

**When Recorded Return to:**

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

\_\_\_\_\_  
SPACE ABOVE THIS LINE FOR RECORDER'S USE

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

**LOCAL INNOVATION AND FAST TRACK HOUSING PROGRAM  
PRIORITY AND SUBORDINATION AGREEMENT**

([Project Name])

THIS PRIORITY AND SUBORDINATION AGREEMENT (this "Agreement") is made as of [Month] \_\_, 20\_\_, by and among: [Name of Lender] (the "Bank"); the State of Oregon (the "State") acting by and through its Housing and Community Services Department ("OHCS"); and [Entity Name], [entity type] (the "Borrower"). OHCS, the Bank, and the Borrower, are referred to herein as the "Parties." This Agreement shall be recorded against the property legally described in Exhibit A attached hereto (the "Property").

**RECITALS**

A. The Bank has agreed to make a loan to the Borrower in the maximum principal amount of \$X,XXX,XXX (the "Bank Loan") pursuant to a Construction and Term Loan Agreement dated as of [Month] \_\_, 20\_\_ (the "Bank Loan Agreement"), between the Bank and the Borrower to finance costs incurred by the Borrower for the development and construction of a ##-home development, to be known as "[Project Name]," located in the city of [City Name], in [County Name] County, Oregon (the "Project"). The Bank Loan is evidenced by a Promissory Note from the Borrower to the Bank (the "Bank Note") in the amount of the Bank Loan. The obligations of the Borrower to the Bank under the Bank Note, the Bank Loan Agreement and all related documents will be secured by a Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing, recorded [Month] \_\_, 20\_\_, under Recording No. 2024-\_\_\_\_\_, in the records of [County Name] County, Oregon (the "Bank Deed of Trust"). The Bank Loan, the Bank Note, the Bank Deed of Trust, and all other documents associated with the Bank Loan are referred to together herein as the "Bank Documents."

B. OHCS and the Borrower are parties to a Local Innovation and Fast Track Housing Program Loan Agreement, dated as of [Month] \_\_, 20\_\_ (the "LIFT Loan Agreement"), for a loan to the Borrower in the maximum principal amount of \$X,XXX,XXX (the "LIFT Loan"). The LIFT Loan is evidenced by a Promissory Note from the Borrower in favor of OHCS in the amount of the LIFT Loan (the "LIFT Note"), and secured by a Local Innovation and Fast Track Housing Program Line of Credit Trust Deed, Security Agreement, Fixture Filing and Assignment of Leases and Rents, recorded [Month] \_\_, 20\_\_, under Recording No. 2024-\_\_\_\_\_, in the records of [County Name] County, Oregon (the "LIFT Trust Deed"). The LIFT Loan Agreement, the LIFT Note, the LIFT Trust Deed, the LIFT Operating Agreement

(as defined below) and all other documents associated with the LIFT Loan are referred to together herein as the “**LIFT Loan Documents.**”

C. In connection with the making of the LIFT Loan, the Borrower has agreed to impose on the Project certain restrictions as set forth in the Local Innovation and Fast Track Housing Program Operating Agreement and Declaration of Land-Use Restrictive Covenants (the “**Affordability Requirements**”) by and between OHCS and the Borrower, recorded [Month] \_\_\_\_, 20\_\_, under Recording No. 2024-\_\_\_\_\_, in the records of [County Name] County, Oregon (the “**LIFT Operating Agreement**”).

D. OHCS and the Bank are parties to a Local Innovation and Fast Track Housing Program Intercreditor Agreement, recorded [Month] \_\_\_\_, 20\_\_, under Recording No. 2024-\_\_\_\_\_, in the records of [County Name] County, Oregon (the “**LIFT Intercreditor Agreement**”), providing for a joint-shared first lien position on the Project for the Bank Deed of Trust and the LIFT Trust Deed, and setting forth certain rights and remedies of the parties with respect to the Bank Loan and the LIFT Loan, including the rights of the Bank to take Enforcement Action and OHCS to exercise Operational Remedies as set forth and defined therein.

E. The Bank Documents, the LIFT Loan Documents, and the LIFT Intercreditor Agreement, are collectively referred to as the “**Financing Documents.**”

F. The Parties enter into this Agreement in order to establish and confirm their relative rights and priorities regarding the Property and the Project under the Financing Documents as set forth herein.

## AGREEMENT

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

1. Recitals. The Recitals above and Exhibit A are hereby incorporated into this Agreement.

2. Priorities. Regardless of the time each Party’s lien on or interest in the Property is created or recorded, such interests have and shall have the priorities set forth below:

(a) First Priority. The LIFT Operating Agreement, including the Affordability Requirements, shall have first priority. The liens, rights, and interests of the Parties created under documents with a lesser priority as established in this Agreement will be subordinate and subject to the rights and interests of OHCS under the LIFT Operating Agreement.

(b) Second Priority. The Bank Deed of Trust and the LIFT Trust Deed shall share second priority but shall constitute a first lien and security interest in the Property to secure the payment and performance of the Borrower’s obligations under the Bank Documents and the LIFT Loan Documents, respectively, as set forth in and subject to the terms of the LIFT Intercreditor Agreement. The liens, rights, and interests of the Parties created under documents with a lesser priority as established in this Agreement are hereby made subordinate and subject to the rights and interests of (A) the Bank under the Bank Deed of Trust and (B) OHCS under the

LIFT Trust Deed. The Bank Deed of Trust and the LIFT Trust Deed shall survive foreclosure of any lien with a lesser priority as established in this Agreement regardless of the recording order and shall be binding upon any person that acquires the Property by means of such foreclosure or deed in lieu thereof or that is a successor to one who acquires the Property by such means, for so long as such person shall retain an interest in the Property. The Bank Deed of Trust shall remain in second priority and continue as a first lien and security interest until the repayment of the Bank Loan.

(c) Any other right of any party to acquire the Property or any part thereof pursuant to any option or right of first refusal in any of the Financing Documents or otherwise, is hereby made subject and subordinate to each of the liens and interests described above in this Section 2.

(d) For purposes of this Section 2, the lien or interest with “lesser priority” is the one with the higher numerical designation, so that, for example, “fifth priority” is a “lesser priority” than “fourth priority.”

(e) Except as specifically set forth in a separate agreement, the Parties agree that the Parties do not have any obligation to each other to advance funds or to see to the application of their respective loan proceeds and that any application of such proceeds contrary to the terms of any loan or grant documents shall not defeat the subordinations granted herein in whole or in part.

3. Reliance. It is understood by the Parties hereto that the Parties would not enter into their respective Financing Documents without this Agreement.

4. Applicability of Intercreditor Agreement. This Agreement is intended to summarize the relative priority of liens, payment obligations, and other interests as set forth in Section 2 above. Except with respect to such priority, this Agreement shall not be deemed to modify, amend or supersede the rights and obligations of OHCS and the Bank under the LIFT Intercreditor Agreement. In the event of a conflict between the terms of this Agreement and the terms of the LIFT Intercreditor Agreement, the terms of the LIFT Intercreditor Agreement shall control.

5. Acknowledgements. The Parties hereby each agree and acknowledge, as follows:

(a) For purposes of this Agreement, the Parties acknowledge that each has been provided the opportunity to review the documents described herein before executing this Agreement;

(b) The release by OHCS or the Bank of any security for the Bank Loan or the LIFT Loan, including, without limitation, the reconveyance of any portion of the Property from the lien of the Bank Deed of Trust or the LIFT Trust Deed shall not constitute a waiver or relinquishment of the unconditional subordination of the liens or charges of any subordinate loan documents against the Property to the lien or charge of the Bank Deed of Trust or the LIFT Trust Deed, or any other subordinations hereunder.

6. Cross Defaults. The Parties acknowledge and agree that any default under the LIFT Loan Documents, that, after being declared by OHCS, is not cured or waived within the applicable cure period set forth therein, shall constitute an event of default under the Bank Documents.

7. Miscellaneous.

(a) Applicable Law. 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.

(b) Successors; Assignment. This Agreement is for the benefit of the Parties and their respective successors and assigns. No other party shall be entitled to any benefits hereunder, whether as a third-party beneficiary or otherwise.

(c) Notices. 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:.

To Bank:

[Name of Bank]  
[Address Line 1]  
[Address Line 2]  
Telephone:  
Attention:  
Email:

With a copy to: [Name]  
[Address Line 1]  
[Address Line 2]  
Telephone:  
Attention:  
Email:

To 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

To Borrower: [Name]  
[Address Line 1]  
[Address Line 2]  
Telephone:  
Attention:  
Email:

With a copy to: [Name]  
[Address Line 1]  
[Address Line 2]  
Telephone:  
Attention:  
Email:

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) Amendment. This Agreement may be amended, or any provision waived, only by a writing signed by each Party against which the amendment or waiver is sought to be enforced or asserted.

(e) Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and whether or not all Parties execute each counterpart.

(f) Completion of Recording Information. If this Agreement is signed without completion of certain recording information called for above, any Party hereto or any title insurance company acting on the instructions of any Party is hereby authorized to insert such information prior to recording this Agreement.

(g) Consent to Other Parties' Loan Documents. By executing this Agreement, each Party hereby acknowledges and consents to the execution of, and where appropriate, the recording of, the documents referenced herein.

(h) Further Instruments. The Parties hereto shall execute and acknowledge such further documents and instruments as may be reasonably necessary from time to time to effectuate the intent of this instrument.

[SIGNATURE PAGES FOLLOW]



**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 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.]*





**EXHIBIT A**

**LEGAL DESCRIPTION**

[Insert Legal Description]