

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

LOCAL INNOVATION AND FAST TRACK HOUSING PROGRAM

**LOAN AGREEMENT
(Construction and Permanent)**

This Local Innovation and Fast Track Housing Program Loan Agreement (“**Agreement**”) is made this [day] day of [Month], [Year] (the “**Effective Date**”) by and between [Legal 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 (“**Lender**” or “**OHCS**”). Borrower and Lender may be referred to herein jointly as the “**Parties**” or individually as a “**Party**.”

RECITALS

A. Subject to the terms and conditions set forth herein and in the Loan Documents (as hereinafter defined), Lender will provide a conditional loan of Local Innovation And Fast Track Housing Program (“**LIFT**”) funds in an amount not to exceed [UPPER CASE NUMBER] Dollars (\$ [X,XXX,XXX]) (the “**Loan**”) to partially finance the new construction of an affordable, multifamily, rental-housing development comprised of a total of [lowercase number (XX)] residential units, including [lower case number] (#) manager unit(s), of which [lowercase number (XX)] residential units will be income and rent-restricted for persons with low-income as further described below (the “**Qualified Units**”) in [lowercase number (XX)] residential building(s) and number (#) community building(s) (collectively, and including related common areas and other improvements, the “**Improvements**”) that are owned or will be owned by Borrower. The Improvements are situated on certain real property located in [] [] (the “**City**”), [] County (the “**County**”), Oregon and further described in Exhibit A, attached hereto (the “**Property**”). The Property and the Improvements are collectively referred to herein as the “**Project**” and known as “[]”.

B. Lender is willing to make the Loan expressly conditioned upon Borrower’s representations under this Agreement that it intends, declares, and covenants that the regulatory requirements and restrictive covenants set forth this Agreement, and the Loan Documents governing the new construction, use, and occupancy of the Project and restricting its transfer are covenants running with the Project for the Affordability Period (as hereinafter defined) and will be binding upon all subsequent owners of the Project, and are not merely personal covenants of Borrower.

AGREEMENT

For good and sufficient consideration, including the terms and conditions of this Agreement, the Parties agree as follows:

1. DEFINITIONS.

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

- 1.1. “**Certificate of Occupancy**” means the Certificate of Occupancy issued for the Project by the applicable local jurisdiction.
- 1.2. “**Construction Documents**” means the plans and specifications for the Project, the construction contract and architect agreement (if any) for the Project, and any other documents relating to the design or construction of the Project, all as approved in writing by Lender.
- 1.3. “**Construction Loan Period**” means the period beginning on the Effective Date and ending on December 31, 20 , which may be extended for two periods of three months each with Lender’s prior written approval.
- 1.4. “**DEI**” means that certain Diversity, Equity and Inclusion Agreement executed by Borrower in connection with the Application.
- 1.5. “**Event of Default**” has the meaning set forth in Section 10.
- 1.6. “**Guaranty**” means the Repayment and Completion Guaranty Agreement of even date between **[Legal entity name]**, an Oregon **[type of entity]**, and Lender.
- 1.7. “**Loan Documents**” mean this Agreement, the Note, the Trust Deed, the Operating Agreement, the Guaranty, the Project Management Agreement, and any other agreement executed or to be executed by Borrower in connection with the Loan.
- 1.8. “**Note**” means that certain promissory note of even date herewith executed by Borrower in favor of Lender and evidencing the Loan.
- 1.9. “**Operating Agreement**” means that certain Local Innovation and Fast Track Housing Program Operating Agreement and Declaration of Land-Use Restrictive Covenants dated on or about the date hereof between Lender and Borrower, as the same may be amended from time to time.
- 1.10. “**Permanent Loan Period**” means the period beginning on the first day after the expiration of the Construction Loan Period and ending on the Maturity Date (as defined in the Note).
- 1.11. “**Project Management Agreement**” means that certain Local Innovation and Fast Track Housing Program Project Management Agreement, to be executed among Lender, Borrower, and **[Legal entity name]**, an Oregon **[type of entity]**, prior to the Completion Date and in substantially the form attached to the LIFT Operating Agreement.
- 1.12. “**Project Requirements**” means all performance requirements, restrictive covenants, warranties, liabilities, operational standards, and other obligations of the Owner, Agent (as applicable), and others arising under the terms and conditions of the LIFT program, including applicable provisions of Article XI-Q, the Act, the Code, the Bond Documents, this Agreement, the Project Management Agreement, the Management Agreement (as applicable), the Management Plan, the Loan Agreement, other Loan Documents, OHCS administrative rules, applicable OHCS manuals and handbooks, applicable OHCS policies,

orders and directives, and other applicable federal, state, and local laws, ordinances, codes, rules, orders, and regulations (including all of the foregoing as amended from time to time).

- 1.13. “**Public Subsidy**” means any government-sponsored credit, funding, or abatement, including but not limited to: loans, property tax or assessment abatements, credits, or reductions; taxable or tax-exempt bonds; or grants including fee waivers.
- 1.14. “**Sources and Uses of Funding Budget**” means the amounts and sources of all funding for the development of the Project and the construction loan budget approved by Lender in writing, attached hereto as **Exhibit B**, as the same may be revised from time to time with the prior written consent of Lender.
- 1.15. “**Trust Deed**” means that certain line of credit trust deed, security agreement, fixture filing, and assignment of leases and rents of even date herewith executed by Borrower, as Grantor, in favor of Lender, as Beneficiary, encumbering the Project and securing the Loan.

2. LOAN GENERALLY

Lender Loan. On the terms and conditions of this Agreement, Lender agrees to make the Loan to Borrower in the maximum principal amount of (\$[X,XXX,XXX]) (“**Loan Amount**”). The Loan will initially be a construction loan (the “**Construction Loan**”). Upon expiration of the Construction Loan Period, the Construction Loan will, subject to satisfaction of the conditions precedent set forth in Section 4.1, be converted to a permanent loan. The Loan, after the conversion to a permanent loan is referred to herein as the “**Permanent Loan**”. The Loan is evidenced by and repayable in accordance with this Agreement and the Note and is secured by the Trust Deed. All payments and prepayments on the Loan and all other amounts payable hereunder or under the Trust Deed by Borrower to Lender will be made to:

Oregon Housing and Community Services
725 Summer Street NE, Suite B,
Salem, Oregon 97301-1266

or at such other address as Lender may specify in writing.

3. CONSTRUCTION LOAN

- 3.1. **Loan and Term.** Commencing on the Effective Date and ending on the expiration of the Construction Loan Period, Lender agrees, on the terms and conditions of this Agreement and upon satisfaction of all conditions precedent, to disburse funds from time to time up to a total aggregate principal amount equal to the Loan Amount.
- 3.2. **Interest.** During the Construction Loan Period, interest will accrue on the Loan as provided in the Note. Amounts past due, whether by late payment, maturity, acceleration, or otherwise, will bear interest at the Default Rate (as hereinafter defined).
- 3.3. **Disbursements.** The proceeds of the Loan must be held in a construction loan account with Lender and will be disbursed in accordance with and subject to the provisions of this Agreement.

- 3.3.1. **Request for Disbursements.** Borrower will request a disbursement by providing Lender with a draw request satisfactory to Lender (“**Request for Disbursement**”), together with all supporting documentation required by Lender, including copies of unpaid invoices and/or billing statements from contractors and subcontractors in the amount of the draw request, copies of invoices for all soft cost payments requested, MBE/WBE/ESB documentation, prevailing wage rate documentation or any other form of regulatory documentation that may be required and, if requested by Lender, and lien releases in form and substance satisfactory to Lender from any such contractors or subcontractors. At Lender’s election, the disbursement will be made directly to the contractors or subcontractors for whom the draw is requested. In addition to the conditions and restrictions set forth in this Agreement, the disbursement of Loan proceeds will be subject to such disbursement arrangements and procedures as Lender may establish with any other lender providing financing for the construction of the Project. Any direct disbursement hereunder will constitute disbursement to Borrower.
- 3.3.2. **Affirmation of Representations and Warranties.** Borrower’s submission of a Request for Disbursement to Lender will constitute an affirmation that all of Borrower’s representations and warranties set forth in Section 6 remain true and correct as of the submittal date.
- 3.3.3. **Change Orders.** All change orders to the general contractor’s contract that materially affect the Project must be approved in writing by Lender prior to implementation of the work described in such change order. A change order that materially affects the Project is a change order that (i) with respect to a single change order, results in an increase or decrease in the cost of constructing the Project of more than \$50,000, or (ii) with respect to all changes orders in the aggregate accepted within the Construction Loan Period, result in an increase or decrease in the cost of constructing the Project of more than \$150,000, or (iii) that extends the schedule of the Project. Material changes in soft cost allocations must be approved by Lender prior to implementation.
- 3.3.4. **Changes in Line-Item Disbursements.** Except for change orders not requiring Lender consent, any disbursement requests resulting from changes in line item allocations will not be made without Borrower receiving prior written approval from Lender.
- 3.3.5. **Capitalized Reserves.** Borrower will maintain Project reserves as identified, and subject to the limitations, in Borrower’s entity formation documents in effect at the time of the execution of this Agreement unless otherwise approved by Lender.
- 3.4. **Conditions Precedent to Disbursements.** At the time of the initial disbursement and each subsequent disbursement of Loan funds:
- 3.4.1. All applicable conditions set forth in the Loan Documents will have been satisfied;
- 3.4.2. Borrower will have secured a commitment for all financing described in Section 2, which, when combined with the Loan proceeds and amounts scheduled to be contributed by

Borrower, will be sufficient, in Lender's reasonable determination, to complete the Project;

- 3.4.3. Each of Borrower's representations and warranties contained in Section 6 are true and correct in all material respects as if made on and as of the date of such disbursement;
 - 3.4.4. No Event of Default will have occurred and be continuing under this Agreement (including without limitation a failure to perform any covenant set forth in Section 3.7) or failure to comply with the terms and conditions of any other Loan Document, and no event will have occurred that, with the giving of notice or passage of time or both, would constitute an Event of Default;
 - 3.4.5. The general contractor and all subcontractors will have been paid for the amounts covered by prior payment requests, less required retainage;
 - 3.4.6. There will have been no condemnation, casualty, or catastrophe affecting the security value of the Project;
 - 3.4.7. The disbursement request will have been made in accordance with Section 3.3 and will be for payment of one or more line-item expenditures shown on the Sources and Uses of Funding Budget; and
 - 3.4.8. All change orders included in the draw which require Lender's approval pursuant to Section 3.3(b) have been reviewed and approved by Lender.
- 3.5. **Conditions Precedent to Final Disbursement.** At the time of the final disbursement:
- 3.5.1. Each of the conditions specified in Section 3.4 will be satisfied;
 - 3.5.2. Lender will have confirmed completion of all Project construction work, including all punch-list items, as certified by Borrower, architect, general contractor, and all lenders;
 - 3.5.3. Lender will have received copies of lien waivers, in form and substance satisfactory to Lender, from the general contractor and all subcontractors who worked on the Project indicating that they have been paid for all work performed, or the seventy-five (75) day construction lien period will have expired (without any liens having been filed), or Borrower will have obtained, at its option and expense, an early issue title policy insuring the Beneficiary's lien interests in the Trust Deed against all construction liens that have been or may be filed against the Project;
 - 3.5.4. A Completion Notice will have been posted in accordance with ORS 87.045 and Lender will have inspected (unless it waives inspection in its sole discretion) the Project to determine that it was completed in accordance with the Construction Documents and the Project Requirements;

- 3.5.5. A Certificate of Occupancy will have been issued for all units in the Project and all other governmental approvals, licenses, or permits necessary for the use and/or occupancy of the Project will have been obtained; and
- 3.5.6. Lender will have received from Borrower all required regulatory reporting forms applicable to the Project in form and substance acceptable to Lender and such supporting documentation as Lender may request.
- 3.6. **Repayment.** Without prejudice to Lender's rights and remedies upon an Event of Default or if the conditions precedent to conversion of the Loan to a Permanent Loan are not satisfied, no principal or interest will be payable until the last day of the Construction Loan Period, at which time all principal and accrued interest will be due and payable in full.
- 3.7. **Covenants of Borrower.** Borrower covenants as follows with respect to the construction of the Project (unless Lender has provided prior written consent to waive compliance with respect to any individual requirement):
- 3.7.1. Borrower will commence construction of the Project within thirty (30) days after the Effective Date. All construction work will be done under and in accordance with building permits issued by the applicable local jurisdiction.
- 3.7.2. The Project will be constructed in a good, workmanlike, expeditious, and continuous manner. The Project must be completed in accordance with the Construction Documents, as evidenced by the written certification of the Project architect and general contractor in form and substance satisfactory to Lender, no later than **December 31, 20[XX]** (the "**Completion Date**"). Any change to the Completion Date requires prior written consent by Lender.
- 3.7.3. Borrower will comply with commitments set forth in the DEI.
- 3.7.4. All Construction Documents and the Sources and Uses of Funding Budget will be approved by Lender in writing and will not be modified subsequent thereto in any material respect without Lender's prior written approval, which approval will not be unreasonably withheld or delayed.
- 3.7.5. Lender and its agents and representatives will have the right at any reasonable time to inspect the Project, observe the work of construction, examine all materials, plans, specifications, work drawings and other matters relating to the construction, and verify that construction is progressing in compliance with the Lender-approved disbursement schedule and all Construction Documents; provided, however, such inspection by Lender is solely for the purpose of protecting Lender's rights and interests, and will under no circumstances impose any liability on Lender or result in a waiver of any Event of Default of Borrower or be a representation that Borrower is or will be in compliance with the Construction Documents or other applicable laws or requirements.
- 3.7.6. All funds disbursed hereunder must be used by Borrower for such purposes relating to the construction and lease-up of the Project as are shown on the applicable Draw Request

for Disbursement and line item of the Sources and Uses of Funding Budget not inconsistent with the terms and conditions of the Operating Agreement, and for no other purpose. Borrower may not loan or otherwise make available all or any part of the Loan proceeds to any person or entity without the prior written consent of Lender.

- 3.7.7. Borrower agrees to provide to Lender upon Lender's request supporting documentation of all soft costs incurred by Borrower that are shown on the Sources and Uses of Funding Budget (e.g., architectural design expenses, legal and other consultant fees, construction interest, and closing costs), whether such costs are paid from Loan proceeds.
- 3.7.8. If at any time Lender determines that the undisbursed Loan proceeds, together with any sums provided or to be provided by Borrower, by other construction lenders, or by any other third party are insufficient to construct and complete the Project in accordance with the Construction Documents, Borrower agrees, within fifteen (15) days after written notice from Lender, to obtain documentation satisfactory to Lender, in its sole discretion, demonstrating the availability of additional funds as are necessary to enable the Project to be so completed.
- 3.7.9. All contractors and subcontractors on the Project will be registered and bonded in accordance with ORS Chapter 701 and must be licensed as required by applicable law.
- 3.7.10. Borrower agrees to comply with all applicable HUD Federal Specifications and with Oregon's prevailing wage and workers' compensation laws and other requirements, and to include such specifications and requirements as an addendum to the general contractor's construction contract.
- 3.7.11. Borrower covenants that there has been no material change in the Project financing as described in Section 2.
- 3.8. **Retainage** Lender may, at its sole discretion, require Borrower to withhold 5% retainage of each construction progress payment to ensure performance by the general contractor and any subcontractors ("Retainage"). Final disbursement of the Retainage will not be authorized until the seventy-five (75) day lien period has expired or upon receipt of appropriate lien waivers. This lien period may be reduced, at the option of Borrower, by satisfying the early issue requirements of the title insurance and Lender.
- 3.9. **Holdback.** A portion of the Loan up to 10% of the Loan Amount (to include any Retainage amounts), as determined by Lender, in its sole discretion, may be held back from disbursement during Project construction (the "Holdback"). The Holdback will only be disbursed either (a) in full, upon satisfaction of all applicable conditions precedent to the final disbursement or (b) in full or in part (at Lender's sole discretion), (i) at the completion of Project construction and after the seventy-five (75) day lien period has expired (or upon receipt of appropriate lien waivers), (ii) to the extent permitted by Lender's preliminary cost savings analysis (based upon the actual Project costs and by a projection of future Project costs and future Project funding sources), and (iii) provided that the Project has been completed to a level satisfactory to Lender (in its sole discretion). In case of any Event of Default under this Agreement or the other Loan Documents, Lender may apply the Holdback to make any payments necessary to correct the Event of Default.

- 3.10. **Contingency Funds.** A construction contingency reserve (“**Construction Contingency**”) is a line item on the Sources and Uses of Funding Budget and is intended to provide funds in the event of unforeseen costs or required building code corrections. The Construction Contingency will only be available to Borrower upon compliance with the disbursement procedures set forth in Section 3.3. If at any time prior to completion of Project construction, Lender determines that the unused portion of the Construction Contingency is unreasonably low in relation to the amount of work remaining to complete the Project, Lender may restrict or prohibit the use of the remaining portion of the Construction Contingency or require Borrower to make a cash deposit within a specified time period to bring the Construction Contingency up to a reasonable level, as determined by Lender.
- 3.11. **Project Cost Savings.** Project Cost Savings will be determined at the end of the Construction Loan Period and will have the meaning and be applied as provided in Section 4 of the Note.

4. PERMANENT LOAN

- 4.1. **Loan.** Upon expiration of the Construction Loan Period, and provided that (a) all conditions precedent to the final disbursement as set forth in Section 3.5 are satisfied or waived in writing by Lender, (b) Borrower is not in default under any provision of this Agreement or any other Loan Document, and (c) no event has occurred that, with the giving of notice or passage of time or both, would constitute an Event of Default, the Loan will be converted to the Permanent Loan, the initial principal balance of which will be the actual amount disbursed pursuant to the provisions of Section 3 (whether or not the actual amount disbursed is less than the Loan Amount due to Project Cost Savings or other factors) plus accrued interest thereon, less any Project Cost Savings applied to the Loan balance pursuant to Section 3.11. Lender will have no further obligation to advance any funds to Borrower after expiration of the Construction Loan Period, regardless of whether the Project construction has been completed. If Borrower has not satisfied the above conditions precedent to the Permanent Loan conversion within ten (10) days after written notice from Lender, Lender may, in its sole discretion, (a) require payment in full of the entire outstanding balance upon thirty (30) days prior written notice, or (b) grant Borrower additional time to satisfy all conditions precedent, on such terms and conditions as Lender may require. In its sole discretion, Lender may (but is not obligated to) make further disbursements after expiration of the Construction Loan Period (for example, to pay construction liens or otherwise for the protection of its collateral for the Loan), and all such disbursements will be deemed advances and added to the balance of the Loan.
- 4.2. **Permanent Loan Period.** The term of the Permanent Loan (the “**Permanent Loan Period**”) will commence on the first day after expiration of the Construction Loan Period and will terminate on the Maturity Date as set forth in the Note, at which time all principal and accrued interest will be due and payable in full.
- 4.3. **Interest; Repayment.** During the Permanent Loan Period, principal and accrued interest will be payable as provided in the Note. Amounts past due, whether by late payment, maturity, acceleration, or otherwise, will bear interest at the Default Rate.

5. COLLATERAL

- 5.1. **Trust Deed; Security Interest in Personal Property Collateral.** To secure Borrower's prompt payment and performance of its obligations under this Agreement, the Note, and the other Loan Documents, Borrower will grant Lender a lien on the Property and the Project and a continuing security interest in personal property now or hereafter located on, relating to, or used in connection with the Property or the Project, as and to the extent provided in the Trust Deed.
- 5.2. **Personal Property Lien Perfection.** Borrower agrees that Lender has the right to file UCC financing statements, instruments, and documents and Borrower agrees to take such other action as may be required to perfect or to continue the perfection of Lender's security interest in the collateral described in the Trust Deed.

6. BORROWER'S REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender as follows:

- 6.1. **Power and Authority.** Borrower is an Oregon [type of entity] duly organized, validly existing, authorized to do business under the laws of Oregon and has the power and authority to transact the business in which it is engaged and to enter into and perform this Agreement.
- 6.2. **No Violations or Events of Default.** Neither Borrower nor any of its affiliates is in default under or in violation of any indenture or agreement to which it is a party or by which it is bound, or any order, regulation, ruling, or requirement of a court or other public body or authority. No creditor has given Borrower notice or threatened to give it any notice of default under any material agreement.
- 6.3. **Litigation.** No action, suit, investigation, or proceeding is pending against Borrower or any of its affiliates with respect to the Project before any court or administrative agency, (a) the outcome of which, by itself or taken together with other such litigation, might have a material adverse effect on the business, assets, operations, or financial condition of Borrower, or (b) which purports to affect the legality, enforceability, or validity of any Loan Document.
- 6.4. **Tax Returns and Taxes.** All federal, state, and other tax returns of Borrower required by law to be filed have been filed. All other taxes applicable to Borrower, including real property taxes, are current.
- 6.5. **Title to Collateral.** All the collateral described in the Trust Deed is owned by Borrower, and Borrower's interest in such collateral is free and clear of all liens and encumbrances of any kind except those approved in writing by Lender or as set forth in Exhibit B to the Trust Deed ("**Permitted Exceptions**").
- 6.6. **Compliance with Laws.** Borrower is in material compliance with all federal, state, and local laws, rules, regulations, ordinances, and orders applicable to it, the Property or the Project, and the operation thereof, including, without limitation, all applicable health and safety, environmental, and zoning laws.

6.7. **Financial Statements.** All financial statements delivered by Borrower to Lender will, as of the date thereof, be true, correct and complete, fairly present the financial condition of Borrower and the Project at the dates thereof, and be prepared in accordance with generally accepted accounting principles and practices in the United States. Since the date of the most recent financial statements delivered to Lender, there has been no material adverse change in the financial condition of Borrower or Project.

7. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER.

7.1. **Fair Housing and Other Civil Rights Compliance.** Borrower shall:

7.1.1. Comply with all applicable state and federal nondiscrimination laws;

7.1.2. Act affirmatively (including the use of appropriate outreach) to ensure those who may be, or are at risk of being, underserved with OHCS resources are provided appropriate accessibility;

7.1.3. Comply with Equal Opportunity Employment standards in hiring and retaining personnel; and

7.1.4. Satisfy any targeted population or services standards in the Project Requirements.

7.2. **M/W/ESB Utilization.** Borrower shall use best efforts to comply with established OHCS policies and Borrower commitments in the Application regarding utilization of M/W/ESB firms. OHCS’ policies regarding M/W/ESB inclusion can be located on OHCS’ website. OHCS, at its discretion, and in a format it may see fit or is agreed upon, will require Borrower to report on its utilization of M/W/ESB firms during construction and lease up of the Project.

7.3. **Affordability.**

7.3.1. **Income Limitations.** For a period of thirty (30) years from December 31st of the year that any building in the Project is first placed in service or until [month] [day], [year], whichever is later (the “Affordability Period”). Notwithstanding the foregoing, OHCS may, at its sole discretion, extend the Affordability Period beyond [month day, year from sentence above], for periods of time matching corresponding periods of time during which OHCS determines Borrower to be in material noncompliance with any of the terms of this Agreement. Throughout the Affordability Period, Borrower will continuously rent or hold vacant for rent the following Qualified Units to households whose incomes are at or below the following levels of the area median income, adjusted by family size, as determined by OHCS based upon information from the U.S. Department of Housing and Urban Development (“HUD”) or other applicable source:

Unit Type	Number of Units	Maximum Percent of Median Family Income as Determined by HUD	Maximum Rent Standards as Determined by HUD
1 bedroom	[#]	60%	60%

2 bedrooms	[#]	60%	60%
3 bedrooms	[#]	60%	60%
Manager's unit	[#]	N/A or 60% if unoccupied by managers	N/A or 60% if unoccupied by managers

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

7.3.1.2. The **maximum restricted-rents** for the Qualified Units, as published by HUD, correspond to the elected income limits and Maximum Rent Standards payable by Qualified Unit tenants (“**Qualified Tenants**”) reflected in the table, but actual rents for the Project payable by Qualified Tenants may be lower depending on the terms of other applicable rent subsidies or OHCS rent-approval requirements. Under no circumstances will Qualified Tenants be required to pay more rent than that allowed by applicable rent-subsidy programs or the Project Requirements, with the most conservative restrictions having precedence.

7.3.1.3. The table shows maximum income and rent standards rounded up to the nearest percentile. Borrower has represented to OHCS in its Application that the rent payable by Qualified Tenants and income levels of Qualified Tenants will not exceed the maximums identified in the foregoing table and will otherwise comply with Project Requirements.

7.3.2. **Rent Restrictions.** Throughout the Affordability Period, Borrower will ensure that the Owner will restrict gross rents with respect to the Qualified Units in compliance with the Project Requirements, with not-to-exceed limits as reflected in the above table. The not-to-exceed limits are indicated as a percentage of the applicable area (county) median family income determined by OHCS based upon information from HUD or other applicable source.

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

7.3.2.2. **Limitation of Unit Rents and Other Project Fees.** OHCS may also limit other unit rents and Project fees as it determines, in its sole discretion, is necessary or appropriate to ensure the affordability of or access to Qualified Units. Unit rents

and Project fees limited under this subparagraph may only be increased subject to prior written approval by OHCS in accordance with the procedures of subparagraph (iii) of this paragraph.

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

7.3.2.4. **Most Restrictive Income and Rent Limitations.** Where Qualified Unit Rents are subject to limitations from multiple OHCS funding sources, the most restrictive limitations will govern not-to-exceed limits for such Qualified Unit Rents.

7.3.2.5. **Rents Paid by Tenants.** For purposes of this Section 7.1, subject to OHCS and other subsidy provider policy, allowable rents will relate to those rents actually paid by the Tenants and will not limit the rents permitted under any HUD or other subsidy provider program that are not paid by the actual Tenant.

7.4. **Prevailing Wage Compliance.** Borrower covenants and agrees that if the Project is not expressly exempt from the Prevailing Wage Rules (as defined below) as an "affordable housing" project within the meaning of ORS 279C.810(2)(d), then in the event that public funds, other than Bond proceeds, in the amount of \$750,000 or more are secured or are expected to be secured for the Project, prior to the Closing Date and before any application of such amounts to the payment of Project Costs, Borrower shall have either:

7.4.1. Obtained and provided to Lender a copy of an Oregon Bureau of Labor and Industries (BOLI) determination letter for the Project ("BOLI Letter") reasonably acceptable to Lender confirming that the Project is not subject to the prevailing wage requirements set forth in ORS 279C.800 to 279C.870 and related administrative rules (collectively, the "Prevailing Wage Rules") as a result of the proposed use of such public funds for the Project; or

7.4.2. Provided to Lender a certification or such other documentation that may reasonably confirm compliance by Borrower with the Prevailing Wage Rules.

8. AFFIRMATIVE COVENANTS

At all times during the term of this Agreement (including the Construction Loan Period) and until all amounts and obligations owing hereunder and under any other Loan Document will have been paid and performed, Borrower covenants and agrees as follows:

- 8.1. **Licenses; Maintenance of Business.** Borrower will remain a [type of entity] validly existing under the laws of Oregon and will keep in force all licenses and permits necessary to the proper conduct of its ownership and operation of the Project.
- 8.2. **Performance of Obligations.** Borrower will pay the principal of and interest on the Loan in accordance with the terms of the Note and this Agreement, will pay when due all other amounts payable by Borrower hereunder or under any Loan Document, and will comply with all requirements of the Trust Deed.
- 8.3. **Compliance with Other Agreements.** Borrower will perform and discharge all of its obligations under the Operating Agreement and comply with and cause the Project to comply with all requirements and restrictions imposed on Borrower or the Project by the Operating Agreement.
- 8.4. **Compliance with Laws and Use Restrictions.** Borrower will comply with, or cause the Project to comply with, all laws, ordinances, statutes, rules, regulations, orders, injunctions, or decrees of any government agency or instrumentality applicable to Borrower, the Project, or the operation thereof, including (a) all applicable health and safety, environmental, and zoning laws, (b) all requirements under Section 42 of the Internal Revenue Code and the regulations promulgated thereunder (if Borrower has applied or will apply for low-income housing tax credits for the Project), and (c) all restrictions on the use, occupancy or operation of the Project arising from the original source of the Loan proceeds or otherwise required by Lender, including those affordability requirements and/or use restrictions set forth in the Operating Agreement and Project Management Agreement (if any).
- 8.5. **Other Obligations.** Borrower will pay and discharge before the same becomes delinquent, all indebtedness, taxes, and other obligations for which it is liable or to which its income or property is subject and all claims for labor and materials or supplies which, if unpaid, might become by law a lien (other than a Permitted Exception) upon the collateral described in the Trust Deed, except any thereof whose validity or amount is being contested in good faith by Borrower in appropriate proceedings with adequate provision having been made in accordance with generally accepted accounting principles for the payment thereof if the contest is determined adversely to Borrower. If Borrower fails to discharge any such claim or lien, Lender may, in its sole discretion and without waiving the default, pay the same, which payment will, at Lender's option, be added to the amount outstanding under the Note.
- 8.6. **Indemnity.** Borrower must indemnify, hold harmless, save, 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 Project 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 Project.
- 8.7. **Financial Information.** Borrower will provide to Lender periodic financial statements and other reports as reasonably requested by Lender, including copies of federal and state tax returns.

- 8.8. **Additional Payments; Additional Acts.** From time to time, Borrower will execute and deliver all such instruments, provide such additional information, and perform all such other acts as Lender may reasonably request to carry out the transactions contemplated by the Loan Documents.

9. NEGATIVE COVENANTS

At all times during the term of this Agreement and until all amounts and obligations owing hereunder and under any other Loan Document will have been paid and performed in full, Borrower will not, directly or indirectly, without the prior written consent of Lender:

- 9.1. **Ownership/Change in Control.** Sell or transfer any beneficial interest in Borrower in violation of the terms of the Note or change or permit a material change in Borrower's structure, except as provided in the Trust Deed or the Operating Agreement.
- 9.2. **Sale or Merger.** Sell or transfer all or any part of the Property or Project in violation of the terms of the Note, or dissolve, liquidate, merge, reorganize, or consolidate the Land or Project.
- 9.3. **Indebtedness.** Except as specifically contemplated in this Agreement, incur any new indebtedness in addition to the Loan or indebtedness secured by Permitted Exceptions.
- 9.4. **Liens.** Create, assume, or suffer to exist any lien or charge of any kind, direct or indirect, upon any of the Property or the Project, except for Permitted Exceptions and liens in favor of Lender, and liens that have been bonded against pursuant to Oregon law.

10. EVENTS OF DEFAULT

Each of the following will be an "Event of Default" under this Agreement:

- 10.1. **Failure to Pay Obligations Under Loan Documents.** Borrower fails to pay any sum due under the Note within ten (10) days after the date it is due or fails to pay any other amount required to be paid by Borrower pursuant to the Loan Documents (including, without limitation, taxes, assessments, insurance and any other payment necessary to prevent filing or imposition of any liens) within ten (10) days after written notice of nonpayment from Lender specifying the Event of Default.
- 10.2. **Failure to Comply with Loan Documents.** Borrower fails to perform or abide by any other covenant or obligation in this Agreement or in another Loan Document and such failure, to the extent curable, is not cured within thirty (30) days after written notice from Lender specifying the failure or, if such failure cannot with due diligence be cured within such period, if Borrower fails within such thirty (30) day period to commence cure of the failure and thereafter diligently prosecute to completion such cure (which cure in any event must occur within sixty (60) days after Lender's initial notice of such failure), provided that if an Event of Default is not reasonably capable of being cured within thirty (30) days or any lesser notice period provided by Lender, Lender may, in its sole discretion, extend the correction period for up to six (6) months, but only if Lender determines there is good cause for granting the extension; and provided further, however, in the event of a foreclosure, deed in lieu of

foreclosure, or similar event with respect to the Project or the Property, the correction period for the successor for an existing default shall be no less than thirty (30) days from the earlier of the date the successor obtains control or becomes the owner of the Project or Property.

10.3. **Failure to Obtain Lender's Consent to Transaction.** Borrower engages in a sale, transfer or assignment, or uses Loan proceeds, in violation of the terms of the Note, the Trust Deed, or the other Loan Documents, or changes the use of the Property without Lender's prior written consent.

10.4. **Failure to Pay General Debts When Due.**

10.4.1. Borrower or any guarantor of the Loan (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all or a substantial part of its property, (ii) admits in writing its inability to pay, or generally is not paying, its debts as they become due, (iii) makes a general assignment for the benefit of creditors, (iv) commences a voluntary action under the United States Bankruptcy Code (as now or hereafter in effect), (v) is adjudicated a bankrupt or insolvent, (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts, (vii) fails to controvert in a timely or appropriate manner, or acquiesces or consents in writing to, any petition filed against it, in an involuntary action under the United States Bankruptcy Code, or (viii) takes any action for the purpose of effecting any of the foregoing.

10.4.2. In the instance of any of the following: (i) a proceeding or case is commenced against Borrower, without its consent, in any court of competent jurisdiction, seeking the liquidation, reorganization, dissolution, windup, or composition or readjustment of the debts of Borrower, (ii) a receiver, trustee, custodian, liquidator, or the like is appointed for Borrower or for all or a substantial part of its assets, (iii) relief is granted to Borrower under any law relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or (iv) an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and all of the foregoing are in effect for any period of sixty (60) days, or an order for relief against Borrower is entered in an involuntary case under the United States Bankruptcy Code and such case is not dismissed within sixty (60) days of filing.

10.5. **Failure to Disclose Material Facts.** Borrower fails to disclose any fact material to the making of any loan to Borrower, or upon discovery by Lender of any misrepresentation by, or on behalf of, or for the benefit of Borrower.

10.6. **Event of Default Under Other Loans.** Borrower defaults under any other loan (including any construction, permanent, or bond financing) secured in whole or in part by the Property, including any loan secured by a Permitted Exception, and fails to cure such default within any applicable cure period set forth in the loan documents relating to such loan.

10.7. **Discontinued Construction.** Construction on the Project is discontinued or prohibited for at least thirty (30) consecutive days, or the Project is abandoned.

- 10.8. **Failure to Diligently Pursue the Project.** Borrower fails to diligently pursue the Project during the Construction Loan Period, including the lease-up.
- 10.9. **Event of Default under Operating Agreement.** An Event of Default occurs, and any applicable cure period with respect to such Event of Default lapses, under the Operating Agreement.
- 10.10. **Investor Courtesy Notice.** If an Event of Default occurs under this Agreement or any of the Loan Documents, Lender is aware of such Event of Default and Lender intends to exercise any of its remedies on account of such Event of Default, then Lender at the same time as it delivers notice to Borrower may, but is not be required to, deliver written courtesy notice of such Event of Default to Borrower's investor member or investor limited partner, as applicable ("**Investor**"). Upon receiving the courtesy notice of default pursuant to this subsection, Investor will have the right, but not the obligation, to cure, within the same time periods as provided to Borrower in this Agreement. Failure of Lender to send a notice of default to Investor will not prevent the exercise of Lender's rights and remedies under this Agreement.

11. RIGHTS AND REMEDIES ON EVENT OF DEFAULT

Upon the occurrence of an Event of Default and at any time thereafter, Trustee or Lender may, at its option, exercise any one or more of the following rights and remedies:

- 11.1. **Acceleration.** Lender may declare the entire remaining unpaid balance of the Loan and other charges payable by Borrower pursuant to the Note or any other Loan Document, to be immediately due and payable in full.
- 11.2. **Foreclosure.** At Lender's direction, the Trustee will foreclose the lien of the Trust Deed by notice and sale, or Lender will have the right to foreclose by judicial foreclosure, in either case in accordance with applicable law. In any judicial foreclosure, Lender will be entitled to obtain a deficiency judgment (subject to any applicable nonrecourse provisions in the Note) for any amount by which the amount of the obligations secured hereby exceeds the sale proceeds.
- 11.3. **Waiver of Rights.** Notwithstanding section 10.2, Lender will have the right, at its sole option, to waive its rights under the Trust Deed and pursue an independent action upon the Note, unless the Note is nonrecourse by its express terms. The Note, Trust Deed, and other Loan Documents are separate and distinct instruments separately or collectively enforceable in accordance with their terms.
- 11.4. **Rights and Remedies Cumulative and Nonexclusive.** Each right and remedy in this Agreement will be cumulative and will be in addition to every other right or remedy in this Agreement or existing at law or in equity including without limitation, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Lender of any such rights or remedies will not preclude the simultaneous or later exercise of any other such right or remedy. All such rights and remedies are nonexclusive and include all rights and remedies provided in the Trust Deed, the Note, and the other Loan Documents, and in any

other instrument delivered by Borrower in connection therewith. Partial exercise of any right or remedy will not limit or restrict Lender's subsequent exercise of such right or remedy nor will it restrict Lender's contemporaneous or subsequent exercise of any other right or remedy.

- 11.5. **Notification to Obligor to Pay Rent Directly to Lender.** Lender may at any time, without notice, either in person, by agent or by receiver to be appointed by a court, and without regard to the adequacy of the security for the obligations hereby secured, notify obligors of rents to pay Lender directly, and/or enter upon and take possession of the Property or any part thereof, in its own name sue or otherwise collect any and all Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney fees, upon any obligations secured hereby, and in such order as Lender may determine.
- 11.6. **Uniform Commercial Code.** Lender will have all rights and remedies under the Oregon Uniform Commercial Code, as amended from time to time. Lender will give Borrower reasonable notice of the time and place of any public sale of any personal property or of the time after which any private sale or any other intended disposition of personal property collateral is to be made. Reasonable notice will mean notice given at least ten (10) days before the time of the sale or disposition.
- 11.7. **Exercising Rights and Remedies.** In exercising its rights and remedies, Lender may cause all or any part of the Property to be sold as a whole or in parcels, and certain portions of the Property may be sold without selling other portions. Lender may bid at any public sale on all or any portion of the Property. A waiver of a breach of a provision of the Trust Deed will not constitute a waiver of or prejudice the right otherwise to demand strict compliance with that provision or any other provision. An election by Lender to pursue any remedy will not exclude pursuit of any other remedy, and all remedies of Lender under the Trust Deed are cumulative and not exclusive. An election to make expenditures or take action to perform an obligation of Borrower will not affect Lender's right to declare an Event of Default and exercise its remedies under the Trust Deed.
- 11.8. **Foreclosure of Lessee's Rights - Subordination.** Lender will have the right, at its option, to foreclose the Trust Deed subject to the rights of any lessee(s) of the Property. Lender's failure to foreclose against any lessee will not be asserted as a claim against Lender or as a defense against any claim by Lender in any action or proceeding. Lender, at any time, may subordinate the Trust Deed to any or all the lessees, except that Lender will retain its priority claim to any condemnation or insurance proceeds.
- 11.9. **Repairs During Redemption.** In the event of a judicial foreclosure, the purchaser during any redemption period may make such repairs and alterations to the Property as may be reasonably necessary for the proper operation, care, preservation, protection and insuring of the Property. Any sums so paid, together with interest from the date of the expenditure at the rate provided in the judgment will be added to the amount required to be paid for redemption of the Property.
- 11.10. **Event of Foreclosure.** In the event of any judicial or nonjudicial foreclosure sale, Lender in its discretion may use a single notice covering both real estate and personal property,

designate the order of sale, and may elect to sell the real estate and personal property as an integrated unit or separately. Any person permitted by law to do so may purchase at any sale.

- 11.11. **Proceeds of Sale.** Subject to the provisions of applicable law, the proceeds of any sale under the Trust Deed will be applied first to payment of costs and expenses, then to payment of security protection advances, then to payment of the other secured obligations (which includes any applicable prepayment premium or fee) in any order that Lender chooses, and then to any other person or persons who may establish to the satisfaction of Lender that they are legally entitled to it.
- 11.12. **Borrower's Waiver of Rights Upon Sale.** Borrower waives all rights to direct the order and/or combinations in which any of the collateral will be sold, and any right to have any of the collateral marshaled upon any sale. Borrower acknowledges that there is no fiduciary relationship between Borrower and the Trustee or between Borrower and Lender.
- 11.13. **During Construction.** (a) Lender will have the right to take over and cause the Project to be completed and, for that purpose, make disbursements from the undisbursed Loan funds. Any contract entered into or indebtedness incurred on the exercise of such right may be exercised by Lender in the name of Borrower, and Lender is hereby irrevocably appointed attorney-in-fact (the appointment being coupled with an interest) to enter into the contract, incur such obligations, enforce contracts or loan agreements theretofore made by or on behalf of Borrower, and to do any and all things necessary or proper to complete the work of construction, including the signing of Borrower's name to such contracts and documents as may be deemed necessary by counsel for Lender. In no event will Lender be required to use its own funds to complete the Project if undisbursed Loan funds are insufficient, but Lender may, at its option, advance such funds. Any funds so advanced will be payable to Lender by Borrower on demand together with interest thereon at the Default Rate and will be secured by the Trust Deed. (b) Lender will have the right to suspend or terminate its obligation to make further disbursement of Loan proceeds.
- 11.14. **Interest on Default.** Upon the occurrence of any Event of Default, interest will accrue under the Note on the unpaid principal balance from the date of the Event of Default, or if the Event of Default is a payment default, from the date the first unpaid payment was due, at a rate equal to the lesser of six percent per annum or the maximum interest which may be collected from the holder of the Note under applicable law (the "**Default Rate**"). If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest will bear interest from the Maturity Date at the Default Rate.
- 11.15. **Rights and Remedies Cumulative.** All rights and remedies described in Section 10 are cumulative and in addition to any other remedy Lender may have by agreement, at law, or in equity. Partial exercise of any right or remedy will not limit or restrict Lender's subsequent exercise of such right or remedy nor will it restrict Lender's contemporaneous or subsequent exercise of any other right or remedy.

- 11.16. **No Waiver.** No failure or delay of Lender in exercising any right hereunder will operate as a waiver of that right or any other right. No modification or waiver of any provision of the Trust Deed or any other Loan Document will be effective unless in writing, and then only in specific instance and for the purpose given. No notice or demand on Borrower will entitle Borrower to any other notice or demand in other similar circumstances.
- 11.17. **Payment of Costs of Collection.** In case of an Event of Default, or in case litigation is commenced to enforce or construe any term of this Agreement, the Trust Deed, the Note, or any other Loan Document, the losing party will, to the extent permitted by law, pay to the prevailing party such amounts as will be sufficient to cover the cost and expense of collection or enforcement, including, without limitation, reasonable attorney fees and costs prior to and at any arbitration proceeding or at trial, on appeal, or in any bankruptcy proceeding.
- 11.18. **Additional Cure Provisions.** Investor will have the right, but not the obligation, to cure any defaults of Borrower hereunder and in any Loan Document, to the same extent as Borrower, and Lender agrees to accept or reject cures tendered by Investor on behalf of Borrower on the same terms as if such cure was tendered by Borrower. In addition to any other cure provisions contained in this Agreement, Investor (and any special member or special limited partner affiliated therewith) will have the right to cure all defaults for which delivery of written notice to Owner is required under this Agreement within the same time periods allowed to Owner.

12. MISCELLANEOUS

- 12.1. **Recourse Provision.** The obligations under the Note, including obligations secured by the Trust Deed, are with recourse to Borrower and its managing member(s) or general partner(s), as applicable, unless and until the Loan is converted to the Permanent Loan. Upon conversion of the Loan to the Permanent Loan, notwithstanding any other provision of the Note or this Agreement, but subject to the qualifications set forth below in this section, the obligation to pay the indebtedness evidenced by or arising under the Note will be nonrecourse as to Borrower and its members or partners except as to their rights, if any, in the collateral described in the Trust Deed, and no personal judgment may be obtained against Borrower or its members or partners contrary to this limitation; provided, however, that Borrower and its managing member(s) or general partner(s), as applicable, will be personally liable for (a) failure to pay taxes, assessments, or other charges which could result in liens (including construction liens) against the collateral described in the Trust Deed, (b) retention by Borrower or its managing member(s) or general partner(s) of any rental or other income or insurance or condemnation proceeds arising with respect to such collateral which, under the terms of the Trust Deed, should have been paid to Lender, and (c) any liability or losses incurred by Lender as a result of any fraud or deceit by Borrower in connection with this Loan.
- 12.2. **Counterparts.** This Agreement may be executed in any number of counterparts, and any single counterpart or set of counterparts signed, in either case, by all the Parties hereto will constitute a full and original instrument, but all of which will together constitute one and the same instrument.

- 12.3. **Survival.** All agreements, representations, and warranties will survive the execution and delivery of this Agreement, any investigation at any time made by Lender or on its behalf, the making of the Loan, and the delivery of the Note.
- 12.4. **Notice.** Any notice required or permitted under this Agreement will be in writing and will be deemed effective; (1) when actually delivered in person, (2) one business day after deposit with a commercial courier service for “next day” delivery, or (3) three business days after having been deposited in the United States mail as certified or registered mail, addressed to the Parties as follows:

Lender: **Oregon Housing and Community Services Department**
725 Summer St. NE, Suite B
Salem, OR 97301-1266
Attention: Asset and Property Management Section

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

Borrower: [REDACTED]

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

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

Investor: [REDACTED]

- 12.5. **Attorney Fees.** In the event a lawsuit is instituted regarding this Agreement, the prevailing party in any dispute arising under this Agreement will, to the extent permitted by law and this Agreement, be entitled to recover from the other its reasonable attorney fees and all costs and disbursements incurred at trial and on appeal. Reasonable attorney fees will not exceed the rate charged OHCS by its counsel and OHCS’ liability for attorney fees will be subject to the limitations under Article XI, Section 7 of the Oregon Constitution.
- 12.6. **Governing Law; Venue; and Consent to Jurisdiction.** This Agreement will be governed by the laws of the State of Oregon law without regard to principles of conflicts of law and the laws of the United States of America, as applicable. Any claim, action, suit or proceeding (collectively, “Claim”) among the “Parties or with any third-party beneficiary related to this Agreement or the Project 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. BORROWER, BY EXECUTION OF THIS AGREEMENT, HEREBY EXPRESSLY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. 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.

- 12.7. **Assignment; Successors and Assigns.** Except as expressly permitted herein, Borrower must not assign or otherwise transfer any interest in this Agreement or in Borrower (other than leases for the residential units in the Project) without the prior written consent of Lender. Any attempted assignment or transfer in violation of this provision will be null and void. The provisions of this Agreement are binding upon and will run to the benefit of the parties to this Agreement and their respective successors and permitted assigns.
- 12.8. **Modification; Prior Loan Agreements; Waiver.** This Agreement, taken together with the other Loan Documents constitutes the entire agreement between the Parties on the subject matter hereof, and supersede all prior agreements and understandings relating to such subject matter. No modification or amendment of this Agreement will bind the Parties unless in writing and signed by both Parties, 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.
- 12.9. **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.
- 12.10. **Severability.** If any 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 this Agreement did not contain the particular term or provisions held to be invalid.
- 12.11. **Exhibits.** Any exhibits attached to this Agreement and referred to herein are incorporated in this Agreement as if they were fully set forth in the text hereof.
- 12.12. **Time of Essence.** Time is of the essence in the performance of this Agreement.
- 12.13. **Third-Party Beneficiaries.** This Agreement is not intended to confer upon any person other than the Parties to this Agreement any rights or remedies under this Agreement.
- 12.14. **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 Owner, the Project, and the transactions contemplated by this Agreement 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 Credit Requirements, or otherwise by virtue of any exercise of its governmental powers.

(Signature Pages Follow)

SAMPLE

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

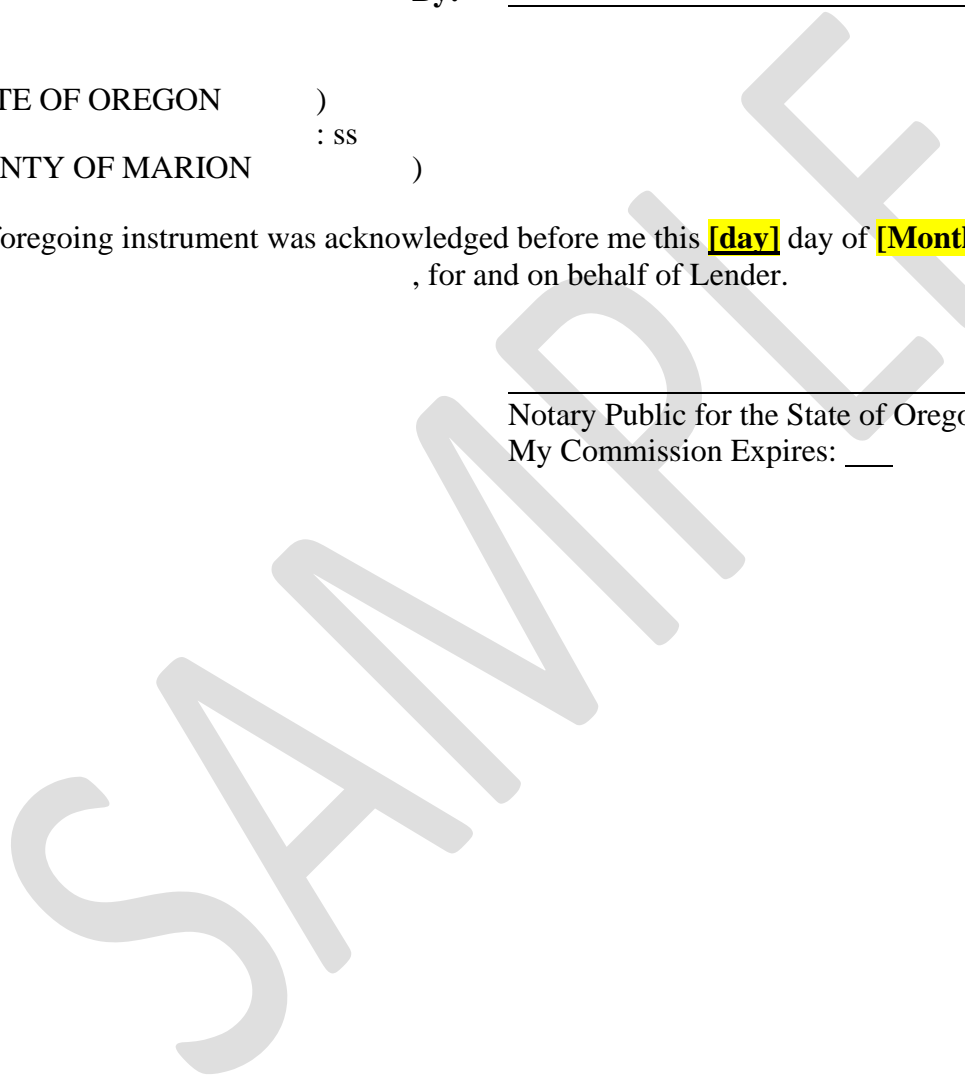
LENDER: **STATE OF OREGON**, acting by and through its **Housing and Community Services Department**

By: _____

STATE OF OREGON)
 : ss
COUNTY OF MARION)

The foregoing instrument was acknowledged before me this [day] day of [Month], 20__ by
, for and on behalf of Lender.

Notary Public for the State of Oregon
My Commission Expires: ____



BORROWER:

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

By: _____
Name of Signor, title

STATE OF OREGON)
 : ss
County of)

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

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

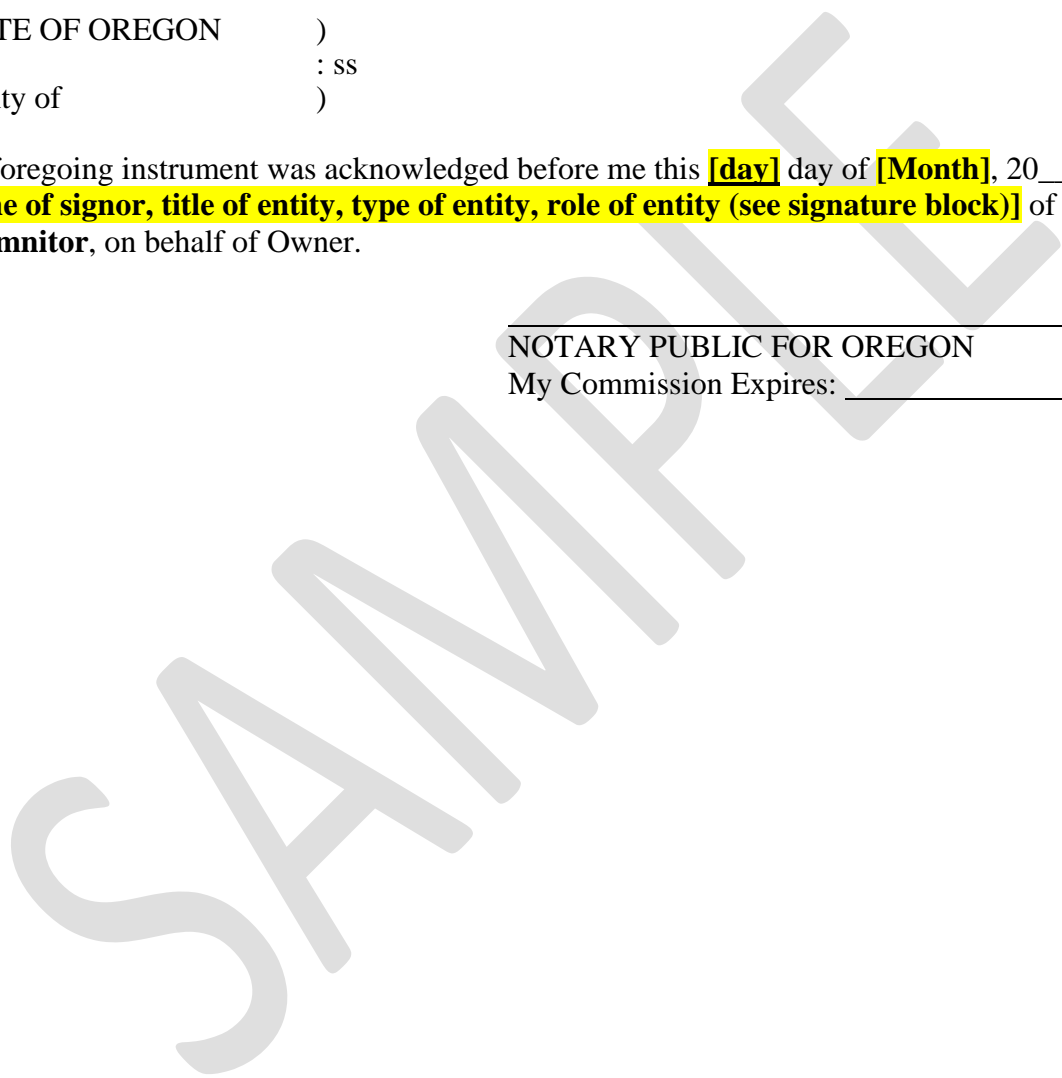


EXHIBIT A
(Legal Description)

EXHIBIT B
(Sources and Uses of Funding Budget)