AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Loan Agreement; Promissory Note; Gunnison Valley R

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Please see the attached documentation that was provided by GVRHA Director Karl Fulmer.

Fiscal Impact: Up to $100,000

Submitted by: Katherine Haase **Submitter's Email Address:** khaase@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
Funds available derived from workforce impact fees to meet the requirements of this agreement.

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 8/6/2015

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok db 8/7/15

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 8/7/2015 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 8/7/2015

( ) Consent Agenda (●) Regular Agenda ( ) Worksession Time Allotted: 5

Agenda Date: 8/11/2015

Revised April 2015

PROMISSORY NOTE

Principal Amount: $100,000.00 July ___, 2015
Gunnison, Colorado

FOR VALUE RECEIVED, the undersigned, Gunnison Valley Regional Housing Authority, a Colorado multijurisdictional housing authority ("Maker"), whose address is 202 East Georgia Avenue, Gunnison, Colorado 81230, hereby promises to pay to GUNNISON COUNTY, a Colorado governmental subdivision ("Holder"), or its successors and assigns, at 200 E. Virginia Ave, Gunnison, CO 81230, or at such other place or to such other party or parties as Holder may from time to time designate in writing to Maker, the principal sum of ONE HUNDRED THOUSAND and No/100 DOLLARS ($100,000.00) (the "Loan") pursuant to the terms of this Promissory Note (this "Note") for advances made pursuant to that certain Loan Agreement dated as of the date hereof, by and between Holder and Maker (as amended from time to time, the "Loan Agreement"). Subject to the provisions hereof, and the terms of the Loan Agreement, the outstanding unpaid principal balance of this Note shall be due and payable the later of (a) the start of the Operating Deficit Loan Period (as defined in that certain Amended and Restated Operating Agreement of Anthracite Place Apartments, LLC (the "Operating Agreement")) or (b) the payment of all adjusters pursuant to Section 5.01 of the Operating Agreement (the later of said two dates being deemed the "Maturity Date"). Payments under this Note shall be as set forth below:

1. The amount payable under this Note shall be reduced on a dollar-for-dollar basis for all amounts paid by Maker pursuant to that certain Unconditional Guaranty made by Maker in favor of U.S.A. Institutional Tax Credit Fund XCVIII, L.P., a Delaware limited partnership (the "Guaranty"), Interest shall accrue on the unpaid principal balance of this Note from and after the date disbursed without regard to any reduction in the principal amount payable pursuant to the immediately preceding sentence. At the Maturity Date all principal (subject to reduction as provided in this Section 1) and accrued interest which are unpaid and any other amounts due hereunder shall be due and payable in one lump sum.

2. All payments shall be paid without set off or counterclaim for any reason whatsoever, and shall be applied first to the reduction of amounts (such as late fees), if any, other than interest due hereunder, then to interest accrued to the date such payment is received, and the balance to principal.

3. All payments shall be made to Holder at the address shown above or at such other place as the Holder shall have designated to Maker in writing.

4. This Note is an unsecured promissory note.

5. The following shall constitute an "Event of Default" under this Note:

(a) Failure to make payment of any installment of principal or other payment required pursuant to this Note within ten (10) days of the date required to be paid in accordance with the terms hereof; or

(b) Default in the performance or observance of any covenant contained in this Note or the Loan Agreement which shall continue for sixty (60) days after notice thereof to Maker.

6. In the event of an uncured Event of Default after proper notice and opportunity to cure, then the Holder may exercise any one or more of the rights and remedies available by law, in equity, or otherwise.

7. This Note may not be assumed by anyone at any time without the prior written consent of Holder and Maker.

8. Holder may not seek to satisfy the deficiency from the assets of Maker's manager, members or affiliates. This Note and Maker's liability hereunder shall impose no personal liability on any partners, managers, members, shareholders and their successors, assigns, heirs, administrators and personal representatives for payment of this Note.

9. Maker may prepay its obligation under this Note in full or in part without penalty or premium.

10. No officer, employee or partner of Maker shall be personally liable for the payment of the indebtedness evidenced by this Note, the Loan Agreement or any other loan documents, and any judgment or decree in any action brought to enforce the obligation of Maker to pay the indebtedness will be enforceable only against Maker.

11. Maker agrees as follows:

(a) The proceeds of the Loan shall be used to satisfy any obligations under the Guaranty only after the Owner's Contingency in the amount of $232,500 and the Contractor's Contingency in the amount of $106,750 have been exhausted.

(b) The proceeds of the Loan shall be used to satisfy obligations arising under the Guaranty on a *pro rata* basis with the proceeds of that certain loan in the principal amount of $400,000 from the Gunnison Valley Housing Foundation, a Colorado nonprofit corporation (the "GVHF Loan"). For example, in the event obligations arise under the Guaranty which are $100,000 in excess of the Owner's Contingency and the Contractor's Contingency, such obligations shall be funded (a) $20,000 from proceeds of the Loan, and (b) $80,000 from proceeds of the GVHF Loan.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, Maker has caused this note to be executed on the date first written above.

Gunnison Valley Regional Housing Authority,
a Colorado multijurisdictional housing authority

By:_____
Name: Karl Fulmer
Title: Executive Director

[Signature page to Promissory Note ($100,000)]

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LOAN AGREEMENT

THIS LOAN AGREEMENT (this "Agreement") is made to be effective as of the __ day of July, 2015, between and among GUNNISON VALLEY REGIONAL HOUSING AUTHORITY, a Colorado multijurisdictional housing authority ("Borrower") and GUNNISON COUNTY, a Colorado government body ("Lender").

W I T N E S S E T H :

WHEREAS, Borrower is the manager and sole member of Anthracite Place (Manager), LLC, a Colorado limited liability company, which is the manager and sole member of Anthracite Place Apartments, LLC, a Colorado limited liability company (the "Owner"), which is the owner of the real property more particularly described on Exhibit A attached hereto (the "Property")

WHEREAS, and Borrower intends to construct a 30-unit affordable housing project for low-income residents and related improvements on the Property (the "Project").

WHEREAS, Borrower has requested that Lender lend it the principal amount of up to ONE HUNDRED THOUSAND DOLLARS ($100,000.00) (the "Loan") to be used by Borrower for the purposes set forth herein, upon the terms and conditions provided herein and Lender agrees to advance such Loan amount.

NOW, THEREFORE, in consideration of the promises and the mutual and dependent covenants hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
THE LOAN

Section 1.1 Amount. Upon the closing of the Loan, and subject to the terms and conditions of this Agreement, Lender agrees to make available to advance to Borrower Loan proceeds in an amount up to $100,000.00 for purposes of satisfying a net worth requirement pursuant to that certain Unconditional Guaranty made by Borrower in favor of U.S.A. Institutional Tax Credit Fund XCVIII, L.P., a Delaware limited partnership (the "Investor Guaranty"). The Loan proceeds shall be advanced in accordance with the terms and conditions of this Agreement.

Section 1.2 Note. The Loan shall be evidenced by a Promissory Note executed by Borrower (the "Note") payable to Lender, or its order, on the dates and in the manner set forth in the Note.

Section 1.3 Purpose of, and Use of Proceeds of, the Loan. The proceeds of the Loan shall be used to satisfy the requirements of the Investor Guaranty. The units at the Project are intended to provide affordable, quality housing for low-income residents of Gunnison County, Colorado.

Section 1.4 Loan Repayment. All Loan payments are to be sent to: GUNNISON COUNTY c/o Gunnison County Finance Department, 200 E. Virginia Ave, Gunnison, CO 81230, or such other place as Lender may from time to time designate.

Section 1.5 Interest. No interest is due or payable on this loan.

Section 1.6 Loan Documents. This Agreement, the Note and any financing statements are referred to herein collectively as the "Loan Documents".

Section 1.7 Closing Expenses. All closing expenses shall be paid by Borrower, including, but not limited to, all recording and transfer fees, taxes, title and other insurance premiums, Borrower's attorneys' fees, and survey fees.

ARTICLE II
INTENTIONALLY OMITTED

ARTICLE III
CONDITIONS OF LENDER'S OBLIGATIONS

Section 3.1 Conditions Precedent to Disbursements. Lender shall not be obligated to advance any portion of the Loan proceeds unless and until each of the requirements set forth in this Agreement and each of the following conditions have been satisfied in a manner satisfactory to Lender in its reasonable discretion:

a. Delivery of a Borrowing Resolution from the manager of Borrower (and from the other members, if member consent is required under the Borrower's Operating Agreement), approving the Loan and authorizing the manager to execute the Loan Documents and authorizing Karl Fulmer, as Executive Director of Gunnison Valley Regional Housing Authority, a political subdivision of the State of Colorado, the sole member of the manager of the of Borrower, to execute the Loan Documents on behalf of Borrower;

b. Execution of the Note by Borrower and delivery to Lender;

c. Borrower shall have delivered such other documents as Lender may have reasonably requested; and

d. There shall be no defaults then existing, or which would exist with the giving of any applicable notice and the expiration of any applicable grace period, under any of the Loan Documents.

ARTICLE IV
INTENTIONALLY OMITTED

ARTICLE V
INTENTIONALLY OMITTED

ARTICLE VI
DEFAULT

Section 6.1 Events of Default. If one or more of the events set forth in this Section 6.1 (each such event being herein called an "Event of Default") shall occur, Lender shall have the rights and remedies set forth in Section 6.2 hereof.

a. Failure to make payment of any installment of principal or other payment required pursuant to the Note within ten (10) days of the date required to be paid in accordance with the terms of the Note; or

b. Default in the performance or observance of any covenant contained in this Agreement or the Note which shall continue for sixty (60) days after notice thereof to Borrower.

Section 6.2 Rights and Remedies on Default. If any Event of Default shall occur, Lender may exercise all or any of the remedies provided in this Agreement, the Note, or the Loan Documents, or provided by law or equity.

ARTICLE VII
MISCELLANEOUS

Section 7.1 Rights of Third Persons. All conditions of Lender hereunder are imposed solely and exclusively for the benefit of Lender and its successors and assigns, and no other person shall have standing to require satisfaction of such conditions or be entitled to assume that Lender will make disbursements either upon or in the absence of strict compliance with any or all thereof, and no other person shall, under any circumstances, be construed to be a beneficiary of this Agreement or of the Loan Documents, any provisions of which may be freely waived in whole or in part by Lender at any time in its sole discretion. In particular, Lender makes no representations and assumes no duties or obligations as to third persons concerning the quality of the construction of the Project or the absence therefrom of defects.

Section 7.2 Intentionally omitted.

Section 7.3 Lender Not Obligated to Insure Proper Disbursement of Funds to Third Persons. Nothing contained in this Agreement or any Loan Document, shall impose upon Lender any obligation to oversee the proper use or application of any disbursements.

Section 7.4 Borrower not Lender's Agent. Nothing in this Agreement or any other Loan Document shall be construed to make Borrower Lender's agent for any purpose whatsoever, or Borrower and Lender partners, or joint or co-venturers, and the relationship of the parties shall, at all times, be that of debtor and creditor.

Section 7.5 Continuing Liability of Borrower for Underlying Obligations. Anything herein to the contrary notwithstanding, (i) Borrower shall remain liable under its contracts and agreements with respect to the Project to the extent set forth therein to perform all of Borrower's duties and obligations thereunder to the same extent as if this Agreement had not been executed, (ii) the exercise by Lender of any of the rights hereunder shall not release Borrower from any of

its duties or obligations under its contracts and agreements with respect to the Project, and (iii) Lender shall not have any obligation or liability under such contracts and agreements by reason of this Agreement, nor shall Lender be obligated to perform any of the obligations or duties of Borrower thereunder.

Section 7.6 Notices. All notices, requests, consents, waivers and other communications given under any of the provisions of this Agreement shall be in writing and shall be deemed given when delivered or mailed and if mailed, then first class postage prepaid, registered or certified mail, return receipt requested, and addressed as follows:

If to **Lender**, at:

Gunnison County
c/o Gunnison County Finance Department
200 E. Virginia Ave
Gunnison, CO 81230

If to **Borrower**, at:

Gunnison Valley Regional Housing Authority
202 East Georgia Avenue
Gunnison, Colorado 81230
Attn: Karl Fulmer

with a copy to:

Holland & Hart LLP
1800 Broadway, Suite 300
Boulder, Colorado 80302
Attn: Christopher A. Gunlikson

Section 7.7 Entire Agreement; Modifications. This Agreement, the Note and the Loan Documents, and the exhibits and schedules hereto and thereto, contain the entire agreement of the parties hereto with respect to the transactions contemplated hereby, and no change, modification or waiver of any provision hereof or thereof shall be valid unless in writing and signed by the party to be bound.

Section 7.8 No Waiver. No delay or failure on the part of Lender in exercising any rights or remedies hereunder or under the Note or the Loan Documents and no partial or single exercise thereof, shall constitute a waiver of such rights or of any other rights or remedies hereunder or under any of such instruments.

Section 7.9 Applicable Law. Borrower agrees that this Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of Colorado, exclusive of its conflicts of law rules.

Section 7.10 Survival of Representations, Warranties and Agreements. All representations, warranties and agreements herein shall survive until the expiration of the term of this Agreement and payment of the Note issued hereunder, except to the extent that a representation, warranty, agreement or provision expressly provides otherwise.

Section 7.11 Severability. If any provision of this Agreement shall for any reason be held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such illegal, invalid or unenforceable provision had never been contained herein.

Section 7.12 Successors and Assigns. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party.

Section 7.13 No Assignment. Notwithstanding anything to the contrary herein, the Note may not be pledged, transferred or assigned by the Lender without the prior written consent of the Borrower.

Section 7.14 Counterparts. The parties may execute two or more counterparts of this Agreement, each of which shall constitute one and the same instrument.

Section 7.15 Cooperation and Further Assurances. Each of the parties shall cooperate fully with one another and shall execute, deliver, file, and record such further and additional documents and instruments and take such other actions that the other party may reasonably request to effect further and more completely the transactions herein contemplated.

Section 7.16 Jury Trial Waiver. THE UNDERSIGNED WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, ANY ASPECT OF THE TRANSACTION IN CONNECTION WITH WHICH THIS DOCUMENT IS BEING GIVEN OR ANY DOCUMENT EXECUTED OR DELIVERED IN CONNECTION WITH SUCH TRANSACTION. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY THE UNDERSIGNED, AND THE UNDERSIGNED ACKNOWLEDGES THAT NO ONE HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. THE UNDERSIGNED FURTHER ACKNOWLEDGES HAVING BEEN REPRESENTED IN CONNECTION WITH THE TRANSACTION WITH RESPECT TO WHICH THIS DOCUMENT IS BEING GIVEN AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED BY THE UNDERSIGNED'S OWN FREE WILL, AND THAT THE UNDERSIGNED HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH SUCH COUNSEL. THE UNDERSIGNED FURTHER ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE MEANING AND RAMIFICATIONS OF THIS WAIVER PROVISION.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement under seal, with the intention that it constitute a sealed instrument, as of the date first above written.

LENDER:

Gunnison County,
a Colorado governmental body

By:_____
Name:
Title:

BORROWER:

Gunnison Valley Regional Housing Authority,
a Colorado multijurisdictional housing authority

By:_____
Name: Karl Fulmer
Title: Executive Director

[Signature page to Loan Agreement ($100,000)]

EXHIBIT A

Legal Description

Tract 1, according to the Final Plat of Anthracite Place Subdivision, recorded on the 7th day of May, 2015 as Reception No. 632703 in the office of the Gunnison County Clerk and Recorder, Town of Crested Butte, County of Gunnison, State of Colorado

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