**When Recorded Return to:**

Oregon Housing and Community Services
725 Summer Street, Suite B
Salem, OR 97301-1266
Attn: Affordable Rental Housing Division

________________________________________**SPACE ABOVE FOR RECORDER'S USE**

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

# LOCAL INNOVATION AND FAST TRACK HOUSING PROGRAM INTERCREDITOR AGREEMENT

This Local Innovation and Fast Track Housing Program Intercreditor Agreement (this "**Agreement**") is made and entered into as of the ___ day of **[Month]**, **[year]** by and between the State of Oregon, acting by and through its Housing and Community Services Department, together with its successors and assigns ("**OHCS**") and **[Entity Name**], a **[entity type]** (together with its successors and assigns, "**Lender**"). OHCS and Lender may be referred to herein in as the "**Parties**."

## RECITALS

**A.** **[Entity Name]**, a **[entity type]** (the "**Borrower**"), is the owner of certain real property located in the City of **[City]**, **[County Name]** County, Oregon as described in **Exhibit A** hereto (the "**Property**"). The Property is or will be improved with an affordable multifamily rental housing development (the "**Improvements**"). The Property and the Improvements (collectively, the "**Project**") and related personal and other property described in the Trust Deeds (defined below) and defined therein constitute the "**Mortgaged Property**."

**B.** Pursuant to a Local Innovation and Fast Track Housing Program Loan Agreement (Construction and Permanent) dated as of the date hereof between OHCS and the Borrower (the "**LIFT Loan Agreement**"), OHCS has made or is making a loan to the Borrower in the original principal amount of **[LONG FORM NUMBER] DOLLARS ($X,XXX,XXX)** (the "**LIFT Loan**"). The LIFT Loan will be evidenced by a Promissory Note dated as of the date hereof and executed by the Borrower and payable to the order of OHCS (the "**LIFT Note**") and secured by a Local Innovation and Fast Track Housing Program Line of Credit Trust Deed, Security Agreement, Fixture Filing and Assignment of Leases and Rents, dated as of the date hereof (the "**LIFT Trust Deed**") encumbering the Mortgaged Property, recorded **[___________ __]**, 20**[__]** in **[County Name]** County, Oregon Real Property Records as Instrument No. **[______________]**.

**C.** The Borrower will also, among other things, execute and deliver to OHCS an Operating Agreement and Declaration of Land Use Restrictive Covenants in connection with the LIFT Loan dated as of the date hereof between the Borrower and OHCS (the "**Operating Agreement**") relating to the Mortgaged Property recorded **[__________ __]**, 20**[__]** in the **[County Name]** County, Oregon Real Property Records as Instrument No. **[_____________]**.

**D.** Pursuant to a Construction and Term Loan Agreement dated as of **[__________ __]**, 20**[__** between Lender and the Borrower (the "**Lender Loan Agreement**"), Lender will make a construction loan in the maximum principal amount of **$[____]**, which may be converted, pursuant to the terms of the Lender Loan Agreement, into a permanent loan in the maximum principal amount of **$[____]** (collectively, the "**Lender Loan**"). The Lender Loan is or will be secured by a Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing of even date with the Lender Loan Agreement by Borrower in favor of and for the benefit of Lender (the "**Lender Trust Deed**") encumbering the Mortgaged Property, and recorded **[__________ __]**, 20**[__]** in the **[County Name]** County, Oregon Real Property Records as Instrument No. **[_____________].**

**E.** The LIFT Loan and the Lender Loan are, hereinafter, collectively referred to as the "**Loans**." The Trust Deed and the Lender Trust Deed are, hereinafter, collectively referred to as the "**Trust Deeds**."

**F.** The execution and delivery of this Agreement is a condition to the closing of the Loans.

## AGREEMENT

**NOW, THEREFORE**, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **DEFINITIONS**. The following terms, when used in this Agreement and not otherwise defined herein (including, as appropriate, when used in the above Recitals) shall have the following meanings.

"**Affordability Agreements**" has the meaning given to it in Section 7 of this Agreement.

"**Bankruptcy Proceeding**" means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to the Borrower, any guarantor of any of the Loans, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.

"**Borrower**" means all persons or entities identified as "Borrower" in the first Recital of this Agreement, together with their successors and assigns, and any other person or entity who acquires the Borrower's right, title and interest in and to the Mortgaged Property after the date of this Agreement; provided that the term "Borrower" shall not include the Lender or OHCS in the event that either may acquire title to the Mortgaged Property.

"**Casualty**" means the occurrence of damage to or loss of all or any portion of the Mortgaged Property by fire or other casualty.

"**Condemnation**" shall have the meaning given in the Lender Trust Deed.

"**Enforcement Action**" means any of the following actions which the Parties agree may be taken only by Lender, whether directly or at the direction of Lender:: The acceleration of all or any part of the Lender Loan or the LIFT Loan, the advertising of or commencement or completion of any foreclosure or trustee's sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest or late charges, the taking of possession or control of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Lender Loan or the LIFT Loan, the exercising of any banker's lien or rights of set-off or recoupment, or the exercise of any other remedies against the Borrower, any other person or entity liable for any of the Lender Loan or the LIFT Loan or obligated under any of the related financing documents (excluding Operational Remedies) or otherwise with respect to any of the Mortgaged Property. For purposes of this Agreement, "Enforcement Action" shall include the right of Lender to direct the time, method, order and place of conducting any proceeding to be taken to enforce the payment and performance of the Borrower's obligations under the Project Financing Documents (excluding Operational Remedies) including without limitation the appointment (or seeking the appointment) of a receiver, the commencement of foreclosure proceedings with respect to the Mortgaged Property under the Lender Trust Deed, the LIFT Trust Deed, or any other Project Financing Documents creating a lien on or a security interest in the Mortgaged Property (or any part thereof), the collection of rents or any other action to accelerate or otherwise enforce payment on the Lender Loan or the LIFT Loan or the performance by the Borrower of its obligations under any of the Project Financing Documents (excluding Operational Remedies); provided, however, that Lender and OHCS acknowledge and agree that the rights of Lender to take or direct Enforcement Action with respect to the LIFT Loan, the LIFT Note or under any of the LIFT Loan Documents is pursuant to and limited by Section 5 of this Agreement.

"**Event of Default**" means the occurrence and continuance of any event, act or omission that constitutes an "Event of Default," "Default," or other noncompliance after the giving of notice and the expiration of any applicable cure period, under any of the respective Project Financing Documents.

"**Lender Loan Documents**" means the Lender Loan Agreement, the Lender Trust Deed, a certain Promissory Note in the amount of the Lender Loan, and all other documents executed in connection with the Lender Loan, as the same may be amended, modified, supplemented or replaced from time to time.

"**LIFT Loan Documents**" means the LIFT Note, the LIFT Loan Agreement, the LIFT Trust Deed, the Operating Agreement, the Project Management Agreement and the Repayment and Completion Guaranty of even date with this Agreement, and certain related, certificates, instruments or other documents executed by the Borrower, or by OHCS and the Borrower in connection with the LIFT Loan being made by OHCS to the Borrower.

"**Operational Remedies**" has the meaning given to it in Section 7 of this Agreement.

"**Project Financing Documents**" mean, collectively, the Lender Loan Documents and the LIFT Loan Documents.

"**Project Trust Deeds**" mean, collectively, the LIFT Trust Deed and the Lender Trust Deed.

**2. PRIORITY OF LIENS AND SECURITY INTERESTS.** Notwithstanding any provisions to the contrary contained in any of the Project Financing Documents, and irrespective of the time, order, or method of attachment or perfection of the liens and security interests granted thereby or the time or order of filing or recording of financing statements or other liens, or security interests, and irrespective of anything contained in any filing or agreement to which any of the Parties secured by any of the Project Trust Deeds now or hereafter may be a party, the Parties hereby acknowledge and agree that, subject to the terms hereof, the Project Trust Deeds shall each share a first lien position and constitute first liens on the Project, including for purposes of ORS 456.548(18) and OAR 813-035-0033.

The LIFT Trust Deed and the Lender Trust Deed shall at all times be a first lien on the Project and, so long as the Lender Trust Deed is in effect, the LIFT Trust Deed shall have the same lien priority as the Lender Trust Deed or any other deed of trust or other security instrument encumbering the Mortgaged Property to secure any loan which refinances the Lender Loan, as long as the principal amount of refinanced debt secured thereby does not exceed the outstanding balance on the Lender Loan, plus reasonable financing costs and any amount approved by OHCS or Lender for repairs or improvements to the Project.

**3. NOTICE OF EVENT OF DEFAULT; OBLIGATION TO CONSULT UPON DEFAULT**. Each Party shall use reasonable efforts to deliver written notice of any Event of Default under its applicable Project Financing Documents to the other Parties promptly upon acquiring knowledge of the same; provided, however, that no Party shall be deemed in breach hereof for failing to do so. In all events, however, Lender shall provide notice of an Event of Default to OHCS prior to or contemporaneous with the commencement of any Enforcement Action. Upon the request of OHCS made within ten (10) days of the receipt of such notice, Lender shall consult with OHCS within five (5) days of the receipt of the OHCS notice; provided, however, that the obligation to consult shall not operate to limit or restrict the rights of Lender to commence, take, direct or complete any Enforcement Action as permitted by this Agreement, pursuant to any of the Project Financing Documents.

**4. ENFORCEMENT ACTION; PAYMENTS PRIOR TO DEFAULT**. Lender shall have the sole and exclusive right to take, not to take, to direct to be taken, or to refrain from directing to be taken all Enforcement Action in the exercise of its sole and absolute discretion, so long as the Lender Loan is outstanding or any other obligations of the Borrower or any other individual or entity to Lender under any of the Lender Loan Documents are outstanding thereunder. As long as the Lender Loan or any other obligations are outstanding under the Lender Loan Documents, OHCS shall not take any Enforcement Action. The rights of Lender to take or not to take or to direct or refrain from directing any Enforcement Action are and shall be conditioned on and subject to the conditions set forth in Section 3 above, and shall also be subject to Operational Remedies, as retained by OHCS, as described below, so long as any Affordability Agreements remain in force and effect.

Prior to receiving written notice of an Event of Default or any Enforcement Action, OHCS shall be entitled to retain for its own account any regularly scheduled payments due and payable under and pursuant to the respective Project Financing Documents to which it is a party. However, immediately upon receipt of written notice of an Event of Default or any Enforcement Action, OHCS shall not accept any payments on its own account, and the provisions of Section 8 of this Agreement will apply. Lender shall be responsible for all costs associated with its election to take or direct to be taken any Enforcement Action permitted pursuant to this Agreement.

The Parties acknowledge and agree that, subject to the conditions set forth in Section 3 above, Lender, without the consent of OHCS or Trustee, and in Lender's sole and absolute discretion, may fully direct and control whether or not an Enforcement Action is to be taken and the order and manner in which any such Enforcement Action or Actions are to be commenced, terminated, postponed or completed (all without liability to any other Party or any other individual or entity).

**5. LIMITED AGENCY RELATIONSHIP**. Lender may elect to take or direct Enforcement Action (as defined herein) under the LIFT Loan Documents or with respect to the LIFT Loan in addition to exercising remedies under the Lender Loan Documents; provided, however, that Lender absent such election to undertake Enforcement Action under the LIFT Loan Documents or with respect to the LIFT Loan shall have no obligation to take or direct any action on behalf of OHCS.

In the event that Lender elects to take or directs to be taken any Enforcement Action under the LIFT Loan Documents or with respect to the LIFT Loan contemporaneously with taking or directing Enforcement Action under any of the Lender Loan Documents (excluding the rights and remedies reserved to OHCS as Operational Remedies), OHCS hereby appoints Lender as agent solely for the purpose of taking such Enforcement Action permitted pursuant to this Agreement. This shall include, for example, the right of Lender to name and include OHCS (subject to ORS chapter 180) as a plaintiff or party in any Enforcement Action. Any counsel for the Lender that takes action on behalf of the State must be approved by the Attorney General of the State and be appointed as Special Assistant Attorney General for the purpose of such representation. Lender shall not be required to act as agent for OHCS, but shall have the right, at its option to act as agent. In the event that Lender does not elect to act as agent with respect to any Enforcement Action under the LIFT Loan Documents or with respect to the LIFT Loan, upon Lender's request, OHCS shall take such actions as necessary to join and collaborate in any Enforcement Action taken or directed by Lender. Lender, as agent, is not nor shall it assume any responsibility or liability for any act or omission by OHCS under the LIFT Loan Documents. Lender shall not have any duties or responsibilities, except those expressly set forth herein, nor shall Lender have or be deemed to have any fiduciary relationship with the Borrower, OHCS, any guarantor/indemnitor, or any other person, and no implied covenants, function, responsibilities, duties, obligations or liabilities shall be read into this Agreement or otherwise exist against Lender. If Lender elects to undertake any Enforcement Action under the LIFT Loan Documents or with respect to the LIFT Loan, Lender shall exercise the same care as it normally exercises with respect to loans and commitments in which an inter-creditor agreement does not exist. Lender shall not be liable to any other party for any Enforcement Action taken or omitted to be taken by it hereunder or under or in connection herewith, except to the extent such liability with respect to any Enforcement Action taken or omitted to be taken is determined in a final non-appealable judgment by a court of competent jurisdiction to have arisen from the gross negligence or willful misconduct of Lender.

**6. OHCS AGREEMENT TO COOPERATE IN ENFORCEMENT ACTION.** OHCS shall take or direct such actions as may be reasonably requested by Lender to join and cooperate in any Enforcement Action taken or directed by Lender, provided that such actions are otherwise consistent with the provisions of this Agreement or otherwise not inconsistent with the legal authority and statutory powers of OHCS.

Neither Lender nor OHCS shall be liable to any other Party for any action taken or omitted to be taken by it hereunder or in connection herewith, except to the extent such liability with respect to an action taken or omitted to be taken is determined in a final non-appealable judgment by a court of competent jurisdiction to have arisen from the gross negligence or willful misconduct of the acting Party. In the event that Borrower or any other party obligated upon or with respect to the Project Financing Documents commences a legal proceeding challenging the validity or enforceability of any such obligations in defense of any Enforcement Action, and Lender receives written notice thereof, Lender shall provide written notice to OHCS of such challenge or assertion. OHCS may elect to retain its own counsel to respond to such allegations.

**7. CONTINUED OPERATION OF PROJECT AS AFFORDABLE HOUSING; RETENTION OF OPERATIONAL REMEDIES BY DEPARTMENT.** Notwithstanding the sole and exclusive right of Lender to take or direct Enforcement Action following an Event of Default as described in Section 4 of this Agreement, OHCS shall retain the right, so long as any of the Affordability Agreements remain in force and effect, to take action that does not constitute an Enforcement Action and pursue any and all remedies against the Borrower and the Project other than an Enforcement Action to ensure compliance with all covenants and obligations related to the operation of the Project as an affordable housing project and to ensure compliance with the requirements of Article XI-Q of the Oregon Constitution (collectively, the "Operational Remedies"), including without limitation all of the rights and remedies granted to OHCS to ensure affordability, habitability and the management and operation of the Project in accordance with the covenants, obligations and program requirements set forth in the LIFT Loan Documents (collectively, the "**Affordability Agreements**"). For purposes of this Agreement "Operational Remedies" shall include any action taken or directed by OHCS pursuant to any of the Affordability Agreements for other than repayment of the LIFT Loan, including, but not limited to actions for penalties and damages assessed by OHCS and actions for specific performance, mandatory injunctive relief, or similar equitable remedies to compel compliance by the Borrower with the terms of the Affordability Agreements; provided that, nothing in this Section 7 shall permit OHCS to take or direct any Enforcement Action or to commence any foreclosure or trustee's sale proceeding, exercise any power of sale, accept a deed or assignment in lieu of foreclosure, or to take possession or control of any of the Mortgaged Property, except operational oversight of the Project pursuant to its exercise of Operational Remedies. Notwithstanding the foregoing, OHCS may require the replacement of the property manager of the Project, with the prior written consent of Lender to the proposed replacement property manager, which consent will not be unreasonably withheld, conditioned or delayed, pursuant to the relevant provisions of the Operating Agreement. Any required Lender consent to replacement (or action for replacement) of the Borrower's general partner or managing member by OHCS will not be unreasonably withheld, conditioned or delayed. Any replacement (or action for replacement) of Borrower's general partner or managing member or of the property manager of the Project by Lender is subject to OHCS's prior written consent, which consent will not be unreasonably withheld, conditioned or delayed.

**8. PAYMENTS AFTER DEFAULT.**

8.1 OHCS agrees that after receiving written notice of an Event of Default it will not accept any payment, property or asset of any kind under any of the LIFT Loan Documents by or on behalf of the Borrower without the prior written consent of Lender. Notwithstanding the foregoing, if OHCS receives any such payment, property or asset under the LIFT Loan Documents it agrees that such payment, property or asset shall be held in trust for Lender, and OHCS will, unless notified in writing otherwise by Lender, promptly remit such payment, property or asset, in kind, and properly endorse as necessary to Lender. Lender will apply any payment, property or asset so received from OHCS in accordance with the same priorities for the application of foreclosure sale proceeds set forth in Section 9 below.

8.2 If the Enforcement Action or any other remedial action taken by any Party is the appointment of a receiver for any of the Mortgaged Property, all of the rents, issues, profits and proceeds collected by the receiver will be paid and applied by the receiver solely to and for the benefit of Lender and applied in the order, amount and manner as provided in the Lender Trust Deed until such time as all of the obligations owing under the Lender Loan Documents have been paid in full. In no event shall the appointment of a receiver operate to limit the rights of OHCS to exercise Operational Remedies. Further, as a condition to the appointment of a receiver, OHCS may require the receiver to expressly acknowledge and agree that any actions taken or proposed to be taken by the receiver are subject to all requirements and remedies provided under the Affordability Agreements, including but not limited to the continuing right of OHCS to exercise Operational Remedies.

8.3 In any Bankruptcy Proceeding, upon any payment or distribution (whether in cash, property, securities, or otherwise) to creditors (i) all obligations under the Lender Loan Documents shall be paid in full in cash before OHCS will be entitled to receive any payment or other distribution on account of or in respect of the LIFT Loan Documents, and (ii) until all obligations under the Lender Loan Documents are paid in full in cash, any payment or distribution to which OHCS would be entitled but for this Agreement (whether in cash, property, or other assets) will be made to Lender.

8.4 The subordination of payments due to OHCS will continue if any payment under the Lender Documents (whether by or on behalf of Borrower, as proceeds of security or enforcement of any right of set-off or otherwise) is for any reason repaid or returned to Borrower or its insolvent estate, or avoided, set aside or required to be paid to Borrower, a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law. In such event, the Lender Loan originally intended to be satisfied will be deemed to be reinstated and outstanding to the extent of any repayment, return, or other action, as if such payment on account of the Lender Loan had not been made.

8.5 Notwithstanding anything to the contrary contained elsewhere herein, no foreclosure of the lien or security interest under any LIFT Loan Document upon any real or personal property (or other realization upon) shall extinguish, terminate, discharge, release or otherwise modify or affect the liens and security interests of the Lender Loan Documents upon the real or personal property which was the subject of such foreclosure (or other realization) and in order to give effect to the foregoing, in all such events the liens and security interests of the Lender Loan Documents shall survive such foreclosure (or other realization) under the LIFT Loan Documents. In addition, all proceeds from any such foreclosure sale or other realization proceeding shall be applied in accordance with Section 9, below. The Parties acknowledge and agree that any Foreclosure Action (as defined below) of the Lender Trust Deed by or at the direction of Lender shall operate to extinguish, terminate, discharge and release the LIFT Trust Deed. The Parties agree to take any action reasonably requested by Lender to effectuate the foregoing.

## 9. FORECLOSURE AND APPLICATION OF FUNDS.

9.1 **Effect of Foreclosure**. A foreclosure of the Lender Trust Deed or the LIFT Trust Deed (a "**Foreclosure**") or a deed in lieu of foreclosure with respect to either the Lender Trust Deed or the LIFT Trust Deed (together with a Foreclosure, a "**Foreclosure Action**"), permitted by applicable law, will extinguish the lien created by the Project Trust Deed being foreclosed, but shall not terminate the Operating Agreement or terminate, suspend or limit the rights of OHCS to continue to exercise Operational Remedies. Additionally, for purposes of clarity, the Parties further acknowledge and agree that the Operating Agreement shall continue in full force and effect following a Foreclosure Action and any party purchasing or otherwise acquiring the Mortgaged Property in connection with a Foreclosure Action shall be subject to the terms, conditions and all other requirements and obligations as the "Owner" under the Operating Agreement.

9.2 **OHCS Right to Purchase following Notice of an Event of Default**. Prior to the actual sale or transfer of the Mortgaged Property pursuant to a Foreclosure Action, Lender agrees that OHCS shall have the right to purchase the Lender Loan from Lender at a purchase price equal to the principal outstanding under the Lender Loan, together with all accrued and unpaid interest and all other amounts owing to Lender with respect to advances, fees and expenses, and interest on the Lender Loan, and thereafter proceed to acquire the Mortgaged Property, all consistent with its authority to purchase "participating property" under Oregon law, including, without limitation, ORS 456.250 to ORS 456.265. Such purchase of the Mortgaged Property by OHCS may be effected by a Foreclosure Action or on such terms and conditions as may be negotiated between OHCS and the Borrower.

9.3 **Application of Foreclosure Sale Proceeds**. The Parties agree that upon a Foreclosure Action, subject to the provisions of Section 10 of this Agreement, the proceeds resulting from such Foreclosure Action ("**Foreclosure Sale Proceeds**") shall be applied:

FIRST, to all amounts owing to Lender under the Lender Loan Documents, including without limitation the payment of all principal outstanding under the Lender Loan, together with all accrued and unpaid interest and all other amounts owing to Lender with respect to advances, fees and expenses, and interest on the Lender Loan; and

SECOND, to amounts owing to OHCS under the LIFT Loan Documents in accordance with the priority for the application of moneys set forth in the LIFT

Trust Deed providing for the payment of amounts payable to OHCS with respect to advances, fees and expenses, and interest on the LIFT Loan.

**10. TERM AND TERMINATION OF OPERATING AGREEMENT.** The Parties each acknowledge and agree that a Foreclosure Action shall not operate to terminate the Operating Agreement, which shall continue in full force and effect following the Foreclosure Action, absent termination by OHCS as set forth in this Section 10. Contemporaneously with any Foreclosure Action, OHCS may elect to terminate the Operating Agreement with Lender's prior written consent (which consent may be withheld in Lender's sole discretion), and may condition termination of the Operating Agreement (and any other Affordability Agreements) on payment of the LIFT Loan and/or any other payments, terms or conditions as OHCS may require. Upon receipt of any such Lender consent, the Operating Agreement shall be terminated effective upon the sale or transfer of the Mortgaged Property pursuant to the Foreclosure Action and the payment and/or satisfaction of any terms or conditions to the termination agreed to by OHCS and Lender. Absent such termination at the election of OHCS with the consent of Lender, the Operating Agreement shall continue in full force and effect in accordance with its terms notwithstanding the Foreclosure Action.

**11. REFINANCE**. The Parties hereto acknowledge and agree that in connection with any refinancing of the Lender Loan (upon maturity or otherwise) (a "Refinance Loan"), so long as a Refinance Loan is in an amount not greater than the outstanding balance on the Lender Loan, plus reasonable financing costs and any amount approved by OHCS for repairs or improvements to the Project (if any), upon the closing of a Refinance Loan by such refinance lender (the "Refinance Lender"), the deed of trust securing a Refinance Loan (the "Refinance Deed of Trust") shall be in the same lien position as the Lender Trust Deed and subject to the terms and conditions of this Agreement, and that all references in this Agreement to "Lender," shall be deemed to refer to the Refinance Lender and all references in this Agreement to the "Lender Loan" and "Lender Trust Deed" shall be deemed to refer to the Refinance Loan and the Refinance Deed of Trust. It is the intention of the Parties that no further priority agreements or subordination agreements shall be required to establish such priority or agreements. However, the Parties acknowledge and agree that to the extent such subordination or priority agreements are required by the Refinance Lender, or the title company insuring the lien of the Refinance Deed of Trust, the Parties shall execute such documents and subordination agreements provided that they are reasonably acceptable to the Parties required to execute and deliver such subordination or priority agreements

**12. NO OHCS OBLIGATIONS TO OTHER PARTIES.** Nothing contained in this Agreement shall create any pecuniary liability of OHCS for any amounts owing to Lender under any of the Project Financing Documents provided, however, that this Section 12 shall not waive or otherwise limit OHCS's express obligations under this Agreement (or any of Lender's rights or remedies against OHCS for breach of such obligations).

**13. NO LENDER OBLIGATIONS TO OTHER PARTIES.** Nothing contained in this Agreement shall create any pecuniary liability of Lender for any amounts owing to OHCS under any of the Project Financing Documents; provided, however, that this Section 13 shall not waive or otherwise limit Lender's expense obligations under this Agreement (or any of OHCS's rights or remedies against Lender for breach of such obligations).

**14. ADDITIONAL REPRESENTATIONS AND COVENANTS.**

14.1 Without the prior written consent of Lender, OHCS shall not (i) amend or modify the Operating Agreement; (ii) amend or modify any of the material terms and conditions of the LIFT Loan Documents related to the payment of or the security for the LIFT Loan; (iii) pledge, assign, transfer, convey, or sell any OHCS interest in the LIFT Loan; or (iv) accept any payment on account of the LIFT Loan other than the payment of interest or principal then due and payable. Further, Lender shall be permitted to amend, modify, waive, extend, renew or replace any provision of the Lender Loan Documents without the prior approval of any party. Lender shall use reasonable efforts to provide written notice to OHCS of any amendment to any of the Lender Loan Documents.

14.2 OHCS shall deliver to Lender a copy of each notice received or delivered by OHCS pursuant to the LIFT Loan Documents, or in connection with the LIFT Loan, simultaneously with its delivery or receipt of such notice. Lender shall deliver to OHCS in the manner required in Section 14 a copy of each notice of an Event of Default delivered to the Borrower by Lender. Neither giving nor failing to give a notice to Lender or OHCS hereunder shall (i) affect the validity of any notice given by Lender or OHCS to the Borrower, as between the Borrower and such of Lender or OHCS as provided in the notice to the Borrower, or (ii) impose any liability upon any Party for failing to give any such notice (except the notice required under Section 3 to be given by Lender prior to or upon the commencement of any Enforcement Action).

14.3 Without the prior written consent of Lender, OHCS will not commence, or join with any other creditor in commencing, any Bankruptcy Proceeding. In the event of a Bankruptcy Proceeding, OHCS shall not vote affirmatively in favor of any plan of reorganization or liquidation unless Lender has also voted affirmatively in favor of such plan.

14.4 Whenever the Project Financing Documents give OHCS approval or consent rights with respect to any matter, and a right of approval or consent with regard to the same or substantially the same matter is also granted to Lender pursuant to the Lender Loan Documents or otherwise, Lender's approval or consent or failure to approve or consent, as the case may be, shall be binding on OHCS. None of the other provisions of this Section 14 are intended to be in any way in limitation of the provisions of this Section 14.4.

14.5 Upon the occurrence of a Condemnation or a Casualty, the provisions of the Lender Loan Documents shall apply (including, but not limited to, restoration obligations and the application of the proceeds of insurance or condemnation awards). The rights of OHCS (under the LIFT Loan Documents or otherwise) to participate in any proceeding or action relating to a Condemnation or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation or a Casualty, or to apply any proceeds of insurance or condemnation proceeds, will be and remain subordinate to Lender's rights under the Lender Loan Documents with respect thereto. Lender will, however, obtain OHCS' prior approval of any settlement or adjustment of such claims, which approval will not be unreasonably withheld, conditioned, or delayed; provided that if Lender and OHCS cannot agree upon a settlement, or OHCS fails to respond to such request within ten (10) Business Days ("Business Days" means any day except for any Saturday, any Sunday or any bank or legal holiday), Lender's determination shall control. Lender shall keep OHCS reasonably informed of the status of any negotiations concerning settlement or adjustment of a claim resulting from a Condemnation or Casualty.

14.6 Lender and OHCS each acknowledge and agree that it is assuming all risk of loss related to and associated with the Lender Loan and the LIFT Loan, respectively. Lender and OHCS have undertaken their own review and evaluation of the Project and are not relying upon the opinion or actions of the other with respect to the credit worthiness, validity, legality, value, sufficiency, perfection, priority, enforceability or collectability of the Project, the Lender Loan Documents or the LIFT Loan Documents.

## 15. MISCELLANEOUS PROVISIONS.

15.1 In the event of any conflict or inconsistency between the terms of any of the Project Financing Documents, and the terms of this Agreement, the terms of this Agreement shall control.

15.2 This Agreement shall be binding upon and shall inure to the benefit of the respective legal successors and permitted assigns of the Parties hereto. No other party, including, but not limited to, the Borrower, shall be entitled to any benefits hereunder, whether as a third-party beneficiary or otherwise.

15.3 Each notice, request, demand, consent, approval or other communication (collectively, "**notices**," and singly, a "**notice**") which is required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery (any notice so delivered shall be deemed to have been received on the next business day following receipt by the courier), or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

OHCS: State of Oregon Housing and Community Services Department
725 Summer Street NE, Suite B
Salem, OR 97301-1266

With a copy to: Oregon Department of Justice
1162 Court St. NE
Salem, Oregon 97301
Attention: OHCS Contact Counsel

| | |
|---|---|
| Borrower: | [Name]<br>[Address]<br>Attention: _[__________]<br>E-mail: _[______________]<br>Telephone: _[___________] |
| With a copy to: | [Name]<br>[Address]<br>Attention: _[__________]<br>E-mail: _[______________]<br>Telephone: _[___________] |
| Lender: | [Name]<br>[Address]<br>Attention: _[__________]<br>E-mail: _[______________]<br>Telephone: _[___________] |
| With a copy to: | [Name]<br>[Address]<br>Attention: _[__________]<br>E-mail: _[______________]<br>Telephone: _[___________] |

15.4 Any party, by notice given pursuant to this Section, may change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its notices, but notice of a change of address shall only be effective upon receipt. Neither party shall refuse or reject delivery of any notice given in accordance with this Section.

15.5 This Agreement shall be governed by the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") among two or more of the Parties related to this Agreement will be conducted exclusively within the Circuit Court of Marion County, Oregon (unless Oregon law requires that it be brought and conducted where the Project is located) or, if necessary, the United States District Court for the District of Oregon. In no event will this provision be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. EACH OF THE PARTIES HERETO, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

15.6 If any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein, and any other application thereof, shall not in any way be affected or impaired thereby.

15.7 No failure or delay on the part of any Party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.

15.8 Each Party hereto acknowledges that in the event any Party fails to comply with its obligations hereunder, the other Parties shall have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting Party and injunctive relief.

15.9 This Agreement may be amended, changed, modified, altered or terminated only by a written instrument or written instruments signed by the Parties of this Agreement.

15.10 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

***[Remainder of Page Intentionally Left Blank – Signature Pages Follow]***

**IN WITNESS WHEREOF**, the Parties have duly executed this Agreement as of the day and year first above written.

**OHCS:**

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

______________________________________

Roberto Franco, Assistant Director
Affordable Rental Housing Division

STATE OF OREGON )
: ss
County of Marion )

The foregoing instrument was acknowledged before me this [__] day of [________] 20[__], by Roberto Franco, Assistant Director, Affordable Rental Housing Division, for and on behalf of OHCS.

______________________________________

NOTARY PUBLIC FOR OREGON
My Commission Expires:[___________________]

| | |
|---|---|
| **LENDER:** | **[ENTITY NAME],**<br>**an [entity type]** |
| | By: _______________________________________ |

STATE OF OREGON )
: ss
County of [_________] )

This instrument was acknowledged before me this [__] day of [________] 20[__], by [______________________________], [____________________] for and on behalf of Lender.

_________________________________________

NOTARY PUBLIC FOR OREGON
My Commission Expires:[___________________]

## CONSENT OF BORROWER

The Borrower hereby acknowledges receipt of a copy of this Inter-Creditor Agreement and consents to the agreement of the parties set forth herein.

**BORROWER:**

**[Legal Name of Owner Entity]**,
an Oregon **[type of entity]**
Tax ID: **[tax id #]**

By: ________________________________________

**[Name of Signor], [Title]**

STATE OF OREGON )
: ss
COUNTY OF [_________] )

The foregoing instrument was acknowledged before me this **[__]** day of **[________]** 20**[__]**, by **[name of signor, title of entity, type of entity, role of entity (see signature block)]** of Borrower, for and on behalf of Borrower.

_____________________________________________

NOTARY PUBLIC FOR OREGON
My Commission Expires:[____________________]

**EXHIBIT A**
(Legal Description)