

Debie Zitzelberger

From: Debie Zitzelberger
Sent: Wednesday, August 08, 2012 4:17 PM
To: 'clyde@hollandpartners.net'; Gary Vance (gvance@hollandpartners.net)
Cc: 'Dan Dias'; rich_hobernicht@co.washington.or.us; Vince Chiotti (vince.chiotti@state.or.us)
Subject: Wrap Site Development at Orenco Station - Conditional Confirmation of Prospective Vertical Housing Certification
Attachments: WrapSiteConditionalApproval.pdf; Sample PUA.pdf

Congratulations. Attached is the Department's Conditional Confirmation that the proposed project appears to meet the Vertical Housing criteria. If the project is built as proposed and the conditions outlined in the attached letter are met, the project may be eligible for a 60% partial property tax exemption on the improvements.

Also attached is a sample copy of the project use agreement the Department will provide to the developer to record against the property when construction is complete.

If you have questions, please e-mail me your questions and I will respond.

Debie Zitzelberger, Loan Officer
Multifamily Finance and Resources Section
Oregon Housing & Community Services
725 Summer Street NE, Suite B
Salem OR 97301-1271
phone: (503) 986-2038
e-mail: debie.zitzelberger@state.or.us



Oregon

John A. Kitzhaber, MD, Governor



Housing and Community Services

North Mall Office Building
725 Summer Street NE, Suite B
Salem, OR 97301-1266
(503) 986-2000



FAX (503) 986-2020
TTY (503) 986-2100

www.ohcs.oregon.gov

August 8, 2012

Clyde Holland
Orengo Station Wrap Investors
1111 Main Street, Suite 700
Vancouver WA 98660

RE: Conditional Confirmation of Prospective Certification
Wrap Site Development at Orengo Station

Dear Mr. Holland:

Oregon Housing and Community Services (OHCS) has received and reviewed the Vertical Housing Project Application for the **Wrap Site Development at Orengo Station** new construction development located at 1060 NW 231st Avenue, Hillsboro, Oregon. OHCS concludes the Wrap Site Development at Orengo Station meets threshold criteria for applying for the partial property tax exemption and is eligible for conditional confirmation of prospective certification of the project pending construction completion as provided under OAR 813-013-0035(15). The potential partial property tax exemption may be 60% assuming the project is constructed and rented up as proposed. Final certification can occur when OHCS has received and approved the following:

1. In order to develop the property, the developer is consolidating the property into one tax lot which will be the Vertical Housing development site. When the consolidation is complete, provide OHCS with a copy of the final approval, the recorded consolidation, the tax lot number for the one consolidated parcel, the tax account number, the property address for the consolidated parcel, and the legal description for the consolidated parcel.
2. A copy of the title report for the consolidated parcel, including the new legal description.
3. After the parcels are consolidated, provide a copy of the survey showing one parcel, easements, encroachments and the footprint of the building(s).
4. For a project with a site that has frontage on more than one public street, the developer must designate one of the public streets as the Project's primary public street. One-hundred percent (100%) of the Project's primary public street fronting ground floor facade must be committed to non-residential use. Please identify the primary street, identify the uses along that frontage, and provide a floor plan showing the uses.
5. Identify the entity that will be on title to the property once constructed and will be the borrower on the loan.
6. Within 10 days of receipt, provide a copy of the Certificate of Occupancy (this can be the temporary Certificate).
7. At completion of construction, provide an updated site plan and architectural pages that show the final "as built" square footages. OHCS will use this information to independently calculate the equalized floors eligible for a partial property tax exemption.
8. At completion of construction, provide an updated Application for Certification form reflecting updated project, applicant, property owner, target population, project site, unit mix, and sign the updated form.

9. For your information, attached is a sample Project Use Agreement (PUA) that is non-negotiable. Upon satisfaction of meeting all Program requirements, OHCS will issue an original Certification and a Project Use Agreement to the developer. The developer will be responsible for executing and recording the Project Use Agreement, providing satisfactory evidence that the document was property recorded within 10 days of receipt, and return of the original Agreement to OHCS. All associated recording costs are the responsibility of the owner.

It is the developer's responsibility to contact the County Tax Assessor's office on or before April 1 preceding the first tax year for which the partial property tax exemption is sought to request the partial property tax exemption. The developer is to present a copy of the Certification, copies of the Certificate(s) of Occupancy, a copy of the final Vertical Housing application, and any other information the County Assessor may request in order to begin claiming the partial property tax exemption. ***Allow at least 60 days prior to this date for the Department to issue the Certificate.*** The partial property tax exemption will run for a maximum term of 10 years. Any change in the use of the project during the term of the exemption (as described in the final Vertical Housing application) may result in disqualification of the partial property tax exemption.

I look forward to receiving the information noted above in order to qualify the project for a partial property tax exemption under the Vertical Housing Program. If you have any questions about the status of your Application or would like further information about the Program, please contact me at (503) 986-2038 or debie.zitzelberger@state.or.us.

Sincerely,



Debie Zitzelberger, Loan Officer
Multifamily Finance and Resources Section

c: Gary Vance, Holland Partners Group
Dan Dias, City of Hillsboro
Rich Hobernich, Washington County Assessor
Vince Chiotti, OHCS Regional Advisor

Attachment: Sample Project Use Agreement

RETURN TO:
Oregon Housing and Community
Services Department
725 Summer Street NE, Suite B
Salem, Oregon 97301-1271
Attn: Housing Finance Section

SAMPLE

SPACE ABOVE FOR RECORDER'S USE

**HOUSING AND COMMUNITY SERVICES DEPARTMENT
STATE OF OREGON**

**PROJECT USE AGREEMENT, DECLARATION OF RESTRICTIVE COVENANTS
AND EQUITABLE SERVITUDE**

VERTICAL HOUSING DEVELOPMENT PROGRAM

THIS PROJECT USE AGREEMENT, DECLARATION OF RESTRICTIVE COVENANTS AND EQUITABLE SERVITUDE (the "Agreement") is made and entered into this _____ day of _____, _____, by and between [NAME OF RECIPIENT] (the "Recipient") and the State of Oregon, acting by and through its Housing and Community Services Department (the "Department").

PURPOSE

The Department desires to make available to the Recipient a certification for a 10-year partial tax exemption on a Certified Vertical Housing Development Project, to stimulate the development of the housing project known as [NAME] (the "Project") located in [CITY], Oregon. The legal property description of said Project is set forth in Exhibit A, which also is attached hereto and incorporated herein by reference.

The Recipient is willing to receive the Certification, to satisfy the conditions thereof, and to execute and record this Agreement for the purpose, in part, of creating restrictive covenants and an equitable servitude that shall run with the Project land and bind any and all subsequent owners of the Project for the term of this Agreement.

AGREEMENT

In consideration of the above purposes and of the representations, covenants, warranties and agreements set forth herein, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows in order to ensure that the Project will be operated in accordance with this Agreement and that the following covenants, restrictions and charges shall run with the land and shall be binding and a burden upon the Project, and all portions thereof, and upon any purchaser, grantee, owner or lessee of any portion of the Project and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, owner or lessee of any portion of the Project and any other person or entity having any right, title or interest therein, for the length of time that this Agreement shall be in effect.

SECTION 1. REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE RECIPIENT CONCERNING USE OF THE CERTIFICATION AND MAINTENANCE OF PROJECT AS A CERTIFIED VERTICAL HOUSING DEVELOPMENT PROJECT. Recipient hereby represents, covenants, warrants and agrees that:

- a. Recipient will maintain the mixed residential and non-residential uses of the Certified Project for a period of 10 years (the "Compliance Period") from the first year the county assessor first partially exempts the project from the specified ad valorem taxes as certified. Mix of residential and non-residential uses shall remain as proposed in the Project Application as identified in Exhibit B.

SAMPLE

- b. Certified Use of the project is restricted to a total of [enter total number of eligible floors] eligible floors.
- c. [~~L.O. complete if a portion of the project is affordable, or delete this ¶ if not~~] Of the total eligible floors, [enter affordable number of eligible floors] of the floors are restricted to affordable households earning no greater than 80% of the area median income, adjusted by family size, as determined by the Department based upon information from the U. S. Department of Housing and Urban Development.
- d. [~~L.O. complete if a portion of the project is affordable, or delete this ¶ if not~~] The Recipient is entitled to a partial tax exemption on the land due to the inclusion of low-income housing units in the project. This partial exemption is based on a [insert the percentage of land use exempted] % percent affordable land use partial exemption.
- e. Recipient will comply, and will cause its agents, employees, contractors, subgrantees and assigns, if any, to comply with the terms and conditions of this Agreement and all otherwise applicable laws (including, without limitation, all applicable federal, state and local statutes, rules, regulations, ordinances and orders affecting the Project or activities related thereto).

SECTION 2. COVENANTS TO RUN WITH THE LAND; EQUITABLE SERVITUDE. The Recipient represents, covenants, warrants and agrees that:

- a. The Department is making the Certification to the Recipient as an inducement to the Recipient to develop and operate the Project in accordance with the terms of this Agreement. In consideration of the receipt of the Certification, the Recipient has entered into this Agreement with the Department and has agreed to restrict the use of the Project during the Exemption Period as set forth in this Agreement.
- b. The covenants, restrictions, and charges set forth herein with respect to the Project shall be deemed restrictive covenants running with the Project land and also shall be deemed an equitable servitude running with the Project land. These restrictive covenants and equitable servitude shall pass to and be binding upon the Recipient's successors in title including any purchaser, grantee or lessee of any portion of the Project, shall pass to and be binding upon the respective heirs, executors, administrators, devisees, successors and assigns of the Recipient or any purchaser, grantee or lessee of any portion of the Project and shall pass to and be binding upon any other person or entity having any right, title or interest in the Project. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein shall contain an express provision making such conveyance subject to the covenants, restrictions, and charges contained herein; provided, however, that any such contract, deed or instrument shall conclusively be held to have been executed, delivered and accepted subject to such covenants, restrictions and charges regardless of whether or not such covenants, restrictions and charges are set forth or incorporated by reference in such contract, deed or instrument.

SECTION 3. BURDEN AND BENEFIT. The parties hereby declare their understanding and intent that the burdens of the covenants, restrictions, and charges set forth herein touch and concern the Project land and that the Recipient's legal interest in the Project may be rendered less valuable thereby. The parties further declare their understanding and intent that the benefits of such covenants, restrictions, and charges touch and concern the Project land by enhancing and increasing the enjoyment and use of the owners and tenants of the equivalent floors, the intended beneficiaries of such covenants, restrictions, and charges and by furthering the public purposes for which the partial exemption is certified.

SECTION 4. COMPLIANCE REPORTING. The Parties hereby agree that Recipient will provide an annual certification, in a format and on a schedule approved by the Department in its sole discretion, that the Recipient is fulfilling its obligations under this Agreement. The Department may inspect the Project, and any part thereof, and may inspect and copy all records of the Project, upon reasonable notice to the Recipient. The Recipient, its agents, employees, and subcontractors will cooperate fully with the Department in any requested inspection or compliance monitoring.

SECTION 5. SUBORDINATION. The parties agree that this Agreement and the restrictive covenants and equitable servitude created hereunder is subordinated to the lien of Recipient's primary financing loan. The Department, at its sole discretion, may subordinate this Agreement to other financing on the Project.

SAMPLE

SECTION 6. TERM OF AGREEMENT. The parties agree that this Agreement and the restrictive covenants and equitable servitude created hereunder shall become effective upon execution of this Agreement and shall remain in full force and effect for the 10-Year Partial Exemption Period (Compliance Period). Notwithstanding any other provision of this Agreement, this Agreement shall terminate and be of no further force and effect in the event of a completed foreclosure by the primary financing lender or by a lender to whom the Department has subordinated this Agreement, or their successors or assigns, or in the event of a delivery by the Recipient of a deed for the Project to the primary financing lender in lieu of foreclosure, or to a lender to whom the Department has subordinated this Agreement, or their successors or assigns.

SECTION 7. TERMINATION. The Department may terminate this Agreement, without further liability, immediately upon notice to the Recipient:

- a. If the Recipient fails to perform or breaches any of the terms of this Agreement; or
- b. If the Recipient is unable or fails to commence the Project within six (6) months from the date of this Agreement;
- c. If the Department loses the authority to administer the Program, is determined by its counsel or otherwise as lacking the authority to administer the Program, or fails to receive or loses necessary funding, appropriations, limitations or other expenditure or position authority sufficient to carry out the terms of this Agreement; or

SECTION 8. REMEDIES. If the Recipient defaults in the performance or observance of any covenant, agreement, or obligation set forth in this Agreement and if such default remains uncured for a period of 30 days (or such shorter period as the Department may indicate in its notice) after the notice thereof shall have been given by the Department to the Recipient, then the Department, at its option, may take any one or more of the following steps:

- a. Have access to and inspect, examine and make copies of all of the books and records of the Recipient pertaining to the Project;
- b. May decertify the project or a portion thereof;
- c. Take such other action under this Agreement, at law or in equity as may appear necessary or desirable to the Department to enforce the covenants, agreements, warranties, and obligations of the Recipient hereunder.

No waiver or delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any person entitled to enforce the same to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times.

SECTION 9. RECORDING AND FILING. The Recipient shall cause this Agreement and all amendments and supplements hereto to be recorded and filed in the real property records of the county in which the Project is located and in such other places as the Department may reasonably request. The Recipient shall pay all fees and charges incurred in connection with any recording. The Recipient shall provide either the original recorded document or a certified copy of the recorded document within ten days of the date of this agreement.

SECTION 10. GOVERNING LAW; VENUE. This Agreement shall be governed by the laws of the State of Oregon. The courts of the State of Oregon, or to the degree necessary, the U.S. District Court for the District of Oregon shall have exclusive jurisdiction over any action brought by or against the Department under this Agreement. The Recipient hereby consents to such exclusive jurisdiction and waives any and all objections it might have thereto.

SECTION 11. AUTHORITY. Recipient hereby represents, warrants and certifies that:

- a. It possesses legal authority to apply for and accept the terms and conditions of the Certification and to carry out the proposed Project;
- b. Its governing body, if any, has duly authorized the filing of the application, including all understandings and assurances contained therein;

SAMPLE

- c. The person identified as the official representative of the Recipient in the application is duly authorized to act in connection therewith and to provide such additional information as may be required. The Recipient's official representative has sufficient authority to make all certifications on its behalf;
- d. This Agreement does not and will not violate any provision of any applicable law, rule, regulation or order of any court, regulatory commission, board or administrative agency applicable to the Recipient or any provision of the Recipient's organic laws or documents;
- e. This Agreement has been duly executed by an official representative of Recipient, delivered by Recipient, and will constitute the legal, valid and binding obligations of the Recipient, enforceable in accordance with their terms.

SECTION 12. INDEPENDENT CONTRACTOR. Recipient acknowledges and agrees that it is acting in its own independent capacity under this Agreement and not as an agent or subcontractor for the Department. Grantee assumes full responsibility for its own actions and shall provide for its own insurance and other compliance responsibilities, including providing for its own workers' compensation and other insurance coverage, as needed.

SECTION 13. AMENDMENTS. This Agreement may be amended only by a written instrument executed by the parties hereto or by their successors and duly recorded in the real property records of the County.

SECTION 14. SEVERABILITY. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

SECTION 15. CONSTRUCTION. The parties to this Agreement acknowledge that each party and its counsel have participated in the drafting and revision of this Agreement. Accordingly, the parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment, modification, supplement or restatement of the foregoing or of any exhibit to this Agreement.

SECTION 16. NO LIMITATIONS ON ACTIONS OF ISSUER IN EXERCISE OF ITS GOVERNMENTAL POWERS. Nothing in this Agreement is intended, nor shall it be construed, to in any way limit the actions of the Department in the exercise of its governmental powers. It is the express intention of the parties hereto that the Department shall retain the full right and ability to exercise its governmental powers with respect to the Recipient, the Project, the land, and the transactions contemplated by this Agreement to the same extent as if it were not a party to this Agreement or the transactions contemplated thereby, and in no event shall the Department have any liability in contract arising under this Agreement by virtue of any exercise of its governmental powers.

SECTION 17. TIME IS OF THE ESSENCE. Time is of the essence in the performance of the obligations of this Agreement.

SECTION 18. NOTICES. Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery or first class mail, postage prepaid, at the addresses specified below, or at such other addresses as may be specified in writing by the Department or the Recipient:

To the Department: Oregon Housing and Community Services Department
725 Summer Street NE, Suite B
Salem, Oregon 97301-1271
Attention: Asset & Property Management Division
Vertical Housing Program Monitoring

To the Recipient: [REDACTED]

SAMPLE

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

RECIPIENT:

DEPARTMENT:

[FULL NAME]

STATE OF OREGON acting by and through its Housing and Community Services Department.

By: _____

By: _____

Title: _____

Title: _____

STATE OF OREGON)
) ss:
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by _____, who is a _____ of _____, on behalf of the Recipient.

Notary Public for the State of Oregon
My commission expires: _____

STATE OF OREGON)
) ss:
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by _____, who is a _____ of the Oregon Housing and Community Services Department, on behalf of the Department.

Notary Public for the State of Oregon
My commission expires: _____

SAMPLE

EXHIBIT A

LEGAL DESCRIPTION OF THE PROJECT

SAMPLE

EXHIBIT B

MIX OF RESIDENTIAL & NON-RESIDENTIAL SQUARE FOOTAGES

[Attach copy of VHD Project Square Footage Certification page,
Project Summary of Buildings page, AND
Project - Buildings by Floor by Use square footage page]