

**TENNESSEE HOUSING DEVELOPMENT AGENCY**  
**INTERCREDITOR AGREEMENT**  
(Multiple Draws Without Syndicator)

This Intercreditor Agreement (“Agreement”) is made as of \_\_\_\_\_, 2009, by and among \_\_\_\_\_, a \_\_\_\_\_ (and together with its permitted successors and assigns, the “Senior 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 THDA Loan Agreement. The THDA Loan is evidenced by the THDA Note and, among other things, is secured by the THDA Deed of Trust.

Senior Lender is making a construction loan in the amount of \$ \_\_\_\_\_ (together with all replacements or refinancing thereof that meet the requirements of Section 2(e) the “Senior Loan”) to Borrower. [If certain conditions are met, the Senior Loan will convert to a permanent loan.] The Senior Loan is evidenced by the Senior Note and secured by the Senior Deed and the Senior Assignment.

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

A [2009/2008] Low-Income Housing Tax Credit Carryover Allocation Agreement for the Development has been executed.

~~[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 Senior 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 Senior 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:

“100% Completion of Construction” has the meaning as defined in the THDA Loan Agreement.

“Assistance Funds” has the meaning as defined in the THDA Loan Agreement.

“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 Senior 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 Senior Lender and THDA, together with all required supporting documentation.

“Eligible Costs” has the meaning as defined in the THDA Loan Agreement.

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

“Lender” means THDA or Senior Lender.

“Lenders” means THDA and Senior Lender.

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

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

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

“Senior Assignment” means the assignment of leases and rents document executed by Borrower in favor of Senior Lender, if such document is required and executed in connection with the Senior Loan.

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

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

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

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

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

“THDA Loan Documents” means all documents identified in Article VII, Section 2 of the THDA 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.

“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) Notwithstanding any provisions to the contrary in any Loan Documents, 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 Senior Loan Documents and the rights, powers, and privileges granted to the Lenders under their respective Loan Documents shall be as follows:

first priority - Senior 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 Senior Loan Documents (but not including any debt that is covered by the Senior Loan Documents solely due to a “dragnet” clause in the Senior 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 Senior Lender's debt, rights, title, lien, and interests created or evidenced in the Senior 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 Senior 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.
- (e) Notwithstanding any contrary provision, the priority of the Senior Loan and the Senior Loan Documents shall continue as the Senior Loan and the Senior Loan Documents are amended, modified, extended and/or refinanced from time to time so long as (i) the maximum principal balance of the Senior Loan is not increased beyond its current maximum and (ii) the revised Senior Loan Documents do not materially and adversely affect the rights of THDA. In the event the Senior Loan is amended, modified, extended and/or refinanced, in accordance with the above requirements, THDA agrees to execute an Intercreditor Agreement on the same terms set forth herein upon reasonable request of the then Senior Lender.
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 are currently estimated not to exceed \$\_\_\_\_\_. Senior Lender ~~and Syndicator~~ acknowledges and agrees that no additional amount of Assistance Funds ~~(as defined in the THDA Loan Agreement)~~ shall be made available to Borrower in the event of cost overruns or otherwise.
- (b) The Lenders, ~~Syndicator,~~ and Borrower agree the costs set forth in the Development Budget shall be funded as follows:
- (i) ~~An initial installment of Syndicator Equity in the amount of \$\_\_\_\_\_ to be received by Borrower on or about the date of closing of the Senior Loan and the THDA Loan, shall be used to fund all costs incurred to date associated with the Development that are not includable in eligible basis. None of the proceeds of the THDA Loan shall be used to fund costs that are not Eligible Costs, for that purpose, but Senior Loan proceeds may be so used to the extent allowed by the Senior Loan Documents. [TCAP only Notwithstanding the foregoing, THDA Loan proceeds may also be used to reimburse land acquisition costs, on-site demolition costs, and hazardous waste remediation costs, if any.] If a portion of the initial installment of Syndicator Equity remains after the payment of such costs, the remainder of the initial installment of 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 initial installment of Syndicator Equity is exhausted, t~~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 in accordance with Paragraph 4 of this Agreement.
  - (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. No additional amounts of Assistance Funds ~~(as defined in the THDA Loan Agreement)~~ will be made available therefor.
  - (iv) 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.
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 required by the Senior Lender, together with THDA required certifications and other items as THDA may request. ~~;~~ ~~provided, however, if the Senior Lender does not have a draw request form or if the Senior Lender's form is reasonably unacceptable to THDA,~~ Borrower shall use the most recent forms posted to the THDA website at [www.thda.org](http://www.thda.org) attached to this Agreement as Exhibit D for draws of Assistance Funds, on the [TCAP/Section 1602] Loan. All Draw Requests shall be accompanied by all required supporting ~~invoices and~~ documentation, which may include, without limitation, invoices, affidavits, certificates, and inspection reports. 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.
- (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 mutually selected or agreed to by the Lenders 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, Senior Lender shall notify the inspector that it is needed. Senior Lender agrees to provide, without warranty or liability, copies of all inspection reports provided to Senior Lender by the inspector to THDA. 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.~~ invoices, documentation, which may include, without limitation, invoices, affidavits, certificates, and inspection reports. ~~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) Change Orders. Borrower must obtain the prior written approval of both Lenders for all change orders in accordance with the requirements of the Loan Documents. 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 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 any 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.
- ~~(d)~~(e) Final Disbursement. Upon 100% Completion of Construction ~~(as defined in the THDA Loan Documents)~~ and full or substantial completion of the Work (as required by the Senior Lender in accordance with 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.
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, or completion of the Work). 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 Sections 2(e) and 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 Senior 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, Senior Lender may amend, modify, renew, or extend the provisions of the Senior Loan Documents without any notice to or consent from THDA.
- ~~(b) 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 in a manner that materially and adversely alters the requirements for contribution of the Syndicator Equity. 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. Senior Lender Representations. Senior Lender warrants that Exhibits J, K and L are true, correct, and complete copies of the Senior Note, the Senior Deed of Trust, and the Senior Assignment; the debt evidenced by the Senior Note is the only debt secured by the Senior Deed or Senior Assignment; and there is currently no default under the Senior 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 Syndication Agreement and no event has occurred, which with the giving of notice or the passage of time, would be such a default.~~
- ~~10.9.~~ 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 Senior Loan Documents, but subject to the terms of this Agreement, Senior Lender agrees that THDA may record the THDA Deed of Trust, and any of the other THDA Loan Documents that need to be recorded.
- ~~11.10.~~ Notice and Cure Provisions.
- (a) Senior Lender/~~Syndicator~~ Cure Period. If a default occurs under the THDA Loan Documents, THDA shall notify the Senior 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 Senior Lender's receipt of such notice ~~or the Syndicator's receipt of such notice~~ (the "Senior 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 Senior Lender/~~Syndicator~~ Cure Period, Senior 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 the default is a non-monetary default that Senior Lender ~~or Syndicator~~ is incapable of curing (such as a bankruptcy, the insolvency of Borrower, or an assignment for the benefit of creditors by Borrower), Senior Lender ~~and Syndicator~~ shall have the right to pay the THDA Loan in full in accordance with the terms of the THDA Loan Documents and obtain the release of the Property and Collateral from any lien or security interest or title created under the THDA Loan Documents. If Senior Lender ~~and/or Syndicator~~ cures the default within the Senior 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 promptly notify Senior Lender ~~and/or Syndicator~~ of the cure. If ~~neither~~ Senior Lender ~~nor Syndicator does not~~ cures the default within the Senior Lender/~~Syndicator~~ Cure Period or if Borrower does not cure the default, as otherwise permitted, or if Senior Lender ~~and/or Syndicator~~ notifies THDA during the Senior Lender/~~Syndicator~~ Cure Period that it does not intend to cure the default and Borrower's right to cure, if any, has expired, THDA shall have no further obligation to allow Senior Lender ~~or syndicator~~ to cure the default and 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 Senior Lender ~~and/or Syndicator~~ (but subject to the rights of Senior Lender under the Senior Loan Documents ~~and/or Syndicator under the Syndicator Agreement~~).

(b) THDA Cure Period. If a default occurs under the Senior Loan Documents, Senior Lender shall notify THDA in writing within five (5) business days of Senior 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 following THDA's receipt of such notice from Senior Lender ~~or from Syndicator~~ (the "THDA Cure Period"), THDA shall have the right (but not the obligation) to cure the default under the Senior 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 Senior Loan in full in accordance with the terms of the Senior Loan Documents and obtain the release of the Property and Collateral from any lien or security interest or title created under the Senior Loan Documents. During the THDA Cure Period, Senior Lender shall not accelerate the debt evidenced by the Senior Note, begin foreclosure proceedings, or exercise any other remedies it may have under the Senior 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 Senior Loan Documents, ~~or Syndication Agreement, respectively,~~ the Senior Loan ~~and/or Syndication Agreement~~ shall be deemed reinstated. If Borrower cures the default, Senior 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 Senior 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, Senior Lender shall have no further obligation to allow THDA to cure the default and Senior Lender ~~and/or Syndicator~~ may then exercise any rights and remedies under the Senior 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 the THDA Loan Documents).

(c) If Borrower's default is not cured, and Senior Lender has not published the first notice of foreclosure as specified in the Senior Deed of Trust within one hundred twenty (120) days of THDA's receipt of notice of default under the Senior Loan, THDA may pursue whatever remedies it may then have against Borrower.

~~12.11.~~ 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 Senior Lender ~~and/or Syndicator~~ elects to exercise any rights ~~it 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 unreasonably withheld.

~~13.12.~~ 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 Senior Lender's rights under the Senior Loan Documents. Senior 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 Senior Lender makes insurance proceeds or a condemnation award to which it is entitled under the Senior 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 Senior Lender applies such proceeds or award towards payment of the Senior Loan, its rights and interests in any such amounts shall terminate upon the Senior Loan being paid in full and any excess shall be promptly delivered to THDA and will be applied in accordance with the THDA Loan Agreement.

~~14.13.~~ 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 Senior Lender's claims pursuant to the Senior Loan Documents, but only to the extent of the Senior Lender's interest.
- (b) After the Senior 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.

~~15.14.~~ Escrows and Reserves. If Senior 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 Senior Lender is reasonably acceptable to THDA and is being funded in an amount approved by THDA. Senior Lender and Borrower acknowledge and agree that, except as provided in this Section 15, 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, however, Borrower ~~shall~~ may obtain the consent of THDA to any such disbursement before requesting disbursements from the Senior Lender. So long as there is no default under the Loan Documents, Senior Lender may disburse funds for real estate taxes and insurance premiums for the Property as and when the same become due without THDA's consent. If Senior 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 Senior Loan is paid in full before the THDA Loan is paid in full and if the Senior 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. [ADD THIS SENTENCE IF HUD INSURANCE IS INVOLVED: Upon default under the Senior Loan documents and to the extent permitted by the Senior Loan Documents, the Senior Lender may apply the balances of the escrow and reserve accounts to reduce the balance of the Senior Loan.]

~~16.15.~~ 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 Senior 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: \_\_\_\_\_

17.16. 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 Senior 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 2(e) and 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. 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 Senior Lender in making its decision. Apart from specific information or notices that must be given to THDA or Senior Lender under this Agreement, the Syndicator is not required to notify THDA or Senior 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.~~

18.17. 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.

19.18. 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.

20.19. Priority Retained. This Agreement is expressly limited in application to Senior Lender and THDA and the Senior 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.

21.20. 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).

22.21. 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 later of the payment in full of either the THDA Loan or the Senior Loan; (b) Senior 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 Senior Lender or THDA is not in violation of this Agreement.

23.22. 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.

24.23. 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. Except for enforcing the agreed upon priority set forth in ~~s~~Section 2, neither Lender shall contest the validity, perfection, priority or enforceability of any lien, security interest, or security title granted to the other.
- (h) This Agreement may be executed in various counterparts, each of which shall be an original, but all of which shall constitute one instrument.

[Signature pages follow s for Senior Lender, Borrower and THDA]

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

**SENIOR LENDER:** \_\_\_\_\_

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

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

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

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

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

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

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

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

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

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

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

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

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

**THDA:** Tennessee Housing Development Agency

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

Name: Ed Yandell  
Title: Director of Multifamily Development