

After Recording 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
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 _____, 20__ by and between [ENTITY NAME], an Oregon [type of entity] (“**Borrower**”), and the State of Oregon, acting by and through its Housing and Community Services Department, together with its successors and assigns (“**OHCS**”).

RECITALS

A. Borrower has completed and submitted to OHCS an application (the “**Application**”) for a reservation of Local Innovation and Fast Track (“**LIFT**”) funds to be used for the Project (as hereinafter defined) in compliance with the Loan Documents (as hereinafter defined).

B. In response to the Application by Borrower, OHCS has issued a reservation letter dated [Month Day, Year] (the “**Reservation**”) approving a conditional loan of LIFT funds to Borrower in an amount not to exceed [UPPERCASE NUMBER] DOLLARS (\$X,XXX,XXX) (the “**Loan**”) to acquire and improve certain real property that will be or has been subdivided into [UPPERCASE NUMBER] (NUMBERIC NUMBER) separate lots (each, a “**Lot**”) located in [City], [County Name] County, Oregon as more particularly described in Exhibit A attached hereto (which land and Borrower’s interest therein is referred to as the “**Property**”) for the purpose of Borrower constructing certain land improvements for [UPPERCASE NUMBER (XX)] affordable homes (each, a “**Home**” and collectively, the “**Homes**”). As used herein, “**Property**” excludes fee simple title to the Homes and leasehold interests in the Homeowners Leases (as defined below).

C. Borrower shall construct the Homes, sell the Homes to Qualified Homeowners (as defined below), contract with such Qualified Homeowners (each, a “**Homeowner**” and collectively as “**Homeowners**”) through a long-term Master Form Land Lease (the “**Master Lease**”) that will establish certain affordability covenants, including the Affordability Requirements (as hereinafter defined) consistent with this Agreement and the Program Requirements (as hereinafter defined). Borrower shall enter into a Short

Form Land Lease with each Homeowner. The Short Form Land Lease shall incorporate provisions of the Master Lease and include applicable attachments, and when executed is referred to as the “**Land Lease**” or “**Homeowner Lease**.” Each Homeowner’s interest therein is referred to herein as the “**Homeowner’s Leasehold**” whereby the Homeowner purchases a Home and obtains a leasehold interest in a Lot on the Property on which a Home has been or will be constructed. The Land Lease must be substantially in the form attached hereto as Exhibit B. Borrower shall develop and operate the Property, through and as lessor under the Land Leases and otherwise, using a community land trust model of affordable homeownership (the “**Land Trust**”). Borrower shall record a Land Lease with each Homeowner which incorporates by reference the Master Lease against the Lot on which the Homeowner’s Home is constructed. Borrower will convey each Home by warranty deed to a Qualified Homeowner.

D. Within three (3) days following execution of this Operating Agreement by both parties, Borrower shall record this Operating Agreement against the Property in the records of the County.

E. It is anticipated that each Homeowner may finance (or refinance) their purchase of a Home by borrowing money from a “Permitted Lender” as defined in and allowed by the Master Lease (“**Permitted Lender**”) which loan will be secured by a deed of trust or mortgage on the Home and the Homeowner’s Leasehold (collectively, a “**Home Lien**”).

F. Borrower’s development of the Property in preparation for the construction and sale to Homeowners of the Homes pursuant to the Homeowner Leases, Borrower’s construction of the Homes, and Borrower’s subsequent operation of the Property as ground lessor, in accordance with the Homeowner Leases, is referred to herein as the “**Project**” and is known as “[**Project Name**]”. The Project does not include any of the Homeowner’s interest in a Home once purchased by the Homeowner or the Homeowner’s interest in the Homeowner Lease.

G. OHCS is willing to make the Loan conditioned upon Borrower’s agreement to operate the Project as a Land Trust in compliance with the terms and conditions of this Agreement, the Loan Documents, and the Program Requirements.

AGREEMENT

NOW THEREFORE, for good and sufficient consideration, including the terms and conditions herein, OHCS and Borrower agree as follows:

1. INCORPORATION; DEFINITIONS.

1.1. Incorporation. The foregoing Recitals and the Exhibits are hereby incorporated by reference to the same extent and with the same force and effect as if fully set forth herein, provided, however, that the Recitals and the Exhibits may not be deemed to modify the express provisions of this Agreement.

1.2. Definitions. Capitalized terms used herein without definition or not otherwise defined below, have the meaning ascribed to such term in the Loan Documents and the Program Requirements unless the context clearly requires otherwise.

1.2.1. “Act” means the Housing Finance Act, ORS Chapter 456.515 to 456.725, as may be

amended from time to time.

- 1.2.2. “Affordability Period”** means the period of time beginning from the date that any Home in the Project is first conveyed to a Homeowner and expiring not sooner than [Month, Day, Year]. Notwithstanding the foregoing, OHCS may, at its sole discretion, extend the Affordability Period for periods of time matching corresponding periods of time during the Affordability Period for which OHCS determines Borrower to be in material noncompliance with any of the terms of this Agreement.
- 1.2.3. “Affordability Requirements”** mean the requirements set forth in Section 5.2.
- 1.2.4. “Corrective Notice”** means any directive from OHCS to correct a deficiency in the operation or management of the Project, or other noncompliance with the Program Requirements, as determined by OHCS.
- 1.2.5. “GAAP”** means generally accepted accounting principles consistently applied.
- 1.2.6. “Housing Act”** means the United States Housing Act of 1937, as amended.
- 1.2.7. “HUD”** means the U.S. Department of Housing and Urban Development.
- 1.2.8. “Lease Payment”** means that monthly land rent amount that a Homeowner is obligated to pay Borrower pursuant to the terms of the Homeowner Lease.
- 1.2.9. “LIFT” or “LIFT Program”** means the Local Innovation and Fast Track Housing Program.
- 1.2.10. “Loan Documents”** means the documents executed by Borrower 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 Promissory Note, the Loan Agreement, the Trust Deed, this Operating Agreement, as well as related documents (including, but not limited to exhibits, incorporations, ancillary documents, and documents effecting amendments to any of the foregoing).
- 1.2.11. “Program Requirements”** means collectively, all of the following, including as may be amended from time to time, all performance requirements, restrictive covenants, warranties, liabilities, operational standards, and other obligations of the Borrower arising under the terms and conditions of the LIFT Program, including applicable provisions of Article XI-Q, of the Oregon Constitution (“**Article XI-Q**”), the Act, this Agreement, the Loan Documents, the Affordability Requirements, OHCS’ administrative rules, applicable OHCS manuals, applicable OHCS orders and directives, and other applicable federal, state, and local laws, ordinances, codes, rules, and regulations.
- 1.2.12. “Qualified Homeowner”** means a Homeowner whose income, at the time that the Homeowner Lease is entered into or no more than one year prior to that date, is at or below 80% area median income, adjusted by household size, as determined by OHCS based upon

information from the U.S. Department of Housing and Urban Development (“HUD”) and validly occupying a Home in the Project pursuant to the Homeowner Lease.

1.2.13. “Transferee” means the person to whom a “Transfer” (as defined in Section 6.4) is made.

2. QUALIFIED PROJECT.

OHCS and Borrower hereby acknowledge and agree that, at all times during the term of this Operating Agreement, the Project is to be owned and operated as a Project qualified for funding with Article XI-Q. To that end Borrower hereby represents, covenants, warrants, and agrees as follows:

2.1. Cooperative Operation. Borrower shall own and cooperatively operate the Project in accordance with this Agreement and the Program Requirements.

2.2. Complete and Separate Facilities. Each of the Homes will contain complete and separate facilities for living, sleeping, eating, cooking, and sanitation for a single person or a family.

3. MODIFICATION OF COVENANTS.

Borrower and OHCS hereby agree as follows:

3.1. More Restrictive Covenants. To the extent any amendments to 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 that must be complied with in order to comport with Article XI-Q, the Act, related statutes, administrative rules, orders, rulings, or other law, this Operating Agreement will be deemed to be automatically amended to impose such additional or more restrictive requirements.

3.2. Execution. Borrower 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.

4. REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER.

Borrower represents, warrants, and covenants that:

4.1. Validity. It is an Oregon a public benefit corporation, 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.

4.2. Authority; No Impairment. The making and performance of this Agreement by Borrower has been duly authorized by all necessary action of Borrower; 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 Borrower’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 Borrower is a party or by which Borrower 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.

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

4.4. Program Requirements. Borrower shall timely satisfy all requirements of this Agreement, including the Program Requirements, to the satisfaction of OHCS.

4.5. Completion Date. Borrower shall complete the Project no later than [Month, Day, Year], in accordance with this Agreement, the Loan Agreement, and the Program Requirements.

4.6. Responsibility. Borrower assumes full responsibility for timely and appropriate completion of Project, for ownership of the Property, conveyance of the Homes to Qualified Homeowners in accordance with the Homeowner Lease, and the operation of the Project in accordance with this Agreement, the Homeowner Leases and the Program Requirements. Borrower acknowledges and agrees that OHCS has no direct or contractual responsibility to Borrower for the Project, for ownership of the Project, or for its operation.

4.7. No Conflicting Agreements. Borrower 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.

5. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER.

Borrower also represents, warrants, and covenants that:

5.1. LIFT Program Compliance Generally.

5.1.1. Appropriate Costs. Borrower shall use the Loan only for the financing of eligible costs related to the Project, consistent with the Program Requirements.

5.1.2. Overall Compliance. Borrower shall comply, and will cause its agents, employees, contractors, subgrantees and assigns, if any, to comply with the terms and conditions of this Agreement, including the Program Requirements. Accordingly, Borrower shall include in any contracts that it has with subcontractors, that performance under any such contract is subject to the Program Requirements, including record retention by the subcontractor and review rights by OHCS and others of such records consistent with monitoring of Borrower records hereunder, with OHCS as a third-party beneficiary.

5.2. Affordability Requirements. The following requirements comprise the Affordability Requirements:

5.2.1. Income Limitations. Throughout the Affordability Period, Borrower shall enter into the

Homeowner Lease only with Qualified Homeowners, in accordance with the terms of this Agreement and the Program Requirements.

5.2.2. Lease Payment Restrictions. Throughout the Affordability Period, Borrower shall restrict the Lease Payment that a Qualified Homeowner is obligated to pay under the Homeowner Lease to ensure that the Lease Payment, when combined with any mortgage payment owed by such Qualified Homeowner for the Home, does not exceed what is considered affordable, as determined by HUD on an annual basis, to a household with an income of 80% of the area median family income (“AMI”).

5.3. Foreclosure by Permitted Lender. In the event a Home is transferred to a Permitted Lender pursuant to a deed in lieu of foreclosure or is sold pursuant to a foreclosure action brought by a Permitted Lender and purchased by a person not a Qualified Homeowner, OHCS shall release the Affordability Requirements solely as to the lot underlying the Home that was transferred or sold. In such event, OHCS may accelerate repayment of the Loan on a pro-rata basis as provided in the Loan Documents. The pro-rata portion of the Loan secured by the Lot on which the foreclosed Home is located shall not be eligible for satisfaction under the provisions of OAR 813-135-0040(4)(a) (as in effect on the date of the Note).

5.4. Habitability; Other Compliance. Throughout the Affordability Period, Borrower shall maintain or shall cause a homeowner’s association, if any, to maintain, the Project in a safe, sanitary, and habitable condition satisfactory to OHCS and in accordance with the Program Requirements. Throughout the Affordability Period, Borrower shall require each Qualified Homeowner to maintain their Home in a safe, sanitary, and habitable condition.

5.5. Income Verification and Compliance Monitoring.

5.5.1. Verification of Qualified Homeowner Income. Borrower shall make a good faith effort to verify that the income provided by a Homeowner applicant 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 (collectively, 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 Homeowner 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 Homeowner. The income eligibility period must be no more than one year prior to the sale of the home to the Qualified Homeowner. During the Affordability Period, after the initial sale of each Home, each subsequent sale of a Home will be subject to the Verification Process to verify that the income of the buyer’s household is at or below 80% of AMI.

5.5.2. Income Certification. Borrower shall (i) obtain, complete, and maintain on file, until six (6) years after the end of the Affordability Period, income certifications from each Qualified Homeowner dated no sooner than one year prior to the sale of the Home to the Qualified

Homeowner; and (ii) provide such additional information as may be required from time to time by OHCS.

5.5.3. Certificate of Continuing Compliance. Borrower shall 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 a form satisfactory to OHCS and executed by Borrower stating (i) the current Homeowner for each Home, who, at the time the Homeowner Lease was executed was a Qualified Homeowner; (ii) the sale price of any Home that was conveyed during the preceding reporting year; (iii) annual notification of any Homeowner in arrears (of Lease Payments, association assessments, property taxes, insurance, etc.) and a corresponding action plan; (iii) verification of appropriate maintenance and repair of the Project in accordance with the Homeowner Leases; and (iv) verification 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 Borrower to remedy such default.

5.6. Records; Monitoring.

5.6.1. Financial and Performance Records. Borrower 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, Borrower will maintain all records relating to the Project or compliance with this Agreement. Borrower 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, thereafter or such longer period thereafter as may be required by OHCS. The foregoing retention period shall be extended to include any period during which an audit, claim, or litigation with respect to the Project or this Agreement remains outstanding, plus **two (2)** years thereafter.

5.6.2. Provision of Records. Borrower shall provide to or make available for copying by OHCS, at Borrower's expense, such records as OHCS may require, including but not limited to, the following:

5.6.2.1. Tax Returns. From time to time upon OHCS' request, but not less than annually, provide to OHCS, Borrower's 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 Borrower to be true and correct in all respects.

5.6.2.2. Written Notice. Give OHCS written notice within ten (10) days after the Borrower first receives notice of:

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

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

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

5.6.2.4. Other Information. Promptly furnish to OHCS such data and information, financial or otherwise, concerning Borrower, as from time to time may be requested by OHCS.

5.6.3. Monitoring. Borrower 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 Borrower 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, Borrower 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 Borrower and, as applicable, to the Homeowners. Borrower, 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.

5.7. Charges. Borrower shall timely pay an annual compliance monitoring charge to OHCS, and such other fees or charges from time to time as described herein or under the Program Requirements.

5.8. Corrective Action. As a consequence of its monitoring or otherwise, OHCS may identify deficiencies in Borrower's compliance with the Program Requirements. OHCS may require action by Borrower (satisfactory to OHCS) to correct such deficiencies. Borrower shall correct such deficiencies as directed by OHCS subject to the Homeowner's rights under the Homeowner Lease.

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

6. FURTHER ASSURANCES.

6.1. Further Acts. Borrower, 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.

6.2. Reliance. OHCS may rely upon statements, certificates, and other records of Borrower and its agents and assigns, as well as of Qualified Homeowners, including as to accuracy, genuine nature, and proper execution of such statements, certificates, and other records.

6.3. 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.

6.4. Unapproved Transfers. Any sale, transfer or disposition of the Loan, the Property or the Project, or any portion of any of the foregoing (each a “**Transfer**”) without the prior written consent of OHCS will be void and ineffective to relieve Borrower, the Project or any transferor of any continuing obligations under this Operating Agreement. OHCS’ consent to any such Transfer will not be deemed to be a consent to any subsequent Transfer. OHCS’ consent will not be unreasonably withheld or delayed, but may be conditioned upon, among other things, any of the following:

- The Transferee being duly qualified and licensed to do business in the State of Oregon, having the power and authority to transact the business in which it is engaged, and being authorized to assume the obligations under and perform this Operating Agreement.
- The Transferee not having been criminally indicted for or otherwise criminally or civilly charged by a governmental entity with fraud or an offense in connection with obtaining or performing a public contract or transaction;
- The Transferee having relevant experience owning, operating and managing affordable housing projects, not being currently in material breach of existing obligations to OHCS or the State of Oregon and not having a history of non-compliance with OHCS program requirements, including affordability restrictions similar in nature to those set forth in this Operating Agreement;
- The Transferee’s execution of an assignment in a form satisfactory to OHCS under which the Transferee will assume all duties and obligations of Borrower under this Operating Agreement;
- The payment of a transfer fee required by OHCS and satisfaction of any other conditions that may be imposed by OHCS to ensure compliance with the Project Requirements, including but not limited to Borrower providing OHCS with current financial information with respect to the Transferee and a full description of the Transferee’s experience in owning and operating affordable housing; and
- The Transferee being 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.

No consent under this Section 6.4 is required for transfers of title to a Home to a Qualified Homeowner in the ordinary course of Home sales, subject to the Borrower’s compliance with the requirements to verify and report on the qualification of a Homeowner expressly set forth in the Loan Documents; and no consent under this Section 6.4 is required for (i) Transfers as a result of a deed in lieu of foreclosure to a construction lender, (ii) Transfers pursuant to a judicial or nonjudicial foreclosure initiated by a construction lender and permitted under an Intercreditor Agreement between OHCS and such

construction lender (an “**Intercreditor Agreement**”), or (iii) transfer of a Home by a Permitted Lender who takes title to the Home, by means of foreclosure or a deed in lieu of foreclosure, subject to the applicable terms of the Homeowner Lease that obligates such Permitted Lender with respect to such Home.

Following any transfer of the Property or the Project under this Section 6.4, this Operating Agreement shall continue in full force and effect and the Transferee shall immediately be subject to the terms, conditions, and all other requirements of the Borrower hereunder; provided however, no Transferee, pursuant to a sale, transfer or other disposition of the Project pursuant to a foreclosure or a deed in lieu of foreclosure by a construction lender pursuant to a deed of trust following a default under such deed of trust (a “**Foreclosure Action**”), shall have any liability or obligation for repayment of the Loan, provided that such Foreclosure Action is permitted under an Intercreditor Agreement.

If the development work and construction of Homes relating to the Project has not been completed at the time of the sale, transfer or other disposition of the Project to the Transferee, the Transferee will be obligated to complete such work, to sell the Homes to Qualified Homeowners and to operate the Project to the same extent as required of the Borrower pursuant to this Agreement.

7. COVENANTS AND EQUITABLE SERVITUDES TO RUN WITH THE PROPERTY.

7.1. Inducement. Borrower represents, covenants, and warrants that the issuance to it of the Loan is an inducement to Borrower to have the Project done timely and appropriately, and to have the Project operated in accordance with this Agreement. In consideration of the issuance of the Loan, Borrower 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.

7.2. Covenants; Equitable Servitudes.

7.2.1. Declaration of Land-Use Restrictive Covenants. OHCS and Borrower hereby declare their express intent that, throughout the Affordability Period, the covenants, restrictions, charges and easements set forth herein (including, without limitation, the Affordability Requirements, all other requirements set forth in Section 5 and the restrictions on transfer and Project completion requirements set forth in Section 6) will be deemed covenants running with the Property and will create equitable servitudes running with the Property, and will pass to and be binding upon OHCS’ and Borrower’s successors in title including any purchaser, transferee, or lessee of any portion of the Property 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 Property and any other person or entity having any right, title or interest therein. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof or interest therein 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.

7.2.2. Satisfaction of Requirements. Any and all legal requirements for the provisions of this Agreement to constitute restrictive covenants running with the Property, or to create equitable servitudes with respect to same in favor of OHCS, are deemed satisfied in full.

7.2.3. 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 Borrower.

7.3. Burden and Benefit.

7.3.1. Covenant Burdens. Borrower hereby declares its understanding and intent that the burdens of the covenants and equitable servitudes set forth herein touch and concern the Property, and to the extent that Borrower's legal interest in the Project is rendered less valuable thereby, also touch and concern the Project as a whole, but not as an encumbrance on the Homes or a Homeowner's Leasehold interest in a Homeowner Lease.

7.3.2. Covenant Benefits. Borrower hereby further declares its understanding and intent that the benefits of such covenants and equitable servitudes touch and concern the Property, by enhancing and increasing the enjoyment and use of the Project by the Homeowners and other intended beneficiaries (in addition to OHCS) of such covenants, reservations and restrictions, but not as an encumbrance on the Homes or a Homeowner's Leasehold interest in a Homeowner Lease, and by furthering the public purposes for which the Loan was issued.

7.4. Right of Modification. OHCS may compromise, waive, amend, modify, or forbear the enforcement of, any of the terms of this Agreement including, but not limited to the restrictive covenants and equitable servitudes created hereby, as OHCS determines, in its sole discretion, to be to the benefit of OHCS, the Project, the LIFT Program, or OHCS efforts to provide or maintain safe, sanitary, and affordable housing to low-income and moderate-income residents of the State of Oregon, provided that any material amendment to the rights or obligations of Borrower under this Agreement shall require the prior written approval of Borrower. To be effective, any compromise, waiver, amendment or modification of this Agreement must be in writing, signed by an authorized OHCS representative.

7.5. No Right of Action. Homeowners and other third-party beneficiaries under this Agreement, if any, have no right of action to enforce the restrictive covenants or equitable servitudes created hereunder. OHCS and Borrower retain the right to enforce such covenants and servitudes. Homeowners and other third-party beneficiaries under this Agreement, if any, have no claim, cause of action or other right of recourse against Borrower or OHCS with respect to any action or lack of action taken by Borrower or 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.

7.6. No Attorney Fees. Homeowners and other third-party beneficiaries under this Agreement, 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 Homeowners and other third-party

beneficiaries, if any, hereunder.

8. CHARGES AND FEES.

8.1. Payment of Fees and Charges. Borrower will timely pay all charges and fees identified in this Operating Agreement, and in the Program Requirements.

8.2. Payments at Closing. The amount of fees and charges required to be paid at closing will be provided by invoice from OHCS to include, among other things, the standard recorded document preparation charges from the Department of Justice. Legal fees and other charges due from Borrower at closing will be paid separately by Borrower at closing.

8.3. Administration and Monitoring Fees and Related Charges. As part of the charges and fees due from Borrower to OHCS, Borrower acknowledges and agrees that it will prospectively pay annual administration and monitoring fees and related charges at the beginning of each calendar year throughout the Affordability Period in a yearly amount equal to \$XXX (calculated on the basis of \$25 for each of the [number lower case] (number) Homes in the Project). Fees begin once the first Home is conveyed to a Homeowner or [Month, Day, Year], whichever is sooner and pro-rated based on the remaining portion of the calendar year. Payment for the pro-rated fee and the first-year's prospective fee will commence in January [Year]), and thereafter in annual payments, as described above, 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.

9. RECORDING AND FILING.

Borrower shall 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 Property 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 Borrower. Borrower will pay all fees and charges incurred in connection with any such recording.

10. GENERAL PROVISIONS.

10.1. Compliance with Applicable Laws and Requirements.

10.1.1. Compliance. Borrower will comply, and will ensure that the Project complies, with the Program Requirements.

10.1.2. Contracts; Subcontracts. Borrower will ensure that all contracts and subcontracts undertaken by Borrower, or by any wholly owned subsidiary of Borrower, related to the Project or this Agreement comply with the Program Requirements, including containing a provision to that effect therein.

10.1.3. Endurance of Obligations. Borrower will remain fully obligated under the provisions of this 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 the Loan is being provided

by OHCS or compliance is being required by OHCS.

10.1.4. Inspections. Borrower will permit OHCS to inspect all Homes in the Project at reasonable times and under reasonable conditions, subject to each Homeowner's rights under the Homeowner Lease.

10.2. Indemnity. Borrower assumes sole liability for breach of the conditions of the Loan, other Project funding (if any), or the Program Requirements (including all terms and conditions of this Agreement) by Borrower or any of its officers, agents, employees, and assigns. Borrower shall 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 the Program Requirements, or resulting from or arising out of the acts, omissions, neglect or misconduct of Borrower or its subcontractors, agents, or employees under this Agreement or related to the Loan, other Project funding (if any), the Project, or the Program Requirements.

10.3. Time of the Essence. Time is of the essence in the performance by Borrower of the terms of this Agreement.

10.4. No Discrimination; Marketing. Borrower shall 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. Borrower will use its reasonable efforts to advertise and market the Homes within the county and, if applicable, the city in which the Project is located.

10.5. Notice. 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 Borrower at the following addresses:

OHCS: Oregon Housing and Community Services Department
725 Summer Street N.E., Suite B
Salem, Oregon 97301-1266
Attn: LIFT Homeownership

BORROWER: [Entity Name]
[Address]
[City, State, Zip Code]
Attn: [Receiving Party]

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.

10.6. No Third-Party Beneficiaries. Unless and only to the degree expressly provided otherwise in this Agreement, OHCS and Borrower 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.

10.7. Borrower Status.

10.7.1. Independent Contractor. Borrower shall perform all obligations under this Agreement and will timely satisfy the Program Requirements as an independent contractor. Borrower 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.

10.7.2. Borrower Responsible for Insurance Coverage. Borrower agrees that insurance coverage, whether purchased or by self-insurance, for Borrower's agents, employees, officers and/or subcontractors is the sole responsibility of Borrower.

10.7.3. Non-federal Employment Certification. Borrower certifies that it is not employed by or contracting with the federal government for performance covered by this Agreement.

10.7.4. Good Standing Certification. Borrower certifies to the best of its knowledge and belief that neither Borrower nor any of its directors or officers:

10.7.4.1. Is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any state or federal department or agency;

10.7.4.2. 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;

10.7.4.3. 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 10.7.4.2;

10.7.4.4. 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

10.7.4.5. 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>

10.8. 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 Borrower, under any of the following conditions:

- 10.8.1.** 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;
- 10.8.2.** 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 LIFT Program;
- 10.8.3.** If any authority required by law or regulation to be held by Borrower to complete the Project ends for any reason;
- 10.8.4.** If Borrower is unable or fails to commence the Project within six (6) months from the date of this Agreement;
- 10.8.5.** If Borrower 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;
- 10.8.6.** If OHCS determines that any representation, warranty or covenant of Borrower, whether in whole or in part, is false, invalid, or in default; or
- 10.8.7.** If Borrower (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 to be 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 Borrower hereunder, at law, or otherwise.

10.9. Remedies.

10.9.1. Repayment Upon Termination. If this Agreement or any part hereof, terminates for cause prior to the term of the Affordability Period, Borrower shall, within thirty (30) days of

written demand for repayment, repay the Loan to OHCS, together with applicable interest, fees, and other charges. However, in the case of an Event of Default under Section 5.2 or Section 5.4 of the Trust Deed because of (i) a sale of a Home, pursuant to a foreclosure action brought by a Permitted Lender, to a purchaser who is not a Qualified Homeowner (as defined in the Operating Agreement) or a transfer of a Home to a Permitted Lender pursuant to a deed in lieu of foreclosure or (ii) a violation of a Homeowner Lease by the Homeowner, Lender will have the right to such acceleration only with respect to a pro-rata portion of the Loan. Such pro-rata portion shall be based on the percentage determined by dividing the number of Homes involved in the applicable defaults by the total number of Homes on the Property, multiplying that number by 100, and then rounding that number to the nearest hundredth. That pro-rata portion of the Loan shall not be eligible for satisfaction under the provisions of OAR 813-135-0040(4)(a) (as in effect on the date of the Loan Agreement), and repayment of such pro-rata portion shall be due thirty (30) days following the date on which OHCS notifies Borrower that it has elected to accelerate such pro-rata portion. No amount of the Loan shall be eligible for satisfaction under the provisions of OAR 813-135-0040(4)(a) until Borrower pays OHCS all amounts that may be due under this section.

10.9.2. Deficiencies. OHCS may, from time to time, identify and direct Borrower to correct deficiencies (including deficiencies by Borrower) in its compliance with this Agreement which it will correct as so directed.

10.9.3. Additional Remedies. If Borrower defaults in the performance or observance of any covenant, agreement or obligation set forth in this Agreement, and if such default remains uncured by Borrower 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 Homeowners) 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 Borrower should, with due diligence, have discovered such default (either scenario constituting an “**Event of 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, 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 Property, 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 Property. 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, in addition to all other remedies provided in this Agreement, by law, or in equity:

10.9.3.1. By suit, action or proceeding at law or in equity, require Borrower 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;

- 10.9.3.2.** Obtain the appointment of a receiver to operate the Project in compliance with this Agreement;
- 10.9.3.3.** Require a change in the General Partner, Managing Member, or equivalent position of Borrower to OHCS's satisfaction;
- 10.9.3.4.** Require Borrower to cease management of the Project and to engage a management agent acceptable to OHCS, or, if Borrower is currently engaging a management agent, require Borrower to engage a different management agent that is acceptable to OHCS;
- 10.9.3.5.** Withhold from Borrower, suspend or terminate, all or part of any undisbursed Loan funding described under this Agreement;
- 10.9.3.6.** Subject to the limitations provided in the Loan Agreement, demand repayment of the Loan, and such amounts will be immediately due and payable to OHCS following thirty (30) days from such written demand;
- 10.9.3.7.** Declare Borrower, its owners, principals, officers, employees, and agents ineligible to receive further OHCS financial assistance for such period as OHCS determines in its sole discretion;
- 10.9.3.8.** Offset amounts due under the Loan against other funding awarded or to be awarded to Borrower by OHCS;
- 10.9.3.9.** Have access to, and inspect, examine and make copies of, all of the books and records of Borrower or its agents pertaining to the Project, to inspect the Project at any time, and to inspect the Project upon reasonable notice;
- 10.9.3.10.** Enter onto the Property and correct Events of Default with respect to the Project at Borrower's expense, which expense Borrower will repay to OHCS within ten (10) days of any presentment of charges for such expenses;
- 10.9.3.11.** Require Borrower, its owners, principals, officers, employees, and agents to undertake training, at Borrower's expense, as directed by OHCS; and
- 10.9.3.12.** Take such other action under this Agreement, at law, in equity, or otherwise as may be available to OHCS.
- 10.9.3.13.** Subject to the notice and cure provisions of this subsection, failure to comply with the affordability requirements may result in the imposition on Borrower of liquidated damages by OHCS for each noncompliant Home. The amount of such liquidated damages shall be \$50 per day for each noncompliant Home, with such amount increasing by 3 percent at the start of each calendar year during the Affordability Period. It would be difficult and expensive to determine the actual damages that would result in the event of failure to comply with the Affordability Requirements; \$50 per day for each noncompliant Home, increasing by 3 percent each calendar year, represents a reasonable

estimate of actual damages that OHCS would incur in the form of losing the affordability of a Home and the cost of OHCS staff time incurred in attempting to remedy such a situation. Notwithstanding the foregoing, liquidated damages will not be imposed for any day that precedes the date OHCS notifies Borrower of a default under subsection 10.9.3 and for any period thereafter, provided that Borrower commences to cure the default within thirty (30) days of the notice and demonstrates to OHCS's satisfaction that Borrower is continuing to diligently work to cure the default. Any such damages imposed by OHCS shall be personal and unsecured obligations of Borrower and no Transferee or subsequent owner of the Project, including without limitation, any Transferee following a foreclosure or deed in lieu of foreclosure, shall be subject to or obligated for the payment of any such damages imposed by OHCS in respect of any period prior to the ownership of the Project by such party.

10.9.4. 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.

10.10. 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.

10.11. Survival of Obligations. 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.

10.12. 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 and on appeal. Reasonable attorney fees will not exceed the rate charged to OHCS by its attorneys. OHCS' liability for attorney fees shall be subject to the limits provided under Article XI, Section 7 of the Oregon Constitution.

10.13. 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.

10.14. 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.

10.15. 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.

10.16. 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.

10.17. 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.

10.18. 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. BORROWER, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. 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.

10.19. Merger Clause; Modification; Waiver. This Agreement, the other Loan Documents, the Application, Reservation, and any exhibits, schedules, appendices and attachments hereto (which are by this reference incorporated herein), constitute the entire agreement between the parties on the subject matter hereof. 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.

10.20. 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 Borrower, 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.

10.21. Cross Default. OHCS may treat an Event of Default hereunder as an Event of Default under any of the other Loan Documents. OHCS may treat an Event of Default under any other of the Loan Documents as an Event of Default hereunder.

10.22. Master Lease. The Master Lease shall provide that, if the Homeowner defaults and fails to timely cure the default, Borrower may exercise all rights and remedies available to Borrower at law or in equity, including but not limited to: (a) terminating the Land Lease and initiating summary proceedings under applicable law against Homeowner to repossess the Lot and Home and expel Homeowner and those claiming rights through Homeowner; (b) exercising the option to purchase the Home for an amount set forth in the Land Lease; and (c) specifically enforcing the obligations Homeowner is required to perform under the Land Lease. OHCS acknowledges that the form of the Master Lease described in Recital C and this section complies with the Affordability Requirements of this Operating Agreement.

10.23. LIFT Affordability Lease Rider. Borrower shall ensure that a LIFT Affordability Lease Rider, in form and substance substantially similar to Exhibit C to this Operating Agreement, shall be made a part of each Land Lease.

10.24. Recognition and Non-Disturbance by OHCS. OHCS agrees as follows:

10.24.1. Operating Agreement Encumbers the Land and Borrower's Leasehold Interests. OHCS affirms that the Operating Agreement is not intended to, and does not, encumber the Homes or a Homeowner's Leasehold interest in a Homeowner Lease.

10.24.2. Recognition and Non-Disturbance by OHCS. In the event OHCS acquires ownership of all or a portion of the Property, for any reason whatsoever, pursuant to the provisions of the Trust Deed or otherwise, then OHCS will honor the terms of (i) any declaration of easements, covenants, conditions, and restrictions recorded against the Property in the ordinary course of development or pursuant to the requirements for obtaining permits or public utility service for the Project each an "**Encumbrance**") so long as the Encumbrance does not conflict with the Affordability Requirements or otherwise compromise OHCS's rights in connection with the Affordability Requirements, and (ii) each Homeowner Lease, provided that this requirement will in no way eliminate or restrict any right of the lessor under the Homeowner's Lease to which OHCS succeeds, including but not limited to the rights of enforcement or eviction of the lessee or other tenants. OHCS covenants and agrees to the foregoing, commencing with the date on which OHCS acquires ownership of Borrower's interest in the Property.

10.24.3. Foreclosure. In furtherance of the foregoing, for each Permitted Lender, if any action or proceeding is commenced by OHCS for the foreclosure of the Trust Deed or the sale of all or part of the Property, the Permitted Lender will not be named as a party therein, and the sale of the Property (or a portion thereof) in any such action or proceeding shall be made subject to the Home and the Homeowner's Leasehold and the Encumbrance. In the event that OHCS accepts a deed in lieu of foreclosure, OHCS will own the Property until such time that it appoints a successor owner. Such successor will be subject to the terms of this Operating Agreement.

10.24.4. Reliance by Home Lenders. The Permitted Lenders may rely on this Agreement in connection with issuing such financing or refinancing to the Homeowners.

[Signature Pages Follow]

IN WITNESS WHEREOF, OHCS and Borrower have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.

OHCS:

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

By: _____
Talia 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 Talia Kahn-Kravis, Assistant Director of Homeownership Programs, 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: _____

BORROWER: [ENTITY]
an Oregon [type of] corporation

By _____
[Name]
[Title]

STATE OF OREGON)
: ss
County of [Name]___)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by
[Name, Title of Entity], for and on behalf of Borrower.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

EXHIBIT A

Legal Description

EXHIBIT B

Form of Short Form Land Lease

[see attached]

WHEN RECORDED, PLEASE MAIL TO
[Lessor name and address]

SEND TAX NOTICES TO

**SHORT FORM LAND LEASE
Incorporating Affordable Housing Covenants
(Pursuant to ORS §§93.780 - 93.802 and 456.270 - .295)**

On this day of _____, _____, [Lessor], an Oregon nonprofit corporation, whose address is _____, and _____ (“Homeowner”), whose street address is the real estate described below, enter into this Short Form Land Lease.

MASTER FORM LAND LEASE INCORPORATED BY REFERENCE

This Short Form Land Lease incorporates by this reference all provisions of the Master Form Land Lease which [Lessor] recorded in _____ pursuant to ORS §§ 93.780 – 93.802 and 456.270 - .295.

Homeowner acknowledges that a copy of the Master Form Land Lease was furnished to it at or before the time it executed this Short Form Land Lease.

Homeowner agrees with [Lessor] that upon execution and recording of this Short Form Land Lease, provisions of the Master Form Land Lease apply to the real estate transaction documented by this Short Form Land Lease as though the provisions of the Master Form Land Lease were fully set forth in this Short Form Land Lease.

SECTION 1. REAL ESTATE AFFECTED BY THIS REAL ESTATE TRANSACTION

[Lessor] leases to Homeowner the Land legally described in the attached Exhibit A: LAND AND HOME LEGALLY DEFINED, incorporated by this reference.

Homeowner has title to the Home on the Land, and the Home is legally described in the same Exhibit A with a street address of _____.

The property tax account for the Land is _____

The property tax account for the Home is _____.

SECTION 2. SPECIFIC INFORMATION FOR THIS TRANSACTION

This Lease begins on the first date written above and has a 99 year term with one option to renew for an additional 99 years.

The Lease Fee is not less than _____.

Information for Formula Price Calculations:

a) Homeowner’s Base Price: _____

b) Initial Appraised Value of Land and Home: _____.

Homeowner acknowledges and agrees the Base Price is calculated as follows:

Homeowner acknowledges and agrees the Resale Price is calculated as follows:

Homeowner’s address for notices, if not the street address for the Home, is _____
_____. If no information is written in the blank, then Homeowner has agreed to use
street address of the Home for notices.

SECTION 3. DEVIATIONS FROM MASTER FORM LAND LEASE

This Short Form Land Lease **includes** the LIFT Affordability Lease Rider to Lessor Land Lease for Benefit of State of Oregon, Oregon Housing and Community Services (“LIFT Rider”) contained in the Master Form Land Lease, which amends and supplements the Lessor Land Lease. For the LIFT Rider, Lessor is the “Lessor,” and Homeowner is the “Lessee.”

This Short Form Land Lease (check one of the following):

- Includes**
- Does not include**

the current Community Land Trust Ground Lease Rider (Fannie Mae Form 2100 3/06 (rev. 12/10).

The Short Form Land Lease incorporates all of the Exhibits to the Lessor Land Lease in the Master Form Land Lease. Exhibits completed by Lessor and Homebuyer for this specific real estate transaction are listed in Section 4 below, attached to this Short Form Land Lease, and incorporated by this reference.

SECTION 4. LIST OF EXHIBITS

1. Exhibit A: LAND AND HOME LEGALLY DEFINED
2. Exhibit B: HOMEOWNER’S LETTER OF AGREEMENT
3. Exhibit C: HOMEOWNER’S LAWYER’S ACKNOWLEDGMENT
4. Other [Enter Exhibit Name]

IN WITNESS WHEREOF, the parties have executed this Short Form Land Lease as amended and supplemented by the LIFT Affordability Lease Rider on the day and year first above written.

[Lessor] _____, an Oregon nonprofit corporation

By: _____
_____, _____

HOMEOWNER: _____

and _____

STATE OF OREGON
COUNTY OF _____

This instrument was acknowledged before me on _____, 20_____, by _____
as _____ of [Lessor], an Oregon nonprofit corporation, on behalf of the corporation.

Notary Public – State of Oregon

STATE OF OREGON
COUNTY OF _____

This instrument was acknowledged before me on _____, 20_____, by
_____.

Notary Public – State of Oregon

EXHIBIT C

LIFT Affordability Lease Rider

1. This LIFT Affordability Lease Rider (“LIFT Rider” or “Rider”) is for Homes that were constructed in whole or in part with LIFT funding from OHCS to make the Homes more affordable and governs over any inconsistent terms in the Land Lease to which this LIFT Rider is attached (the “Land Lease”).
2. This LIFT Rider is made this _____ day of _____, _____, and amends and supplements that certain Land Lease dated _____, 20____, that is by and between _____ as lessor (referred to as “Lessor” in this Rider but may otherwise be referred to in the Land Lease as “_____”) and _____ as lessee (referred to in this Rider as “Homeowner”). This Rider is hereby incorporated into the Land Lease and the Land Lease, as amended by this LIFT Rider, shall be referred to as the “Land Lease,” unless otherwise indicated.
3. This LIFT Rider amends the Land Lease to facilitate Lessor receiving funds through OHCS’s LIFT Program to help subsidize the cost of the Land and improvements constructed thereon, and thereby reduce the cost of the Home to the Homeowner. The parties to this Rider agree that the criteria and requirements set forth in this Rider are applicable to any funding through the LIFT Program and govern over any inconsistent terms in the Land Lease, unless otherwise stated in this Rider.
4. Affordability Period. The affordability period will be a minimum of twenty (20) years or the term of the Article XI-Q bond issued by the State of Oregon to provide the LIFT funding for the Homes, based on the original maturity date identified at the time of the bond sale, whichever is greater. To the extent the affordability period contained in the Land Lease is greater, the provisions of the Land Lease as to the affordability period shall govern.
5. Eligible Homeowners. LIFT funding must be used for housing that is available to Homeowners earning at or below 80% area median income, adjusted by household size, as determined by OHCS based upon information from the U.S. Department of Housing and Urban Development or any successor.
6. OHCS’s Security Interest in the Land. The parties to this Rider each acknowledge that OHCS has a deed of trust lien on the Land and in the Lessor’s leasehold interest as Lessor under the Land Lease.
7. Habitability. The parties to this Rider each acknowledge that Homeowner is obligated to maintain the Home in a safe, sound, and habitable condition.
8. Restrictive Covenants. The parties to this Rider each acknowledge that the Land Lease includes affordability covenants and other covenants and conditions relating to transfer and rental restrictions and maintenance standards for the Land and Home under the Land Lease. Lessor hereby assigns to OHCS a third-party right of enforcement in the affordability covenants and the other covenants and conditions relating to transfer restrictions and maintenance standards under the Land Lease. Such third-party right of enforcement provides OHCS the option, but not an obligation, to take action to enforce the affordability covenants and the other covenants and conditions relating to transfer restrictions and maintenance standards under the Land Lease. Homeowner hereby recognizes OHCS’s third-party right of enforcement.
9. Compliance and Oversight. The parties to this Rider agree that OHCS may undertake certain

ongoing oversight and monitoring with respect to OHCS's rights under this Rider, which may include but is not limited to:

- a. Initial Homeowner household income verification.
- b. For any Home's subsequent sales during the Affordability Period, verification of the purchasing Homeowner's income.
- c. Annual notification of whether Homeowner is in arrears in the payment of property taxes, insurance or other obligations relating to the Land and Home.
- d. Verification of appropriate maintenance and repair of the Land and Home as required by the Land Lease.

The Homeowner agrees to cooperate with Lessor and OHCS in providing any information and documentation related to OHCS's oversight when requested in writing by Lessor or OHCS. The Homeowner must provide such information and documentation within twenty (20) days after receiving a request from OHCS or Lessor.