

MULTIFAMILY RESTORATION LOAN FUNDING PROGRAM
INTERCREDITOR AND SUBORDINATION AGREEMENT

THIS INTERCREDITOR AND SUBORDINATION AGREEMENT (this “**Agreement**”) is entered into as of _____, 2017, by and among **LOUISIANA HOUSING CORPORATION** (the “**Junior Lender**”), _____, a _____ (the “**Senior Lender**”), and _____, a _____ (“**Borrower**”).

RECITALS:

A. Borrower is the owner of a _____ known as _____ (the “**Project**”) in _____ Parish, Louisiana on the property (the “**Property**”) which is more fully described on **Exhibit “A”** attached hereto and incorporated herein by reference.

B. The Junior Lender has made a subordinate loan (the “**Junior Loan**”) for the Project in the amount of \$_____ consisting of Multifamily Restoration Loan Funding Program Funds (“**MRLF Funds**” or “**Junior Loan Funds**”) evidenced by a Multifamily Restoration Loan Funding Program Promissory Note (“**MRLF Note**”) secured by the Property and the Project through the Multifamily Restoration Loan Funding Program Mortgage, Pledge of Leases and Rents and Security Agreement (the “**MRLF Mortgage**”) (such funding is referred to herein as the “**Junior Loan Funds**”).

C. The Senior Lender has made a loan of \$_____ (the “**Senior Loan**”), to provide construction financing for the Project. The Senior Loan is evidenced by a Promissory Note in the amount of \$_____, and is fully described in and secured by, among other things, a Multiple Indebtedness Mortgage of even date with such note (the “**Senior Mortgage**”), and covering the Property and the Project.

D. The documents evidencing and securing the Senior Loan shall be referred to as the “**Senior Loan Documents**”.)

E. The Senior Loan has a term of _____ years amortized over _____ years with interest at the rate of _____.

F. The Junior Lender, Borrower, and the Senior Lender wish to enter into this Agreement to fully set forth their agreement regarding the relationship of the Junior Loan Funds to the Senior Loan and other matters of mutual interest to the Junior Lender and the Senior Lender with respect to the Project.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Junior Lender and the Senior Lender hereby agree as follows:

1. **Definitions.** In addition to the defined terms set forth elsewhere herein, the following term shall have the meaning set forth below:

(a) **Junior Loan Documents**” means all notes, mortgages, agreements, instruments, and documents, pertaining to, evidencing, or securing the Junior Loan Funds.

(b) “**Senior Loan Documents**” means all notes, mortgages, agreements, instruments, and documents, pertaining to, evidencing, or securing the Senior Loan Funds.

2. **Acknowledgments, Representations, and Consents.** The Junior Lender represents to the Senior Lender that (i) the Junior Loan Documents are in full force and effect (and will remain in full force and effect throughout the term of this Agreement), (ii) all conditions to the Junior Lender’s obligations set forth in the Junior Loan Documents have been satisfied by Junior Lender or waived by Junior Lender, (iii) all Multifamily Restoration Loan Funding Program (the “**MRLF Program**”) requirements have been satisfied and fulfilled, and (iv) the Junior Loan Documents constitute a commitment by the Junior Lender to make the Junior Loan Funds available to Borrower for the Project as hereafter provided subject to the terms and conditions of the Junior Loan Documents.
3. **Subordination by Junior Lender.** The Junior Lender and Borrower agree that to the extent any voluntary or involuntary liens, claims, and security interests, whether by agreement, at law, or in equity, of the Junior Lender and/or Borrower (or any other entity claiming by, through, or under the Junior Lender) now or hereafter secure the payment and/or performance of Borrower’s obligations under and with respect to the Junior Loan Funds and the Junior Loan Documents or otherwise with respect to the Project (including, without limitation, the liens granted in the mortgage executed by Borrower to the Junior Lender), said liens, claims, and security interests are and shall forever remain junior, subordinate, and inferior, to the first priority liens and security interests of the Senior Lender securing payment of the Senior Loan and, by its execution hereof, the Junior Lender hereby evidence said subordination.

4. **Notice of Defaults.**

(a) If a default or an event of default (or an event which with the passage of time or the giving of notice or both would be an event of default) occurs under the Junior Loan Documents (“**Junior Loan Default**”), then the Junior Lender will provide Senior Lender with a copy of any written notice thereof contemporaneously with the delivery of such notice to Borrower and shall permit the Senior Lender the right, but not the obligation, to cure the default within any applicable grace or cure period provided for in the Junior Loan Documents.

(b) Senior Lender shall provide the Junior Lender with a copy of each notice (“**Senior Loan Default Notice**”) of any default or event of default (“**Senior Loan Default**”) under and with respect to the Senior Loan or Senior Loan Documents provided to Borrower simultaneously with the giving of that notice to Borrower and shall permit the Junior Lender the right, but not the obligation, to cure the default within any applicable grace or cure period provided for in the Senior Loan Documents.

(c) Notwithstanding anything to the contrary herein, and so long as there is no default or event of default under the Senior Loan or Senior Loan Documents then continuing, Borrower may make payments on the Junior Loan as set forth in the Junior Loan Documents.

(d) In the event of any receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization or arrangement with creditors, whether or not pursuant to bankruptcy laws, sale of all or substantially all of the assets, dissolutions, liquidations or any other marshaling of the assets and liabilities of Borrower, the Junior Lender and the Senior Lender agree that the Senior Loan will be paid prior to the Junior Loan. The Junior Lender agree to file any claim, or other instrument of similar character necessary to enforce the obligations of Borrower under the Junior Loan Documents, and will hold in trust for Senior Lender and

immediately pay over to Senior Lender, in the form received (except for the Junior Lender's endorsement or assignment which the Junior Lender agrees to provide upon Senior Lender's request) to be applied on the Senior Loan, any and all moneys, dividends, or other assets received in any such proceeding on account of the Junior Loans, unless and until the Senior Loan shall be paid in full.

5. **Casualty or Condemnation.** In the event of any taking, condemnation or other exercise of eminent domain of all or a portion of the Property or a fire or other casualty resulting in damage to all or a portion of the Property, the Junior Lender and the Senior Lender agree that the Senior Loan will be paid prior to the Junior Loans. Furthermore, the rights of the Junior Lender shall be and remain subordinate in all respects to the Senior Lender's rights under the Senior Mortgage with respect thereto, and the Junior Lender shall be bound by any settlement or adjustment of a claim made by the Senior Lender. It being understood by all parties hereto that the Senior Lender at all times has first priority of the proceeds of such settlement or adjustment for the payment of any outstanding indebtedness under the Senior Loan.
6. **Subordination of Subrogation Rights.** The Junior Lender agree that if, by reason of its payment of real estate taxes or other monetary obligations of the Borrower, or if by reason of its exercise of any other right or remedy under the Junior Loan, it acquires by right of subrogation or otherwise a lien on the Property which (but for this subsection) would be senior to the lien of the Senior Mortgage, then, in that event, such lien shall be subject and subordinate to the lien of the Senior Mortgage.
7. **Payments After Senior Loan Default.** The Borrower agrees that, after it receives notice (or otherwise acquires knowledge) of a Senior Loan Default, it will not make any payments under or pursuant to the Junior Loans (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the subordinated mortgage, as applicable) without the Senior Lender's prior written consent. The Junior Lender agree that, after it receives a Senior Loan Default Notice from the Senior Lender with written instructions directing the Junior Lender not to accept payments from the Borrower on account of the Junior Loans, they will not accept any payments under or pursuant to the Junior Loans (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinated Mortgages) without the Senior Lender's prior written consent. The Junior Lender shall receive written notice from the Senior Lender of any Senior Loan Default that gives rise to the Junior Lender's obligation not to accept payments, and Senior Lender shall make commercially reasonable efforts to notify Junior Lender in writing whether such default has been cured, waived, or otherwise suspended by the Senior Lender. In the event of such cure, waiver or suspension, the restrictions on payment to the Junior Lender, in this Section 7 shall terminate, and the Senior Lender shall have no right to any subsequent payments made to the Junior Lender by the Borrower prior to the Junior Lender's receipt of a new Senior Loan Default Notice from the Senior Lender in accordance with the provisions of this Section 7.
8. **Remitting Junior Loan Payments to Senior Lender.** If, after the Junior Lender receive a Senior Loan Default Notice from the Senior Lender in accordance with Section 7 above, the Junior Lender receive any payments under the Junior Loan Documents, the Junior Lender agree that such payment or other distribution will be received and held in trust for the Senior Lender and unless the Senior Lender otherwise notifies the Junior Lender in writing, will be promptly remitted, in kind to the Senior Lender, properly endorsed to the Senior Lender, to be applied to the principal of, interest on and other amounts due under the Senior Loan Documents in accordance with the provisions of the Senior Loan Documents. By executing this Agreement, the

Borrower specifically authorizes the Junior Lender to endorse and remit any such payments to the Senior Lender, and specifically waives any and all rights to have such payments returned to the Borrower or credited against the Junior Loans. Borrower and Senior Lender acknowledge and agree that payments received by the Junior Lender, and remitted to the Senior Lender under this Section 8, shall not be applied or otherwise credited against the Junior Loans, nor shall the tender of such payment to the Senior Lender waive any Junior Loan Default which may arise from the inability of the Junior Lender to retain such payment or apply such payment to the Junior Loans.

9. **Agreement Not to Commence Bankruptcy Proceeding.** The Junior Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing, any bankruptcy reorganization, arrangement, insolvency or liquidation proceedings with respect to the Borrower, without the Senior Lender's prior written consent.

10. **Modification or Refinancing of Senior Loan.**

(a) Subject to and upon fulfillment by the Borrower of all of the conditions and requirements for funding as set forth in the Senior Loan Documents, the Senior Mortgage will continue to represent a first priority mortgage and security interest in the Property and the revenues therefrom.

(b) The Junior Lender consents to any agreement or arrangement in which the Senior Lender waives, postpones, extends, reduces or modifies any provisions of the Senior Loan Documents, including any provision requiring the payment of money, in connection with a refinancing of or replacement financing for the Senior Loan, including, without limitation, the conversion of the Senior Loan to permanent financing. Each Subordinated Lender further agrees that: (a) its agreement to subordinate hereunder shall extend to any new mortgage debt for the purpose of refinancing all or any part of the Senior Loan (including reasonable and necessary costs associated with the closing and/or the refinancing) at an interest rate lower than the interest rate on the Senior Loan immediately prior to the refinancing; (b) all the terms and covenants of this Agreement shall inure to the benefit of any holder of any such refinanced debt; (c) such holder shall assume the obligations of the Senior Lender hereunder; and (d) all references to the Senior Loan, the Senior Loan Note, the Senior Loan Mortgage, the Senior Loan Documents and Senior Lender shall mean, respectively, the refinance loan, the refinance note, the mortgage securing the refinance note, all documents evidencing securing or otherwise pertaining to the refinance note and the holder of the refinance note. Notwithstanding the preceding to the contrary, Senior Lender agrees that: (x) the refinancing or replacement of all or any part of the Senior Loan shall not result in scheduled payments on the Senior Loan exceeding the scheduled payments immediately prior to such refinancing and shall not require the Junior Lender to modify the terms of its Junior Loan Documents or otherwise extend the term of its Junior Loan, or have a material or adverse effect on any other Junior Loan; and (y) the aggregate principal amount of the Senior Loan may not increase beyond the amount necessary to cover reasonable and necessary costs associated with the closing and/or refinancing.

11. **Junior Lender's Exercise of Remedies after Notice to Senior Lender.** If a Junior Loan Default occurs and is continuing, the Junior Lender agree that, without the Senior Lender's prior written consent, they will not commence foreclosure proceedings with respect to the Property under the Junior Loan Documents or exercise any other rights or remedies it may have under the Junior Loan Documents, including, but not limited to accelerating the Junior Loan, collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder unless and until it has received the prior written consent of the Senior Lender; provided, however, the Junior Lender shall be entitled to exercise and enforce all other rights and

remedies available to the Junior Lender under the Junior Loan Documents (other than commencing foreclosure proceedings or accelerating the Junior Loan) and/or under applicable laws, including without limitation, rights to enforce covenants and agreements of the Borrower relating to income, rent, or affordability restrictions.

12. **Subordination of Senior Loan to the Louisiana Restore Louisiana Neighborhood Landlord Rental Program Regulatory Agreement (the “Junior Loan Regulatory Agreement”).** Senior Lender acknowledges that Borrower and Junior Lender intend to enter into, or concurrently with the execution and delivery of the Junior Loan Documents are entering into, a Junior Loan Regulatory Agreement. Senior Lender agrees to subordinate the Senior Loan and Senior Lender’s rights under the Senior Loan Documents executed in conjunction therewith to the relevant provisions of said Junior Loan Regulatory Agreement.
13. **Notices.** Any notice by one party to the other hereunder shall be in writing and shall be delivered in person or by United States Mail, postage prepaid, certified, return receipt requested. Notice shall be deemed delivered on the date delivered, or if mailed, three days after deposit in the U.S. Mail.

Notice shall be delivered to the following addresses:

To the Junior Lender: Louisiana Housing Corporation
2415 Quail Drive
Baton Rouge, Louisiana 70808
Attention: Executive Director or General Counsel

With a copy to: Foley & Judell, L.L.P.
365 Canal Street, Suite 2600
New Orleans, Louisiana 70130
Attention: Wayne J. Neveu

To the
Senior Lender:

With a copy to:

To the Borrower:
With a copy to:

The parties may change their addresses for purposes of notice by giving the other party ten (10) days’ written notice of the address change in the manner hereinabove stated.

14. Miscellaneous.

(a) This Agreement constitutes the entire agreement of the three parties hereto with respect to the subject matter hereof, and all other prior and contemporaneous written or oral agreements. Any amendment hereto must be in writing executed by the Junior Lender, the Borrower, and the Senior Lender. Separate agreements exist between the Junior Lender and the Borrower that are not in conflict.

(b) Time is of the essence in the performance of the parties' obligations hereunder.

(c) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF LOUISIANA AND APPLICABLE UNITED STATES FEDERAL LAW. THE EXCLUSIVE VENUE FOR THIS AGREEMENT SHALL BE _____, _____ PARISH, AND LOUISIANA. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT, THE UNDERSIGNED HEREBY AGREE THAT THE STATE AND FEDERAL COURTS LOCATED IN MOREHOUSE PARISH, LOUISIANA OR THE WESTERN DISTRICT OF LOUISIANA, MONROE DIVISION SHALL HAVE EXCLUSIVE JURISDICTION AND VENUE WITH RESPECT TO ALL ACTIONS BROUGHT BY OR AGAINST ANY PARTY UNDER OR PURSUANT TO THIS AGREEMENT AND/OR ANY OF THE OTHER LOAN DOCUMENTS, AND THE UNDERSIGNED HEREBY CONSENT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS.

(d) This Agreement shall be enforceable by and binding upon all successors and assigns of Senior Lender, Borrower and/or Junior Lender.

(e) This Agreement shall remain in full force and effect until the Senior Loan has been fully and finally paid and Borrower has no further obligations under the Senior Loan Documents.

(f) This Agreement may be executed in two or more counterparts, and it shall not be necessary that any one counterpart be executed by all of the parties hereto. Each fully or partially executed counterpart shall be deemed an original, but all such counterparts taken together shall constitute but one and the same instrument.

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IN WITNESS WHEREOF, the undersigned have affixed their signatures hereto on the respective dates set forth in the acknowledgment below to be effective as of the date first above written.

WITNESSES: [_____]

By: _____

Print Name: _____

By: _____

Name: _____

Title: _____

By: _____

Print Name: _____

NOTARY PUBLIC

Print Name: _____

Bar Roll/Notary No.: _____

My Commission Expires: _____

[BORROWER SIGNATURE PAGE TO INTERCREDITOR AND SUBORDINATION AGREEMENT]

IN WITNESS WHEREOF, the undersigned have affixed their signatures hereto on the respective dates set forth in the acknowledgment below to be effective as of the date first above written.

WITNESSES: [_____]

By: _____

Print Name: _____

By: _____

Name: _____

Title: _____

By: _____

Print Name: _____

NOTARY PUBLIC

Print Name: _____

Bar Roll/Notary No.: _____

My Commission Expires: _____

[SENIOR LENDER SIGNATURE PAGE TO INTERCREDITOR AND SUBORDINATION AGREEMENT]

IN WITNESS WHEREOF, the undersigned have affixed their signatures hereto on the respective dates set forth in the acknowledgment below to be effective as of the date first above written.

WITNESSES:

LOUISIANA HOUSING CORPORATION

By: _____

Print Name: _____

By: _____

Name: Edselle Keith Cunningham, Jr.

Title: Executive Director

By: _____

Print Name: _____

NOTARY PUBLIC

Print Name: _____

Bar Roll/Notary No.: _____

My Commission Expires: _____

[JUNIOR LENDER SIGNATURE PAGE TO INTERCREDITOR AND SUBORDINATION AGREEMENT]

EXHIBIT A