

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:  
Orrick, Herrington & Sutcliffe LLP  
1120 NW Couch Street, Suite 200  
Portland, Oregon 97209  
Attention: Angie Gardner

2020-004875

Klamath County, Oregon

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Fee: \$177.00

STATE OF OREGON  
HOUSING AND COMMUNITY SERVICES DEPARTMENT

LOCAL INNOVATION AND FAST TRACK HOUSING PROGRAM  
INTER-CREDITOR AGREEMENT

303362AM

This Local Innovation and Fast Track Housing Program Inter-Creditor Agreement (this “**Agreement**”) is made and entered into as of the 1st day of April 2020 by and between the State of Oregon, acting by and through its Housing and Community Services Department, together with its successors and assigns (“**OHCS**”), Zions Bancorporation, National Association, a national banking association, as trustee (“**Trustee**”), and **Umpqua Bank**, an Oregon banking corporation, as the purchaser of the Bonds (as described below) (together with its successors and assigns, the “**Bank**” or the “**Bondholder**”). OHCS, the Trustee and the Bank are sometimes referred to herein in as the “**Parties**.”

RECITALS

A. Sunrise Vista Apartments, LLC, an Oregon limited liability company (the “**Borrower**”), is the lessee of certain real property located in the City of Klamath Falls, Klamath County, Oregon described in **Exhibit A** hereto (the “**Property**”) pursuant to a Ground Lease Agreement dated as of April 8, 2020 (the “**Ground Lease**”), between the Borrower, as lessee, and the Klamath Housing Authority, as lessor (the “**Lessor**”). The Property will be improved with an affordable, multifamily, rental-housing development (the “**Improvements**”). The Lessor’s fee interest in the Property, the Borrower’s leasehold interest in the Property and the Borrower’s right, title and interest in and to the Improvements (collectively, the “**Project**”) and related personal and other property described in the Project Trust Deeds (as defined below) and defined therein constitute the “**Mortgaged Property**.”

B. Pursuant to a Local Innovation and Fast Track Housing Program LIFT Loan Agreement (Construction and Permanent) dated as of the date hereof between OHCS and the Borrower (the “**LIFT Loan Agreement**”), OHCS has agreed to make a loan to the Borrower in the aggregate principal amount of \$7,225,702 (the “**LIFT Loan**”). The LIFT Loan will be evidenced by a Promissory Note dated as of the date hereof and executed by the Borrower and payable to the order of OHCS (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, dated as of the date hereof (the “**LIFT Trust Deed**”), executed by the Borrower and the Lessor, jointly and severally, for the benefit of OHCS, recorded April 16, 2020 in Klamath County, Oregon Real Property Records as Instrument No. 2020-04867.

C. The State of Oregon acting by and through the State Treasurer and OHCS (collectively, the “**Issuer**”) has issued its Oregon Housing and Community Services Department Housing Development Revenue Bonds (Sunrise Vista Apartments Project) 2020 Series D-1 in the aggregate principal amount of \$2,450,000 (the “**Series D-1 Bonds**”), and its Oregon Housing and Community Services Department Housing Development Revenue Bonds (Sunrise Vista Apartments Project) 2020 Series D-2 in the aggregate principal amount of \$5,650,000 (the “**Series D-2 Bonds**” and together with the Series D-1 Bonds, collectively, the “**Bonds**”) pursuant to a Trust Indenture dated as of April 1, 2020 between the Issuer and the Trustee (the “**Indenture**”) and has agreed to loan the proceeds derived from the sale of the Bonds to the Borrower pursuant to a Loan Agreement dated as of April 1, 2020 between the Issuer and the Borrower (the “**Loan Agreement**”).

D. Pursuant to the Bond Documents (as defined below) and a Construction and Term Loan Agreement dated as of April 1, 2020, between the Bank and the Borrower (the “**Bank Loan Agreement**”), the Bank will purchase the Bonds by making advances to or for the benefit of the Borrower to pay costs of the Project in the aggregate principal amount of \$8,100,000 (the “**Bank Loan**”), the aggregate principal amount of the Bonds, to provide both construction and permanent financing for the Project. The obligations of the Borrower under the Bank Loan Agreement, the Loan Agreement and with respect to the Bonds will be secured by a Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing, dated as of the date hereof (the “**Bond Trust Deed**”), executed by the Borrower and the Lessor, jointly and severally, in favor of the Trustee for the benefit of the Bank and the Issuer, encumbering the Mortgaged Property, recorded April 16, 2020 in the Klamath County, Oregon Real Property Records as Instrument No. 2020-004866.

E. The Borrower will also, *inter alia*, execute and deliver to OHCS an Operating Agreement and Declaration of Land Use Restrictive Covenants in connection with the LIFT Loan dated as of the date hereof between the Borrower and OHCS (the “**Operating Agreement**”) relating to the Mortgaged Property recorded April 16, 2020 in the Klamath County, Oregon Real Property Records as Instrument No. 2020-004865.

F. The execution and delivery of this Agreement is a condition to the closing of the LIFT Loan, and the execution and delivery of the Bonds.

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

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

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

(b) “**Bank Loan Agreement**” means the Bank Loan Agreement identified in Recital D above by and between the Bank and the Borrower, as the same may be amended, modified, supplemented or replaced from time to time.

(c) **“Bank Loan Documents”** means the Bank Loan Agreement, the Bond Trust Deed, and the other documents executed in connection with the Bank Loan, as the same may be amended, modified, supplemented or replaced from time to time.

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

(e) **“Borrower”** means all persons or entities identified as “Borrower” in the first Recital of this Agreement, together with their successors and assigns, and any other person or entity who acquires the Borrower’s right, title and interest in and to the Mortgaged Property after the date of this Agreement; provided that the term “Borrower” shall not include OHCS, the Bank or the Trustee in the event that any of them may acquire title to the Mortgaged Property.

(f) **“Bond Documents”** means the Bonds, the Indenture, the Loan Agreement, the Bond Declaration, the Bond Trust Deed, the Operating Agreement, the Bank Loan Documents, and all other documents executed by the Issuer, the Trustee and/or the Borrower in connection with the execution and delivery of the Bonds by the Issuer and the loan of the proceeds thereof to the Borrower.

(g) **“Casualty”** means the occurrence of damage to or loss of all or any portion of the Mortgaged Property by fire or other casualty.

(h) **“Condemnation”** and **“Impositions”** shall have the meanings given to those terms in the Bond Trust Deed.

(i) **“Enforcement Action”** means any of the following actions, which the Parties agree may be taken only by the Bank, whether directly or at the direction of the Bank (including action taken by the Trustee at the written direction of the Bank): The acceleration of all or any part of the LIFT Loan or the Bonds, the advertising of or commencement or completion of any foreclosure or trustee’s sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest or late charges, the taking of possession or control of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the LIFT Loan or the Bonds, the exercising of any banker’s lien or rights of set-off or recoupment, or the exercise of any other remedies against the Borrower, any other person or entity liable for any of the LIFT Loan or the Bonds or obligated under any of the related financing documents (excluding rights and remedies reserved to OHCS under the Affordability Agreements, including its Operational Remedies under the LIFT Loan Documents) or otherwise with respect to any of the Mortgaged Property. For purposes of this Agreement, **“Enforcement Action”** shall include the right of the Bank to direct the time, method, order and place of conducting any

proceeding to be taken to enforce the payment and performance of the Borrower's obligations under the LIFT Loan Documents or the Bond Documents (excluding rights and remedies reserved to OHCS under the Affordability Agreements, including its Operational Remedies under the LIFT Loan Documents), including without limitation the appointment (or seeking the appointment) of a receiver, the commencement of foreclosure proceedings with respect to the Mortgaged Property under the Bond Trust Deed or the LIFT Trust Deed or any other Project Financing Documents creating a lien on or a security interest in the Mortgaged Property (or any part thereof), the collection of rents or any other action to accelerate or otherwise enforce payment on the LIFT Loan or the Bonds or the performance by the Borrower of its obligations under any of the Project Financing Documents (excluding rights and remedies reserved to OHCS under the Affordability Agreements, including its Operational Remedies under the LIFT Loan Documents).

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

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

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

(k) **"Project Financing Documents"** mean, collectively, the Bond Documents and the LIFT Loan Documents.

(l) **"Project Trust Deeds"** mean, collectively, the LIFT Trust Deed and the Bond Trust Deed.

**2. PRIORITY OF LIENS AND SECURITY INTERESTS.** Notwithstanding any provisions to the contrary contained in any of the Project Financing Documents, and irrespective of the time, order, or method of attachment or perfection of the liens and security interests granted thereby or the time or order of filing or recording of financing statements or other liens, or security interests, and irrespective of anything contained in any filing or agreement to which any of the Parties secured by any of the Project Trust Deeds now or hereafter may be a party, the Parties hereby acknowledge and agree that, subject to the terms hereof, the Project Trust Deeds shall each share a first lien position and constitute first liens on the Project, including for purposes of ORS 456.548(18) and OAR 813-035-0033.

The LIFT Trust Deed shall at all times remain in the same lien priority as the Bond Trust Deed or any other deed of trust or other security instrument encumbering the Mortgaged Property to secure any loan which refinances the Bonds, as long as the principal amount of refinanced debt secured thereby does not exceed the outstanding balance on the Bonds, plus reasonable financing costs and any amount approved by OHCS for repairs or improvements to the Project.

**3. NOTICE OF EVENT OF DEFAULT.** Each Party shall use reasonable efforts to provide written notice of any Event of Default under any of the Project Financing Documents to which it is a party to the other Parties promptly upon acquiring knowledge of the same; provided, however, that no Party shall be deemed in breach hereof for failing to do so. In all events, OHCS and the Trustee shall provide at least 30 days' prior written notice to the Bank prior to exercising any right or remedy it may be entitled to exercise under the applicable Project Financing Documents to which it is a party.

**4. ENFORCEMENT ACTION; PAYMENTS PRIOR TO DEFAULT.** The Bank shall have the sole and exclusive right to take, not to take, to direct to be taken, or to refrain from directing to be taken all Enforcement Action under the Bond Documents and, at the election of the Bank, in the exercise of its sole and absolute discretion, the LIFT Loan Documents (excluding the rights and remedies expressly reserved to OHCS under the Affordability Agreements and its Operational Remedies under the LIFT Loan Documents) so long as the Bonds or any other obligations of the Borrower or any other individual or entity to the Bank under the Bond Documents are outstanding thereunder. As long as the Bonds or any such other obligations are outstanding under the Bond Documents, neither OHCS nor the Trustee shall take any Enforcement Action. The rights of the Bank to take or not to take or to direct or refrain from directing any such Enforcement Action are and shall be conditioned on and subject to providing written notice of an Event of Default to OHCS and the Trustee as provided in Section 3 of this Agreement and shall also be subject to the Operational Remedies, as retained by OHCS as described below, so long as any of the Affordability Agreements remain in force and effect. Prior to receiving written notice of an Event of Default from the Bank, OHCS shall be entitled to retain for its own account all regularly scheduled payments due and payable under and pursuant to the respective Project Financing Documents to which it is a party. However, immediately upon receipt of written notice of an Event of Default, OHCS shall not accept any payments for its own account, and the provisions of Section 6 of this Agreement will apply. Bank shall be responsible for all costs associated with its election to take or direct to be taken any Enforcement Action permitted pursuant to this Agreement; provided, however, OHCS agrees to reimburse Bank for all expenses, including attorney fees, that Bank incurs in connection with enforcing the LIFT Trust Deed or any of the other LIFT Loan Documents for the direct benefit of or otherwise serving as the agent for OHCS hereunder to the extent that Bank is not reimbursed by Borrower or from Foreclosure Sale Proceeds, as such term is used in Section 8 below.

**5. LIMITED AGENCY RELATIONSHIP.** The Bank may, in its sole and absolute discretion, elect to take or direct Enforcement Action under or with respect to the LIFT Loan; provided, however, that the Bank absent such election shall have no obligation to take or direct any action on behalf of OHCS. In the event that the Bank elects in writing in a notice provided to OHCS to take or direct Enforcement Action under the LIFT Loan Documents contemporaneously with taking or directing Enforcement Action under any of the Bond Documents (excluding the rights and remedies reserved to OHCS under the Affordability Agreements and its Operational Remedies under the LIFT Loan Documents), OHCS hereby appoints the Bank as agent solely for the purpose of taking any such Enforcement Action. This shall include, for example, the right of Bank to name and include OHCS (subject to ORS chapter 180) as plaintiff or a party in any Enforcement Action. The Bank shall not be required to act as agent for OHCS, but shall have the right, at its option to act as agent. In the event that the Bank

does not elect to act as agent, upon the Bank's request, OHCS shall take such actions as may be necessary to join and collaborate in any Enforcement Action taken or directed by the Bank. The Bank, as agent, is not nor shall it assume any responsibility or liability for any act or omission by OHCS under the LIFT Loan Documents. The Bank shall not have any duties or responsibilities, except those expressly set forth herein, nor shall the Bank have or be deemed to have any fiduciary relationship with the Borrower, the Trustee, OHCS, any guarantor/indemnitor, or any other person, and no implied covenants, function, responsibilities, duties, obligations or liabilities shall be read into this Agreement or otherwise exist against the Bank. If, and only if, Bank elects, in writing, to take any Enforcement Action under the LIFT Loan Documents as agent on behalf of LIFT, the Bank shall exercise the same care in doing so as it normally exercises with respect to loans and commitments made by Bank in which an inter-creditor agreement does not exist. Neither the Bank, the Trustee nor OHCS shall be liable to the other for any Enforcement Action taken or omitted to be taken by it hereunder or under or in connection herewith, except to the extent such liability with respect to an Enforcement Action taken or omitted to be taken is determined in a final non-appealable judgment by a court of competent jurisdiction to have arisen from the gross negligence or willful misconduct of the other Party. In the event that Borrower or any other party obligated upon or with respect to the Bonds commences a legal proceeding challenging the validity or enforceability of any such obligations in defense of any Enforcement Action, and Bank receives written notice thereof, the Bank shall provide written notice to the Trustee and OHCS of such challenge or assertion. The Trustee and OHCS may elect to retain their own respective counsel to respond to such allegations or, the Bank may, with the written permission of the Trustee or OHCS, as its agent, respond and defend such allegations. In the event that Bank takes such action on behalf of the Trustee or OHCS as agent, such party shall be responsible to repay to Bank any expenses incurred consistent with such party's written permission and not otherwise recovered by the Bank following completion of any Enforcement Action and liquidation of the Property. Notwithstanding the foregoing, the Parties acknowledge and agree that Bank, without the consent of OHCS or Trustee, and in Bank's sole and absolute discretion, may elect (a) to first complete a foreclosure under the LIFT Trust Deed, before completing a foreclosure under the Bond Trust Deed, (b) to first complete a foreclosure under the Bond Trust Deed, before completing a foreclosure under the LIFT Trust Deed, (c) to complete a foreclosure under the LIFT Trust Deed and not complete a foreclosure under the Bond Trust Deed, (d) to complete a foreclosure under the Bond Trust Deed and not complete a foreclosure under the LIFT Trust Deed, (e) to otherwise fully direct and control whether an Enforcement Action is to be taken under any document, or under applicable laws, rules or regulations, and the order and manner in which any such Enforcement Action or Actions are to be commenced, terminated, postponed or completed (all without liability to any other Party or any other individual or entity).

**6. CONTINUED OPERATION OF PROJECT AS AFFORDABLE HOUSING; RETENTION OF OPERATIONAL REMEDIES BY DEPARTMENT.**

Notwithstanding the sole and exclusive right of the Bank to take or direct Enforcement Action following an Event of Default as described in Section 4 of this Agreement, OHCS shall retain the right, as long as the Affordability Agreements remain in effect and have not terminated, to take action and pursue remedies against the Borrower and the Project to ensure compliance with all covenants and obligations related to the operation of the Project as an affordable housing project and the requirements of Article XI-Q of the Oregon Constitution, including without limitation all of the rights and remedies granted to OHCS to ensure affordability, habitability and the

management and operation of the Project in accordance with the covenants, obligations and program requirements set forth in the Operating Agreement and the rights and remedies of OHCS under the LIFT Loan Documents, the LIHTC Documents and Bond Documents (all as collectively defined in the Operating Agreement as the “**Financing Documents**”) that do not constitute an Enforcement Action (collectively, the “**Affordability Agreements**” and the rights and remedies of OHCS thereunder, collectively, the “**Operational Remedies**”). For purposes of this Agreement “Operational Remedies” shall include any action taken or directed by OHCS pursuant to any of the Affordability Agreements for other than monetary relief, including, but not limited to specific performance, mandatory injunctive relief, or similar equitable remedies to compel compliance by the Borrower with the terms of the Affordability Agreements; provided that, nothing in this Section 6 shall permit OHCS to take or direct Enforcement Actions or to commence any foreclosure or trustee’s sale proceedings, exercise any power of sale, accept a deed or assignment in lieu of foreclosure or sale, or to take possession or control of any of the Mortgaged Property, except operational oversight of the Project pursuant to its exercise of Operational Remedies. Notwithstanding the foregoing, OHCS may require replacement of the property manager of the Project, but only to the extent permitted in the applicable covenants and agreements contained in the Affordability Agreements and only following written notice of such action having been provided to the Bank. Any required consent by the Bank to replacement (or action for replacement) of the Borrower’s general partner or managing member, if any, by OHCS will not be unreasonably withheld, conditioned or delayed. Any replacement (or action for replacement) of Borrower’s general partner or managing member, if any, or of the property manager by the Bank is subject to OHCS’s prior written consent, which consent will not be unreasonably withheld, conditioned or delayed. Any appointment (or action seeking appointment) of a receiver with respect to the Project by the Bank must be preceded by written notice to OHCS.

## **7. PAYMENTS AFTER DEFAULT.**

(a) OHCS agrees that after receiving written notice of an Event of Default it will not accept any payment, property or asset of any kind under any of the LIFT Loan Documents, or the Bond Documents, respectively, by or on behalf of the Borrower without the prior written consent of the Bank. Notwithstanding the foregoing, if OHCS receives any such payment, property or asset under the LIFT Loan Documents or the Bond Documents it agrees that such payment, property or asset shall be held in trust for the Bank, and OHCS will, unless notified in writing otherwise by the Bank, promptly remit such payment, property or asset, in kind, and properly endorse as necessary to the Bank. The Bank will apply any payment, property or asset so received from OHCS in accordance with the same priorities for the application of foreclosure sale proceeds set forth in Section 8 below.

(b) If an Enforcement Action taken by any Party is the appointment of a receiver for any of the Mortgaged Property, all of the rents, issues, profits and proceeds collected by the receiver will be paid and applied by the receiver solely to and for the benefit of the Bank and applied in the order, amount and manner as provided in Bond Trust Deed until such time as all of the obligations owing under the Bond Documents have been paid in full.

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

(d) The subordination of payments due to the OHCS will continue if any payment under the Bond Documents (whether by or on behalf of Borrower, as proceeds of security or enforcement of any right of set-off or otherwise) is for any reason repaid or returned to Borrower or its insolvent estate, or avoided, set aside or required to be paid to Borrower, a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law. In such event, any or all of the Bonds originally intended to be satisfied will be deemed to be reinstated and outstanding to the extent of any repayment, return, or other action, as if such payment on account of the Bonds had not been made.

(e) Notwithstanding anything to the contrary contained elsewhere herein, no foreclosure of the lien or security interest under any LIFT Loan Document upon any real or personal property (or other realization upon) shall extinguish, terminate, discharge, release or otherwise modify or affect the liens and security interests of the Bond Documents upon the real or personal property which was the subject of such foreclosure (or other realization) (and in order to give effect to the foregoing, in all such events the liens and security interests of the Bond Documents shall survive such foreclosure (or other realization) under the LIFT Loan Documents. In addition, all proceeds from any such foreclosure sale or other realization proceeding shall be applied in accordance with Section 8, below.

**8. FORECLOSURE AND APPLICATION OF FUNDS.** The Parties agree that following a foreclosure of the Bond Trust Deed or the delivery of a deed in lieu of foreclosure pursuant to the Bond Trust Deed, the lien of the LIFT Trust Deed shall be released (and no longer be a lien on the Project) provided that the Bank has taken action as agent to enforce the LIFT Trust Deed as provided in Section 5 hereof or OHCS has joined in such Enforcement Action. The Parties shall take any action requested by the Bank to effectuate the foregoing. Furthermore, the Parties agree that in the event of a foreclosure of the Bond Trust Deed or the delivery of a deed in lieu of foreclosure pursuant to the Bond Trust Deed, or in the event of a foreclosure of the LIFT Trust Deed or the delivery of a deed in lieu of foreclosure pursuant to the LIFT Trust Deed, the proceeds resulting from each such foreclosure or deed in lieu of foreclosure ("**Foreclosure Sale Proceeds**") shall be applied as follows:

FIRST, to all amounts owing to the Bank under the Bond Documents, including without limitation the payment of all principal outstanding under the Bonds, together with all accrued and unpaid interest and all other amounts owing to the Bank with respect to advances, fees and expenses, interest and premium (if any) on the Bonds; and

SECOND, to amounts owing to OHCS under the LIFT Loan Documents in accordance with the priority for the application of moneys set forth in the LIFT Trust Deed



providing for the payment of amounts payable to OHCS with respect to advances, fees and expenses, interest, premium (if any) and interest on the LIFT Loan.

9. **REFINANCE.** The parties hereto acknowledge and agree that in connection with any refinancing of the Bank Loan (upon maturity or otherwise) (the "**Refinance Loan**"), upon the closing of the Refinance Loan by such refinance lender (the "**Refinance Lender**"), the deed of trust securing the Refinance Loan (the "**Refinance Deed of Trust**") shall be in the same lien position of the Bond Trust Deed and subject to the terms and conditions of this Agreement, and that all references in this Agreement to "Bank," "Bank Loan" or "Bond Trust Deed" shall be deemed to refer to the Refinance Lender, the Refinance Loan, and the Refinance Deed of Trust, respectively. It is the intention of the parties that no further priority agreements or subordination agreements shall be required to establish such priority or agreements. However, the parties acknowledge and agree that to the extent such subordination or priority agreements are required by Refinance Lender, or the title company insuring the lien of the Refinance Deed of Trust, the parties shall execute such documents and subordination agreements provided that they are reasonably acceptable to the parties required to execute and deliver such subordination or priority agreements.

10. **NO OHCS OBLIGATIONS TO OTHER PARTIES.** Nothing contained in this Agreement shall create any pecuniary liability of OHCS for any amounts owing to the Bank or the Trustee, under any of the Project Financing Documents; provided, however, that this Section shall not waive or otherwise limit OHCS's express obligations under this Agreement (or any of Bank's rights or remedies against OHCS for breach of such obligations).

11. **NO BANK OBLIGATIONS TO OTHER PARTIES.** Nothing contained in this Agreement shall create any pecuniary liability of the Bank for any amounts owing to OHCS or the Trustee, under any of the Project Financing Documents; provided, however, that this Section shall not waive or otherwise limit the Bank's expense obligations under this Agreement (or any of OHCS's rights or remedies against the Bank for breach of such obligations).

12. **ADDITIONAL REPRESENTATIONS AND COVENANTS.**

(a) Without the prior written consent of the Bank, neither the Trustee nor OHCS shall (i) amend, modify, waive, extend, renew or replace any provision of any of the LIFT Loan Documents to which each is a party, or (ii) in the case of the LIFT Loan, pledge, assign, transfer, convey, or sell any interest in the LIFT Loan; or (iii) accept any payment on account of the LIFT Loan other than the payment of interest or principal then due and payable; or (iv) take any action which has the effect of increasing the outstanding amount of the LIFT Loan, or (v) appear in, defend or bring any action to protect OHCS's interest in the Mortgaged Property, or (vi) take any action concerning environmental matters affecting the Mortgaged Property. The Bank is permitted to amend, modify, waive, extend, renew or replace any provision of the Bank Loan Documents without the prior approval of any party. The Bank and the Trustee shall use reasonable efforts to provide written notice to OHCS of any amendment to any of the Project Financing Documents to which each is a party.

(b) OHCS shall deliver to the Bank and the Trustee a copy of each notice received or delivered by OHCS pursuant to the LIFT Loan Documents, or in connection with the LIFT Loan, simultaneously with its delivery or receipt of such notice. The Bank and the Trustee shall deliver to OHCS in the manner required in Section 13 a copy of each notice of an Event of Default delivered to the Borrower by the Bank or the Trustee, respectively. Neither giving nor failing to give a notice to the Bank, the Trustee or OHCS hereunder shall (a) affect the validity of any notice given by the Bank, the Trustee, or OHCS to the Borrower, as between the Borrower and such of the Bank, the Trustee or OHCS as provided in the notice to the Borrower, or (b) impose any liability upon any Party for failing to give any such notice (except any notice which one Party is required to give another Party hereunder of the first Party's intention to commence taking an Enforcement Action).

(c) Without the prior written consent of the Bank, neither the Trustee nor OHCS shall commence, or join with any other creditor in commencing, any Bankruptcy Proceeding. In the event of a Bankruptcy Proceeding, neither the Trustee nor OHCS shall vote affirmatively in favor of any plan of reorganization or liquidation unless the Bank has also voted affirmatively in favor of such plan.

(d) Whenever the Project Financing Documents give the Trustee or OHCS approval or consent rights with respect to any matter, and a right of approval or consent with regard to the same or substantially the same matter is also granted to the Bank pursuant to the Bond Documents or otherwise, the Bank's approval or consent or failure to approve or consent, as the case may be, shall be binding on the Trustee and OHCS. None of the other provisions of this Section are intended to be in any way in limitation of the provisions of this Section 12(d).

(e) In the event of a Condemnation or a Casualty, the provisions of the Bank Loan Documents shall apply (including, but not limited to, restoration obligations and the application of the proceeds of insurance or condemnation awards). The rights of OHCS (under the LIFT Loan Documents or otherwise) to participate in any proceeding or action relating to a Condemnation or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation or a Casualty, or to apply any proceeds of insurance or condemnation proceeds, will be and remain subordinate to Bank's rights under the Bank Loan Documents with respect thereto. Bank will, however, obtain OHCS' prior approval of any settlement or adjustment of such claims, which approval will not be unreasonably withheld, conditioned, or delayed. The Bank shall keep OHCS reasonably informed of the status of any negotiations concerning settlement or adjustment of a claim resulting from a Condemnation or Casualty.

(f) The Bank and OHCS each acknowledges and agrees that it is assuming all risk of loss related to and associated with the Bonds and the LIFT Loan, respectively. The Bank and OHCS have undertaken their own review and evaluation of the Project and are not relying upon the opinion or actions of the other with respect to the credit worthiness, validity, legality, value, sufficiency, perfection, priority, enforceability or collectability of the Project, the Bond Documents or the LIFT Loan Documents.

### 13. MISCELLANEOUS PROVISIONS

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

(b) This Agreement shall be binding upon and shall inure to the benefit of the respective legal successors and permitted assigns of the Parties hereto. No other party, including, but not limited to, Borrower, shall be entitled to any benefits hereunder, whether as a third-party beneficiary or otherwise.

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

OHCS: State of Oregon Housing and Community  
Services Department  
725 Summer Street NE, Suite B  
Salem, OR 97301-1266  
Attention: Debt Operations Manager  
Email: OR.BondInvestor@oregon.gov  
Telephone: 503-986-6897

With a copy to: Oregon Department of Justice  
1162 Court Street NE  
Salem, OR 97301-4096  
Attention: Hannah Fenley  
Email: hannah.p.fenley@doj.state.or.us  
Telephone: 503-947-4759

The Borrower: Sunrise Vista Apartments, LLC  
c/o Luckenbill-Drayton & Associates, LLC  
1007 NW Rimrock Drive  
Redmond, OR 97756  
Attention: Dee Luckenbill  
Email: luknbill@qwestoffice.net  
Telephone: (541) 728-1582

With a copy to: Rita L. Spears Law Firm  
5777 S. Rural Rd., #4  
Tempe, AZ 85283  
Attention: Rita Spears  
Email: rita@rspearslaw.com  
Telephone: (480) 966-8383

And with a copy to: Dagle Law Office, LLC  
9755 S.W. Barnes Road, Suite 695  
Portland, OR 97225  
Attention: Paul Dagle  
Email: paul.dagle@daglelaw.com  
Telephone: (503) 546-4493

Bank: Umpqua Bank  
One SW Columbia Street, Suite 1170  
Portland, OR 97204  
Attention: Gina Leon  
Email: ginaleon@umpquabank.com  
Telephone: (503) 219-6195

With a copy to: Miller Nash Graham & Dunn LLP  
3400 U.S. Bancorp Tower  
111 SW Fifth Avenue  
Portland, OR 97204-3699  
Telephone: (503) 205-2548  
Attention: Catherine A. Shaw, P.C.  
Email: catherine.shaw@millernash.com

Trustee: Zions Bancorporation, National Association  
Corporate Trust, Zions Bank Division  
1211 SW Fifth Avenue, Suite 1250  
Portland, OR 97204  
Telephone: (503) 548-1030  
Attention: Corazon Gruenberg  
Email: corazon.gruenberg@zionsbank.com

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

(d) This Agreement shall be governed by the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "**Claim**") among two or more of the parties related to this Assignment will

be conducted exclusively within the Circuit Court of Marion County, Oregon (unless Oregon law requires that it be brought and conducted where the Project is located) or, if necessary, the United States District Court for the District of Oregon. In no event will this provision be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. EACH OF THE PARTIES HERETO, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

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

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

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

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


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

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

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

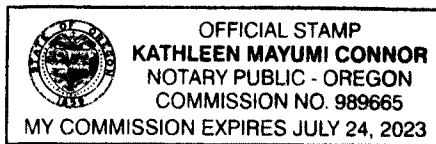
OHCS:


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

By:   
Caleb Yant  
Chief Financial Officer

STATE OF OREGON            )  
                                      : ss  
COUNTY OF MARION        )

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of April 2020 by Caleb Yant, who is the Chief Financial Officer, for and on behalf of the State of Oregon, acting by and through its State Treasurer and its Housing and Community Services Department.

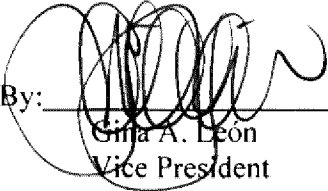


  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: July 24, 2023

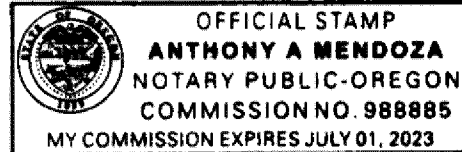
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**BANK:**


**UMPQUA BANK,**  
as Bond Purchaser

By:  \_\_\_\_\_  
Gina A. Leon  
Vice President

STATE OF OREGON )  
COUNTY OF Washington : ss  
MULTNOMAH )



The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of April 2020 by Gina A. León, who is the Vice President of Umpqua Bank, an Oregon banking corporation, for and on behalf of Bond Purchaser.

  
\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: July 1, 2023

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TRUSTEE:

**ZIONS BANCORPORATION, NATIONAL  
ASSOCIATION,**  
as Trustee

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

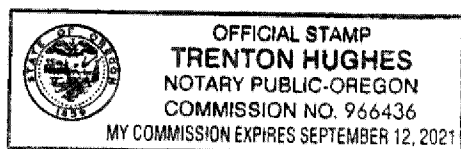
*Corazon Gruenberg*  
Corazon Gruenberg, Vice President  
Zions Bank Division

STATE OF OREGON )

: ss

COUNTY OF MULTNOMAH )

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of April 2020 by Corazon Gruenberg, who is the Vice President, Zions Bank Division, of Zions Bancorporation, National Association, for and on behalf of Trustee.



*Trenton Hughes*  
\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 09/12/2021

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## CONSENT OF BORROWER


The Borrower hereby acknowledges receipt of a copy of this Inter-Creditor Agreement and consents to the agreement of the parties set forth herein.

Dated: As of the date first written above.

**SUNRISE VISTA APARTMENTS, LLC,**  
an Oregon limited liability company

By: **LDA-SVA Development, LLC,**  
an Oregon limited liability company,  
its Managing Member

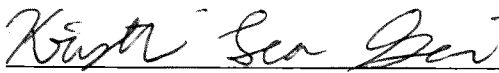
By: **Luckenbill-Drayton & Associates, LLC,**  
its Manager

By:   
Lisa Drayton  
Manager

STATE OF OREGON                     )  
  : SS  
COUNTY OF DESCHUTES            )

The foregoing instrument was acknowledged before me this 7 day of April 2020 by Lisa Drayton, as Manager of Luckenbill-Drayton & Associates, LLC, an Oregon limited liability company, as the Manager of LDA-SVA Development, LLC, an Oregon limited liability company, as the Managing Member of Sunrise Vista Apartments, LLC, an Oregon limited liability company, who executed the foregoing instrument for and on behalf of the Borrower.



  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: June 25, 2022

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**EXHIBIT A**  
**LEGAL DESCRIPTION**

**PARCEL 1:**

Parcel 2 of Land Partition 2-17 Replat of Parcel 2 of Land Partition 8-00 situate in SE1/4 NE1/4 Section 14, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, recorded May 8, 2017 in 2017-004773, Records of Klamath County, Oregon.

**PARCEL 2:**

60 foot Access Easement as designated and delineated on Land Partition 2-17 Replat of Parcel 2 of Land Partition 8-00 situate in SE1/4 NE1/4 Section 14, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, recorded May 8, 2017 in 2017-004773, Records of Klamath County, Oregon.