

Loan Number: _____

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

**LOCAL INNOVATION AND FAST TRACK HOUSING PROGRAM
LOAN AGREEMENT
(Construction and Permanent)**

THIS LOAN AGREEMENT (“Loan Agreement” or “Agreement”) is made this _____ day of _____, 20__ (the “Effective Date”) by and between _____, a _____ (“Borrower”) and the **STATE OF OREGON**, acting by and through its **HOUSING AND COMMUNITY SERVICES DEPARTMENT** (“Lender”). Borrower and Lender may be referred to herein jointly as the “Parties” or individually as a “Party”.

RECITALS

A. Borrower is the owner of that certain real property located at _____, commonly known as _____ and described in **Exhibit A** attached hereto (the "Property").

B. Subject to the terms and conditions set forth herein and in the Loan Documents, Lender will provide Borrower the Loan (as hereinafter defined) for the purpose of constructing a ____ (____) unit low-income multifamily rental housing development in the city of _____, _____ County, Oregon on the Property (the Property and the improvements thereon, collectively, the “Project”).

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS

“Certificate of Occupancy” means the Certificate of Occupancy issued for the Project by the City of _____.

“City” means the City of _____, a municipal corporation of the State of Oregon.

“Construction Documents” means the plans and specifications for the Project, the construction contract and architect agreement (if any) for the Project, and any other documents relating to the design or construction of the Project, all as approved in writing by Lender.

“Construction Loan Period” means the period beginning on the Effective Date and ending on _____, which may be extended for two, three-month periods by written request and Lender’s approval as long as the Loan is in good standing.

“Default” means an event which, after notice or passage of time, or both, would be an Event of Default.

“Event of Default” has the meaning set forth in Section 9

“Loan” means the construction and permanent loan from Lender described in this Loan Agreement in an amount not to exceed _____ and NO/100 DOLLARS (\$_____) of _____ funding.

“Loan Documents” mean this Loan Agreement, the Note, the Trust Deed and any other agreement executed by Borrower in connection with the Loan.

“Note” means that certain promissory note of even date herewith executed by Borrower in favor of Lender and evidencing the Loan.

“Operating Agreement” means that certain Local Innovation and Fast Track Housing Program Operating Agreement and Declaration of Land-Use Restrictive Covenants dated on or about the date hereof between Lender and Borrower, as the same may be amended from time to time.

“Permanent Loan Period” means the period beginning on the first day after the expiration of the Construction Loan Period and ending on the Maturity Date (as defined in the Note).

“Project Management Agreement” means that certain Local Innovation and Fast Track Housing Program Project Management Agreement dated on or about the date hereof among Lender, Borrower and _____, as the same may be amended from time to time.

“Public Subsidy” means any government-sponsored credit, funding, or abatement, including but not limited to: loans; property tax or assessment abatements, credits, or reductions; taxable or tax exempt bonds; or grants including fee waivers.

“Reservation Letter” means the letter dated _____, issued by Lender to Borrower and approving the Loan.

“Sources and Uses of Funding Budget” means the amounts and sources of all funding for the development of the Project and the construction loan budget approved by Lender in writing, attached hereto as **Exhibit B**, as the same may be revised from time to time with the written consent of Lender.

“Trust Deed” means that certain line of credit trust deed, security agreement, fixture filing, and assignment of leases of rents of even date herewith executed by Borrower, as Grantor, in favor of Lender, as Beneficiary, encumbering the Project and securing the Loan.

2. LOAN GENERALLY

2.1 **Lender Loan.** On the terms and conditions of this Loan Agreement, Lender agrees to make the Loan to Borrower in the maximum principal amount of \$ _____ (“Loan Amount”). The Loan will initially be a construction loan (the “Construction Loan”). Upon expiration of the Construction Loan Period, the Construction Loan will, subject to satisfaction of the conditions precedent set forth in Section 4.1, be converted to a permanent loan. The Loan, after the conversion to a permanent loan may be referred to herein as the “Permanent Loan”. The Loan is evidenced by and repayable in accordance with this Loan Agreement and the Note, and is secured by the Trust Deed. All payments and prepayments on the Loan and all other amounts payable hereunder or under the Trust Deed by Borrower to Lender shall be made to:

or at such other address as Lender may specify in writing.

2.2 **Other Financing.** In addition to Lender Loan, the Project has or will receive, subject to the terms and conditions of applicable agreements, the following:

Third Party Loan	\$
4% LIHTC Equity, if applicable	\$
Deferred Developer Fee	
Other	\$
Other	\$
Other	\$
____ Project Based Section 8 rent assistance vouchers	

3. CONSTRUCTION LOAN

3.1 **Loan and Term.** Commencing on the Effective Date and ending on the expiration of the Construction Loan Period, Lender agrees, on the terms and conditions of this Loan Agreement and upon satisfaction of all conditions precedent, to disburse funds from time to time up to a total aggregate principal amount equal to the Loan Amount.

3.2 **Interest.** During the Construction Loan Period, no interest will accrue on the Loan other than on amounts past due. Amounts past due, whether by late payment, maturity, acceleration, or otherwise, will bear interest at the Default Rate (as hereinafter defined).

3.3 **Disbursements.** The proceeds of the Loan shall be held in a construction loan account, and will be disbursed in accordance with and subject to the provisions of the this Section 3.3 and to all of the conditions set forth in Section 3.4 (and, in the case of the final disbursement, Section 3.5).

(a) **Request for Disbursements.** [To Be Determined]

(b) **Change Orders.** All change orders to the General Contractor's contract that materially affect the Project must be approved in writing by Lender prior to implementation of the work described in such change order. A change order that materially affects the Project is a change order (i) over \$5,000.00, (ii) or \$25,000.00 in aggregate costs that impact the quality or the nature of the Project over the entire Construction Loan Period, or (iii) that extends the schedule of the Project. Material changes in soft cost allocations must be approved by Lender prior to implementation.

(c) **Changes in Line Item Disbursements.** Any disbursement requests resulting from changes in line item allocations will not be made without Borrower receiving prior written approval from Lender.

(d) **Developer Fee and Capitalized Reserves.** Borrower's approved combined developer fee and capitalized reserves are \$_____ ("Developer Fee and Capitalized Reserves"). Of this total, approximately \$_____ shall be the Deferred Developer Fee, which is paid over time from Project revenues. Lender shall authorize reasonable release of loan proceeds to pay the cash portion of the Developer Fee and Capitalized Reserves for work actually performed and completed provided satisfactory benchmarks have been reached. Further payments of the cash portion of the Developer Fee and Capitalized Reserves may be made from funding sources in section 2.2. The Developer fee includes any fees paid to consultants performing developer work.

3.4 **Conditions Precedent to Disbursements.** At the time of the initial disbursement and each subsequent disbursement of Loan funds:

(a) All applicable conditions set forth in the Reservation Letter shall be satisfied;

(b) Borrower will have secured a commitment for all financing described in Section 2 which, when combined with the Loan proceeds and amounts scheduled to be contributed by Borrower, will be sufficient, in Lender's reasonable opinion, to complete the Project;

(c) Borrower will have secured a final Housing and Urban Development approval for _____ (____) Project Based Section 8 voucher rent assistance units described in Section 2.2;

(d) Each of Borrower's representations and warranties contained in Section 6 are true and correct in all material respects as if made on and as of the date of such disbursement;

(e) No Event of Default shall have occurred and be continuing under this Loan Agreement (including without limitation a failure to perform any covenant set forth in Section 3.7) or any other Loan Document, and no event shall have occurred that, with the giving of notice or passage of time or both, would constitute an Event of Default ;

(f) The contractor and all subcontractors will have been paid for the amounts covered by prior payment requests;

(g) There shall have been no condemnation, casualty, or catastrophe that, if not repaired or restored prior to the last day of the Construction Loan Period would affect the security value of the Project;

(h) The disbursement request will have been made in accordance with Section 3.3 and will be for one or more line items shown on the Sources and Uses of Funding Budget; and

(i) All change orders included in the draw which require Lender's approval pursuant to Section 3.3(b) have been reviewed and approved by Lender.

3.5 Conditions Precedent to Final Disbursement. At the time of the final disbursement:

(a) Each of the conditions specified in Section 3.4 will be satisfied;

(b) All construction work, including all punchlist items, shall be completed as certified by the owner, architect, contractor, and all lenders;

(c) Lender will have received copies of lien waivers, in form and substance satisfactory to Lender, from the general contractor and all subcontractors who worked on the Project indicating that they have been paid for all work performed, or the 75-day construction lien period will have expired (without any liens having been filed), or Borrower will have obtained, at its option and expense, an early issue title policy insuring the lien of the Trust Deed against all construction liens that have been or may be filed against the Project;

(d) A Completion Notice will have been posted in accordance with ORS 87.045 and Lender will have inspected (unless it waives inspection in its sole discretion) the Project to determine that it was completed in accordance with the Construction Documents and other applicable requirements;

(e) A Certificate of Occupancy will have been issued for all units in the Project and all other governmental approvals, licenses, or permits necessary for the use and/or occupancy of the Project will have been obtained; and

(f) Lender will have received from Borrower all required regulatory reporting forms applicable to the Project in form and substance acceptable to Lender and such supporting documentation as Lender may request.

(g) Conversion of the construction loan to the Permanent Loan (as defined in Section 4) below.

3.6 Repayment. Without prejudice to Lender's rights and remedies upon an Event of Default or if the conditions precedent to conversion of the Loan to a Permanent Loan are not satisfied, no principal or interest will be payable until the last day of the Construction Loan Period, at which time all principal and accrued interest will be due and payable in full.

3.7 Covenants of Borrower. Borrower covenants as follows with respect to the construction of the Project, unless Lender has waived compliance in writing:

(a) Borrower will commence construction of the Project within thirty (30) days after the Effective Date . All construction work will be done under and in accordance with building permits issued by _____.

(b) The Project will be constructed in a good, workmanlike, expeditious, and continuous manner. The Project shall be completed in accordance with the Construction Documents, as evidenced by the written certification of the Project architect and contractor in form and substance satisfactory to Lender, no later than the date 30 months after the date of the Reservation Letter (unless extended as described in section 1 of the Note) ("Completion Date"). Any change to the Completion Date must be approved by the Lender.

(c) All Construction Documents and the Sources and Uses of Funding Budget will be approved by Lender in writing and will not be modified subsequent thereto in any material respect without Lender's prior written approval, which approval shall not be unreasonably withheld or delayed.

(d) Lender and its agents and representatives will have the right at any reasonable time to inspect the Project, observe the work of construction, examine all materials, plans, specifications, work drawings and other matters relating to the construction, and verify that construction is progressing in compliance with the Lender-approved disbursement schedule and all Construction Documents; provided, however, such inspection by Lender is solely for the purpose of protecting Lender's rights and interests, and shall under no circumstances impose any liability on Lender or result in a waiver of any Event of Default of Borrower or be a representation that Borrower is or will be in compliance with the Construction Documents or other applicable laws or requirements.

(e) All funds disbursed hereunder will be used by Borrower for such purposes relating to the construction and lease-up of the Project as are shown on the applicable Draw Request

for Disbursement and line item of the Sources and Uses of Funding Budget, and for no other purpose. Borrower shall not loan or otherwise make available all or any part of the Loan proceeds to any person or entity without the prior written consent of Lender.

(f) Borrower agrees to provide to Lender upon Lender's request supporting documentation of all soft costs incurred by Borrower that are shown on the Sources and Uses of Funding Budget (e.g., architectural design expenses, legal and other consultant fees, construction interest, and closing costs), whether or not such costs are paid from Loan proceeds.

(g) If at any time Lender determines that the undisbursed Loan proceeds, together with any sums provided or to be provided by Borrower, by other construction lenders, or by any other third party are insufficient to construct and complete the Project in accordance with the Construction Documents, Borrower agrees, within fifteen (15) days after written notice from Lender, to obtain documentation satisfactory to Lender, in its sole discretion, demonstrating the availability of additional funds as are necessary to enable the Project to be so completed.

(h) All contractors and subcontractors on the Project will be registered and bonded in accordance with ORS Chapter 701 and shall be licensed as required by applicable law.

(i) Borrower agrees to comply with any and all applicable HUD Federal Specifications and to include such specifications as an addendum to the general contractor's construction contract.

(j) Borrower covenants that there has been no material change in the Project financing as described in Section 2.

3.8 Retainage Lender may, at its sole discretion, require Borrower to withhold 5% retainage of each construction progress payment to ensure performance by Project contractor. Final disbursement of retainage will not be authorized until the seventy-five (75) day lien period has expired. This lien period may be reduced, at the option of the Borrower, by satisfying the early issue requirements of the title insurance and Lender.

3.9 Holdback. A portion of loan funds of approximately 5% of Lender funding, as determined by Lender, will be held back from disbursement during the construction of the Project. The withheld amount will be retained and will only be disbursed upon satisfaction of all applicable conditions precedent to final disbursement or may be fully/partially released at the completion of construction of the Project (at Lender's discretion and after the 75 -day lien period has expired) to the extent permitted by Lender's preliminary cost savings analysis based on the actual Project cost and a projection of the future Project costs and future Project funding sources and the Project has been completed to a level satisfactory to Lender. In case of any Default hereunder, or under the Promissory Note or the Trust Deed, Lender may use the withheld amount to make any payments necessary to correct the Default.

3.10. **Contingency Funds.** A construction contingency reserve ("**Construction Contingency**") is a line item on the Sources and Uses of Funding Budget and is intended to provide funds in the event of unforeseen costs or required building code corrections. The Construction Contingency will only be available to Borrower upon compliance with the disbursement procedures set forth in Section 3.3. If at any time prior to completion of construction, Lender determines that the unused portion of the Construction Contingency is unreasonably low in relation to the amount of work remaining to complete the Project, Lender may restrict or prohibit the use of the remaining portion of the Construction Contingency or require Borrower to make a cash deposit within a specified time period to bring the Construction Contingency up to a reasonable level, as determined by Lender.

3.11. **Project Cost Savings.** Project Cost Savings will be determined at [To Be Determined] as provided in the Note

4. PERMANENT LOAN

4.1 **Loan.** Upon expiration of the Construction Loan Period, and provided that (a) all conditions precedent to the final disbursement as set forth in Section 3.5 are satisfied or waived in writing by Lender, and (b) no Event of Default has occurred and no event has occurred that, with the giving of notice or passage of time or both, would constitute an Event of Default, the Loan will be converted to the Permanent Loan, the initial principal balance of which shall be the actual amount disbursed pursuant to the provisions of Section 3 (whether or not the actual amount disbursed is less than the Loan Amount), less any Project Cost Savings applied to the Loan balance pursuant to Section 3.11. Lender will have no further obligation to advance any funds to Borrower after expiration of the Construction Loan Period, whether or not the Project has been completed. If Borrower has not satisfied the above conditions precedent to the Permanent Loan conversion within ten (10) days after the end of the Construction Loan Period (or such longer period as Lender may specify in written notice to Borrower), Lender may, in its sole discretion, (a) require payment in full of the entire outstanding balance on thirty (30) days prior written notice, or (b) grant Borrower additional time to satisfy all conditions precedent, on such terms and conditions as Lender may require. In its sole discretion, Lender may (but is not obligated to) make further disbursements after expiration of the Construction Loan Period (for example, to pay construction liens or otherwise for the protection of its collateral for the Loan), and all such disbursements will be deemed advances and added to the balance of the Loan.

4.2 **Permanent Loan Period.** The term of the Permanent Loan (the "Permanent Loan Period") will commence on the first day after expiration of the Construction Loan Period and will terminate on the Maturity Date, at which time all principal and accrued interest will be due and payable in full.

4.3 **Interest; Repayment.** During the Permanent Loan Period, principal and accrued interest will be payable as provided in the Note. Amounts past due, whether by late payment, maturity, acceleration, or otherwise, will bear interest at the Default Rate.

5. COLLATERAL

5.1 **Trust Deed; Security Interest in Personal Property Collateral.** To secure Borrower's prompt payment and performance of its obligations under this Loan Agreement, the Note, and the other Loan Documents, Borrower will grant Lender a lien on the Property and the Project and a continuing security interest in personal property now or hereafter located on, relating to, or used in connection with the Property or the Project, as and to the extent provided in the Trust Deed.

5.2 **Personal Property Lien Perfection.** Borrower agrees that Lender has the right to file UCC financing statements, instruments, and documents and Borrower agrees to take such other action as may be required to perfect or to continue the perfection of Lender's security interest in the collateral described in the Trust Deed.

6. BORROWER'S REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender as follows:

6.1 **Power and Authority.** Borrower is a limited partnership duly organized, validly existing, and on active status under the laws of the state of Oregon and has the power and authority to enter into the Loan Documents. Borrower's general partner is a limited liability company duly organized and validly existing under the laws of the state of Oregon and has the power and authority to execute the Loan Documents on behalf of Borrower.

6.2 **No Violations or Default.** Neither Borrower nor any of its affiliates is in default under or in violation of any indenture or agreement to which it is a party or by which it is bound, or any order, regulation, ruling, or requirement of a court or other public body or authority. No creditor has given Borrower notice or threatened to give it any notice of default under any material agreement.

6.3 **Litigation.** No action, suit, investigation, or proceeding is pending against Borrower or any of its affiliates with respect to the Project before any court or administrative agency, (a) the outcome of which, by itself or taken together with other such litigation, might have a material adverse effect on the business, assets, operations, or financial condition of Borrower, or (b) which purports to affect the legality, enforceability, or validity of any Loan Document.

6.4 **Tax Returns and Taxes.** All federal, state, and other tax returns of Borrower required by law to be filed have been filed. All other taxes applicable to Borrower, including real property taxes, are current.

6.5 **Title to Collateral.** All the collateral described in the Trust Deed is owned by Borrower, and Borrower's interest in such collateral is free and clear of all liens and encumbrances of any kind except those approved in writing by Lender ("Permitted Exceptions").

6.6 **Compliance With Laws.** Borrower is in material compliance with all federal, state and local laws, rules, regulations, ordinances and orders applicable to it, the Property or the Project, and the operation thereof, including, without limitation, all applicable health and safety, environmental, and zoning laws.

6.7 **Financial Statements.** All financial statements delivered by Borrower to Lender will, as of the date thereof, be true, correct and complete, fairly present the financial condition of the Borrower and the Project at the dates thereof; and be prepared in accordance with generally accepted accounting principles and practices in the United States, consistently applied. Since the date of the most recent financial statements delivered to Lender, there has been no material adverse change in the financial condition of Borrower or Project.

7. AFFIRMATIVE COVENANTS

At all times during the term of this Loan Agreement (including the Construction Loan Period) and until all amounts and obligations owing hereunder and under any other Loan Document will have been paid and performed, Borrower covenants and agrees as follows:

7.1 **Licenses; Maintenance of Business.** Borrower will remain a limited partnership validly existing under the laws of Oregon and will keep in force all licenses and permits necessary to the proper conduct of its ownership and operation of the Project.

7.2 **Performance of Obligations.** Borrower will pay the principal of and interest on the Loan in accordance with the terms of the Note and this Loan Agreement, will pay when due all other amounts payable by Borrower hereunder or under any Loan Document, and will comply with all requirements of the Trust Deed.

7.3 **Compliance with Other Agreements.** Borrower shall perform and discharge all of its obligations under the Project Management Agreement and the Operating Agreement and comply with and cause the Project to comply with all requirements and restrictions imposed on Borrower or the Project by the Project Management Agreement or the Operating Agreement.

7.4 **Compliance with Laws and Use Restrictions.** Borrower will comply with, or cause the Project to comply with, all laws, ordinances, statutes, rules, regulations, orders, injunctions, or decrees of any government agency or instrumentality applicable to Borrower, the Project, or the operation thereof, including (a) all applicable health and safety, environmental, and zoning laws, (b) all requirements under Section 42 of the Internal Revenue Code and the regulations promulgated thereunder (if Borrower has applied or will apply for low-income housing tax credits for the Project), and (c) all restrictions on the use, occupancy or operation of the Project arising from the original source of the Loan proceeds or otherwise required by Lender, including those affordability requirements and/or use restrictions set forth in the Operating Agreement and Project Management Agreement.

7.5 **Other Obligations.** Borrower will pay and discharge before the same shall become delinquent all indebtedness, taxes, and other obligations for which it is liable or to which its income or property is subject and all claims for labor and materials or supplies which, if unpaid, might become by law a lien (other than a Permitted Exception) upon the collateral described in the Trust Deed, except any thereof whose validity or amount is being contested in good faith by Borrower in appropriate proceedings with adequate provision having been made in accordance with generally accepted accounting principles for the payment thereof if the contest is determined adversely to Borrower. If Borrower fails to discharge any such claim or lien, Lender may, in its sole discretion and without

waiving the default, pay the same, which payment will, at Lender's option, be added to the amount outstanding under the Note.

7.6 **Indemnity.** Borrower will defend (subject to ORS Chapter 180), indemnify and hold Lender, its employees and agents harmless from and against any and all liabilities, claims, losses, damages, or expenses (including attorney fees and title costs and expenses) which any of them may suffer or incur in connection with (a) the inaccuracy of any of the representations and warranties made herein, (b) any transaction contemplated by this Loan Agreement or any other Loan Document, and (c) the construction or operation of the Project, except to the extent such liabilities, claims, losses, damages, or expenses arise solely from the gross negligence or willful misconduct of Lender.

7.7 **Financial Information.** Borrower will provide to Lender periodic financial statements and other reports as reasonably requested by Lender, including copies of federal and state tax returns.

7.8 **Additional Payments; Additional Acts.** From time to time, Borrower will execute and deliver all such instruments, provide such additional information, and perform all such other acts as Lender may reasonably request to carry out the transactions contemplated by the Loan Documents.

8. NEGATIVE COVENANTS

At all times during the term of this Loan Agreement and until all amounts and obligations owing hereunder and under any other Loan Document shall have been paid and performed in full, Borrower will not, directly or indirectly, without the prior written consent of Lender:

8.1 **Ownership/Change in Control.** Sell or transfer any beneficial interest in Borrower in violation of the terms of the Note, or change or permit a material change in Borrower's structure, except as provided in Sections 8.5 and 8.6 of the Trust Deed.

8.2 **Sale or Merger.** Sell or transfer all or any part of the Property or Project in violation of the terms of the Note, or dissolve, liquidate, merge, reorganize, or consolidate the Land or Project.

8.3 **Indebtedness.** Except as specifically contemplated in this Loan Agreement, incur any new indebtedness in addition to the Loan or indebtedness secured by Permitted Exceptions.

8.4 **Liens.** Create, assume, or suffer to exist any lien or charge of any kind, direct or indirect, upon any of the Property or the Project, except for Permitted Exceptions and liens in favor of Lender, and liens that have been bonded against pursuant to Oregon law.

9. EVENTS OF DEFAULT

Each of the following shall be an event of default (each, an "Event of Default") under this Loan Agreement:

9.1 **Failure to Pay Obligations Under Loan Documents.** Borrower fails to pay any sum due under the Note within ten (10) days after the date it is due, or fails to pay any other amount required to be paid by Borrower pursuant to the Trust Deed or the Loan Documents (including, without

limitation, taxes, assessments, insurance and any other payment necessary to prevent filing or imposition of any liens) within ten (10) days after written notice of nonpayment from Lender specifying the Default.

9.2 Failure to Comply with Loan Documents. Borrower fails to perform or abide by any other covenant or obligation in this Loan Agreement or in another Loan Document and such failure, to the extent curable, is not cured within thirty (30) days after written notice from Lender specifying the failure or, if such failure cannot with due diligence be cured within such period, if Borrower shall fail within such thirty (30) day period to commence cure of the failure and thereafter diligently prosecute to completion such cure (which cure in any event must occur within sixty (60) days after the Lender's initial notice of such failure).

9.3 Failure to Obtain Lender's Consent to Transaction. Borrower engages in a sale, transfer or assignment, or uses Loan proceeds, in violation of the terms of the Note, the Trust Deed, or the Loan Documents, or changes the use of the Property without Lender's prior written consent.

9.4 Failure to Pay General Debts When Due.

(a) Borrower or any guarantor of the Loan (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all or a substantial part of its property, (ii) admits in writing its inability to pay, or generally is not paying, its debts as they become due, (iii) makes a general assignment for the benefit of creditors, (iv) commences a voluntary action under the United States Bankruptcy Code (as now or hereafter in effect), (v) is adjudicated a bankrupt or insolvent, (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts, (vii) fails to controvert in a timely or appropriate manner, or acquiesces or consents in writing to, any petition filed against it, in an involuntary action under the United States Bankruptcy Code, or (viii) takes any action for the purpose of effecting any of the foregoing.

(b) (i) A proceeding or case is commenced against Borrower, without its consent, in any court of competent jurisdiction, seeking the liquidation, reorganization, dissolution, windup, or composition or readjustment of the debts of Borrower, (ii) a receiver, trustee, custodian, liquidator, or the like is appointed for Borrower or for all or a substantial part of its assets, or (iii) relief is granted to Borrower under any law relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or (iv) an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for any period of 60 days, or an order for relief against Borrower is entered in an involuntary case under the United States Bankruptcy Code.

9.5 Failure to Disclose Material Facts. Borrower fails to disclose any fact material to the making of any loan to Borrower, or upon discovery by Lender of any misrepresentation by, or on behalf of, or for the benefit of Borrower.

9.6 Default Under Other Loans. Borrower defaults under any other loan (including any construction, permanent, or bond financing) secured in whole or in part by the Property, including any

loan secured by a Permitted Exception, and fails to cure such default within any applicable cure period set forth in the loan documents relating to such loan.

9.7 **Discontinued Construction.** Construction on the Project is discontinued or prohibited for at least 30 consecutive days, or the Project is abandoned.

9.8 **Failure to Diligently Pursue the Project.** Borrower fails to diligently pursue the Project during the Construction Loan Period, including the lease-up. .

9.9 **Event of Default under Operating Agreement or Project Management Agreement.** An Event of Default occurs under the Operating Agreement or Project Management Agreement.

9.10 **Limited Partner Courtesy Notice.** If a Default occurs under this Loan Agreement or any of the Loan Documents, Lender is aware of such Default, Lender intends to exercise any of its remedies on account of such Default, and Lender is required to give notice to Borrower before the Default can become an Event of Default, then Lender at the same time as it delivers notice to Borrower will deliver written notice of such Default to Borrower's limited partner. Upon receiving the notice of Default pursuant to this subsection, Borrower's limited partner will have the right to cure, within the same time periods as provided to Borrower in this Loan Agreement. Failure of Lender to send a notice of Default to Borrower's limited partner will not prevent the exercise of the Lender's rights and remedies under this Loan Agreement.

10. RIGHTS AND REMEDIES ON DEFAULT

Upon the occurrence of an Event of Default and at any time thereafter, Trustee or Lender may, at its option, exercise any one or more of the following rights and remedies:

10.1 **Acceleration.** Lender may declare the entire remaining unpaid balance of the Loan and other charges payable by Borrower pursuant to the Note or any other Loan Document, to be immediately due and payable in full.

10.2 **Foreclosure.** At Lender's direction, the Trustee will foreclose the lien of the Trust Deed by notice and sale, or Lender will have the right to foreclose by judicial foreclosure, in either case in accordance with applicable law. In any judicial foreclosure, Lender will be entitled to obtain a deficiency judgment (subject to any applicable nonrecourse provisions in the Note) for any amount by which the amount of the obligations secured hereby exceeds the sale proceeds.

10.3 **Waiver of Rights.** Notwithstanding section 10.2, Lender will have the right, at its sole option, to waive its rights under the Trust Deed and pursue an independent action upon the Note, unless the Note is nonrecourse by its express terms. The Note, Trust Deed, and other Loan Documents are separate and distinct instruments separately or collectively enforceable in accordance with their terms.

10.4 **Rights and Remedies.** Lender will have any other rights or remedies provided in the Trust Deed, the Note, the Loan Documents, or any other instrument delivered by Borrower in

connection therewith, or available at law, in equity, or otherwise in such order and manner as it may select.

10.5 Notification to Obligors to Pay Rent Directly to Lender. Lender may at any time, without notice, either in person, by agent or by receiver to be appointed by a court, and without regard to the adequacy of the security for the obligations hereby secured, notify obligors of rents to pay Lender directly, and/or enter upon and take possession of the Property or any part thereof, in its own name sue or otherwise collect any and all Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney fees, upon any obligations secured hereby, and in such order as Lender may determine.

10.6 Uniform Commercial Code. Lender will have all rights and remedies under the Oregon Uniform Commercial Code, as amended from time to time. Lender will give Borrower reasonable notice of the time and place of any public sale of any personal property or of the time after which any private sale or any other intended disposition of personal property collateral is to be made. Reasonable notice will mean notice given at least ten (10) days before the time of the sale or disposition.

10.7 Exercising Rights and Remedies. In exercising its rights and remedies, Lender may cause all or any part of the Property to be sold as a whole or in parcels, and certain portions of the Property may be sold without selling other portions. Lender may bid at any public sale on all or any portion of the Property. A waiver of a breach of a provision of the Trust Deed will not constitute a waiver of or prejudice the right otherwise to demand strict compliance with that provision or any other provision. An election by Lender to pursue any remedy will not exclude pursuit of any other remedy, and all remedies of Lender under the Trust Deed are cumulative and not exclusive. An election to make expenditures or take action to perform an obligation of Borrower will not affect Lender's right to declare an Event of Default and exercise its remedies under the Trust Deed.

10.8 Foreclosure of Lessee's Rights - Subordination. Lender will have the right, at its option, to foreclose the Trust Deed subject to the rights of any lessee(s) of the Property. Lender's failure to foreclose against any lessee shall not be asserted as a claim against Lender or as a defense against any claim by Lender in any action or proceeding. Lender, at any time, may subordinate the Trust Deed to any or all of the lessees, except that Lender shall retain its priority claim to any condemnation or insurance proceeds.

10.9 Repairs During Redemption. In the event of a judicial foreclosure, the purchaser during any redemption period may make such repairs and alterations to the Property as may be reasonably necessary for the proper operation, care, preservation, protection and insuring of the Property. Any sums so paid, together with interest from the date of the expenditure at the rate provided in the judgment will be added to the amount required to be paid for redemption of the Property.

10.10 Event of Foreclosure. In the event of any judicial or nonjudicial foreclosure sale, Lender in its discretion may use a single notice covering both real estate and personal property, designate the order of sale, and may elect to sell the real estate and personal property as an integrated unit or separately. Any person permitted by law to do so may purchase at any sale.

10.11 **Proceeds of Sale.** Subject to the provisions of applicable law, the proceeds of any sale under the Trust Deed will be applied first to payment of costs and expenses, then to payment of security protection advances, then to payment of the other secured obligations (which includes any applicable prepayment premium or fee) in any order that Lender chooses, and then to any other person or persons who may establish to the satisfaction of Lender that they are legally entitled to it.

10.12 **Borrower's Waiver of Rights Upon Sale.** Borrower waives all rights to direct the order and/or combinations in which any of the collateral will be sold, and also any right to have any of the collateral marshaled upon any sale. Borrower acknowledges that there is no fiduciary relationship between Borrower and the Trustee or between Borrower and Lender.

10.13 **During Construction.** (a) Lender will have the right to take over and cause the Project to be completed and, for that purpose, make disbursements from the undisbursed Loan funds. Any contract entered into or indebtedness incurred on the exercise of such right may be exercised by Lender in the name of Borrower, and Lender is hereby irrevocably appointed attorney-in-fact (the appointment being coupled with an interest) to enter into the contract, incur such obligations, enforce contracts or loan agreements theretofore made by or on behalf of Borrower, and to do any and all things necessary or proper to complete the work of construction, including the signing of Borrower's name to such contracts and documents as may be deemed necessary by counsel for Lender. In no event will Lender be required to use its own funds to complete the Project if undisbursed Loan funds are insufficient, but Lender may, at its option, advance such funds. Any funds so advanced will be payable to Lender by Borrower on demand together with interest thereon at the Default Rate and shall be secured by the Trust Deed. (b) Lender will have the right to suspend or terminate its obligation to make further disbursement of Loan proceeds.

10.14 **Interest on Default.** Upon the occurrence of any Event of Default, interest will accrue under the Note on the unpaid principal balance from the date of the Event of Default, or if the Event of Default is a payment default, from the date the first unpaid payment was due, at a rate equal to the lesser of four percent per annum or the maximum interest which may be collected from the holder of the Note under applicable law (the "Default Rate"). If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest will bear interest from the Maturity Date at the Default Rate.

10.15 **Rights and Remedies Cumulative.** All rights and remedies described in Section 10 are cumulative and in addition to any other remedy Lender may have by agreement, at law, or in equity. Partial exercise of any right or remedy will not limit or restrict Lender's subsequent exercise of such right or remedy nor will it restrict Lender's contemporaneous or subsequent exercise of any other right or remedy.

10.16 **No Waiver.** No failure or delay of Lender in exercising any right hereunder will operate as a waiver of that right or any other right. No modification or waiver of any provision of the Trust Deed or any other Loan Document will be effective unless in writing, and then only in specific instance and for the purpose given. No notice or demand on Borrower will entitle Borrower to any other notice or demand in other similar circumstances.

10.17 Payment of Costs of Collection. In case of an Event of Default, or in case litigation is commenced to enforce or construe any term of the Trust Deed, the Note, or any other Loan Document, the losing party will, to the extent permitted by law, pay to the prevailing party such amounts as shall be sufficient to cover the cost and expense of collection or enforcement, including, without limitation, reasonable attorney fees and costs prior to and at any arbitration proceeding or at trial, on appeal, or in any bankruptcy proceeding.

10.18 Additional Cure Provisions. The limited partners of Borrower will have the right, but not the obligation, to cure any defaults of Borrower hereunder and in any Loan Document, to the same extent as Borrower, and Lender agrees to accept cures tendered by the limited partners of Borrower on behalf of the Borrower.

11. MISCELLANEOUS

11.1 Recourse Provision

The obligations under the Note, including obligations secured by the Trust Deed, are with recourse to the Borrower and its general partners unless and until the Loan is converted to the Permanent Loan. Upon conversion of the Loan to the Permanent Loan, notwithstanding any other provision of the Note or this Loan Agreement, but subject to the qualifications set forth below in this section, the obligation to pay the indebtedness evidenced by or arising under the Note will be nonrecourse as to Borrower and its partners or members except as to their rights, if any, in the collateral described in the Trust Deed, and no personal judgment may be obtained against Borrower or any of its partners or members; provided, however, that Borrower and its general partners will be personally liable for (a) failure to pay taxes, assessments, or other charges which could result in liens (including construction liens) against the collateral described in the Trust Deed, (b) retention by Borrower or its general partners or managing members of any rental or other income or insurance or condemnation proceeds arising with respect to such collateral which, under the terms of the Trust Deed, should have been paid to Lender, and (c) any liability or losses incurred by Lender as a result of any fraud or deceit by Borrower in connection with this Loan.

11.2 Counterparts. This Loan Agreement may be executed in any number of counterparts, and any single counterpart or set of counterparts signed, in either case, by all the Parties hereto will constitute a full and original instrument, but all of which will together constitute one and the same instrument.

11.3 Survival. All agreements, representations, and warranties shall survive the execution and delivery of this Loan Agreement, any investigation at any time made by Lender or on its behalf, the making of the Loan, and the delivery of the Note.

11.4 Notice. Any notice required or permitted under this Loan Agreement will be in writing and will be deemed effective; (1) when actually delivered in person, (2) one business day after deposit with a commercial courier service for "next day" delivery, (3) two business days after having been deposited in the United States mail as certified or registered mail, or (4) when transmitted by facsimile (answer back or receipt confirmed), addressed to the Parties as follows:

Owner: _____

with a courtesy notice to: _____

with a copy to: _____

Lender: _____

with a copy to: _____

11.5 **Successors and Assigns.** This Loan Agreement will be binding upon and will inure to the benefit of the Parties and their respective permitted successors and assigns.

11.6 **Governing Law.** This Loan Agreement and the other Loan Documents will be governed by and construed under Oregon law, without regard to it conflicts of laws principles.

11.7 **Jurisdiction and Venue.** Any Party bringing a legal action or proceeding against any the other Party arising out of or relating to this Loan Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum. Notwithstanding the forgoing, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon, provided that a claim may be brought against the State of Oregon in federal court only to the extent Congress has appropriately abrogated the State of Oregon’s sovereign immunity and this Section 11.7 is not consent by the State of Oregon to be sued in federal court. This Section 11.7 is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

11.8 **Assignment.** Borrower may not assign this Loan Agreement without the prior written consent of Lender.

11.9 **Modification; Prior Loan Agreements; Headings.** This Loan Agreement may not be modified or amended except by an instrument in writing signed by Borrower and Lender. This Loan Agreement, taken together with the other Loan Documents and the Reservation Letter, reflects and sets forth the entire agreement and understanding of the Parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings relating to such subject matter. The headings in this Loan Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms hereof.

11.10 **Validity; Severability.** If any provision of this Loan Agreement is held to be invalid, such event will not affect, in any respect whatsoever, the validity of the remainder of this Loan Agreement, and the remainder will be construed without the invalid provision so as to carry out the intent of the Parties to the extent possible without the invalid provision.

11.11 **Exhibits.** Any exhibits attached to this Loan Agreement and referred to herein are incorporated in this Loan Agreement as if they were fully set forth in the text hereof.

11.12 **Time of Essence.** Time is of the essence of this Loan Agreement and each of the Loan Documents.

11.13 **No Third Party Beneficiaries.** This Loan Agreement is not intended to confer upon any person other than the Parties to this Loan Agreement any rights or remedies under this Loan Agreement.

IN WITNESS WHEREOF, the Parties have caused this Loan Agreement to be executed by their duly authorized representatives as of the Effective Date.

LENDER:

BORROWER:

STATE OF OREGON, acting by and through its **HOUSING AND COMMUNITY SERVICES DEPARTMENT**

By: _____

Name: _____
Title: _____

By: _____
_____, Director

APPROVED FOR LEGAL SUFFICIENCY:

Assistant Attorney General

List of Exhibits

- Exhibit A Legal Description of Property

- Exhibit B Sources and Uses of Funding Budget

- Exhibit C Loan Disbursement Authorization

DRAFT

**EXHIBIT A
Legal Description**

Real property in the County of _____, State of Oregon, described as follows: