

**After Recording Return to:**

Housing and Community Services  
Attn: Multifamily Housing Finance Section  
725 Summer Street, Suite B  
Salem, OR 97301-1266

SPACE ABOVE FOR RECORDER'S USE

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

**LOCAL INNOVATION AND FAST TRACK HOUSING PROGRAM  
OPERATING AGREEMENT AND DECLARATION OF LAND-USE RESTRICTIVE COVENANTS**

This Local Innovation and Fast Track Housing Program Operating Agreement and Declaration of Land-Use Restrictive Covenants (this “**Operating Agreement**” or “**Agreement**”) is made and entered into this [#~] day of [Month~], 2017 by and between [Name of Owner~], an Oregon [type of entity~] (“**Owner**”), and the State of Oregon, acting by and through its Housing and Community Services Department, together with its successors and assigns (“**OHCS**”).

**RECITALS**

A. The Issuer has or will issue its [Amount Longhand~] Dollars (\$[x~]) State of Oregon Article XI-Q General Obligation Taxable Bonds 2017 Series [#~] (the “**Bonds**”) for the purpose, *inter alia*, of OHCS loaning certain proceeds of the Bonds in accordance with its Local Innovation and Fast Track Housing Program (“**LIFT**” or “**Program**”) to partially finance the costs of developing (the “**Work**”) an affordable multifamily rental housing project further described below (the “**Project**”) pursuant to a Loan Agreement of even date with this Agreement by and between OHCS and Owner (the “**Loan Agreement**”), which Project will be developed, operated, and managed in accordance with the terms and conditions of the Bond Documents, the Financing Documents, this Agreement, the Loan Agreement, other Loan Documents including the Local Innovation and Fast Track Housing Program Project Management Agreement of even date with this Agreement, by and between/among OHCS, Owner, and [Name of Agent~], an Oregon [type of entity~] (“**Agent**”) (the “**Project Management Agreement**”), and any other applicable Program Requirements. [Note: Include shaded phrase “the Financing Documents,” only if applicable. Modify second shaded area depending upon whether or not there is a Management Agent.]

B. Owner has completed and submitted to OHCS an application (the “**Application**”) for a reservation of LIFT funds to be used for the Project in compliance with Program Requirements, and for a reservation of LIHTC and Conduit Bond funding to be used for the Project in compliance with Program Requirements. [Note: Delete shaded portion of sentence if not applicable.]

C. In response to the Application by Owner, OHCS has issued a reservation letter dated [Month~] [#~], 2017 (the “**Reservation**”) approving a conditional loan of LIFT funds to Owner for the Project up to a maximum principal amount of [Amount Longhand~] Dollars (\$[#~]) (the “**Loan**”), approving a conditional loan of Conduit Bond funds to Owner for the Project up to a maximum principal amount of [Amount Longhand~] Dollars

(\$[#~]) (the “**Conduit Bond Loan**”), and approving a conditional reservation of federal Low-Income Housing Tax Credits up to a maximum principal amount of [**Amount Longhand~**] Dollars (\$[#~]) (the “LIHTC”) all for the purpose of partially financing the Work costs of a [**Number Longhand~**] ([#~]) -unit affordable multifamily rental housing project in [**Name of City, if applicable~**], [**Name of County~**] County, Oregon on land more particularly described in Exhibit A hereto (the “**Property**”), and known as [**Name of Project~**] (the improvements and land, hereinafter, the “**Project**”). [Note: Include shaded portion of above paragraph only if Conduit Bonds and LIHTC are being reserved for partial financing of the Project.]

**D.** OHCS is willing to make the Loans and LIHTC allocation conditioned upon Borrower’s compliance with the terms and conditions of this Agreement, the Project Management Agreement, and other applicable Program Requirements. [Note: Include shaded portion of above paragraph only if Conduit Bonds and LIHTC are being reserved for partial financing of the Project.]

**E.** It is the intent of the parties that any Management Agreement between the Owner and Agent, if any, concerning the Project will be consistent with and subordinate to this Agreement, the Project Management Agreement, and other applicable Program Requirements.

## AGREEMENT

WHEREFORE, for good and sufficient consideration, including the terms and conditions herein, OHCS and Owner mutually agree as follows:

### **SECTION 1. INCORPORATIONS; UNDERSTANDING OF OWNER; DEFINITIONS.**

**1. Incorporations.** The foregoing Recitals, the Bond Documents, the other Loan Documents, the Financing Documents, and Exhibits A through C are incorporated herein. Other documents are incorporated herein as expressly stated in this Agreement. Notwithstanding these incorporations, the recitals, documents, and exhibits do not modify the express terms of this Agreement, except if so expressly stated.

**2. Acknowledgement of Owner.** Owner acknowledges, represents, agrees, and warrants that it understands the nature and structure of the transactions contemplated by this Operating Agreement; that it is familiar with the provisions of all of the documents and instruments to which it is a party or of which it is a beneficiary; that it understands the financial and legal risks inherent in such transactions; and that it has not relied on the Issuer, OHCS specifically, or the State of Oregon for any guidance or expertise in analyzing the financial or other consequences of such financing transactions or otherwise relied on the Issuer, OHCS specifically, or the State of Oregon in any manner except to issue the Bonds and to make the Loan in order to provide funds to assist the Owner in financing the Project.

**3. Definitions.** Unless the context clearly indicates otherwise, words used in this Agreement have the meanings given below, otherwise in this Agreement, or as used in other Program Requirements:

- (a) “Act” means the Housing Finance Act, ORS Chapter 456.515 to 725, as amended.

- (b) “Affordability Period” means the aggregate of: (A) the aggregate of the respective Affordability Periods described in the Conduit Bond Loan Documents and Financing Documents; and (B) [Number Longhand~] [#~] years beginning from the date that any building in the Project is first placed in service; and (C) the time period beginning with the date of this Agreement and expiring not sooner than [Month~] [#~], 20[#~], provided that the Owner is in continuous compliance with the terms of this Agreement during such time period. Notwithstanding the foregoing, OHCS may, at its sole discretion, extend this Affordability Period for periods of time matching corresponding periods of time during the aforementioned Affordability Period for which OHCS determines the Owner to be in material noncompliance with any of the terms of this Agreement (including the incorporated Financing Documents). [Note: Delete shaded area and change (C) to (B) if no LIHTC/Conduit Bonds involved in Project financing.]
- (c) “Agent” or “Management Agent” mean that Agent identified above in Recital A, if any, or as hereafter required by OHCS.
- (d) “Application” means the application completed and submitted to OHCS by or on behalf of Owner for a reservation of LIFT funds, for a reservation of Conduit Bond funds, and for a reservation of LIHTC to be used for the Project in compliance with Program Requirements as referenced in Recital B. [Note: Included shaded portion only if applicable.]
- (e) “Article XI-Q” means Article XI-Q of the Oregon Constitution referenced in Recital A, pursuant to which the Bonds have or will be issued.
- (f) “Available Units” mean Dwelling Units in the Project that are actually occupied and Dwelling Units in the Project that are vacant and have been occupied at least once after becoming available for occupancy, provided that (a) a Dwelling Unit that is vacant on the later of (i) the date the Project is acquired or (ii) the issue date of the Bonds is not an Available Unit and does not become an Available Unit until it has been occupied for the first time after such date, and (b) a Dwelling Unit that is not available for occupancy due to renovations is not an Available Unit and does not become an Available Unit until it has been occupied for the first time after the renovations are completed.
- (g) “Bonds” means those State of Oregon Article XI-Q General Obligation Taxable Bonds 2017 Series [#~], as referenced in Recital A, including any refunding bonds.
- (h) “Bond Documents” means, including as amended from time to time: the Bond Declaration and other documents, including as amended from time to time, issued or executed by relevant entities or parties related to the partial-financing of the Project with proceeds of the Bonds or operation of the Project consistent with such financing, as well as any Conduit Bond Documents. [Note: If Conduit Bond financing not part of transaction, “reserve” this shaded portion of the definition. Otherwise, remove shading.]
- (i) “Code” or “IRC” mean the Internal Revenue Code of 1986, together with corresponding and applicable final, temporary or proposed regulations and revenue rulings issued or amended with respect thereto by the Treasury Department or Internal Revenue Service of the United States. All references herein to sections, paragraphs or other subdivisions of the Code or the regulations promulgated thereunder will be deemed to be references to correlative provisions of any successor code or regulations promulgated thereunder.

- (j) “Conduit Bonds” means those bonds, including refunding bonds, issued pursuant to the OHCS Pass-Through Revenue Bond Program for the partial-financing of the Project. [Note: If not applicable, “reserve” this definition.]
- (k) “Conduit Bond Documents” means documents including as amended from time to time, issued or executed by relevant entities or parties related to the partial-financing of the Project with proceeds of the Conduit Bonds or operation of the Project consistent with such financing. [Note: If not applicable, “reserve” this definition.]
- (l) “Conduit Bond Issuer” means, collectively, the Oregon State Treasurer and the Housing and Community Services Department. [Note: If not applicable, “reserve” this definition.]
- (m) “Conduit Bond Loan” means the conditional, up-to-a-maximum-principal-amount Loan described in the Conduit Bond Documents. [Note: If not applicable, “reserve” this definition.]
- (n) “Corrective Notice” means any directive from OHCS to correct a deficiency in the operation or management of the Project, or other noncompliance with Program Requirements, as determined by OHCS.
- (o) “Dwelling Units” or “Units” mean the units of multifamily residential rental housing comprising the Project that are available for occupancy. For purposes of this definition, no manager unit so designated herein or in any applicable Financing Document will be treated as a rental Unit during the time of such occupation unless expressly so stated herein or in such applicable Financing Document. All manager units will be construed as Units for the computation of applicable administration and monitoring fees or charges.
- (p) “Excess Revenues” means that Operating Income remaining after payment of applicable Operating Expenses and, subject to the terms of this Operating Agreement, available for distribution by the Owner.
- (q) “Financing Documents” means, including as amended from time to time: the Reservation and Extended Use Agreement executed between OHCS and Owner of even date with this Agreement, the Hold Harmless Agreement executed between OHCS and Owner of even date with this Agreement, the Declaration of Land Use Restrictive Covenants to be executed in the future by OHCS and Owner, and to be recorded against the Project in the official records of the county or counties in which the Project is sited, and other documents between or by OHCS and/or Owner related to the partial-financing of the Project with federal Low-Income Housing Tax Credits. [Note: If not applicable, “reserve” this definition. This definition included only if other LIHTC/Conduit Bond funding assistance is/has been provided to the Project.]
- (r) “Functionally Related and Subordinate” means and includes facilities for use by Residents; for example, laundry facilities, parking areas and recreational facilities provided that the same is of a character and size commensurate with the character and size of the Project.
- (s) “GAAP” means generally accepted accounting principles consistently applied.
- (t) “Housing Act” means the United States Housing Act of 1937, as amended.
- (u) “HUD” means the U.S. Department of Housing and Urban Development.

- (v) “IFRS” means the International Financial Reporting Standards consistently applied.
- (w) “Investor” means **[Full Name~]**, an **[Jurisdiction of Incorporation~]** **[type of entity~]**, which is providing LIHTC-derived investment funding to Owner, and the Investor’s permitted successors and assigns. **[If not applicable, “reserve” this definition.]**
- (x) “Issuer” means, collectively, the Oregon State Treasurer, the Department of Administrative Services, and the Housing and Community Services Department. In any context exclusive of the Bonds, “Issuer” means, collectively, the Oregon State Treasurer and the Housing and Community Services Department. **[Note: If this second sentence is not applicable, delete.]**
- (y) “Lease” means the form(s) of OHCS-approved agreement between the Owner and a Resident under the terms of which said Resident is entitled to enjoy possession of a Unit in the Project.
- (z) “Letter of Intent” or “LOI” mean **one or more**/that letters of intent executed among Owner, **[Name of other required party~]**, and OHCS, dated **respectively** **[Date(s)~]**, including as amended. **[Note: If one LOI will cover all applicable OHCS funding, delete shaded areas.]**
- (aa) “LIFT” or “Program” mean the Local Innovation and Fast Track Housing Program described in Recital A, as administered by OHCS or any successor or assign.
- (bb) “LIHTC” means low-income housing tax credits available pursuant to Section 42 of the Code. **[Note: If not applicable, “reserve” this definition.]**
- (cc) “Loan” means the conditional, up-to-a-maximum-principal-amount Loan described in Recital C, the terms for which are more fully described in the Loan Agreement.
- (dd) “Loan Agreement” means that Loan Agreement described in Recital A governing the Loan from OHCS to Owner, including as amended.
- (ee) “Loan Documents” means the documents executed by Owner with or in favor of OHCS in connection with the Loan and with the ownership and operation of the Project, including but not limited to documents referred to herein as the LOI, the Promissory Note, the Loan Agreement, the Trust Deed, this Operating Agreement, the Project Management Agreement, the Application, and the Reservation, as well as related documents (including, but not limited to exhibits, incorporations, ancillary documents, and documents effecting amendments to any of the foregoing).
- (ff) “Loans” means, collectively, the Loan and the Conduit Bond Loan. **[Note: “Reserve” this definition if no Conduit Bond financing involved in Project.]**
- (hh)** “Management Agreement” means that management agreement between Owner and Agent, if any, satisfactory to OHCS, as described above in Recital E, including as amended or replaced. The Management Agreement is an ancillary document to the Loan Documents and included in the definition thereof.
- (ii) “Management Plan” means information provided to OHCS (and satisfactory to OHCS) consistent with the Key Personnel Summary attached hereto as Exhibit B, describing, *inter alia*, the **Owner/Agent relationship**, Project site management staffing, management responsibilities (specific by position), and marketing outreach, as amended from time to time with the approval of OHCS or as required by OHCS. **[Note: This Management Plan is also incorporated into the Project Management Agreement, as is the**

Management Agreement. If there is no Management Agent, the Project Management Agreement is solely between Owner and OHCS (with relevant variations) and this definition is modified accordingly.]

- (jj) “Operating Agreement” or “Agreement” means this Operating Agreement and Declaration of Restrictive Covenants, including as amended.
- (kk) “Operating Expenses” means payments required to be made from Operating Income (including those under the Bond Documents, Loan Documents, and Financing Documents, as applicable - including principal and interest payments thereunder), including but not limited to all federal, state, county and local government taxes, assessments, or charges; water and sewer charges; operating costs incurred in meeting subordinated debt of the Project (other than subordinated debt of the Managing Member of Owner, if any), maintaining and operating the Project, including without limitation costs of required reserves, utilities, supplies, insurance, compensation of all persons who perform duties connected with the operation, maintenance, and repair of the Project, management of the Project, legal, accounting, and other professional fees incurred in connection with the operation, maintenance, and management of the Project; and any other costs or expenses incurred by Owner or its agents with respect to the Project and not otherwise reimbursed by occupants of the Project, which are properly allocable to the operation or maintenance of the Project in accordance with GAAP or IFRS (whichever is allowed by OHCS). Legal, accounting and other professional fees, as well as all other costs, incurred in resisting foreclosure or any other remedy exercised by OHCS, or required under a remedy, will not qualify as Operating Expenses nor will any payments made by Owner to any Related Persons except as otherwise specified above.
- (ll) “Operating Income” means all rents paid by occupants, whether Residents or otherwise, and all other income of the Project, including without limitation interest earnings on moneys in the Operating Fund.
- (mm) “Operating Income and Expense Fund” or “Operating Fund” mean the account established in a depository approved by OHCS and otherwise organized and operated pursuant to this Agreement.
- (nn) “Owner” or “Borrower” mean the Owner, as defined in the introductory paragraph hereof, and its successors and assigns.
- (oo) “Ownership Agreement” means the Owner’s limited liability company operating agreement or limited partnership agreement, as the same may be amended or supplemented from time to time.
- (pp) “Project” means the Property, together with all improvements, buildings, appurtenances, and equipment thereon as more fully described in Recital C.
- (qq) “Project Management Agreement” means that Local Innovation and Fast Track Housing Program Project Management Agreement, satisfactory to OHCS, among Owner, Management Agent (if applicable), and OHCS referenced in Recital A.
- (rr) “Property” means the land described in Exhibit A, referenced in Recital C.
- (ss) “Program Requirements” means all performance requirements, restrictive covenants, warranties, liabilities, operational standards, and other obligations of the Owner, Agent (as applicable), and others arising under the terms and conditions of the Program, **the Pass-Through Revenue Bond Program, and the Low-Income Housing Tax Credit Program**, including applicable provisions of Article XI-Q, the Act, the Code, the Bond Documents, this Agreement, the Project Management Agreement, the Management Agreement (as applicable), the Management Plan, the Loan Agreement, other Loan Documents, **any Financing Documents (including all requirements related thereto), any Conduit Bond Documents (including all requirements related thereto)**, OHCS administrative rules, applicable OHCS manuals,

applicable OHCS orders and directives, and other applicable federal, state, and local laws, ordinances, codes, rules, and regulations (all of the foregoing, including as amended from time to time). [Note: Remove shaded areas if no Conduit Bond/LIHTC funding involved with Project.]

- (tt) “Qualified Resident” or “Qualified Tenant” means a person satisfying applicable income limits under this Agreement and validly occupying a Qualified Unit in the Project pursuant to a Lease.
- (uu) “Qualified Units” means Dwelling Units, the respective Residents of which have an aggregate gross income of not more than the applicable limits permitted in this Agreement at the time of initial occupancy. A Residential Unit occupied by one or more students will only constitute a Qualified Unit if such students meet the requirements of Section 142(d)(2)(c) of the Code. The character of a Unit as a Qualified Unit will be re-determined from time to time as described in this Agreement. [Note: If shaded sentence not applicable, delete.]
- (vv) “Related Persons” means a person who is related to another person if:
- (i) The relationship between such persons would result in a disallowance of losses under Section 267 of the Code (relating to disallowance of losses, etc., between related taxpayers) and Section 707(b) of the Code (relating to losses disallowed, etc., between partners and controlled partnerships) and the regulations thereunder, or
  - (ii) Such persons are members of the same controlled group of corporations, as defined in Section 1563(a) of the Code, relating to definition of “controlled group of corporations” (except that “more than 50 percent” will be substituted for “at least 80 percent” each place it appears in Section 1563(a) of the Code) and the regulations thereunder.
- (ww) “Rent” means that monthly amount that a Resident is obligated to pay the Owner pursuant to the terms of a Lease.
- (xx) “Reservation” means that reservation letter from OHCS described in Recital C approving, *inter alia*, the conditional Loan of LIFT funds to Owner for the Project and applicable Conduit Bond and LIHTC funding. [Delete shaded area if no LIHTC/Conduit Bond funding involved in Project.]
- (yy) “Resident” means a person or household occupying a Dwelling Unit in the Project pursuant to a Lease.
- (zz) “Resident Services Plan” means the “**Resident Services Plan**” or “**Resident Plan**” described herein and attached hereto as Exhibit C.
- (aaa) “Rules and Regulations” means conduct standards for Residents and users of the Project consistent with Program Requirements.
- (bbb) “Transferee” means the person to whom the Owner sells, transfers to or disposes of the Project, the Owner itself or any portion of or interest in either (other than by leasing or renting for individual tenant use as contemplated in this Operating Agreement), including a “Related Person.”
- (ccc) “Treasury Regulations” means the regulations of the U.S. Department of the Treasury under the Code, as applicable.
- (ddd) “Unit” or “Dwelling Unit” mean a residential dwelling unit in the Project.

(eee) IFRS

## **SECTION 2. QUALIFIED PROJECT.**

OHCS and Owner hereby acknowledge and agree that, at all times during the term of this Operating Agreement, the Project is to be owned, managed and operated as a Project qualified for funding with Article XI-Q Bonds and with funding supplied pursuant to the Conduit Bond Documents and Financing Documents. [Note: Delete shaded area of sentence if not applicable.] To that end Owner hereby represents, covenants, warrants, and agrees as follows:

**1. Cooperative Operation.** Owner will own and cooperatively operate the Project as a low-income multifamily residential rental housing development property containing Dwelling Units and facilities Functionally Related and Subordinate to such Dwelling Units, in accordance with this Agreement, the Project Management Agreement, and other applicable Program Requirements.

**2. Complete and Separate Facilities.** Each of the Dwelling Units in the Project will contain complete and separate facilities for living, sleeping, eating, cooking, and sanitation for a single person or a family, within the meaning of Treasury Regulations Section 1.103-8(b)(8), as supplemented and amended. [Note: If Conduit Bonds/LIHTC not involved in Project, this subsection may be modified, as appropriate, to comport with approved construction.]

**3. Availability of Units.** Once available for occupancy, throughout the Affordability Period described in this Operating Agreement, each Dwelling Unit in the Project will be rented or available for rental on a continuous basis to members of the general public, without preference to any particular group or class, except preferences permitted under Section 42 of the Code (as clarified by Section 42(g)(9) thereof), or otherwise consistent with federal housing policy governing non-discrimination (inclusive of the Housing Act), as evidenced by HUD rules and regulations (24 CFR subtitle A and chapters I through XX), and state law limiting discrimination provided, however, that any residential rental unit that is part of a hospital, nursing home, sanitarium, life-care facility, trailer park, or intermediate care facility for the mentally and physically handicapped is not deemed herein to be for use by the general public.

**4. Functionally Related and Subordinate Facilities.** The Project will consist of proximate buildings or structures located on a single "tract" of land which have similarly constructed Dwelling Units financed pursuant to a "common plan" together with Functionally Related and Subordinate Facilities, which will be owned by the same "person" (as such terms are used in the Treasury Regulations). Owner has covenanted (and does hereby covenant, represent and warrant) that no interest in either the Owner or the Project will be transferred except as permitted in Section 7 hereof.

## **SECTION 3. MODIFICATION OF COVENANTS.**

Owner and OHCS hereby agree as follows:

**1. More Restrictive Covenants.** To the extent any amendments to the Code, Treasury Regulations, Article XI-Q, the Act, related statutes, administrative rules, orders, rulings, or other law will, in the written opinion of counsel for OHCS, impose requirements upon the ownership or operation of the Project more restrictive than those imposed by this Operating Agreement and the Project Management Agreement that must be complied with in order to comport with the Code, Treasury Regulations, Article XI-Q, the Act, related statutes, administrative rules, orders, rulings, or other law, this Operating Agreement and the Project Management Agreement, will be deemed to be automatically amended to impose such additional or more restrictive requirements.



**2. Less Restrictive Covenants.** To the extent any amendments to the Code, Treasury Regulations, Article XI-Q, the Act, related statutes, administrative rules, orders, rulings, or other law will, in the written opinion of counsel for OHCS, impose requirements upon the ownership or operation of the Project less restrictive than imposed by this Operating Agreement, this Agreement may be amended or modified, to provide such less restrictive requirements, but only by written consent signed by OHCS (which consent may be given or withheld at its sole discretion, including reliance upon a written opinion of counsel for OHCS that such amendment will not impair compliance with the Code, Treasury Regulations, Article XI-Q, the Act, related statutes, administrative rules, orders, rulings, or other law, will not affect the use of the Bonds, the Conduit Bonds, if any, the LIHTC, if any, and will not create an actual or potential liability for OHCS or the State of Oregon, including their officers, employees, agents, representatives, and assigns).

**3. Changes.** OHCS and Owner may, in a writing signed by authorized representatives of same, amend, modify, waive, release or forebear (collectively, “**Change**”) the compliance and enforcement of other covenants under this Agreement (including incorporated documents) at the sole discretion of OHCS, as it determines to be appropriate under applicable law and to further the purposes of OHCS, including in promoting safe, sanitary and affordable housing for low- and lower-income residents of the State of Oregon. Third-party beneficiaries under such covenants, if any, will have no recourse with respect to such Changes except as expressly reserved under the Code or Treasury Regulations.

**4. Execution.** Owner and OHCS will execute, deliver and, if applicable, file of record any and all documents and instruments, necessary to effectuate the intent of this Section.

#### **SECTION 4. GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF OWNER.**

The Owner represents, warrants, and covenants that:

**1. Validity.** It is an Oregon [**type of entity~**], duly organized, validly existing under the laws of Oregon, is authorized to do business in Oregon, and it has the power and authority to transact the business in which it is engaged and to enter into and perform this Agreement.

**2. Authority; No Impairment.** The making and performance of this Agreement by Owner has been duly authorized by all necessary action of Owner; do not and will not violate any provision of any applicable law, rule, or regulation or order of any court, regulatory commission, board or other administrative agency or any provision of Owner’s organizing documents or authorizing statutes; and do not and will not result in the breach of, or constitute a default or require any consent under, any other agreement or instrument to which Owner is a party or by which Owner or any of its properties is bound or affected and does not and will not result in the creation or imposition of any prohibited encumbrance of any nature.

**3. Enforceability.** This Agreement, when executed and delivered, is a valid and binding obligation of Owner enforceable in accordance with its terms.

**4. Program Requirements.** Owner will timely satisfy all requirements of this Agreement, including all applicable Program Requirements, to the satisfaction of OHCS.

**5. Completion Date.** Owner will complete the Project Work no later than [**Month~**] [**#~**], 20[**#~**] in accordance with this Agreement, the Loan Agreement, and other applicable Program Requirements (including but not limited to the plans and specifications for the Project approved by OHCS or modifications to those plans and specifications, which modifications must be approved by OHCS).

**6. Responsibility.** Owner assumes full responsibility for timely and appropriate completion of Project Work, for

ownership of the Project, for its operation of the Project in accordance with Program Requirements, for full and timely satisfaction of Program Requirements, and acknowledges that OHCS has no direct or contractual responsibility to Owner for the Project Work, for ownership of the Project, or for its operation.

**7. No Conflicting Agreements.** Owner has not executed, and will not execute, any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event the requirements of this Operating Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith except as may be expressly required by the Code or applicable Treasury Regulations.

**SECTION 5. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF OWNER.**

The Owner also represents, warrants, and covenants that:

**1. Program Compliance Generally.**

**(a) Appropriate Costs.** Owner will use Loan or other Conduit Bond or LIHTC funds only for financing of eligible costs related to Project Work with respect to the [Number Longhand~] ([#~]) Qualified Units of the [Number Longhand~] ([#~]) total Units in the Project and such eligible common areas and other aspects of the Project, consistent with Program Requirements, as well as any other Units and elements as described in the Application and approved in the Reservation. [Note: Delete shaded area if not applicable.]

**(b) Overall Compliance.** Owner will comply, and will cause its agents, employees, contractors, subgrantees and assigns, if any, to comply with the terms and conditions of this Agreement, including all applicable Program Requirements.

**(i) Local Compliance.** Compliance with Program Requirements expressly includes compliance with applicable local codes, ordinances, and standards.

**(ii) Compliance by Subcontractors.** Owner will include in any contracts with subcontractors that performance under any such contract is subject to Program Requirements, including record retention by the subcontract and review rights by OHCS and others of such records consistent with monitoring of Owner records hereunder, with OHCS as a third-party beneficiary.

**2. Affordability.**

**(a) Income Limitations.** Throughout the Affordability Period as defined above, Owner will, in accordance with the terms of this Agreement and other applicable Program Requirements, continuously rent or hold vacant for rent the following Qualified Units to Residents whose incomes are at or below the following levels of the area median income, adjusted by family size, as determined by OHCS based upon information from the U.S. Department of Housing and Urban Development (“HUD”) or other applicable source:

Unit Type	Number of Units	Maximum Percent of Median Family Income As Determined by HUD	Maximum Rent Standard As Determined by HUD
[#~] BR		[#~]%	[#~]%
[#~] BR		[#~]%	[#~]%
[#~] BR		[#~]%	[#~]%

[#~] BR		[#~]%	[#~]%
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[Note: This table should reflect all Qualified Units, i.e., if LIHTC/Conduit Bond Financing in Project, reflect totality of restrictions.]

\* The maximum restricted-incomes for the Qualified Units reflected in the above table are based upon the rent-restriction election made by Owner in the Application as approved in the Reservation. Maximum restricted-incomes consistent with the foregoing standards are published by HUD, adjusted for family size and Project location.

\*\* The maximum restricted-rents for the Qualified Units, as published by HUD, correspond to the elected income limits and Maximum Rent Standards reflected in the table, but actual rents for the Project may be lower depending on further election of lower rent levels and OHCS rent-approval requirements. Maximum restricted-rents applicable to the LIFT Program or other applicable funding may vary depending upon bedroom size and Project site. The table reflects gross rent limits. Net rents allowable to Owner hereunder are gross rents less an appropriate utility allowance, consistent with Program Requirements.

\*\*\* The table shows maximum income and rent standards rounded up to the nearest percentile. The Owner has represented to OHCS in its Application that the rent and income levels will not exceed the maximums identified in the foregoing table and will otherwise comply with Program Requirements.

**(b) Rent Restrictions.** Throughout the Affordability Period, Owner will restrict Rents with respect to the Qualified Units in compliance with Program Requirements, with not-to-exceed limit standards as reflected in the above table. The not-to-exceed limit standards are described as a percentage of the applicable area (e.g., county) median family income with actual allowable gross rent limits corresponding to same calculated by HUD on an annual basis.

**(i) Actual Unit Rents.** Net rents allowable to the Owner are not more than allowable gross rents, less an appropriate utility allowance. Actual approved Rents for Qualified Units, as determined by OHCS in its sole discretion, may be lower than allowable net rents, but not in excess of allowable net rents. OHCS has sole authority and discretion in the determinations of what is an appropriate utility allowance and what other charges by Owner must be subsumed within approved Rents as normal or standard charges for Project occupancy.

**(ii) Limitation of Unit Rents and Other Project Fees.** OHCS also may limit other Unit Rents and Project fees as it determines, in its sole discretion, is necessary or appropriate to ensure the affordability of or access to Qualified Units. Unit Rents and Fees limited under this subparagraph may only be increased subject to prior written approval by OHCS in accordance with the procedures of subparagraph (iii) of this paragraph.

**(iii) Prior Approval of Rents.** Owner must obtain prior written approval from OHCS for setting or increasing Qualified Unit Rents. The Owner may request an increase in Rents annually in writing, together with supporting documentation (including a schedule of Rents for all Project Units), all satisfactory to OHCS, which request will be deemed approved if not in excess of Program Requirements limits and not denied or modified by OHCS within ninety (90) days of its receipt by OHCS. Subject to Program Requirements limits, OHCS may approve, deny or modify such Rent increase requests at its sole discretion. OHCS, at its sole discretion, also may approve, deny or modify other requests by the Owner for Rent increases, subject to Program Requirements limits.

**(iv) Most Restrictive Rent Limitations.** Where Qualified Unit Rents are subject to limitations from multiple OHCS funding sources, the most restrictive limitations will govern not-to-exceed limits for Rents with respect to such Units.

**3. Habitability; Other Compliance.** Throughout the Affordability Period, Owner will maintain the Project in a

safe, sanitary, and habitable condition satisfactory to OHCS and in accordance with Program Requirements, including applicable zoning and code requirements.

#### 4. Resident Service Programs.

(a) **The Plan.** Owner will file with OHCS a Project Resident Services Plan (the “**Resident Plan**”), consistent with Program Requirements, satisfactory to OHCS. Any then current Resident Plan, when approved by OHCS, will be deemed incorporated into this Agreement by reference. OHCS may require periodic revisions to the Resident Plan from the Owner. The Owner may propose revisions to the Resident Plan for approval by OHCS. All Resident Plan revisions are subject to OHCS’ sole discretion and must be approved in writing by OHCS prior to becoming effective.

(b) **Resident Services.** Owner will provide timely resident services (“**Services**”) appropriate to the Project population and consistent with the Resident Plan, including as the Plan may be revised from time to time.

#### 5. Management Oversight.

(a) **The Management Plan.** Owner will file with OHCS a Project Management Plan (the “**Management Plan**”), consistent with Program Requirements, satisfactory to OHCS. Any then current Management Plan, when approved by OHCS, will be deemed incorporated into this Agreement by reference. OHCS may require periodic revisions to the Management Plan from the Owner. The Owner may propose revisions to the Management Plan for approval by OHCS. All Management Plan revisions are subject to OHCS’ sole discretion and must be approved in writing by OHCS prior to becoming effective.

(b) **Project Management Agreement.** Owner will execute a Project Management Agreement with OHCS concurrent with this Agreement in form and substance satisfactory to OHCS. If Owner will, or is required by OHCS to, accomplish its management functions with respect to the Project through a Management Agent, such Management Agent also must execute the Project Management Agreement. Any then current Project Management Agreement, when approved by OHCS, will be deemed incorporated into this Agreement by reference. OHCS may require change of the Management Agent and revisions to the Project Management Agreement as it deems appropriate, in its sole discretion.

(b) **Management Performance.** As applicable, Owner will timely and suitably perform its Project management responsibilities directly or through a Management Agent approved in writing by OHCS consistent with the Management Plan and Project Management Agreement, including as the Management Plan or Project Management Agreement may be revised from time to time.

#### 6. Character of Qualified Units.

(a) **Re-determination of Qualified Units.** Dwelling Units that are Qualified Units at the beginning of their occupancy will continue to qualify as Qualified Units until the earlier of (i) the date the character of the Unit is re-determined pursuant to the next sentence hereof or (ii) the circumstances described in subparagraph (c)(iii) hereof. When certain new Residents join existing Residents in a Unit, the character of the Unit as a Qualified Unit or as a Unit that is not a Qualified Unit must be re-determined on the basis of the then-current income of the current Residents and the number of Residents in the Unit on the date of such certification. A Qualified Unit will be deemed, upon the termination of the Qualified Resident’s occupancy, to be continuously occupied by a Qualified Resident until reoccupied, other than for a temporary period, at which time the character of the Dwelling Unit will be re-determined. In no event will such temporary period exceed 31 days.

**(b) Qualified Unit Quality.** The Qualified Units will be of a quality comparable to those Units that are rented by other Residents. Residents in the Qualified Units will have equal access and enjoyment to all common facilities and services of the Project. Qualified Units will be dispersed throughout the Project in a manner acceptable to OHCS and in compliance with Section 2.

**(c) Income Certifications; Verification.**

**(i) Initial and Annual Income Certification.** Owner will obtain, complete, and maintain on file, until six (6) years after the end of the Affordability Period, income certifications from each Qualified Resident, dated immediately prior to the initial occupancy of such Qualified Resident and, except as provided in the next sentence of this paragraph, no less frequently than annually thereafter (as further described in subparagraph (c)(iii) hereof) in the form attached hereto as Exhibit B, and will provide such additional information as may be required from time to time by OHCS.

**(ii) Alternate Certification.** In lieu of obtaining, completing, and maintaining an annual income certification pursuant to the foregoing subparagraph, Owner may, with respect to any particular twelve-month period ending, deliver to OHCS no later than fifteen (15) days after such date a certification that as of such date, no Dwelling Unit in the Project was occupied within the preceding twelve months by a new resident whose income exceeded the limit applicable to Qualified Residents upon admission to the Project. Owner also will provide such additional information as may be required from time to time by OHCS.

**(iii) Verification of Resident Income.** The Owner will make a good faith effort to verify that the income provided by an applicant in an income certification is accurate by taking such action as may be required by OHCS, including at least one of the following steps as a part of the verification process: (i) obtain a pay stub for the most recent pay period; (ii) obtain an income tax return for the most recent tax year; (iii) obtain a credit report or conduct a similar records search; (iv) obtain an income verification form from the applicant's current employer; (v) obtain an income verification form from the Social Security Administration if the applicant receives assistance from such agency; (vi) if the prospective Resident maintains bank accounts, a copy of the most recent bank statements for such accounts; and (vii) if the applicant is (A) unemployed and has no such tax return or (B) has no Social Security Administration verification form, obtain another form of independent verification or an executed written declaration of the prospective Resident.

**(d) Certificate of Continuing Compliance.** Owner will prepare and submit to OHCS within thirty (30) days after the end of each year during the Affordability Period or as otherwise determined by OHCS, a Certificate of Continuing Program Compliance in the form set forth in Exhibit C, attached hereto, executed by the Owner stating (i) the percentage of the dwelling units of the Project which were Qualified Units occupied or deemed occupied pursuant to subsection (b) hereof, by Qualified Residents during such period, and (ii) that either (A) no uncured default has occurred under this Agreement or (B) that a default has occurred, in which event the certificate will describe the nature of the default and set forth the measures being taken by the Owner to remedy such default.

**(e) No Discrimination.** Owner will not discriminate against any Resident who is a parent or legal guardian with whom a child resides or is expected to reside, except in the event that the Project is designated exclusively for households, the heads of whom are over 62 years of age or, if permitted by the Code, over 55 years of age if the household meets the requirements of 42 U.S.C. 3607(b)(2)(c). Owner will not otherwise discriminate against applicants or Residents in any manner contrary to applicable law.

**(f) Qualified Unit Lease Conditions.**

(i) **Reliance Statement.** Each Lease pertaining to a Qualified Unit will contain a provision to the effect that the Owner has relied on the income certification and supporting information supplied by the Qualified Resident in determining qualification for occupancy of an applicable Qualified Unit, and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such Lease.

(ii) **Occupancy Restrictions.** Each Lease pertaining to a Qualified Unit will contain a provision prohibiting the Qualified Residents from allowing the Unit to be occupied, other than on a temporary basis not exceeding 30 days, by any additional persons unless, prior to such occupancy, the Qualified Residents and all other persons who will occupy such Unit provide current income certifications in the form attached hereto as Exhibit B and unless the Owner consents in writing to such occupancy.

(iii) **Recertification.** Each Lease pertaining to a Qualified Unit will contain a provision stating that Residents will be required to recertify income annually and upon addition of any Resident to the Unit unless an existing Qualified Resident in such Unit is a parent or guardian of the new Resident. The Owner will not renew the Lease of any Qualified Unit unless all Residents therein comply with the recertification requirement.

(iv) **Other Conditions.** Each Lease will otherwise conform to the requirements in the Project Management Agreement.

(g) **Income Determinations; Termination of Qualified Unit Status.** The determination of whether the income of the occupants of a Dwelling Unit exceeds the applicable income limit will be made at least annually on the basis of the then current income of the Residents of the Dwelling Unit. No later than, and dated as of the respective yearly anniversary of the execution of each Qualified Resident's Lease for a Qualified Unit in the Project (and no less than once each calendar year with respect to the Residents of each Qualified Unit) throughout the Affordability Period, the Owner will recertify each Qualified Resident's income by obtaining a completed income certification in the form set forth in Exhibit B, attached hereto. If the aggregate adjusted income of Qualified Residents in a Qualified Unit, as of the most recent determination thereof, exceeds one hundred forty percent (140%) of the applicable income limit for a Qualified Unit occupied by the same number of Residents, the Dwelling Unit occupied by such Residents will continue to be treated as an applicable Qualified Unit unless and until an available Unit of comparable or smaller size is rented to persons other than those who are then applicable Qualified Residents.

## 7. Records; Monitoring.

(a) **Financial and Performance Records.** Owner will maintain all financial records relating to this Agreement in accordance with GAAP or, with OHCS approval, IFRS, and in a manner satisfactory to OHCS. In addition, Owner will maintain all records relating to the Project or compliance with this Agreement and all other applicable Program Requirements. Owner will retain and keep accessible all such records of whatever source or type (including, but not limited to written or electronic documents, papers, plans, writings, communications, orders, charges, shipments, and other records) throughout the Affordability Period and for a minimum of **six (6)** years, or such longer period thereafter as may be required by OHCS - which expressly includes any period (including beyond the foregoing times) during which an audit, claim, or litigation with respect to the Project or Agreement remains outstanding, plus **two (2)** years thereafter.

(b) **Provision of Records.** Owner will provide to or make available for copying by OHCS, at Owner's expense, such records as OHCS may require, including but not limited to the following:

(i) **Tax Returns.** From time to time upon OHCS's request, but not less than annually, provide to OHCS the latest tax returns complete with all schedules, including applicable K-1 statements and financial statements prepared in accordance with GAAP or IFRS and certified by the Owner to be true and correct in all respects.

(ii) **Audited Financial Statements.** When OHCS has required the Owner to establish and maintain the Operating Fund described below or when otherwise expressly requested by OHCS, provide to OHCS within 120 days after the end of each applicable calendar year (or short shorter term as may be applicable in any Financing Document) a complete audited financial statement with respect to the Project in a form acceptable to OHCS, based upon an examination of the books, records, and accounts of the Project, setting forth the financial condition of the Project as of the end of such fiscal year and the results of operation of the Project for such fiscal year

(iii) **Current Rent Rolls and Operating Statements.** From time to time upon OHCS' request provide to OHCS a current rent roll and operating statements prepared in accordance with GAAP or IFRS (as allowed by OHCS) and certified by the Owner to be complete and accurate in all respects.

(iv) **Written Notice.** Give OHCS written notice within ten (10) days after the Owner first receives notice of:

(A) Any litigation or claims of any kind which might subject the Owner to any liability, whether covered by insurance or not; and

(B) All complaints and charges filed by any Governmental Authority or any other person affecting the Project, the Owner, or Owner's business that may impair the operation of the Project or compliance with Program Requirements.

(v) **Breach or Event of Default.** Promptly notify OHCS of any condition or event that constitutes a breach, default, or Event of Default under this Operating Agreement (including incorporated documents).

(vi) **Other Information.** Promptly furnish to OHCS such data and information, financial or otherwise, concerning the Owner, as from time to time may be requested by OHCS, including as otherwise required under this Operating Agreement (including incorporated documents).

(c) **Monitoring.** Owner acknowledges and agrees that OHCS, the Oregon Secretary of State's Office, the Oregon Department of Revenue, the U.S. Department of the Treasury, and their respective duly-authorized representatives will have access to all records of Owner that are pertinent to this Agreement to perform examinations, audits, or other action, and to make excerpts and transcripts of such records, and take copies of such records. Furthermore, the Owner acknowledges and agrees that OHCS, the Oregon Secretary of State's Office, the Oregon Department of Revenue, the U.S. Department of the Treasury, HUD, and their respective duly-authorized representatives may inspect the Project, and any part thereof, upon reasonable notice to the Owner and, as applicable, to Residents. The Owner, its agents, employees, and subcontractors will cooperate fully with OHCS and the others in any requested inspection of the Project, its records, or other compliance monitoring.

**8. Charges.** Owner will timely pay an annual compliance monitoring charge to OHCS, and such other fees or charges from time to time as described herein or under Program Requirements.

**9. Corrective Action.** As a consequence of its monitoring or otherwise, OHCS may identify deficiencies in Owner's compliance with Program Requirements. OHCS may require action by Owner (satisfactory to OHCS) to

correct such deficiencies. Owner will correct such deficiencies as directed by OHCS. The reasonableness of such corrective actions is subject to OHCS in its sole discretion.

**10. Single-Asset Entity.** Owner is and will remain a single-asset entity throughout the Affordability Period described herein.

**11. Limitation on Debt.** Owner will have no other debt that does or may result in a lien against the Project without prior written consent from OHCS.

#### **SECTION 6. FURTHER ASSURANCES.**

**1. Further Acts.** Owner, at any time upon request of OHCS, will do, make, execute and deliver all such additional and further acts, instruments or papers as OHCS may require in its sole discretion to protect OHCS' rights or accomplish its purposes under this Agreement.

**2. Reliance.** OHCS may rely upon statements, certificates, and other records of Owner and its agents and assigns, as well as of Residents of Qualified Units, including as to accuracy, genuine nature, and proper execution of such statements, certificates, and other records.

**3. Consultation with Counsel.** OHCS may consult with counsel, and the opinion of such counsel will be full and complete authorization and protection as to any action taken or suffered by OHCS in good faith and in conformity with the opinion of such counsel with respect to this Agreement or the Project.

#### **SECTION 7. NO UNAPPROVED TRANSFERS; REMOVAL OF GENERAL PARTNER/MANAGING MEMBER OR MANAGEMENT AGENT; CONSENTS.**

**1. Sale, Transfer, or Other Disposition of an Interest in the Loans, Owner (including Investor), or Project.**

**(a) Transfer of Any Interest in Loans or Project.** Except in relation to leases to tenants (“**Tenants**”) for the Units in the Project, if the Owner sells, assigns, bequeaths, disposes, or otherwise transfers or attempts to sell, assign, bequeath, dispose or otherwise transfer (collectively, “**Transfer**”) any interest in the Loans or Project to any person, entity, or other assignee (collectively, “**Transferee**”), without obtaining the prior written consent of OHCS, OHCS may declare an Event of Default under the terms of this Agreement and exercise the remedies provided for in this Agreement or otherwise available at law. OHCS' consent will not, however, be unreasonably withheld or delayed, but may be conditioned upon:

- (i)** reasonable evidence satisfactory to OHCS that the Owner are is then in default hereunder beyond any applicable grace period or cure period;
- (ii)** the execution and recording of documents satisfactory to OHCS;
- (iii)** the payment to OHCS of an appropriate transfer fee; and
- (iv)** any other conditions that may be imposed by OHCS, in its complete discretion, to assure, *inter alia*, compliance with federal or state law or other Program Requirements, and also including but not limited to the Owner providing OHCS with current financial information with respect to the Transferee and a full management agent packet for any existing or proposed management agent (“**Management Agent**”).



- (b) **Transfer of Any Interest in the Owner.** If the Owner sells, assigns, bequeaths, disposes, or otherwise transfers or attempts to sell, assign, bequeath, dispose or otherwise transfer (collectively, “**Transfer**”) any interest in the Owner to any person, entity, or other assignee (collectively, “**Transferee**”) without obtaining the prior written consent of OHCS, OHCS may declare an Event of Default under the terms of this Agreement and exercise the remedies provided for in this Agreement or otherwise available at law. The parties agree, however, that, so long as the Owner is not then in default hereunder beyond any applicable cure period, a Transfer of an interest in the Owner made in full compliance with any of clauses (b)(i), (b)(ii), (b)(iii), or (b)(iv) below will constitute a permitted Transfer of an interest in the Owner.
- (i) **Transfers Permitted Prior to Making All Capital Contributions.** Prior to making all of the capital contributions with respect to this Project required to be made by the Investor under the ownership agreement in effect between the Investor and Owner as of the date of this Agreement (the “**Ownership Agreement**”), a one-time Transfer of the Investor’s limited partnership or limited membership in the Owner may be made to an Affiliate of the Investor with advance written notice to OHCS of such Transfer (“**Permitted Affiliate Transfer of Owner Interest**”) so long as the transfer occurs within one year of the date of this Agreement. No OHCS consent will be required for a Permitted Affiliate Transfer of Owner Interest, but written notice will be provided to OHCS as set forth in this Agreement in connection with such Permitted Affiliate Transfer of Owner Interest. Further, OHCS will not impose a transfer fee or charge on the Owner for a Permitted Affiliate Transfer of Owner Interest.
- (ii) **Other Transfers Made Prior to Making All Capital Contributions.** Prior to making all capital contributions required to be made by the Investor under the Ownership Agreement, other than a Permitted Affiliate Transfer of Owner Interest pursuant to clause (i) above, no interest in the Owner may be Transferred without the written consent of OHCS, which it may give or withhold in its sole but reasonable discretion, taking into consideration those factors it determines to be relevant. OHCS will communicate its determination to consent or withhold consent to a Transfer promptly to the Owner and may impose a transfer fee or charge on the Owner consistent with applicable administrative rules, as amended from time to time.
- (iii) **Transfers of Owner Interest After Making All Capital Contributions.** After all of the capital contributions to be made by the Investor under the Ownership Agreement have been made, the Transfer of the Investor’s limited partnership or membership interest in the Owner (a “**Post Conversion Transfer of Owner Interest**”) may be made subject to the following: OHCS must (A) be given advance written notice of the proposed Transfer; (B) give its written consent to the Transfer, which consent will not be unreasonably withheld, conditioned or delayed; and (C) OHCS may impose a transfer fee or charge on the Owner consistent with applicable administrative rules, as amended from time to time. The parties agree that a Post Conversion Transfer of Owner Interest to an Affiliate will be presumed reasonable and that OHCS will promptly provide its consent to such a transfer upon confirmation that such transfer involves a Transfer to an Affiliate of the Investor and satisfaction of the foregoing conditions.
- (iv) **Transfers of Interests in General Partner of Owner.** To assure appropriate use of tax credit capital contributions by Owner and appropriate operation of the Project, and that any party having an ownership interest in the general partner or managing member of the Owner is suitable for such purposes, appropriate for the operational integrity of the general partner or managing member, and sufficiently limited in its capacity to direct or control actions by the general partner or managing member, a party proposing to acquire an ownership interest in the general partner or managing member (a “**Member**”) may not acquire an ownership interest in the general partner or managing member without the prior written consent of OHCS. Such consent will be conditioned on (a) the

ownership interest in the general partner or managing member to be acquired by the Member being not greater than one-percent (1%) of the ownership interest in the Owner, (b) OHCS receiving evidence reasonably satisfactory to OHCS establishing the suitability of the Member, and (c) payment to OHCS of a transfer fee or charge consistent with OHCS administrative rules, as those rules may be amended from time to time.

(c) **Transfer of Any Interest in Investor.** If the Investor Transfers any interest in the Investor without obtaining the prior written consent of OHCS, OHCS may declare an Event of Default under the terms of this Agreement and exercise the remedies provided for hereunder or otherwise available at law. The parties agree, however, that, so long as the Owner is not then in default hereunder beyond any applicable cure period, a Transfer of an interest in the Investor made in full compliance with any of clauses (c)(i), (c)(ii), or (c)(iii) below will constitute a permitted transfer of an interest in the Investor.

(i) **Transfers Permitted Prior to Making All Capital Contributions.** Prior to making all of the capital contributions required under the Ownership Agreement: (1) Transfers of interests in the Investor (the “**Investor Membership Interests**”) may be made among the initial holders of the Investor Membership Interests (the “**Initial Investment Members**”), provided that the Owner provides written notice to OHCS of the transfer within thirty (30) days of the Owner learning of the Transfer; and (2) Transfers of Investor Membership Interests may be made to a person or entity that is not an Initial Investment Member if, after making such Transfers not less than 75% of the holder(s) of the Investor Membership Interests are either (a) the Investor or an Affiliate of the Investor, or (b) Financial Institutions or Publicly Held Corporations with a credit rating at the time of such transfer of BBB- or better by Standard & Poor’s or Baa3 or better by Moody’s Investor Service, Inc., or wholly-owned subsidiaries of such entities or are otherwise holders that have been approved by OHCS, provided that the Owner will provide written notice to OHCS of the transfer within thirty (30) days of the Owner learning of the transfer. Transfers of Investor Membership Interests described in sub-clauses (1) and (2) of this clause (i) are referred to herein as “**Permitted Investor Membership Interest Transfers**”). No OHCS consent will be required for any Permitted Investor Membership Interest Transfer pursuant to sub-clauses (1) or (2) of this clause (i), but written notice will be provided to OHCS as set forth above in connection with each such Transfer. Further, OHCS may impose a transfer fee or charge on the Owner for Permitted Investor Membership Interest Transfers consistent with applicable administration rules, as amended from time to time.

(ii) **Other Transfers Made Prior to Making All Capital Contributions.** Prior to making all capital contributions required under the Ownership Agreement, other than Permitted Investor Membership Interest Transfers pursuant to clause (i) above, no interest in the Investor, including any Investor Membership Interest, may be Transferred without the written consent of OHCS, which consent may be given or withheld in its sole but reasonable discretion, taking into consideration those factors it determines to be relevant. OHCS will communicate its determination to consent or withhold consent to a Transfer promptly to the Owner and may impose a transfer fee or charge on the Owner consistent with applicable administrative rules, as amended from time to time.

(iii) **Transfers of Investor Interest After Making All Capital Contributions.** After all of the capital contributions to be made by the Investor under the Ownership Agreement have been made, the Transfer of any limited partnership or membership interest in the Investor, including any Investor Membership Interest (a “**Post Conversion Transfer of Investor Interest**”) may be made without prior notice to or approval by OHCS, provided that Owner will provide written notice to the OHCS of any Post Conversion Transfer of Investor Interest within thirty (30) days of reasonable discovery of such Transfer. OHCS will not impose a transfer fee or charge on the Owner for a qualifying Post Conversion Transfer of Investor Interest.

**2. Definition of Affiliate.** The term “Affiliate” means any corporation, partnership, limited liability company, or other entity of comparable financial capacity directly or indirectly controlling, controlled by or under common control with such entity. For this purpose “**control**,” “**controlled**,” or “**controlling**” means (i) ownership directly or indirectly of voting control of the corporation or other entity, (ii) control of the management through holding, directly or indirectly, a general partnership interest in a limited partnership or the managing member interest in a limited liability company, or (iii) if such entity has no stock or equity, control over a majority of the board of directors of such entity.

**3. Removal and Replacement of General Partner or Managing Member.** The Investor may seek to remove a General Partner or Managing Member of the Owner for cause pursuant to the terms of the Ownership Agreement in effect as of the date of this Agreement, or pursuant to any revisions adopted by the parties to the Ownership Agreement and approved in writing by OHCS, subject to the following: (i) the Investor must notify OHCS in writing of its desire to remove the General Partner or Managing Member for cause; (ii) the Investor must notify OHCS in writing of the successor General Partner or Managing Member, if any, and (iii) OHCS must give its written consent to the removal and replacement of the General Partner or Managing Member, which consent will not be unreasonably withheld, conditioned or delayed. If the Ownership Agreement provisions related to the removal of the General Partner or Managing Member are amended without OHCS’ written approval (a “**Removal Amendment**”), and the Investor seeks to remove a General Partner or Managing Member for cause pursuant to the Removal Amendment, the prior written consent of OHCS must be obtained and OHCS may give or withhold its consent in its sole discretion.

**4. Removal and Replacement of Management Agent.** OHCS may, for cause, require the removal and replacement of the Management Agent for the Project or, if the Owner directly manages the Project, OHCS may require the appointment of a Management Agent for the Project in lieu of the Owner. The Owner also may, with OHCS’ approval, remove and replace a Management Agent in accordance with this Agreement, the terms and conditions of the Ownership Agreement, or any agreement with respect to Project management required by OHCS (at its sole discretion). Any then current, executed agreement with respect to Project management (including as amended) will be deemed to be incorporated herein by this reference.

**5. Unapproved Transfers Are Void.** Any Transfer of the Loans, Project, Owner, Owner, or Investor in violation of this Agreement will be ineffective to relieve the Owner, the Owner, the Investor, any Transferee, or the Project of any continuing obligations under this Agreement. OHCS’ consent hereunder will not be deemed continuing and the Owner and each permitted Transferee will continue to be bound by this Agreement unless OHCS has consented in writing to the Transfer of the Project, Owner, Owner, or Investor.

**6. Consents by OHCS to Admission of Investor and to Security Interest.**

- (a) If this Project is financed, in part, by federal low-income housing tax credits (“**LIHTC**”), OHCS consents to the admission of the LIHTC Investor member or limited partner, as applicable, in the Owner and within one year of this Agreement, as applicable, the admission of a special member or special limited partner in the Owner of an entity that is an Affiliate of the Investor.
- (b) OHCS consents to the managing member/general partner of the Owner granting a security interest in its interest in the Owner as security for performance of obligations under the Ownership Agreement and under any document evidencing or securing construction or permanent financing of the Project.
- (c) OHCS consents to the Owner granting to a primary commercial lender a security interest in the Credits (as defined in the REUA between OHCS and Owner) as security for performance of the Owner’s obligations under any document evidencing or securing construction or permanent financing of the Project. In the event of a foreclosure of a deed of trust, mortgage, or other security document securing the

Owner's obligation to repay a loan from the referenced lender, OHCS further consents to a foreclosure by such lender of its security interest in the Credits; provided, however, OHCS makes no representation as to the effect of such a foreclosure on the ability of the foreclosing entity to claim, transfer, or otherwise utilize the Credits pursuant to IRC Section 42, applicable Oregon law, or otherwise.

**7. Sale of Project to Managing Member or General Partner.** Absent (1) a change in the managing member or general partner in Owner, or in the composition thereof, or (2) an uncured Event of Default under this Agreement, OHCS consent to the sale of the Project to the current managing member or general partner of the Owner upon termination of the "compliance period" applicable to the last building of the Project to be placed in service as provided in IRC Section 42 provided (1) OHCS is given adequate notice prior to the transfer, (2) the terms of such sale are reasonable as determined by OHCS, and (3) Owner and the managing member or general partner each will have complied with all other requirements of OHCS, including provision of requested information, execution of required documents satisfactory to OHCS, and payment of an appropriate Transfer fee as established by OHCS.

## **SECTION 8. COVENANTS AND EQUITABLE SERVITUDES TO RUN WITH THE LAND.**

**1. Inducement.** The Owner represents, covenants, and warrants that the issuance to it of the Loan and other funding, if any, described herein by OHCS is an inducement to the Owner to have the Project Work done timely and appropriately, and to have the Project operated in accordance with this Agreement. In consideration of the issuance of the Loan and other Project funding, if any, the Owner has entered into this Agreement and has agreed to restrict the operation of and uses to which the Project can be put on the terms and conditions set forth herein. Therefore, the Owner covenants, agrees and acknowledges that OHCS has relied on this Agreement in determining to issue the Loan and other Project funding, if any.

### **2. Covenants; Equitable Servitudes.**

**(a) Declaration of Land-Use Restrictive Covenants.** OHCS and the Owner hereby declare their express intent that throughout the Affordability Period the covenants, restrictions, charges and easements set forth herein will be deemed covenants running with the land of the Project and will create equitable servitudes running with the land of the Project, and will pass to and be binding upon OHCS' and the Owner's successors in title including any purchaser, transferee, or lessee of any portion of the Project and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, transferee or lessee of any portion of the Project and any other person or entity having any right, title or interest therein. **(b) Inclusion of Covenants in Project-Related Documents.** Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein (other than a rental agreement or lease for a dwelling unit) will contain an express provision making such conveyance subject to the covenants, restrictions, charges and easements contained herein; provided, however, that any such contract, deed or other instrument will conclusively be held to have been executed, delivered and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed or other instrument.

**(c) Satisfaction of Requirements.** Any and all legal requirements for the provisions of this Agreement to constitute restrictive covenants running with the land of the Project and applying to the Project as a whole, or to create equitable servitudes with respect to same in favor of OHCS, are deemed satisfied in full.

(d) **Consents.** The consent of any recorded prior lien holder on the Project, including the Property, is not required in connection with recording this Agreement, or if required, such consent has been or will be obtained by the Owner.

**3. Burden and Benefit.**

(a) **Covenant Burdens.** The Owner hereby declares its understanding and intent that the burdens of the covenants and equitable servitudes set forth herein touch and concern the land of the Project, and the Project as a whole, in that the Owner's legal interest in the Project is rendered less valuable thereby.

(b) **Covenant Benefits.** The Owner hereby further declares its understanding and intent that the benefits of such covenants and equitable servitudes touch and concern the land of the Project, and the Project as a whole, by enhancing and increasing the enjoyment and use of the Project by Residents, intended beneficiaries (in addition to OHCS) of such covenants, reservations and restrictions, and by furthering the public purposes for which the Loan was issued.

**4. Right of Modification.** OHCS may compromise, waive, amend or modify the terms of this Agreement including, but not limited to the restrictive covenants and equitable servitudes created hereby, with the written consent of Owner or subsequent Project owners, as it so determines to be to the benefit of OHCS, the Project, the Program, or OHCS efforts to provide or maintain safe, sanitary, and affordable housing in the State of Oregon. To be effective, any compromise, waiver, amendment or modification of this Agreement must be in writing, signed by an authorized OHCS representative.

**5. No Right of Action.** Residents and other third-party beneficiaries under this Agreement (including incorporated documents), if any, have no right of action to enforce the restrictive covenants or equitable servitudes created hereunder (except, with respect to LIHTC or Conduit Bond covenants, as expressly reserved to third-party beneficiaries in applicable Code or Treasury Regulations provisions). OHCS retains the exclusive right to enforce such covenants and servitudes (except, with respect to LIHTC or Conduit Bond covenants, as expressly reserved to third-party beneficiaries in applicable Code or Treasury Regulations provisions). Residents and other third-party beneficiaries under this Agreement (including incorporated documents), if any, have no claim, cause of action or other right of recourse against OHCS with respect to any action or lack of action taken by OHCS with respect to this Agreement (including the described covenants and servitudes) or the Project arising from their rights, if any, under this Agreement or otherwise.

**6. No Attorney Fees.** Residents and other third-party beneficiaries under this Agreement (including incorporated documents), if any, have no right to attorney fees under this Agreement for claims asserted as third-party beneficiaries hereunder nor will parties hereto have a right to attorney fees against Residents and other third-party beneficiaries, if any, hereunder.

**SECTION 9. OPERATING INCOME AND EXPENSE FUND.** [To Be Determined]

Upon written notice by OHCS, which notice OHCS may give and retract from time to time at its sole, but reasonable discretion, the Owner will establish and maintain a Project Operating Income and Expense Fund (the “**Operating Fund**”) with a depository approved in writing by OHCS (and acceptable to the Lender during the period of the Loan and to the Limited Partner of the Owner (the “Investor”) during the period of its participation in Owner). The processes otherwise allowed in the Loan Documents [To Be Determined] for the deposit and expenditure of Operating Income will be deemed permissible under this Agreement unless and until the Owner is notified by OHCS that it must implement the Operating Fund. Upon written notice by OHCS, all Operating Income will be deposited immediately in the Operating Fund, and Owner will promptly pay all Operating Expenses out of this Operating Fund. No other use of the Operating Fund deposits or the moneys required to be

placed therein, including the distribution of Excess Revenues, may be made by Owner without prior written approval of OHCS. So long as the Loan or any portion thereof remains outstanding, any Operating Fund required pursuant to this Agreement will be maintained with the Lender (**[Name of Primary Lender~]**) so long as it is the holder of the Loan and thereafter, if required by the holder of the Loan, with such holder if such holder is a federally insured depository institution and otherwise with a federally insured depository institution satisfactory to such holder in its reasonable discretion.

**SECTION 10. DISTRIBUTIONS FROM THE OPERATING FUND.** **[To Be Determined]**

During any period in which the Owner is required by notice from OHCS to establish and maintain an Operating Fund, neither the Owner nor those having a beneficial interest in the Owner will make, receive, or retain any distribution of any assets or any income of any kind from the Project for the term of this Agreement except from the Operating Fund and then only subject to the following conditions:

**1. Permitted Distributions.** Owner is entitled to distributions of Excess Revenues from the Operating Fund only at the end of each fiscal year of Project operation and only after all Operating Expenses have been paid, or moneys have been set aside for payment, and OHCS has given its written authorization based on OHCS's review of the annual audited financial statement and inspection required in Section 19 of this Operating Agreement. OHCS will endeavor to complete its inspection and review of the annual audited financial statement within sixty (60) days of its receipt. If OHCS fails to give its written authorization for distribution within sixty (60) days after its receipt of the annual audited financial statement without providing notice of corrective action to be taken by Owner with respect to the Project, OHCS's inspections of same, or the annual audited financial statement, distribution of Excess Revenues from the Operating Fund will be deemed approved.

**2. Withholding of Distributions.** OHCS may withhold authorization of any distribution of Excess Revenues from the Operating Fund when there is an Event of Default, or when OHCS determines that there is a reasonable probability that the Operating Fund balance will not be sufficient to pay all of the Operating Expenses of the Project.

**3. Constructive Trust; Repayment.** Any distribution of moneys from the Operating Fund that does not comply with the terms of this Section will be deemed to be held in constructive trust for the benefit of OHCS by the possessor of those moneys. The Owner, if not the possessor of the trust moneys, will make demand upon the possessor of those moneys at the request of OHCS. Any unauthorized distribution of moneys will be repaid by the Owner to the Operating Fund from sources other than other Operating Income or assets of the Project.

**SECTION 11. CHARGES AND FEES.**

**1. Payment of Fees and Charges.** The Owner will timely pay all charges and fees identified in this Operating Agreement (including in the LOI and other Financing Documents), and in other applicable Program Requirements.

**2. Payments at Closing.** The amount of fees and charges required to be paid at closing under the LOI will be provided by invoice from OHCS to include, *inter alia*, as applicable, the standard recorded document preparation charge, the LIHTC Recipient Charge, the LIHTC Reservation Charge, the Bond Issuance Fee, the Conduit Bond Issuance Fee, any TEFRA charges, any Financial Advisor charges, as well as other non-Conduit Bond Document preparation charges in the amount of **#[#~]** from DOJ. Legal fees and other charges due from Owner at closing under the LOI will be paid separately by Owner at closing.

**3. Administration and Monitoring Fees and Related Charges.** As part of the charges and fees due from Owner to OHCS, Owner acknowledges and agrees that it will prospectively pay administration and monitoring

fees and related charges, on an ongoing annual basis for the first fifteen full years (but not less than the full Qualified Project Period with respect to any Conduit Bond funding) in a yearly amount equal to \$[Amount~] (calculated on the basis of \$45 for each of the [#~] Units in the Project) and on an ongoing annual basis for the balance of the Affordability Period in a yearly amount equal to \$[Amount~] (calculated on the basis of \$25 for each of the [#~] Units in the Project), each annual installment payable on a calendar-year basis for the duration of the Affordability Period (at a minimum, through [End Date~]), the first payment of which will be due and payable upon the first day of the month after which 10% of the Units in the Project are first occupied or [Date~ (generally 2 months from completion date)], whichever is sooner (pro-rated based on the remaining portion of the calendar year), and thereafter in regular payments in advance as described above commencing on **January 1, 20[#~]**, in accordance with terms satisfactory to OHCS. Such fees and related charges are subject to adjustment from time to time by OHCS in accordance with its then current administrative rules.

## **SECTION 12. RECORDING AND FILING.**

The Owner will cause this Operating Agreement and all amendments and supplements hereto to be recorded and filed in the real property records of the Oregon county or counties in which the Project is situated and in such other places as OHCS may reasonably request together with all other documents so required by OHCS to be filed by Owner. The Owner will pay all fees and charges incurred in connection with any such recording.

## **SECTION 14. GENERAL PROVISIONS.**

### **1. Compliance with Applicable Laws and Requirements.**

- (a) **Compliance.** Owner will comply, and will ensure that the Project complies, with all Program Requirements, including but not limited to all federal, state and local laws, regulations, codes, ordinances, and orders applicable to the Project.
- (b) **Contracts; Subcontracts.** Owner will ensure that all contracts and subcontracts related to the Project or this Agreement comply with all applicable Program Requirements, including containing a provision to that effect therein.
- (c) **Endurance of Obligations.** Owner will remain fully obligated under the provisions of the Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the Project with respect to which Loan funding is being provided by OHCS or Plan compliance is being required by OHCS.
- (d) **Inspections.** Owner will permit OHCS to inspect all Units and common areas within the Project, including all Qualified Units, at reasonable times and under reasonable conditions.

**2. Indemnity.** Owner assumes sole liability for breach of the conditions of the Loan, other Project funding (if any), or other applicable Program Requirements (including all terms and conditions of this Agreement) by Owner or any of its officers, agents, employees, and assigns. Subject to any limitations in the Oregon Constitution, Owner will save, hold harmless, indemnify and (subject to ORS chapter 180) defend the State of Oregon, OHCS and their officers, agents, employees, members and assigns, from all suits, actions, claims, losses or damages of whatsoever nature, kind or description related to the Loan, other Project funding (if any), the Project, this Agreement, or other Program Requirements, or resulting from or arising out of the acts, omissions, neglect or misconduct of Owner or its subcontractors, agents, or employees under this Agreement or related to the Loan, other Project funding (if any), the Project, or other Program Requirements.

**3. Time of the Essence.** Time is of the essence in the performance by Owner of the terms of this Agreement.

**4. No Discrimination; Marketing.** Owner will not discriminate in the provision of housing on the basis of race, creed, color, sex, national origin, religion, marital status, sexual orientation, family status, age, disability or the receipt of public assistance. Owner will use its reasonable efforts to advertise and market the Project Dwelling Units, particularly the Qualified Units, within the County and, if applicable, City in which the Project is located.

**5. Notice.**

- (a) Except as otherwise expressly provided in this Agreement, any notices required or permitted to be given under this Agreement will be given in writing, by personal delivery, or mailing the same, postage prepaid, to OHCS or Owner at the following addresses:

OHCS: Oregon Housing and Community Services Department  
Attn: Multifamily Housing Finance Section Manager  
725 Summer Street N.E., Suite B  
Salem, Oregon 97301-1266  
Facsimile: [REDACTED]

Owner: [Name~]  
Attn: [Name, Title~]  
[Address~]  
Facsimile: [#~]  
Email: [Address~]

or to such other address a party may indicate to the other pursuant to this Section. Any notice so addressed and mailed will be effective five (5) days after mailing. Any notice by personal delivery will be deemed to be given when actually delivered.

- (b) **Notice to Investor.** If written notice of a default to the Owner is required under this Agreement, then OHCS also will deliver written notice of such default to the Investor, if applicable, at the Investor's address as referenced below (or such other single address as may be provided in writing) for as long as the Investor will have an ownership interest in Owner.

Investor: [Name~]  
Attn: [Name, Title~]  
[Address~]  
Facsimile: [#~]  
Email: [Address~]

- (c) **Investor Cure Right.** In addition to any other cure provisions contained in this Agreement, the Investor (and any special member or special limited partner affiliated therewith) will have the right to cure all Events of Default for which delivery of written notice to the Owner or Investor is required under this Agreement within the same time periods allowed to Owner.

**6. No Third-Party Beneficiaries.** Unless and only to the degree expressly provided otherwise in this Agreement, OHCS and Owner are the only parties to this Agreement and are the only parties entitled to rely on and enforce the terms of this Agreement. Nothing in this Agreement gives, is intended to give, or will be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly indirectly or otherwise, to third persons unless such third persons are expressly identified in this Agreement and only to the degree they are expressly described as intended beneficiaries of particular terms of this



Agreement and only with such remedies as expressly given herein with respect to such interests.

**7. Owner Status.**

- (a) **Independent Contractor.** Owner will perform all obligations under this Agreement and will timely satisfy all Program Requirements as an independent contractor. Owner is not an officer, employee or agent of the State, as those terms are used in ORS 30.265 or otherwise, with respect to performance under this Agreement.
- (b) **Owner Responsible for Insurance Coverage.** Owner agrees that insurance coverage, whether purchased or by self-insurance, for Owner’s agents, employees, officers and/or subcontractors is the sole responsibility of Owner.
- (c) **Non-federal Employment Certification.** Owner certifies that it is not employed by or contracting with the federal government for performance covered by this Agreement.
- (d) **Good Standing Certification.** Owner certifies to the best of its knowledge and belief that neither the Owner nor any of its principals, officers, directors or employees:
  - (1) Is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any state or federal department or agency;
  - (2) Has within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract related to a public transaction; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
  - (3) Is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in subsection (d)(2);
  - (4) Has within a three-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default; and
  - (5) Is included on the list titled “**Specially Designated Nationals and Blocked Persons**” maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at:  
  
<http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>

**8. Termination.** OHCS may terminate this Agreement in whole or in part, without further liability and without impairment of its remedies, effective upon delivery of written notice to Owner, under any of the following conditions:

- (a) If OHCS funding from federal, state, or other sources is not obtained or is not continued at levels sufficient to allow for delivery of full Loan funding; or
- (b) If federal or state laws, regulations, rules or other requirements are modified or interpreted in such a way that the intended use of Loan funding for the Project is no longer allowable or appropriate or the Project is

no longer eligible for the Loan funding identified in this Agreement from the planned funding source(s) or if OHCS is determined by its legal counsel or otherwise to lack or to have lost the authority to administer the Program; or

- (c) If any authority required by law or regulation to be held by Owner to complete the Project ends for any reason; or
- (d) If Owner is unable or fails to commence the Project within six (6) months from the date of this Agreement; or
- (e) If Owner breaches or fails to timely perform any of its obligations under this Agreement, or any other applicable Loan document and such breach is not cured within the grace period, if any, provided for cure in the applicable document; or
- (f) If OHCS determines that any representation, warranty or covenant of Owner, whether in whole or in part, is false, invalid, or in default; or
- (g) If Owner (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all or substantially all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general Agreement for the benefit of its creditors, (iv) commences a voluntary case under the federal 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, liquidation, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the federal Bankruptcy Code (as now or hereafter in effect), or (viii) takes any action for the purpose of effecting any of the foregoing.

Termination of this Agreement does not terminate or otherwise impair or invalidate any remedy available to OHCS or to Owner hereunder, at law, or otherwise.

## 9. Remedies.

- (a) **Repayment Upon Termination.** If this Agreement or any part hereof, terminates prior to the term of the Affordability Period, Owner will, within thirty (30) days of written demand for repayment, repay the Loans to OHCS, together with applicable interest, fees, and other charges.
- (b) **Deficiencies.** OHCS may, from time to time, identify and direct Owner to correct deficiencies (including deficiencies by Owner) in its compliance with this Agreement (including all Program Requirements), which it will correct as so directed.
- (c) **Additional Remedies.** If the Owner defaults in the performance or observance of any covenant, agreement or obligation set forth in this Agreement, and if such default remains uncured by Owner for a period of thirty (30) days or less (depending upon the requirements of the notice, lesser notice periods being reserved for matters that OHCS determines relate to material health or safety needs of Project occupants) after notice thereof will have been given by OHCS, or if such default runs for a period of thirty (30) days from the date the Owner should, with due diligence, have discovered such default, then OHCS may declare an "**Event of Default**" to have occurred hereunder provided, however, if a default is not reasonably capable of being cured within thirty (30) days or within any lesser notice period provided by OHCS, OHCS may, in its sole discretion, extend the correction period for up to six (6) months, but

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only if OHCS determines there is good cause for granting the extension; and provided further, however, in the event of a foreclosure, deed in lieu of foreclosure, or similar event with respect to the Project or the Land, the correction period for the successor for an existing default will be no less than thirty (30) days from the earlier of the date the successor obtains control or becomes the owner of the Project. To the extent that the default is not corrected within the above-described period including extensions, if any, granted by OHCS, an Event of Default will be deemed to occur and OHCS may exercise its rights and remedies under this Section. Following the occurrence of an Event of Default hereunder OHCS may, at its option, take any one or more of the following steps (except that itemized remedies (2), (7), and (9) always must be preceded by notice of default to the Investor in accordance with this subsection while Investor is a member of Owner), in addition to all other remedies provided in this Agreement, by law, or in equity:

- (1) By mandamus or other suit, action or proceeding at law or in equity, require Owner specifically to perform its obligations under this Agreement or enjoin any acts or things that may be unlawful or in violation of the rights of OHCS under this Agreement;
- (2) Obtain the appointment of a receiver to operate the Project in compliance with this Agreement;
- (3) Require a change in the General Partner or Managing Member of Owner to OHCS' satisfaction;
- (4) Require termination of the Management Agent and its replacement to OHCS' satisfaction;
- (5) Require Owner to cease management of the Project and to engage a Management Agent acceptable to OHCS;
- (6) Withhold from Owner, suspend or terminate, all or part of any undisbursed Loan funding under this Agreement;
- (7) Demand repayment of the Loan, and such amount will be immediately due and payable to OHCS following thirty (30) days from such written demand;
- (8) Declare Owner, its owners, principals, officers, employees, and agents ineligible to receive further OHCS financial assistance for such period as OHCS determines in its sole discretion;
- (9) Offset amounts due from repayment of the Loan or other OHCS Project funding against other funding awarded or to be awarded to Owner by OHCS;
- (10) Have access to, and inspect, examine and make copies of, all of the books and records of Owner or its agents pertaining to the Project, to inspect the Project at any time, and to inspect Dwelling Units of the Project upon reasonable notice;
- (11) Enter onto the Property and correct Events of Default with respect to the Project at Owner's expense, which expense Owner will repay to OHCS within ten (10) days of any presentment of charges for same;
- (12) Withhold any Owner distributions due it from the Operating Fund and Expense Fund, i.e., the Client Trust Account;
- (13) Require Owner, its owners, principals, officers, employees, and agents to undertake training, at Owner's expense, as directed by OHCS; and

(14) Take such other action under this Agreement, at law, in equity, or otherwise as may be available to OHCS.

**(d) Survival of Remedies; Remedies Nonexclusive; Non-Waiver.** The rights and remedies of OHCS provided for in this Agreement will survive the termination of the Affordability Period and of this Agreement. The rights and remedies of OHCS provided for in this Agreement will not be exclusive and are in addition to any other rights and remedies available at law, in equity or otherwise. Inclusion of a remedy as being available upon an Event of Default does not preclude its exercise otherwise, if so permitted under this Agreement without notice of an Event of Default. No failure of or delay by OHCS to enforce any provision of this Agreement will constitute a waiver by OHCS of that or any other provision, nor will any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

**10. Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Agreement did not contain the particular term or provisions held to be invalid.

**11. Survival of Obligations.** The obligations of Owner as set forth in this Agreement, including in the Application and the Reservation, will survive the reservation of any Loan funds and will not be deemed to terminate or merge with the Reservation or disbursement of the funds. Provisions of this Agreement which by their nature are intended to survive termination of this Agreement (including, but not limited to remedies and record-keeping) will survive.

**12. Attorney Fees.** In the event a lawsuit or other proceeding is instituted regarding this Agreement, the prevailing party in any dispute arising under this Agreement will be entitled, to the extent permitted by law, to recover from the other(s) its reasonable attorney fees and all costs and disbursements incurred at trial, in mediation, and on appeal. Reasonable attorney fees will not exceed the rate charged to OHCS by its attorneys. This provision does not apply to lawsuits or other proceedings instituted or maintained by or against Residents or other third-party beneficiaries hereunder, if any, for which lawsuits or other proceedings no award of attorney fees is permitted.

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

**14. Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.

**15. Gender; Number.** Unless the context clearly requires otherwise, as used in this Operating Agreement, words of any gender will be construed to include each other gender when appropriate and words of the singular number will be construed to include the plural number, and vice versa, when appropriate.

**16. Effectuation of Purpose.** This Operating Agreement and all the terms and provisions hereof will be construed to effectuate the purposes set forth herein and to sustain the validity hereof

**17. Execution and Counterparts.** This Agreement may be executed in several counterparts, each of which will be an original, all of which will constitute but one and the same instrument.

**18. Governing Law; Venue: Consent to Jurisdiction.** This Agreement will 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") 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 real property 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 OHCS or 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. OHCS and the State of Oregon expressly reserve all sovereignty rights. OWNER, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

**19. Merger Clause; Order of Precedence.** This Agreement, including the Application, Reservation, and any exhibits, schedules, appendices and attachments hereto (which are by this reference incorporated herein), constitutes the entire agreement between the parties on the subject matter hereof. Owner hereby acknowledges that the Application and the Reservation survive the execution and delivery of this Agreement. In the event of any inconsistencies between the body of the Agreement, the Application, the Reservation, and any of the attachments to the Agreement, the following is the descending order of precedence in which the various provisions are to be interpreted: the Agreement without any attachments or any incorporated provisions, the Management Plan, the Plan, the Reservation, the Application, the Property Description (Exhibit A), any other attachments. No modification or amendment of this Agreement will bind either party unless in writing and signed by both parties (and the necessary approvals obtained), and no waiver or consent will be effective unless signed by the party against whom such waiver or consent is asserted. Such waiver or consent, if given, will be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement.

**20. No Limitations on Actions of OHCS in Exercise of Its Governmental Powers.** Nothing in this Agreement is intended, nor will it be construed, to in any way limit the actions of OHCS in the exercise of its governmental powers. It is the express intention of the parties hereto that OHCS will retain the full right and ability to exercise its governmental powers with respect to the Owner, the Project, this Agreement, and the transactions contemplated by this Agreement and applicable Program Requirements to the same extent as if it were not a party to this Agreement or the transactions contemplated hereby, and in no event will OHCS have any liability in contract arising under this Agreement, the Application, the Reservation, the Program Requirements, or otherwise by virtue of any exercise of its governmental powers.

**21. Cross Default.** OHCS may treat an Event of Default hereunder as an Event of Default under the Loan Documents, under the Bond Documents, and under the Financing Documents. OHCS may treat an Event of Default under the Bond Documents, under the Financing Documents, or under any other of the Loan Documents as an Event of Default hereunder.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, OHCS and Owner have caused this Agreement to be signed by their duly authorized officers as of the first day written above.

**OHCS:**

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

By: \_\_\_\_\_

Heather Pate, Manager  
Multifamily Housing Finance Section

STATE OF OREGON            )  
  : ss  
County of Marion            )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of [Month~], 20[#~] by Heather Pate, who is the Manager of the Multifamily Housing Finance Section, for and on behalf of OHCS.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

*[The balance of this page is intentionally left blank.]*

OWNER:

[Name~]  
an Oregon [type of entity~]  
Tax ID: [#~]

By: \_\_\_\_\_  
[Name~, Title~]

STATE OF OREGON            )  
  : ss  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of [Month~], 20[#~] by [Name~], [Title~], a [type of entity~], who executed the foregoing instrument for and on behalf of the Owner.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

*[The balance of this page is intentionally left blank.]*

EXHIBIT A

*[Legal Description]*

*[The balance of this page is intentionally left blank.]*

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**EXHIBIT B - Form of Income Certification**

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EXHIBIT C

Certificate of Continuing Program Compliance

The undersigned, \_\_\_\_\_, being duly authorized to execute this Certificate on behalf of [Name of Owner~], an Oregon [type of entity~] (the "Owner"), hereby represents and warrants that, with respect to Moonlight Townhomes Project (the "Project"), as of \_\_\_\_\_, \_\_\_\_\_:

- (i) The total number of residential units in the Project is: \_\_\_\_\_;
- (ii) The number of units actually occupied by tenants whose income does not exceed the applicable income limit is: \_\_\_\_\_;
- (iii) The number of units occupied by continuing residents whose income is treated as not exceeding the applicable income limit is: \_\_\_\_\_;
- (iv) The number of units previously occupied by low-income tenants currently held vacant for occupancy is: \_\_\_\_\_ for Qualified Units, and \_\_\_\_\_ for other Qualified Units;
- (v) Sum of 2, 3, and 4 \_\_\_\_\_;
- (vi) Percentage of total units treated as occupied by Qualified Residents (5 divided by 1) \_\_\_\_\_%, with \_\_\_\_\_% thereof as Qualified Units, and \_\_\_\_\_% as other Qualified Units.

At no time since the date of the filing of the last Certificate of Continuing Program Compliance have less than [Article XI-Q~] percent ([#]%) of the Units in the Project been occupied or been last occupied by tenants whose income is treated as not exceeding the applicable Qualified Unit income limit nor have less than [Financing Document~] percent ([#]%) of the Units in the Project been occupied or been last occupied by tenants whose income is treated as not exceeding the applicable Financing Document income limit.

No default has occurred under the terms of the Operating Agreement or, if a default has occurred, the following describes such default and the measures being taken by the Owner to remedy such default:

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DATE: \_\_\_\_\_

By: \_\_\_\_\_  
[Name~], [Title~]