

INTERCREDITOR AGREEMENT  
(With Syndicator)

This Intercreditor Agreement (“Agreement”) is made as of \_\_\_\_\_, 2009, by and among \_\_\_\_\_, a \_\_\_\_\_ (the “Private Lender”), \_\_\_\_\_, a Tennessee limited partnership (“Borrower”), \_\_\_\_\_, a \_\_\_\_\_ (“Syndicator”), and the Tennessee Housing Development Agency, a political subdivision and instrumentality of the State of Tennessee (“THDA”).

RECITALS:

THDA is making a loan in the maximum amount of \$\_\_\_\_\_ (the “THDA Loan”) to Borrower subject to the terms and conditions set forth in the Loan Agreement. The THDA Loan is evidenced by the Assistance Note and, among other things, is secured by the Assistance Deed of Trust.

Private Lender is making a construction loan in the amount of \$\_\_\_\_\_ (the “Private Loan”) to Borrower. [If certain conditions are met, the Private Loan will convert to a permanent loan.] The Private Loan is evidenced by the Private Note and secured by the Private Deed and the Private Assignment.

The Loan Documents require Borrower to use the proceeds of the Private Loan and the THDA Loan to fund the costs of constructing/rehabilitating a multi-family rental housing development with \_\_\_\_\_ units of affordable rental housing (the “Development”) on the Property.

THDA issued a [2009/2008] Low-Income Housing Tax Credit Reservation Notice for the Development.

[Borrower has sold or will sell one or more limited partnership interests, for which it will receive equity contributions from the limited partners (collectively, the “Syndicator Equity”).]

THDA and Private Lender have interests in the same real and personal property; they wish to set forth their priorities and other agreements relating to the Development and to coordinate some of their activities relating to the THDA Loan and the Private Loan, respectively.

NOW, THEREFORE, for and in consideration of \$10.00, the mutual covenants set forth below and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are acknowledged, the parties agree as follows:

1. Definitions. In addition to terms defined elsewhere in this Agreement, the following capitalized terms shall have the following meanings:

“Collateral” means the personal property described in Exhibit B, which is attached hereto and incorporated by this reference.

“Construction and Expenditure Schedule” means the schedule attached as Exhibit E, which is attached hereto and incorporated herein by this reference.

“Development Budget” means the construction and development budget attached as Exhibit C, which is attached hereto and incorporated by this reference.

“Draw Request” means a request for a disbursement of Private Loan proceeds or THDA Loan proceeds by Borrower and means the form attached as Exhibit D, which is attached hereto and incorporated by this reference, or any other form acceptable to Private Lender and THDA, together with all required supporting documentation.

“Foreclosure” or “Foreclose” includes the exercise of a power of sale under a deed to secure debt or a deed in lieu of foreclosure.

“Lender” means THDA or Private Lender.

“Lenders” means THDA and Private Lender.

“Loan Agreement” means the Tennessee Housing Development Agency [TCAP/Section 1602] Loan Agreement dated \_\_\_\_\_, 2009, between Borrower and THDA.

“Loan Documents” means the THDA Loan Documents and the Private Loan Documents.

“Loans” means the THDA Loan and the Private Loan.

“Syndication Agreement” means the agreement between Borrower and Syndicator dated \_\_\_\_\_, which agreement covers syndication of the low income housing tax credits for the Development.

“THDA Deed of Trust” means the Tennessee Housing Development Agency [TCAP/Section 1602] Program Deed of Trust, dated \_\_\_\_\_, 2009, encumbering the Property as security for the THDA Note and granting THDA a security interest in the Collateral.

“THDA Loan Documents” means all documents identified in Article VII, Section 2 of the Loan Agreement and any other instrument or agreement from Borrower to THDA executed now or in the future relating to the THDA Loan, the Development, or the Collateral;

“THDA Note” means the Tennessee Housing Development Agency [TCAP/Section 1602] Program Promissory Note from Borrower to THDA in the amount of \_\_\_\_\_, dated \_\_\_\_\_, 2009.

“Private Deed of Trust” means the deed of trust from Borrower to Private Lender, conveying the Property as security for the Private Loan, dated \_\_\_\_\_, 2009.

“Private Loan Documents” means the Private Note, Private Deed, Private UCC, and any other agreements or instruments relating to the Private Loan.

“Private Note” means the promissory note from Borrower to Private Lender in the amount of \$ \_\_\_\_\_, dated \_\_\_\_\_, 2009.

“Private UCC” means the UCC financing statement, naming Borrower as “Debtor” and Private Lender as “secured party” and describing all or part of the Collateral;

“Property” means the real property described in Exhibit A, a copy of which is attached hereto and incorporated by this reference.

“Work” means Borrower’s [construction/rehabilitation] of the Development on the Property.

When used in this Agreement, “including” means “including (but not limited to)” unless otherwise provided, and “its Loan Documents” or “respective Loan Documents” or similar phrases means the loan documents of a Lender or of the Lender or Lenders that are referenced in the sentence in which the phrase appears.

## 2. Priority.

- (a) The Lenders hereby agree that the priority of the Loan Documents and the security interests created or granted under the THDA Loan Documents and the Private Loan Documents and the rights, powers, and privileges granted to the Lenders under their respective Loan Documents shall be as follows:

first priority - Private Loan Documents; and  
second priority - THDA Loan Documents.

- (b) From and after the date of this Agreement, all of the debt, rights, title, lien, and interests of THDA created or evidenced by the THDA Loan Documents shall be subject and subordinate to all of the debt, rights, title, lien, and interests created or evidenced by the Private Loan Documents (but not including any debt that is covered by the Private Loan Documents solely due to a “dragnet” clause in the Private Loan Documents). This priority shall prevail notwithstanding any of the following: (1) the time of the making of the Loans; (2) the time or order of recording or filing of any of the Loan Documents; (3) the time of the funding of the Loans; or (4) any contrary language in any of the Loan Documents; provided, however, the subordinations and relative priorities contained in this Agreement with respect to the Property and the Collateral are conditioned upon the prior interest or interests being properly perfected or recorded and non-voidable by a bankruptcy trustee.
- (c) If THDA acquires, by subrogation or otherwise, a lien or interest in the Property or the Collateral, any such lien or interest is also subject and subordinate to Private Lender’s debt, rights, title, lien, and interests created or evidenced in the Private Loan Documents as provided above. Notwithstanding the foregoing or any other provision of this Agreement, however, until THDA receives written notice that Borrower is in monetary default under the Private Loan Documents, THDA may accept and retain all payments from Borrower under the THDA Loan Documents.
- (d) Notwithstanding any other provision of this Agreement, if a Lender Forecloses Borrower’s interest in the Property, the Foreclosure shall be subject to the provisions of section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986, as amended, or any similar successor provision (the “Code”). This section shall apply notwithstanding the order of recording of any of the Loan Documents and the Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits for the Property executed in connection with the Loan and the allocation of federal low income housing tax credits by THDA to Borrower for the Development.

3. Loan Administration and Funding. (a) The Work will be performed pursuant to the Development Budget and the Construction and Expenditure Schedule. Lenders hereby affirm receipt and approval of the Development Budget and the Construction and Expenditure Schedule. Total development costs for the Development shall not exceed \$\_\_\_\_\_.

(b) The Lenders and Borrower agree the costs set forth in the Development Budget shall be funded as follows:

(i) A portion of Syndicator Equity in the amount of \$\_\_\_\_\_ to be received by Borrower on or about the date of closing of the Private Loan and the THDA Loan, shall be used to fund all soft costs or other costs incurred to date associated with the Work that are not includable in eligible basis. None of the proceeds of the THDA Loan shall be used for that purpose. If there is Syndicator Equity remaining after the payment of such costs, that Syndicator Equity shall be applied towards hard costs of construction until it is exhausted and before the proceeds of the Lenders’ Loans are used.

(ii) After the above Syndicator Equity is exhausted, the proceeds of the Lenders’ Loans shall be disbursed on a pro rata basis as the Draw Requests from Borrower are received and approved by them.

(iii) Borrower shall be responsible for funding any remaining amounts owed for the Work or development of the Development from Syndicator Equity or some other source.

4. Draw Procedures. The Loan Documents contain provisions relating to how and when the proceeds of the Loans are to be disbursed to or for the benefit of Borrower. Except as specifically and expressly modified by this Agreement, the requirements and conditions for disbursing funds under those Loan Documents are not superseded by this Agreement. The Lenders and Borrower agree, however, that the following unified draw procedures shall apply:
- (a) Draw Requests. Borrower shall submit copies of all Draw Requests to the Lenders at the same time. The form of the Draw Request that Borrower shall use is the form attached to this Agreement as Exhibit D, and Draw Requests shall be accompanied by all required supporting invoices and documentation. To the extent necessary or reasonable, the Lenders shall cooperate in reviewing the Draw Requests submitted to them, and Borrower shall promptly provide them with any additional information or documentation they may request. The initial Draw Request to THDA must satisfy the conditions contained in Exhibit F, a copy of which is attached hereto and incorporated herein by this reference.
  - (b) Inspections. The Lenders will use a common inspector for purposes of inspecting the status, quality, and degree of completion of the Work and advising the Lenders about the conformity of the Work with the plans and specifications, the Development Budget and the Construction and Expenditure Schedule and whether they should disburse in accordance with a pending Draw Request. The inspector chosen for that purpose is \_\_\_\_\_. At any time, however, upon notice to the other Lender and Borrower, but without the other Lender's or Borrower's approval, a Lender may use a different inspector for those purposes. Upon receipt of a Draw Request from Borrower, if an inspection report relating to the Draw Request has not already been performed, Private Lender shall notify the inspector that it is needed. If a Lender checks the title to the Property in connection with any Draw Request, that Lender shall provide the other Lender with the results of any such title check.
  - (c) Approval or Disapproval. The Lenders shall review the Draw Requests in a timely manner and shall use reasonable efforts to approve or disapprove a Draw Request within ten (10) business days after the receipt of the Draw Request and all required supporting invoices, documentation, affidavits, certificates, and inspection reports. If a Lender approves or disapproves of the Draw Request, it shall notify the other Lender and Borrower in writing, and any notice of disapproval shall specify, in reasonable detail, the amounts and items being disapproved and the reasons for the disapproval. The Lenders and Borrower shall diligently and in good faith attempt to resolve any dispute relating to a Draw Request, but Borrower has the burden of correcting any deficiency in the Work or the Draw Request.
  - (d) Disbursements. Upon approval of a Draw Request (other than the final Draw Request) by all Lenders, the Lenders shall disburse proceeds of the Loans if required to do so under Section 3 above. Private Lender shall disburse \_\_\_\_\_ of the net approved amount (less any retainage required or permitted under the Private Loan Documents), and THDA shall disburse \_\_\_\_\_ (less retainage). Borrower shall fund any amounts not funded by the Lenders. Disbursements shall be wired to Borrower's construction account (the "Account") at \_\_\_\_\_, being account number \_\_\_\_\_ (the wiring instructions for the Account are: \_\_\_\_\_). No Lender shall be required to disburse any amount pursuant to a Draw Request unless all Lenders have approved the Draw Request and have agreed to disburse, but any Lender may disburse at any time if it so desires. No Lender shall be required to disburse any amount if there is a default under its Loan Documents.
  - (e) Change Orders. Borrower must obtain the prior written approval of both Lenders for all change orders. Any proposed change order shall be submitted to both Lenders along with any supporting information or documentation, including any consents or documents required. Upon request of a Lender, Borrower shall promptly provide any additional information

- (f) or documentation the Lender may request. If a Lender approves or disapproves the change order, it shall notify Borrower and the other Lender in writing of that approval or disapproval and, if it is a disapproval, the reasons for it. In the event of a disapproval, the disapproving Lender(s) and Borrower shall diligently and in good faith attempt to resolve any differences relating to the change order request, but no Lender shall be liable to Borrower or any other person for its failure to approve a change order.
- (g) Final Disbursement. Upon full or substantial completion of the Work (as required by the individual Lender and its Loan Documents for the final disbursement) and satisfaction of any requirements or conditions in the Loan Documents for a final disbursement, the Lenders shall disburse the amounts previously withheld as retainage (if any) plus any additional amounts approved pursuant to the final Draw Request not previously disbursed. The final Draw Request to THDA must satisfy the conditions of Exhibit G, a copy of which is attached hereto and incorporated herein by this reference.
5. Additional Advances. Without the prior consent of the other Lender, a Lender shall not make advances under its Loan Documents that would cause the outstanding principal balance to exceed the maximum principal amounts set forth in the Recitals, unless the advance is needed to protect the Lender's interest in the Property (such as payment for real estate taxes, property insurance premiums that are in arrears, repairs, completion of the Work, or payments under Sections \_\_ or \_\_). The foregoing does not, however, prohibit a Lender from waiving any of its rights and privileges under its Loan Documents or permitting any departure by Borrower from the performance of its duties and obligations, and any such waiver or departure shall not require the consent of any other Lender. No Lender shall make any other loans to Borrower that are secured by the Property or Collateral without the prior written consent of the other Lender.
6. Amendments.
- (a) Subject to the provisions of Section 5, without the prior consent of the other Lender (which consent shall not be unreasonably withheld), a Lender shall not amend, modify, renew, or extend the provisions of its Loan Documents. If, however, there is a default under the Private Note, which default has not been cured by Borrower within any applicable cure period or by THDA pursuant to Section 11(b) of this Agreement, Private Lender may amend, modify, renew, or extend the provisions of the Private Loan Documents without any notice to or consent from THDA.
- (a) Subject to the provisions of Section 5, without the prior consent of THDA (which consent shall not be unreasonably withheld), Syndicator shall not amend, modify, renew, or extend the provisions of the Syndication Agreement. If, however, there is a default under the Syndication Agreement, which default has not been cured by Borrower within any applicable cure period or by THDA pursuant to Section 11(b) of this Agreement, Syndicator may amend, modify, renew, or extend the provisions of the Syndication Agreement without any notice to or consent from THDA.
7. THDA Representations. THDA warrants that Exhibits H and I are true, correct, and complete copies of the THDA Note and the THDA Deed of Trust; the debt evidenced by the THDA Note is the only debt secured by the THDA Deed of Trust; and there is currently no default under the THDA Loan and no event has occurred, which with the giving of notice or the passage of time, would be such a default.
8. Private Lender Representations. Private Lender warrants that Exhibits J, K and L are true, correct, and complete copies of the Private Note, the Private Deed, and the Private Assignment; the debt evidenced by the Private Note is the only debt secured by the Private Deed or Private Assignment; and there is currently no default under the Private Loan and no event has occurred, which with the giving of notice or the passage of time, would be such a default.

9. Syndicator Representations. Syndicator warrants that Exhibit M is a true, correct, and complete copy of the Syndication Agreement and there is currently no default under the Private Loan and no event has occurred, which with the giving of notice or the passage of time, would be such a default.
10. No Default Created by Loans. Each Lender agrees that Borrower's execution and delivery of the other Lender's Loan Documents (or the assumption of liability under those Loan Documents) does not create an event of default under its Loan Documents. Notwithstanding any prohibition of inferior liens in the Private Loan Documents, but subject to the terms of this Agreement, Private Lender agrees that THDA may record the THDA Deed of Trust, and any of the other THDA Loan Documents that need to be recorded.
11. Notice and Cure Provisions.
  - (a) Private Lender/Syndicator Cure Period. If a default occurs under the THDA Loan Documents, THDA shall notify the Private Lender and Syndicator in writing within five (5) business days of THDA's knowledge of the default, which notice shall specify the nature of the default. For a period of thirty (30) days following the Private Lender's receipt of such notice and the Syndicator's receipt of such notice (the "Private Lender/Syndicator Cure Period"), THDA will not exercise any of its remedies under the THDA Loan Documents or institute any legal action against the Borrower or the Property, including accelerating the maturity of its Note or instituting Foreclosure. During the Private Lender/Syndicator Cure Period, Private Lender and/or Syndicator shall have the right (but not the obligation) to cure Borrower's default without meeting any requirements as to the assumption of the THDA Note. If Private Lender and/or Syndicator cures the default within the Private Lender/Syndicator Cure Period or if Borrower cures the default, as otherwise permitted, then the THDA Loan shall be deemed reinstated, and, in the latter case, THDA shall notify Private Lender and/or Syndicator of the cure. If neither Private Lender nor Syndicator cures the default within the Private Lender/Syndicator Cure Period or if Borrower does not cure the default, as otherwise permitted, or if Private Lender and/or Syndicator informs THDA during the Private Lender/Syndicator Cure Period that it does not intend to cure the default and Borrower's right to cure, if any, has expired, THDA may then exercise its rights and remedies under the THDA Loan Documents (including the right to waive the default or forbear from exercising its remedies) without further notice to or consent from Private Lender and/or Syndicator (but subject to the rights of Private Lender and/or Syndicator under this Agreement).
  - (b) THDA Cure Period. If a default occurs under the Private Loan Documents, Private Lender shall notify THDA in writing within five (5) business days of Private Lender's knowledge of the default, which notice shall specify the nature of the default or if a default occurs under the Syndication Agreement, Syndicator shall notify THDA in writing within five (5) business days of Syndicator's knowledge of the default, which notice shall specify the nature of the default. For a period of thirty (30) days after THDA's receipt of such notice from Private Lender or from Syndicator (the "THDA Cure Period"), THDA shall have the right (but not the obligation) to cure the default under the Private Loan Documents or under the Syndication Agreement. If the default is a non-monetary default that THDA is incapable of curing (such as a bankruptcy, the insolvency of Borrower, or an assignment for the benefit of creditors by Borrower), THDA shall have the right to pay the Private Loan in full and obtain the release of the Property and Collateral from any lien or security interest or title created under the Private Loan Documents. During the THDA Cure Period, Private Lender shall not accelerate the debt evidenced by the Private Note, begin Foreclosure proceedings, or exercise any other remedies it may have under the Private Loan Documents. During the THDA Cure Period, Syndicator shall not exercise any remedies it may have under the Syndication Agreement. If THDA cures the default within the THDA Cure Period or if Borrower cures the default within any cure period in the Private Loan Documents or Syndication Agreement,

- respectively, the Private Loan and/or Syndication Agreement shall be deemed reinstated. If Borrower cures the default, Private Lender and/or Syndicator shall promptly notify THDA of the cure. If THDA does not cure the default within the THDA Cure Period or Borrower does not cure the default as otherwise permitted, or THDA notifies Private Lender and/or Syndicator during the THDA Cure Period that it does not intend to cure the default and Borrower's right to cure, if any, has expired, Private Lender and/or Syndicator may then exercise any rights and remedies under the Private Loan Documents (including the right to waive the default or forbear from exercising its remedies) and/or the Syndication Agreement, respectively, without further notice to or consent from THDA (but subject to the rights of THDA under this Agreement).
- (c) If Borrower's default is not cured, and Private Lender has not Foreclosed Borrower's interest in the Property within one hundred twenty (120) days of THDA's receipt of notice of default under the Private Loan, THDA may pursue whatever remedies it may then have against Borrower.
12. Exercise of Other Rights. To the extent either Lender or Syndicator elects to exercise any rights they, respectively, may have with respect to changing the ownership structure of Borrower (including adding or removing general partners or managing members), replacing the contractor, changing the ownership structure of the developer (including adding or removing parties), replacing the developer, replacing the property management company, enforcing guarantees, or other similar actions, such actions shall be taken by a Lender only with the consent of the other Lender or by the Syndicator only with the consent of THDA, which consent shall not be unreasonably withheld. To the extent Private Lender and/or Syndicator elect to exercise any rights they, respectively, may have, with respect to adjustments to amount and/or timing of payment of developer fees in connection with the Development, such actions shall be taken only with the express written consent of THDA, which shall not be unreasonable withheld.
13. Casualty and Condemnation. If there is a taking or threatened taking by condemnation or the exercise of a power of eminent domain (collectively, a "Taking") or the Property is damaged or destroyed by fire or some other hazard (collectively, a "Casualty"), THDA agrees that its right to participate in any action, adjustment, settlement, award, or insurance proceeds resulting from the Taking or Casualty (under the THDA Loan Documents or otherwise) is subordinate to Private Lender's rights under the Private Loan Documents. Private Lender shall have the sole right to determine how the proceeds or award received due to a Taking or Casualty shall be applied, but agrees to consult with THDA in good faith regarding the application of such amounts. If Private Lender makes insurance proceeds or a condemnation award to which it is entitled under the Private Loan Documents available to Borrower for the restoration of the Property, THDA shall also make available to Borrower for the purpose of restoration the insurance proceeds or condemnation award (if any) to which it is entitled under the THDA Loan Documents. If Private Lender applies such proceeds or award towards payment of the Private Loan, its rights and interests in any such amounts shall terminate upon the Private Loan being paid in full and any excess shall be promptly delivered to THDA and will be applied in accordance with the Loan Agreement.
14. Distribution of Proceeds of Property and/or Collateral. Any and all realizations upon the Property and/or Collateral by either of the Lenders shall be distributed in accordance with the following procedure:
- (a) All realizations upon the Property and/or Collateral shall be applied first to the Private Lender's claims pursuant to the Private Loan Documents, but only to the extent of the Private Lender's interest.

- (b) After the Private Lender's interest has been paid or otherwise satisfied in full, any remaining realizations upon the Property and/or Collateral shall be paid to THDA claims pursuant to the THDA Loan Documents until they are paid or otherwise satisfied in full.
- (c) After all of the claims have been paid or otherwise satisfied in full, the balance of realizations upon the Property and/or Collateral, if any, shall be paid to Borrower or as otherwise required by applicable law.

15. Escrows and Reserves. If Private Lender is collecting payments from Borrower to be escrowed for the payment of real estate taxes, assessments, insurance premiums, and like charges or to set up a special purpose reserve fund, THDA shall not, separately, require payments from Borrower to be escrowed for such purposes, provided the escrow or reserve being administered by Private Lender is acceptable to THDA and is being funded in an amount approved by THDA. Private Lender acknowledges and agrees that THDA's prior written consent, which shall not be unreasonably withheld, is required before funds may be disbursed from any operating reserve and/or replacement reserve or any such other, similar reserve. If Private Lender stops collecting some or any escrow payments from Borrower before the THDA Loan has been paid in full, THDA shall have the immediate right to require the establishment of any such escrow or reserve. If the Private Loan is paid in full before the THDA Loan is paid in full and if the Private Lender is holding any escrow or reserve amounts at such time, it shall promptly transfer the balance of any such escrow or reserve to THDA or its designee.

16. Notices. Any notice, demand, or other communication required or permitted under this Agreement shall be deemed given and received on the date it is personally delivered to the party to whom it is addressed or on the third day after it is deposited in the U.S. mail, certified mail, return receipt requested, postage prepaid or when hand delivered by the party or a courier or overnight delivery service. The addresses to be used for the parties are:

If to Private Lender:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

If to THDA (during construction/rehabilitation, prior to issuance of IRS forms 8609):

Tennessee Housing Development Agency  
 404 James Robertson Parkway, Suite 1200  
 Nashville, TN 37243-0900  
 Attention: Ed Yandell  
 Phone: (615) 815-2142  
 Fax: (615) 564-2700

If to THDA (following issuance of IRS forms 8609):

Tennessee Housing Development Agency  
 404 James Robertson Parkway, Suite 1200  
 Nashville, TN 37243-0900  
 Attention: Donna Duarte  
 Phone: (615) 815-2210  
 Fax: (615) 564-2700

If to Borrower:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Attn: \_\_\_\_\_

If to Syndicator:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

17. No Modification to or Approval of Documents.

(a) This Agreement is not intended to modify and shall not be construed to modify any terms or provisions of the Private Loan Documents or THDA Loan Documents, but, if there is a conflict or inconsistency between the terms of this Agreement and the terms of a Lender's Loan Documents, the terms of this Agreement shall control as between the Lenders. By executing this Agreement, a Lender is not approving the terms of the other Lender's Loan Documents, and, apart from section 6, nothing in this Agreement limits the right of a Lender or Borrower to negotiate regarding the terms of the loan from that Lender. Each Lender has extended credit to Borrower based on the Lender's own assessment of the creditworthiness of Borrower, and neither Lender has relied upon the other Lender or any information it may have provided in making its decision. Apart from specific information or notices that must be given to the other Lender under this Agreement, a Lender is not required to notify the other Lender of its dealings with Borrower, Borrower's financial status, or any other information relating to Borrower or its loan to Borrower. By executing this Agreement, a Lender is not assuming any responsibility to oversee Borrower's application of any advances made to Borrower.

(b) This Agreement is not intended to modify and shall not be construed to modify any terms or provisions of the Syndication Agreement, but, if there is a conflict or inconsistency between the terms of this Agreement and the terms of the Syndication Agreement, the terms of this Agreement shall control as between THDA and the Syndicator. By executing this Agreement, Syndicator is not approving the terms of either Lender's Loan Documents, and, apart from Section 6, nothing in this Agreement limits the right of the Syndicator or Borrower to negotiate regarding the terms of the Syndication Agreement. Syndicator has made its own determination with respect to Borrower and the Syndication Agreement and has not relied upon THDA or Private Lender in making its decision. Apart from specific information or notices that must be given to THDA or Private Lender under this Agreement, the Syndicator is not required to notify THDA or Private Lender of its dealings with Borrower, Borrower's financial status, or any other information relating to Borrower. By executing this Agreement, Syndicator is not assuming any responsibility to oversee Borrower's application of any advances made to Borrower.

18. Further Assurances. So long as this Agreement is in effect, each Lender or any subsequent holder of each Lender's security interest (as the case may be) shall execute, acknowledge, and deliver upon reasonable demand of the other Lender any further documents or instruments for the purpose of confirming and effecting the subordination and the agreements set forth in this Agreement.

19. Estoppel Certificates. Within fifteen (15) days after receipt of written demand from the other Lender, the Lender receiving the demand shall execute, acknowledge, and deliver to the other Lender a certificate stating the total amount of debt owed to the Borrower and secured by the Property and whether, to the Lender's knowledge, a default exists under any of the Lender's Loan Documents or any condition exists, which with the giving of notice or passage of time, would result in a default. All such certificates shall be conclusive as to the matters stated in them and shall be binding upon the party giving the certificate. A Lender shall not be obligated to give such a certificate more frequently than once every calendar quarter.

20. Priority Retained. This Agreement is expressly limited in application to Private Lender and THDA and the Private Loan Documents and the THDA Loan Documents, and, notwithstanding the subordination and priorities between the parties set forth in this Agreement, the parties'

priorities are retained as against all third parties and other instruments or liens as if this Agreement did not exist.

21. Benefit. This Agreement shall inure to the benefit of and be binding on the parties and their respective successors and assigns (including all subsequent holders of any note, deed of trust, assignment, or other instrument mentioned in this Agreement).
22. Term. The term of this Agreement shall begin on the date of this Agreement and continue until the first of the following occurs: (a) the payment in full of either the THDA Loan or the Private Loan; (b) Private Lender's acquisition of title to the Property by Foreclosure; or (c) THDA's acquisition of title to the Property by Foreclosure, provided the acquisition by Private Lender or THDA is not in violation of this Agreement.
23. Waiver of Right to Require Marshaling. Except as set forth in this Agreement to the contrary, each Lender hereby expressly waives any right that it otherwise might have to require the other Lender to marshal assets or to resort to Property or Collateral in any particular order or manner, whether provided for by common law or statute.
24. Miscellaneous.
  - (a) Relationship of Parties. This Agreement is not intended to create and does not create the relationship of partners or joint venturers between or among the parties.
  - (b) Governing Law. This Agreement and all matters relating thereto shall be governed by, construed, and interpreted in accordance with the laws of the State of Tennessee.
  - (c) Amendment. This Agreement shall not be amended except in a writing signed by all parties.
  - (d) Third-Party Beneficiary. The parties do not intend that any third party shall be a third-party beneficiary of this Agreement.
  - (e) Recitals and Exhibits. The Recitals and the attached exhibits are a part of this Agreement.
  - (f) Borrower Acknowledgement. Borrower acknowledges and agrees that nothing in this Agreement grants Borrower a cure period (unless a right to cure is contained in the Lender's Loan Documents or Syndication Agreement) or extends or alters the time within which Borrower may cure a default, if such time is given under a Lender's Loan Documents or Syndication Agreement or gives Borrower the right to notice of a default, unless that right to notice is contained in the Loan Documents or Syndication Agreement.
  - (g) Contesting Liens. Neither Lender shall contest the validity, perfection, priority or enforceability of any lien, security interest, or security title granted to the other.

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[Signatures on next page]

[EXECUTION PAGE FOR INTERCREDITOR AGREEMENT]

IN WITNESS WHEREOF, through their duly authorized officers or partners, Private Lender, Borrower, and THDA have executed this Agreement under seal on the above date.

**PRIVATE LENDER:** \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BORROWER:** \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SYNDICATOR:** \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**THDA:** Tennessee Housing Development Agency

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

