreement made between Developer or the Leasehold Owner and City; or

(g) The construction required by this Agreement fails to meet the affordability requirements of Section 4 of this Agreement for the full Affordability Period.

Termination will be accomplished by mailing by certified mail or by personally delivering written notice of termination to Developer at Developer’s business address, or to any other address that Developer has made known to City either personally or by mail. Termination will be effective on the date the notice is mailed or personally delivered to Developer’s address, regardless of whether the notice is actually received by Developer.

18. Insurance.

A. Residential Property (Property that is not used to generate income for Developer) accepting less than $1,000.00 in Program funds from the City. Developer and/or Leasehold Owner must provide evidence of property insurance of at least 90% of the property value and homeowners’ or rental property liability coverage of at least $100,000.00 and must maintain this insurance until the later of the completion of the project for which funding is provided or repayment of any loaned funds. Developer and/or Leasehold Owner agree to only use contractors who are licensed and bonded for the work performed and to require that such contractors maintain automobile insurance and general liability insurance that includes completed products liability with limits for both automobile and general liability of at least $500,000.00 per occurrence.

B. Residential Property (Property that is not used to generate income for Developer) accepting more than $1,000.00 in Program funds from the City. Developer and/or Leasehold Owner must provide evidence of property insurance of at least 90% of the property value and homeowners’ or rental property liability coverage of at least $200,000.00 and must maintain this insurance until the later of the completion of the project for which funding is provided or repayment of any loaned funds. Developer and/or Leasehold Owner agree to only use contractors who are licensed and bonded for the work performed and to require that such contractors maintain automobile insurance and general liability insurance that includes completed products liability with limits for both automobile and general liability of at least $1,000,000.00 per occurrence and $2,000,000.00 aggregate.

C. Commercial Property (Property that is used to generate income for Developer). Developer and/or Leasehold Owner must provide evidence of property insurance of at least 90% of the property value and homeowners’ or rental property liability coverage of at least $500,000.00 and must maintain this insurance until the later of the completion of the project for which funding is provided or repayment
of any loaned funds. Developer and/or Leasehold Owner agree to only use contractors who are licensed and bonded for the work performed and to require that such contractors maintain automobile insurance and general liability insurance that includes completed products liability with limits for both automobile and general liability of at least $1,000,000.00 per occurrence and $2,000,000.00 aggregate.

19. **Term.**

A. This Agreement will be effective until Developer and/or Leasehold Owner have well and truly performed all the terms and conditions of this Agreement, the Promissory Note, the Leasehold Deed of Trust executed by Leasehold Owner for the benefit of Developer, as assigned to the City, the Restrictive Covenant executed by Leasehold Owner, the Unlimited and Unconditional Guaranty of Payment and Performance, or any other agreement made between Developer or Leasehold Owner and the City.

B. All construction required by this Agreement will begin upon execution of this Agreement and will be completed within 22 months of the date of written Notice to Proceed.

20. **Contract Documents.** The executed Contract Documents will consist of the following:

A. This Agreement;

B. The Promissory Note, the Leasehold Deed of Trust executed by Leasehold Owner for the benefit of Developer, as assigned to the City, the Restrictive Covenant executed by Leasehold Owner, and the Unlimited and Unconditional Guaranty of Payment and Performance, as described in this Agreement;

C. Leasehold Owner’s Budget, attached as Exhibit A; and

D. Leasehold Owner’s Project plans and specifications, attached as Exhibit B.

All Contract Documents and exhibits attached to this Agreement are incorporated herein by reference and made a part of this Agreement as if they were fully set out verbatim. To the extent that there is a conflict between the terms of any of the documents that constitute this Agreement, the terms that provide the greater benefit to the City and/or impose the greater obligation on the Developer and/or the Leasehold Owner will control.

21. **Hold Harmless and Indemnification.** Developer and Leasehold Owner shall defend, indemnify, and hold harmless the City, its officers, employees, and agents from any and all liabilities which may accrue against the City, its officers, employees, and agents or any third party for any and all lawsuits, claims, demands, losses, or damages alleged to have arisen from an act or omission of Developer and/or Leasehold Owner in performance of this Agreement or from Developer's and/or Leasehold Owner’s failure to perform this Agreement using ordinary care and skill, except where such injury, damage, or loss was caused by the sole negligence of the City, its agents or employees.

Developer and Leasehold Owner shall save, indemnify, and hold the City harmless from the cost of the defense of any claim, demand, suit, or cause of action made or brought against the City alleging liability referenced above, including, but not limited to, costs, fees, reasonable attorney fees, and other expenses of any kind whatsoever arising in connection with the defense of the City; and
Developer and Leasehold Owner shall assume and take over the defense of the City in any such claim, demand, suit, or cause of action upon written notice and demand for same by the City. Developer and Leasehold Owner will have the right to defend the City with counsel of their choice that is satisfactory to the City, and the City will provide reasonable cooperation in the defense as Developer and Leasehold Owner may request. Developer and Leasehold Owner will not consent to the entry of any judgment or enter into any settlement with respect to an indemnified claim without the prior written consent of the City, such consent not to be unreasonably withheld or delayed. The City shall have the right to participate in the defense against the indemnified claims with counsel of its choice at its own expense.

Developer and Leasehold Owner shall save, indemnify, and hold City harmless and pay judgments that shall be rendered in any such actions, suits, claims, or demands against City alleging liability referenced above.

The indemnification and hold harmless provisions of this Agreement shall survive termination of the Agreement.

22. HOME Match. The funding provided through this Agreement is intended to be recognized as a HOME matching contribution pursuant to 24 C.F.R. Part 92 Subpart E.


A. INDEPENDENT CONTRACTOR. The Developer and the Leasehold Owner shall perform all obligations under this Agreement as an independent contractor; neither they nor their employees shall be considered employees, partners, or agents of the City, nor shall they or their employees be entitled to any benefits, insurance, pension, or workers’ compensation as an employee of the City.

B. ASSIGNMENT. Neither the Developer, nor the Leasehold Owner, shall assign or transfer any interest in this Agreement without obtaining the prior written approval of the City.

C. SUBCONTRACTS TO THE AGREEMENT. Neither Developer nor Leasehold Owner may enter into a subcontract for any of the services performed under this Agreement without obtaining the prior written approval of the City.

D. WRITTEN AMENDMENTS. This Agreement may be modified only by a written amendment or addendum that has been executed and approved by the appropriate officials shown on the signature page of this Agreement.

E. REQUIRED APPROVALS. No party to this Agreement is bound by this Agreement until it is approved by the appropriate officials shown on the signature page of this Agreement.

F. ARTICLE CAPTIONS. The captions appearing in this Agreement are for convenience only and are not a part of this Agreement; they do not in any way limit or amplify the provisions of this Agreement.

G. SEVERABILITY. If any provision of this Agreement is determined to be unenforceable or invalid, such determination shall not affect the validity of the other provisions.
contained in this Agreement. Failure to enforce any provision of this Agreement does not affect the
rights of the parties to enforce such provision in another circumstance, nor does it affect the rights of
the parties to enforce any other provision of this Agreement at any time.

H. **FEDERAL, STATE AND LOCAL REQUIREMENTS.** The Developer and
Leasehold Owner are responsible for full compliance with all applicable federal, state, and local laws,
rules and regulations.

I. **NO BENEFIT FOR THIRD PARTIES.** The services to be performed by the
Developer and/or Leasehold Owner pursuant to this Agreement with the City are intended solely for
the benefit of the City, and no benefit is conferred hereby, nor is any contractual relationship
established herewith, upon or with any person or entity not a party to this Agreement. No such person
or entity shall be entitled to rely on the Developer’s and/or Leasehold Owner’s performance of their
services hereunder, and no right to assert a claim against the City or the Developer, the Leasehold
Owner, or their officers, employees, agents or contractors shall accrue to the Developer, the Leasehold
Owner or to any subcontractors, independently retained professional consultants, suppliers,
fabricators, manufacturers, lenders tenants, insurers, sureties or any other third party as a result of this
Agreement or the performance or non-performance of the Developer’s and/or Leasehold Owner’s
services hereunder.

J. **NON-RELIANCE OF PARTIES.** Parties explicitly agree that they have not relied
upon any earlier or outside representations other than what has been included in this
Agreement. Furthermore, no party has been induced to enter into this Agreement by anything other
than the specific written terms set forth herein.

K. **FORCE MAJEURE.** No party shall be liable to another for any delay or failure to
perform any of the services or obligations set forth in this Agreement due to causes beyond their
reasonable control, and performance times shall be considered extended for a period of time
equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties
to recommence performance of their respective obligations hereunder. Should a circumstance of
force majeure last more than ninety (90) days, a party may by written notice to the other terminate this
Agreement. The term “force majeure” as used herein shall mean the following: acts of God; strikes,
lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of
the government of the United States or of the State or any of their departments, agencies or officials,
or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes,
droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any
other cause or event not reasonably within the control of any party.

L. **EEO/AA.** The City of Knoxville is an EEO/AA/Title VI/Section 504/
ADA/ADEA Employer.

M. **GOVERNING LAW AND VENUE.** This Agreement shall be governed and
construed in accordance with the laws of the State of Tennessee. Any action for breach of this
Agreement or to enforce or nullify any provision of this agreement shall be instituted only in a court
of appropriate jurisdiction in Knox County, Tennessee.
N. **ENTIRE AGREEMENT.** This Agreement forms the entire Agreement between the City and the Developer. Any prior representations, promises, agreements, oral or otherwise, between the parties, which are not embodied in this writing, shall be of no force or effect.

O. **NOTICES.** Notices to the parties under this Agreement, the Leasehold Deed of Trust, the Promissory Note, the Restrictive Agreement, the Unlimited and Unconditional Guaranty of Payment and Performance, and all other documents related thereto shall be delivered to Developer and Lender at the addresses set out in the heading to this Agreement with copies to Leasehold Owner’s investor limited partner at: TCC Moss Grove, LLC, c/o Truist Community Capital, LLC, 303 Peachtree Street, NE, Suite 2200, Mail Code GA-ATL-0243, Atlanta, Georgia 30308. Copies of all notices shall also be sent to Holland and Knight LLP, 10 St. James Avenue, Boston, Massachusetts 02116, Atten: Dayna M. Hutchins, Esq.. Leasehold Owner’s investor limited partner shall have the right, but not the obligation, to tender a cure of any defaults by Developer or the Leasehold Owner under any of the documents referenced herein to the same extent as if such cure had been tendered by Developer or Leasehold Owner, as the case may be.

**IN WITNESS WHEREOF,** this Agreement has been duly executed and delivered and is effective on the latest of the dates set forth below.

**DEVELOPER:**

ECG MOSS GROVE SLP, LLC

**BY:** ________________________________  
Hunter Nelson, Managing Member

**LEASEHOLD OWNER:**

ECG MOSS GROVE, L.P.

**By:** ECG MOSS GROVE SLP, LLC, its Special Limited Partner

**BY:** ________________________________  
Hunter Nelson, Managing Member

**APPROVED AS TO FORM:**

CITY OF KNOXVILLE

_____________________________  
CHARLES W. SWANSON  
DIRECTOR OF LAW

_____________________________  
INDYA KINCAPANNON  
MAYOR
STATE OF TENNESSEE )
COUNTY OF KNOX )

Before me, a Notary Public in and for the County and State aforesaid, personally appeared Indya Kincannon, with whom I am personally acquainted, and who, upon oath, acknowledged herself to by the Mayor of the City of Knoxville, a municipal corporation, and being so authorized, executed the foregoing instrument for the purposes contained therein.

WITNESS my hand and official seal this ___ day of __________________, 2020.

My Commission Expires: ________________

NOTARY PUBLIC

STATE OF TENNESSEE )
COUNTY OF KNOX )

Before me, a Notary Public in and for Knox County, Tennessee, personally appeared Hunter Nelson, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that as the Managing Member of ECG Moss Grove SLP, LLC, is authorized to do so, executed the within instrument for the purposes therein contained.

WITNESS my hand and seal this ___ day of __________________, 2020.

My commission expires: ________________

NOTARY PUBLIC

STATE OF TENNESSEE )
COUNTY OF KNOX )

Before me, a Notary Public in and for Knox County, Tennessee, personally appeared Hunter Nelson, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that as the Managing Member of ECG MOSS GROVE, LP, the special limited partner of ECG MOSS GROVE, LP, is authorized to do so, executed the within instrument for the purposes therein contained.

WITNESS my hand and seal this ___ day of __________________, 2020.

My commission expires: ________________

NOTARY PUBLIC

R:\GShields\Community Development\Affordable Rental Development Fund\ECG Moss Grove SLP LLC\C-20-0189 Affordable Rental Development Program Agreement w-Geo & DB changes.docx