

When Recorded Return to:
Oregon Housing and Community Services
725 Summer Street, Suite B
Salem, OR 97301-1266
Attn: LIFT Homeownership

SPACE ABOVE FOR RECORDER'S USE

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

**LOCAL INNOVATION AND FAST TRACK HOUSING PROGRAM
INTERCREDITOR AGREEMENT**

This Local Innovation and Fast Track Housing Program Intercreditor Agreement (this “**Agreement**”) is made and entered into as of the ____ day of _____, 20__ by and between the State of Oregon, acting by and through its Housing and Community Services Department, together with its successors and assigns (“**OHCS**”) and [ENTITY NAME], [type of entity], as lender (“**Bank**”). OHCS and the Bank may be referred to herein jointly as the “**Parties**” or individually as a “**Party**.”

RECITALS

A. [ENTITY NAME], [type of entity], (“**Borrower**”), is the owner of certain real property located in the city of [City], [County] County, Oregon described in **Exhibit A** attached hereto, referred to herein as the “**Property**”. The Property does not include: (a) any Homes constructed on the land described in the attached Exhibit A once the Homes are constructed and sold to third-party Homeowners pursuant to a Homeowner Lease; or (b) such Homeowner’s interest in the Homeowner Lease. Capitalized terms without definition in this recital have the meaning set forth in the LIFT Loan Documents (as hereinafter defined).

B. Pursuant to that certain Local Innovation and Fast Track Housing Program LIFT Loan Agreement of even date herewith between OHCS and Borrower (the “**LIFT Loan Agreement**”), OHCS has agreed to make a loan to Borrower in the principal amount of [LONG FORM NUMBER] DOLLARS (\$X,XXX,XXX) for the Property (the “**LIFT Loan**”). The LIFT Loan will be evidenced by that certain Promissory Note of even date herewith and executed by Borrower and payable to the order of OHCS (the “**LIFT Note**”) and secured by that certain Line of Credit Trust Deed and Assignment of Leases and Rents, of even date herewith (the “**LIFT Trust Deed**”) encumbering the Property, recorded _____, 20__ in [County Name] County, Oregon real property records as Instrument No. _____.

C. Borrower will also execute and deliver to OHCS that certain Operating Agreement and Declaration of Land Use Restrictive Covenants of even date herewith between Borrower and OHCS (the “**Operating Agreement**”) in connection with the LIFT Loan and encumbering the

Property recorded _____, 20__ in [County Name] County, Oregon real property records as Instrument No. _____.

D. Pursuant to a Construction Loan Agreement of even date herewith between the Bank and Bank's Borrower (the "**Bank Loan Agreement**"), the Bank has agreed to make a loan to Bank's Borrower in the aggregate principal amount of [LONG FORM NUMBER] **DOLLARS (\$X,XXX,XXX)** (the "**Bank Loan**"). The obligations of Bank's Borrower under the Bank Loan Agreement and with respect to the Bank Loan will be secured by a Deed of Trust, Security Agreement and Fixture Filing, of even date herewith (the "**Bank Trust Deed**") encumbering the Mortgaged Property, recorded _____, 20__ in the [County Name] County, Oregon Real Property Records as Instrument No. _____.

E. The execution and delivery of this Agreement is a condition to the closing of the LIFT Loan and the Bank Loan.

AGREEMENT

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

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

(a) "**Affordability Agreements**" has the meaning given to it in Section 6 of this Agreement.

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

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

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

(e) "**Enforcement Action**" means any of the following actions, that the Parties agree will be taken directly by the Bank or at the direction of the Bank and taken or directed consistently among the Bank Loan and the LIFT Loan: The acceleration of all or any part of the Bank Loan or the LIFT Loan, the advertising of or commencement of any foreclosure

or trustee's sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Bank Loan or the LIFT Loan, the exercising of any banker's lien or rights of set-off or recoupment, or the exercise of any other remedies against the Borrowers, any other person or entity liable for any of the Bank Loan or the LIFT Loan or obligated under any of the related financing documents (excluding rights and remedies reserved to OHCS under the Affordability Agreements, including its Operational Remedies under the LIFT Loan Documents) or otherwise with respect to the Property. For purposes of this Agreement, "**Enforcement Action**" includes the right of the Bank to direct the time, method and place of conducting any proceeding to be taken to enforce the payment and performance of the Borrowers' obligations under the Bank Loan Documents and the LIFT Loan Documents (excluding rights and remedies reserved to OHCS under the Affordability Agreements, including its Operational Remedies under the LIFT Loan Documents), including the appointment (or seeking the appointment) of a receiver, the commencement of foreclosure proceedings with respect to the Property under the Bank Trust Deed or any of the other Property Trust Deeds or any other Property Financing Documents creating a lien on or a security interest in the Property, the collection of rents or any other action to accelerate or otherwise enforce payment on the Bank Loan or the LIFT Loan or the performance by the Borrowers of its obligations under the Property Financing Documents (excluding rights and remedies reserved to OHCS under the Affordability Agreements, including its Operational Remedies under the LIFT Loan Documents).

(f) "**Event of Default**" has the meaning given to it in the respective Property Financing Documents.

(g) "**Foreclosure Action**" means a foreclosure proceeding with respect to the Property under the Bank Trust Deed or any of the other Property Trust Deeds or any other Property Financing Documents creating a lien on or a security interest in the Property.

(h) "**Bank Loan Documents**" mean the Bank Loan Agreement, the note evidencing the Bank Loan, the Bank Trust Deed and all other documents evidencing and securing the Bank Loan or executed in connection with the Bank Loan made by the Bank to the Borrowers.

(i) "**LIFT Loan Documents**" mean, collectively, the LIFT Loan Agreement, the LIFT Note, the LIFT Trust Deed, the Operating Agreement, and certain related promissory notes, certificates, instruments or other documents executed by the OHCS and the Borrowers in connection with the LIFT Loan being made by OHCS to Borrowers.

(j) "**Operational Remedies**" has the meaning given to it in Section 6 of this Agreement.

(k) “**Property Financing Documents**” mean, collectively, the Bank Loan Documents and the LIFT Loan Documents.

(l) “**Property Trust Deeds**” mean, collectively, the Bank Trust Deed and the LIFT Trust Deed.

2. PRIORITY OF LIENS AND SECURITY INTERESTS. Notwithstanding any provisions to the contrary contained in any of the Property Financing Documents, and irrespective of the time, order, or method of attachment or perfection of the liens and security interests granted thereby or the time or order of filing or recording of financing statements or other liens, or security interests, and irrespective of anything contained in any filing or agreement to which any of the Parties now or hereafter may be a party, the Parties hereby acknowledge and agree that, subject to the terms hereof, the Property Trust Deeds will each share a first lien position and constitute first liens on the Property.

3. NOTICE OF EVENT OF DEFAULT. Each Party shall use reasonable efforts to provide written notice of any Event of Default under any Property Financing Documents to which it is a party to the other Party promptly upon acquiring knowledge of the same. In all events, each Party shall provide at least 10 days’ prior written notice to the other Party prior to exercising any Enforcement Action it may be entitled to exercise under the applicable Property Financing Documents to which it is a party as a result of such Event of Default.

4. ENFORCEMENT ACTION; PAYMENTS PRIOR TO DEFAULT. The Bank shall have the sole and exclusive right to take, not to take, to direct to be taken, or to refrain from directing to be taken all Enforcement Actions under the Bank Loan Documents and, at the election of the Bank, the LIFT Loan Documents (excluding the rights and remedies reserved to OHCS under the Affordability Agreements and its Operational Remedies under the LIFT Loan Documents) so long as the Bank Loan or any other obligations of the Borrowers to the Bank under the Bank Loan Documents are outstanding thereunder. As long as any obligations are outstanding under the Bank Loan Documents, OHCS shall not take any Enforcement Action. The rights of the Bank to take or not to take or to direct or refrain from directing any such Enforcement Action are and shall be conditioned on and subject to providing written notice of an Event of Default to OHCS as provided in Section 3 of this Agreement and shall also be subject to the Operational Remedies retained by OHCS as described below so long as any of the Affordability Agreements remain in force and effect. Within the notice period described in Section 3, OHCS may request an opportunity to discuss any notice of intent to exercise an Enforcement Action that OHCS receives with the Bank, and the Bank will schedule a discussion with OHCS as soon as practicable, but in all cases before commencement of the Enforcement Action. Prior to receiving written notice of an Event of Default from the Bank, OHCS shall be entitled to retain for its own account all regularly scheduled payments due and payable under and pursuant to the respective Property Financing Documents to which it is a party. However, immediately upon receipt of written notice of an Event of Default, OHCS will not accept any payments for its respective accounts, and the provisions of Section 6 of this Agreement will apply. Bank shall be responsible for all costs associated with its election to take or direct to be taken any Enforcement Action permitted pursuant to this Agreement.

5. TRANSFER OF ANY INTEREST IN THE PROJECT IN THE EVENT OF A FORECLOSURE ACTION. Unless OHCS elects to terminate the Operating Agreement as provided in Section 9 of this Agreement, the provisions of this Section 5 shall apply in the event of a sale, transfer or other disposition of the Project pursuant to a foreclosure or a deed in lieu of foreclosure pursuant to the Bank Trust Deed following a default under the Bank Trust Deed (a “**Foreclosure Action**”).

(a) **When OHCS Consent is not required.** In the event of a Foreclosure Action, prior written consent of OHCS shall not be required in connection with any sale, transfer or other disposition of the Project pursuant to either a trustee or sheriff’s sale. Additionally, prior written consent of OHCS shall not be required for the Bank to acquire title to the Project pursuant to a Foreclosure Action on a temporary basis until such time as the Bank is able to arrange for the transfer of the Property to a transferee who meets all of the requirements specified in clause (b) below.

(b) **When OHCS Consent is required.** The prior written consent of OHCS is required in connection with a sale, transfer or other disposition of the Project by the Bank if the proposed sale, transfer or disposition of the Project is pursuant to a negotiated sale between the Bank and a prospective transferee (a “**Negotiated Transfer**”). OHCS agrees (i) not to unreasonably withhold such written consent, (ii) to respond to Bank’s request for OHCS’ written consent to a Negotiated Transfer within ten (10) Business Days following receipt of such request (“**Business Days**” means any day except any Saturday, any Sunday, or any day which is a legal or bank holiday) and (iii) that failure on the part of OHCS to respond within ten (10) Business Days will be deemed to be consent by OHCS to such Negotiated Transfer. A request by Bank for OHCS’ prior written consent to a Negotiated Transfer may be given at any time, and shall include the prospective transferee’s name, state of organization (if a business entity), and contact information for a representative of prospective transferee. OHCS further agrees that it will not withhold consent to a Negotiated Transfer so long as the proposed transferee:

- (i) is duly qualified and licensed to do business in the State of Oregon, has the power and authority to transact the business in which it is engaged, and is authorized to assume and perform the obligations under the Operating Agreement,
- (ii) has experience owning, operating and managing affordable housing projects,
- (iii) is not then in default under any obligations to OHCS or the State of Oregon;
- (iv) does not have any actions, suits, proceedings or investigations pending or, to the knowledge of the transferee, threatened against OHCS;

(v) is not presently indicted for or otherwise criminally or civilly charged by a governmental entity with fraud or a criminal offense in connection with obtaining or performing a public contract or transaction;

(vi) does not have a history of non-compliance with OHCS program requirements, including affordability restrictions of a similar nature to those set forth in the Operating Agreement;

(vii) executes an assignment in a form satisfactory to OHCS under which the transferee will assume all duties and obligations of Borrower under the Operating Agreement;

(viii) pays a transfer fee as required by OHCS and satisfies any other conditions that may be imposed by OHCS to ensure compliance with the Project Requirements;

(ix) provides current financial information and a full description of the transferee's experience in owning and operating affordable housing projects that reasonably demonstrate to OHCS' satisfaction the transferee's ability to continue operation of the Property as an affordable housing project; and

(x) is an eligible covenant holder as defined in ORS 456.270(3) or has entered into a contract with such an eligible covenant holder, in a form satisfactory to OHCS, to ensure enforcement of the affordability, habitability and other operational requirements provided under the Homeowner Leases.

If the Bank sells, transfers, or otherwise disposes of any interest in the Project in violation of this Section 5, OHCS may declare an Event of Default under the terms of this Agreement and exercise the remedies provided for herein or available at law.

6. LIMITED AGENCY RELATIONSHIP. The Bank may elect to take or direct Enforcement Action under or with respect to the LIFT Loan in addition to exercising remedies with respect to the Bank Loan; provided, however, that the Bank absent such election shall have no obligation to take or direct any action on behalf of OHCS. In the event that the Bank elects to take or directs to be taken Enforcement Actions under the LIFT Loan Documents contemporaneously with taking or directing Enforcement Actions under any of the Bank Loan Documents (excluding the rights and remedies reserved to OHCS under the Affordability Agreements and its Operations Remedies under the LIFT Loan Documents), OHCS hereby appoints the Bank as agent solely for the purpose of taking any Enforcement Action permitted pursuant to this Agreement. This shall include, for example, the right of Bank to name and include OHCS (subject to ORS chapter 180) as plaintiff or a party in any Enforcement Action. The Bank shall not be required to act as agent for OHCS, but shall have the right, at its option to act as agent. In the event that the Bank does not elect to act as agent, upon the Bank's request, OHCS shall take such actions as necessary to join and collaborate in any Enforcement Action taken or directed by the Bank. The Bank, as agent, is not nor shall it assume any responsibility or liability for any act

or omission by OHCS under the LIFT Loan Documents. The Bank shall not have any duties or responsibilities, except those expressly set forth herein, nor shall the Bank have or be deemed to have any fiduciary relationship with the Borrowers, OHCS, any guarantor/indemnitor, or any other person, and no implied covenants, function, responsibilities, duties, obligations or liabilities shall be read into this Agreement or otherwise exist against the Bank. In acting or electing not to undertake any Enforcement Actions, the Bank shall exercise the same care as it normally exercises with respect to loans and commitments in which an inter-creditor agreement does not exist. Neither the Bank nor OHCS will be liable to the other for any Enforcement Action taken or omitted to be taken by it hereunder or under or in connection herewith, except to the extent such liability with respect to an Enforcement Action taken or omitted to be taken: (i) is determined in a final non-appealable judgment by a court of competent jurisdiction to have arisen from the gross negligence or willful misconduct of the other Party; (ii) results from an Enforcement Action taken by OHCS other than with respect to the Affordability Agreements and its Operational Remedies under the LIFT Loan Documents prior to notifying the Bank; or (iii) results from an Enforcement Action taken by OHCS after Bank has elected to act as agent for OHCS and has provided written notice of the same under the LIFT Loan Documents (excluding the rights and remedies reserved to OHCS under the Affordability Agreements and its Operations Remedies under the LIFT Loan Documents). In the event that Borrowers or any other party obligated upon the LIFT Loan challenges the validity or enforceability of any such obligations in defense of any Enforcement Action, Bank shall provide written notice to OHCS of such challenge or assertion. OHCS may elect to retain its own counsel to respond to such allegations or, the Bank may, with the written permission of OHCS, as its agent, respond and defend such allegations. In the event that Bank takes such action on behalf of OHCS as agent, such party shall be responsible to repay to Bank any expenses incurred consistent with such party's written permission and not otherwise recovered by the Bank following completion of any Enforcement Actions and liquidation of the Property.

7. CONTINUED OPERATION OF PROPERTY AS AFFORDABLE HOUSING; RETENTION OF OPERATIONAL REMEDIES BY DEPARTMENT. Notwithstanding the sole and exclusive right of the Bank to take or direct Enforcement Actions following an Event of Default as described in Section 4 of this Agreement, OHCS shall retain the right to take action and pursue any and all remedies against Borrowers and the Property to ensure compliance with all covenants and obligations related to the operation of the Property as an affordable housing project and to ensure compliance with the requirements of Article XI-Q of the Oregon Constitution (collectively, the “**Operational Remedies**”), including without limitation all of the rights and remedies granted to OHCS to ensure affordability, habitability and the management and operation of the Property in accordance with the covenants, obligations and program requirements set forth in the Operating Agreement and the LIFT Loan Documents (collectively, the “**Affordability Agreements**”). For purposes of this Agreement “Operational Remedies” shall include any action taken or directed by OHCS pursuant to any of the Affordability Agreements for other than actions to collect principal and interest owed under the LIFT Loan, and any action taken or directed by OHCS pursuant to the Operating Agreement including, but not limited to the assessment and collection of damages, specific performance, mandatory injunctive relief, or similar equitable remedies to compel compliance by the Borrowers with the terms of the Affordability Agreements; provided that, nothing in this Section 6 shall permit OHCS to take or direct Enforcement Actions following an Event of Default with respect to the Property Financing Documents or to commence

any foreclosure or trustee's sale proceedings, exercise any power of sale, accept a deed or assignment in lieu of foreclosure or sale, or to take possession or control of any of the Property, except operational oversight of the Property pursuant to its exercise of Operational Remedies. Notwithstanding the foregoing, OHCS may require replacement of the property manager of the Property, but only to the extent permitted in the applicable covenants and agreements contained in the Affordability Agreements and with the prior written consent of the Bank to the proposed replacement property manager, which consent will not be unreasonably withheld, conditioned or delayed, pursuant to the relevant provisions of the Operating Agreement.

8. PAYMENTS AFTER DEFAULT.

(a) OHCS agrees that after receiving written notice of an Event of Default it will not accept any payment, property, or asset of any kind under any of the LIFT Loan Documents by or on behalf of the Borrowers without the prior written consent of the Bank. Notwithstanding the foregoing, if OHCS receives any such payment, property, or asset under the LIFT Loan Documents, such payment, property or asset shall be held in trust for the Bank, and OHCS will, unless notified in writing otherwise by the Bank, promptly remit such payment, property or asset, in kind, and properly endorse as necessary to the Bank. The Bank will apply any payment, property or asset so received from OHCS in accordance with the same priorities for the application of Foreclosure Sale Proceeds set forth in Section 8 below. In no event shall the appointment of a receiver operate to limit the rights of OHCS to exercise Operational Remedies. Any appointment (or action seeking appointment) of a receiver with respect to the Property by the Bank must be preceded by written notice from Bank to OHCS. Any actions taken or proposed to be taken by the receiver are subject to all requirements and remedies provided under the Affordability Agreements, including but not limited to the continuing right of OHCS to exercise Operational Remedies.

(b) If an Enforcement Action taken by the Bank is the appointment of a receiver for any of the Property, all of the rents, issues, profits and proceeds collected by the receiver will be paid and applied by the receiver in accordance with the same priorities for the application of Foreclosure Sale Proceeds set forth in Section 8 below.

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

(d) The subordination of payments due to OHCS will continue if any payment under the Bank Loan Documents (whether by or on behalf of Borrower, as proceeds of security or enforcement of any right of set-off or otherwise) is for any reason repaid or returned to Borrower or its insolvent estate, or avoided, set aside or required to be paid to Borrower, a trustee, receiver or other similar party under any bankruptcy, insolvency,

receivership or similar law. In such event, any or all of the Bank Loan originally intended to be satisfied will be deemed to be reinstated and outstanding to the extent of any repayment, return, or other action, as if such payment on account of the Bank Loan had not been made.

9. FORECLOSURE AND APPLICATION OF FUNDS. The Parties each acknowledge and agree that a Foreclosure Action shall not operate to terminate the Operating Agreement, which shall continue in full force and effect following the Foreclosure Action, absent termination by OHCS as set forth in this Section 8. The Parties agree that following a foreclosure of the Bank Trust Deed or the delivery of a deed in lieu of foreclosure pursuant to the Bank Trust Deed, the monetary lien of the LIFT Trust Deed shall be released; provided, however that the Affordability Agreements and OHCS' Operational Remedies under the LIFT Loan Documents will continue throughout the duration of the Affordability Period as defined in the LIFT Loan Agreement. The Parties shall take any action reasonably requested by the Bank to effectuate the foregoing. Furthermore, the Parties agree that in the event of a foreclosure of the Bank Trust Deed or the delivery of a deed in lieu of foreclosure pursuant to the Bank Trust Deed, or in the event of a foreclosure of the any of the other Property Trust Deeds or the delivery of a deed in lieu of foreclosure pursuant to any of the other Property Trust Deeds, the proceeds resulting from the foreclosure or deed in lieu of foreclosure ("**Foreclosure Sale Proceeds**") shall be applied as follows, except as provided below in the event that OHCS elects to terminate the Operating Agreement:

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

SECOND, to amounts due and payable to OHCS under the LIFT Loan Documents in accordance with the priority for the application of moneys set forth in the LIFT Trust Deed providing for the payment of amounts payable to OHCS with respect to advances, fees and expenses, interest, and premium (if any) on the LIFT Loan.

The Parties further agree that in the event of a Bank Loan Foreclosure and a contemporaneous LIFT Foreclosure, OHCS may elect to terminate the Operating Agreement. If the Operating Agreement is so terminated by OHCS, the Foreclosure Sale Proceeds shall be applied on a pro rata basis among the Bank and OHCS based on the respective amounts owed or to become due to: (a) the Bank under the Bank Loan Documents (including without limitation the payment of all principal outstanding under the Bank Loan, together with all accrued and unpaid interest and all other amounts owed or to become due to the Bank with respect to advances, fees and expenses, interest and premium (if any) on the Bank Loan) and (b) OHCS under the LIFT Loan Documents (including without limitation the payment of all principal outstanding with respect to the LIFT Loan, together with all accrued and unpaid interest and all other amounts owed or to become due to OHCS with respect to advances, fees and expenses, interest and premium (if any) on the LIFT Loan). Upon such termination at the election of OHCS, the Operating Agreement shall be terminated effective upon the sale or transfer of the Property pursuant to the Foreclosure

Action and the payment and/or satisfaction of any terms or conditions to the termination agreed to by OHCS and Bank. Absent such termination at the election of OHCS, the Operating Agreement shall continue in full force and effect in accordance with its terms notwithstanding the Foreclosure Action.

10. OHCS RIGHT TO PURCHASE FOLLOWING NOTICE OF AN EVENT OF DEFAULT. Prior to the actual sale or transfer of the Property pursuant to a Foreclosure Action, the Bank agrees that OHCS shall have the right to purchase the Bank Loan from the Bank at a purchase price equal to the principal outstanding under the Bank Loan Agreement, together with all accrued and unpaid interest and all other amounts owing to the Bank under the Bank Loan Agreement, with respect to advances, fees, expenses and interest, and thereafter proceed to acquire the Property, all consistent with its authority to purchase “participating property” under Oregon law, including, without limitation, ORS 456.250 to ORS 456.265. Such purchase of the Property by OHCS may be effected by a Foreclosure Action or on such terms and conditions as may be negotiated between OHCS and the Borrower.

11. NO OHCS OBLIGATIONS TO OTHER PARTIES. Nothing contained in this Agreement shall create any pecuniary liability of OHCS for any amounts due to the Bank under any of the Property Financing Documents, except as set forth in Section 5 of this Agreement.

12. NO BANK OBLIGATIONS TO OTHER PARTIES. Nothing contained in this Agreement shall create any pecuniary liability of the Bank for any amounts due to OHCS under any of the LIFT Loan Documents.

13. ADDITIONAL REPRESENTATIONS AND COVENANTS.

(a) Without the prior written consent of the Bank, which consent will not be unreasonably withheld, conditioned or delayed, OHCS in each instance, shall not (i) amend, modify, waive, extend, renew or replace any provision of any of the Property Financing Agreements to which it is a party, or (ii) in the case of the LIFT Loan, pledge, assign, transfer, convey, or sell any interest in the LIFT Loan; or (iii) accept any payment on account of the LIFT Loan other than the payment of interest or principal then due and payable; or (iv) take any action which has the effect of increasing the outstanding amount of the LIFT Loan, or (v) appear in, defend or bring any action to protect OHCS’s interest in the Property, or (vi) take any action concerning environmental matters affecting the Property. The Bank is permitted to amend, modify, waive, extend, renew or replace any provision of the Bank Loan Documents without the prior approval of any party (other than Borrowers). The Bank shall provide written notice to OHCS of any material amendment to any of the Property Financing Documents to which it is a party.

(b) OHCS shall deliver to the Bank a copy of each notice received or delivered by OHCS pursuant to the LIFT Loan Documents, or in connection with the LIFT Loan, simultaneously with its delivery or receipt of such notice. The Bank shall deliver to OHCS in the manner required in Section 14 a copy of each notice of an Event of Default delivered to the Borrowers by the Bank. Neither giving nor failing to give a notice to the Bank or

OHCS pursuant to this Section 13(b) shall affect the validity of any notice given by the Bank or OHCS to the Borrowers as provided in this Agreement.

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

(d) Whenever the Property Financing Documents give OHCS approval or consent rights with respect to any matter, and a right of approval or consent with regard to the same or substantially the same matter is also granted to the Bank pursuant to the Bank Loan Documents or otherwise, the Bank's approval or consent or failure to approve or consent, as the case may be, shall be binding on OHCS. None of the other provisions of this Section are intended to be in any way in limitation of the provisions of this Section 11(d).

(e) In the event of a Condemnation or a Casualty, the provisions of the Bank Loan Documents shall apply (including, but not limited to, restoration obligations and the application of the proceeds of insurance or condemnation awards). The rights of OHCS (under the LIFT Loan Documents or otherwise) to participate in any proceeding or action relating to a Condemnation or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation or a Casualty, will be and remain subordinate to Bank's rights under the Bank Loan Documents with respect thereto. For so long as the Bank Loan Documents encumber the Property, Bank shall have all approval, consent, and oversight rights in connection with any insurance claims relating to the Property and any decisions regarding the use of insurance or condemnation proceeds after a casualty loss or condemnation notwithstanding any rights of any other Party Bank shall keep OHCS reasonably informed of the status of any negotiations concerning settlement or adjustment of a claim resulting from a Condemnation or Casualty. This Section 11(e) shall apply until such time as the Bank Loan will have been paid in full and all obligations to the Bank under the Bank Loan Documents shall have been fully performed.

(f) The Bank and OHCS each acknowledge and agree that it is assuming all risk of loss related to and associated with the Bank Loan and the LIFT Loan, as applicable. Each of the Bank and OHCS has undertaken its own review and evaluation of the Property and is not relying upon the opinion or actions of the other with respect to the credit worthiness, validity, legality, value, sufficiency, perfection, priority, enforceability or collectability of the Property, the Bank Loan Documents, or the LIFT Loan Documents.

14. MISCELLANEOUS PROVISIONS

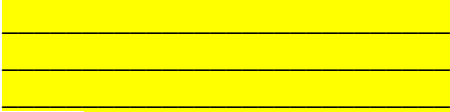

(a) In the event of any conflict or inconsistency between the terms of any of the Property Financing Documents and the terms of this Agreement, the terms of this Agreement shall control.

(b) This Agreement shall be binding upon and shall inure to the benefit of the respective legal successors and permitted assigns of the Parties hereto. No other party shall be entitled to any benefits hereunder, whether as a third-party beneficiary or otherwise.

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

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

With a copy to: Oregon Department of Justice
1162 Court St NE
Salem, OR 97301-4096
Attn: OHCS Contact Counsel

Borrower: 
Attn: 

Bank: 

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

(d) This Agreement shall be governed by the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") among two or more of the parties related to this Agreement will be conducted exclusively within the Circuit Court of Marion County, Oregon (unless Oregon law requires that it be brought and conducted where the 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 the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. EACH OF THE PARTIES HERETO, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

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

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

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

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

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

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

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

OHCS:

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

By: _____
Talía Kahn-Kravis Assistant Director of
Homeownership Programs

STATE OF OREGON)
 : ss
County of Marion)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by Talía Kahn-Kravis, Assistant Director of the Development Resources and Production Section, for and on behalf of the State of Oregon, acting by and through its Oregon Housing and Community Services Department (OHCS).

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

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

BANK:



By:

Name:

Title:

STATE OF _____)
) ss
COUNTY OF _____)

On this the ____ day of _____, 202[REDACTED], before me, a Notary Public, personally appeared _____, _____ of [REDACTED] for and on behalf of Bank.

In witness whereof I hereunto set my hand and official seal.

[SEAL]

Name: _____
Notary Public

My Commission Expires: _____

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

CONSENT OF BORROWER

Borrowers hereby acknowledges receipt of a copy of this Intercreditor Agreement and consents to the agreement of the Parties set forth herein.

BORROWER:

By _____

STATE OF Oregon)
 : ss
County of _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 202__
by _____, _____ of
_____ who executed the foregoing instrument for and on behalf of
the Borrower.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

EXHIBIT A

Property Description