

INTERCREDITOR AGREEMENT

This Intercreditor Agreement (this “**Agreement**”) is made and entered into as of _____, 2007 by and between the State of Louisiana, Division of Administration, Office of Community Development (“**OCD**”); and _____, a _____ (“**Construction Lender**”); and _____, a _____ (“**Borrower**”).

RECITALS

A. WHEREAS, OCD is providing funds from the United States of America, HUD Community Development Block Grant (“**CDBG**”) Program to qualified borrowers in accordance with the CDBG Piggyback Program (the “**Program**”) under the Louisiana Recovery Authority (“**LRA**”) Action Plan known as “*The Road Home*”, to provide needed residential rental property assistance for qualified projects to remedy the loss of such residential rental property due to the damage caused by Hurricane Katrina and/or Hurricane Rita; and

B. WHEREAS, Louisiana Housing Finance Authority (“**LHFA**”) adopted that certain Qualified Allocation Plan on September 16, 2006, (the “**QAP**”), and OCD and LRA adopted that certain CDBG Piggyback Program description on September 28, 2006 (the “**Piggyback Program Description**”), allowing CDBG funds to be used for Gap Financing Loans and project based rental assistance (“**PBRA**”), as described in the QAP and the Piggyback Program Description; and

C. WHEREAS, Borrower submitted an application to LHFA and has been awarded a Gap Financing Loan by OCD for the development, rehabilitation, replacement, restoration, construction and/or operation of a multifamily residential rental project (the “**Project**”) located on certain immovable property more fully described on Exhibit A - Property Description attached hereto (the “**Land**”), pursuant to a CDBG Loan Agreement dated _____, 200__, between OCD and Borrower (the “**CDBG Loan Agreement**”) and secured by a certain Mortgage, Assignment of Leases and Rents and Security Agreement (the “**CDBG Mortgage**”) securing the collateral described therein (the “**Mortgaged Property**”); and

D. WHEREAS, Construction Lender has agreed to provide construction financing for the Project, in the principal amount of \$_____ (the “**Construction Loan**”), as evidenced by the Loan Agreement dated _____, 200__, between Construction Lender and Borrower (the “**Construction Loan Agreement**”) and secured by a certain Mortgage, Assignment of Leases and Rents and Security Agreement (the “**Construction Loan Mortgage**”) securing the Mortgaged Property; and

E. WHEREAS, at the request of Borrower, OCD has agreed to fund the Gap Financing Loan on a *pari passu* basis with all other sources of funding for the Project, including without limitation the Construction Loan, under the terms and conditions set forth herein:

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the sufficiency and receipt whereof being hereby acknowledged, OCD and Construction Lender and Borrower agree as follows:

Section 1. **Pari Passu Disbursement of Proceeds during Construction.** OCD agrees to fund the Gap Financing Loan proceeds to the Borrower, or to Construction Lender for disbursement to Borrower in connection with the Construction Lender's funding of Borrower's Draw Request (as hereafter defined), at OCD's discretion, during the construction of the Project, on a *pari passu* basis with all other sources of funds for the Project, including without limitation the Construction Loan, under the following terms and conditions:

1.01 Disbursement of Gap Financing Loan proceeds is limited to not more than one (1) draw per month, based on the monthly draw requested by Borrower under its Construction Loan (a "**Draw Request**").

1.02 The amount of Gap Financing Loan proceeds disbursed shall be calculated as follows: the amount of the Draw Request times a fraction, the numerator of which is the principal amount of the Gap Financing Loan, and the denominator of which is the sum of (a) the principal amounts of the Construction Loan, the Gap Financing Loan, and any other amounts loaned to Borrower to finance construction of the Project; plus (b) the required equity contribution of the Borrower as set forth in the Construction Loan Documents (as hereinafter defined), less any retainage withheld by OCD as set forth below. OCD shall have the right to withhold retainage from each Draw Request, in an amount equal to 10% of each Draw Request, in OCD's sole and uncontrolled discretion. The retainage withheld by OCD shall be disbursed to Borrower in the Final Disbursement of Gap Financing Loan Proceeds upon satisfaction of the conditions for such disbursement set forth below. In the event of a default by Borrower under the GDBG Loan Documents, OCD may apply the retainage to payment of the Gap Financing Loan, or pay Borrower's contractors directly in order to complete the Project, in OCD's sole discretion.

1.03 Prior to OCD funding each draw of Gap Financing Loan proceeds, the following conditions must be met to the satisfaction of OCD:

(a) **Construction Loan Funding.** All conditions precedent to the funding of the Construction Loan shall have been satisfied to the Construction Lender's satisfaction and there shall be no (i) defaults; or (ii) events with which the passage of time, notice or both, could result in a default under the promissory note(s), Construction Loan Mortgage, Construction Loan Agreement or any other document or instrument evidencing or securing the Construction Loan, as more fully described in **Exhibit B-Construction Loan Documents** attached hereto and made a part hereof ("**Construction Loan Documents**").

(b) **Draw Request.** OCD shall have received from Borrower a copy of the Draw Request for such disbursement, with all accompanying invoices, schedules and supporting materials, approved by the Construction Lender in writing, including without limitation interim lien waivers matching the amount of the Draw Request, which approval shall serve as notice from the Construction Lender to OCD that the conditions set forth in subsection (a) above have been satisfied. The Construction Lender's share of funds to be disbursed to Borrower pursuant to the Draw Request must be funded at the same time OCD's share of funds to be disbursed pursuant to the Draw Request is funded, and OCD will be provided with evidence of funding by the Construction Lender by Borrower or Construction Lender. OCD reserves the right to confirm with Construction Lender that all of the conditions set forth in subsection (a) have been satisfied prior to funding a draw of Gap Financing Loan proceeds.

(c) **Undisbursed Funds.** The sum of the undisbursed Construction Loan proceeds and the undisbursed Gap Financing Loan proceeds, and the unfunded equity contributions by the Borrower's equity owners or investors, must be sufficient to complete the construction of the Project.

(d) Construction Reports. OCD shall have received from Borrower a current and updated copy of the construction budget and line item breakdown of construction cost, including hard and soft costs, approved by the Construction Lender, along with a sources and uses of funds in the amount of the total development cost for the Project. OCD shall have received all inspection reports from the construction inspector for the Project (in form and substance acceptable to OCD), on the progress of construction prior to the date of such Draw Request; provided, further, that the Construction Lender shall have no liability to OCD for the contents of the inspection reports, or the truth or accuracy of the inspection reports, or for any errors or omissions made by the construction inspector or Construction Lender with respect to the inspection reports, nor for any defects in the construction of the Project.

(e) Builder's Risk and Hazard Insurance. OCD shall have received from Borrower certificates of insurance evidencing compliance with the insurance requirements set forth in the CDBG Loan Agreement.

(f) Public Requirements. OCD shall have received from Borrower:

(i) a copy of the building permit(s) (or written confirmation from the relevant government authorities that the building permits are ready to be issued subject only to payment of fees) authorizing construction of the Project together with a certificate from the public official issuing the building permit(s) that the Project conforms with applicable zoning laws and specified variances, if any, to the extent such a certificate is reasonably obtainable after diligent efforts; and

(ii) all other authorizations, permits or approvals, if any, required by any governmental authorities for the construction of the Project, and which are presently procurable at or before the commencement of construction of the Project.

(g) No Default. The warranties and representations contained in the CDBG Loan Agreement are correct and true, in all material respects, all the covenants, terms and conditions of the CDBG Loan Agreement remain satisfied, and no uncured Event of Default or default, or circumstances or events which upon the lapse of time, the giving of notice, or both, could become an Event of Default, have occurred as of the date of the Draw Request under the promissory note(s), CDBG Loan Agreement, the CDBG Mortgage, or any other documents or instruments evidencing or securing the Gap Financing Loan as more fully described in Exhibit C-CDBG Loan Documents attached hereto and made a part hereof (“CDBG Loan Documents”).

(h) CDBG Loan Documents. OCD shall have received from Borrower executed originals of all of the CDBG Loan Documents, in the form provided for in the CDBG Loan Agreement, or in form and substance otherwise acceptable to OCD, and such other documents and information as OCD may reasonably require.

(i) Certification. Borrower shall certify in writing to OCD, that: (1) taking into account any retainage, there will be sufficient funds to complete the Project following funding of the Draw Request; (2) the funds requested pursuant to the Draw Request will only be expended as set forth in the Draw Request; and (3) that the representations, warranties, covenants, terms and conditions set forth in the CDBG Loan Documents are true and correct and satisfied, and that Borrower is not in default thereunder. Construction Lender shall provide OCD with a certification that Borrower is not in default under the Construction Loan Documents as of the date OCD funds the Draw Request, and that the Draw Request approved by Construction Lender is in compliance with the terms and conditions of the Construction Loan Documents, and evidence of funding of the Draw Request by Construction Lender on

the day OCD funds its share of the Draw Request. Borrower shall provide OCD with evidence that all equity contributions required to have been made by Borrower's equity owners or investors in connection with the Draw Request have been funded.

(j) Title Insurance. OCD shall have received from Borrower an endorsement to the title insurance policy using standard construction loan disbursement endorsements updating the status of title to the date of the current Draw Request and increasing the insurance coverage to an amount equal to the sum of all prior Draw Requests and the current Draw Request, without additional exceptions or objections, except those specifically approved in writing by OCD (subject to a maximum coverage amount equal to the principal amount of the Gap Financing Loan).

(k) Piggyback Program Compliance. Satisfaction and compliance with all of the terms, covenants and conditions contained in the Award Agreement, the Application, the QAP, and the Piggyback Program Description, as evidenced by a certificate of Borrower included with each Draw Request, as well as compliance with all requirements set forth in the CDBG Loan Documents.

(l) CDBG Compliance. Compliance with all laws, rules, regulations, ordinances and codes applicable to the Project, including without limitation, CDBG regulations, to the extent not waived in writing, as evidenced by a certificate of Borrower included with each Draw Request.

(m) Completion Date. Borrower shall have substantially completed the Project on or before _____, 200____.

1.04 Interim Disbursement of Gap Financing Proceeds. If all conditions precedent to OCD's obligations hereunder and to the Draw Request have been performed or satisfied to the reasonable satisfaction of OCD, OCD shall, within seven (7) business days of receipt of the Draw Request, fund its share of such Draw Request in accordance with the terms of this Agreement. Provided, however, notwithstanding anything to the contrary contained herein, OCD shall not be required to fund its share of the monthly Draw Request until Construction Lender has funded its share of the monthly Draw Request.

1.05 Final Disbursement of Gap Financing Loan Proceeds. Prior to final disbursement of Gap Financing Loan Proceeds, OCD shall have received from Borrower the following documents, satisfactory to OCD, in addition to satisfying all of the conditions and supplying all of the documents required under Section 1.03:

(a) A copy of the final inspection report delivered to the Construction Lender from its construction inspector;

(b) A certificate from Borrower stating the total cost to construct the Project;

(c) Certificates of occupancy for each building in the Project, or its equivalent from the applicable governmental authorities for the State or the Parish in which the Project is located;

(d) A certificate from the Borrower's architect or engineering firm that the Project has been completed in substantial compliance with the plans and specifications for the Project approved by Construction Lender, and with all applicable federal, state, parish and local laws, rules, regulations and codes, including without limitation the Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157); the Uniform Federal Accessibility Standards, as set forth in 24 CFR Section 570.614; the Americans with Disabilities Act of 1990; for existing properties build prior to 1978, the Lead-Based Paint Poisoning Protection Act (42 U.S.C. §4831(b)) and the Residential Lead based Paint Hazard Reduction Act of 1992

(42 U.S.C §§4851-4856) and implementing regulations at 24 CFR Part 35; and Section 504 of the Rehabilitation Act of 1973; and (iii) an acceptable environmental assessment of the Project that complies with the CDBG regulations and requirements;

(e) Evidence that the Project has been completed lien-free (which evidence shall include without limitation, final lien waivers from the general contractor and all major subcontractors, or expiration of the lien periods provided by applicable Louisiana law with no liens having been filed against the Project) in form and substance reasonably satisfactory to OCD and the Title Company;

(f) An endorsement to the title insurance policy updating the title insurance policy to the completion date, increasing the insurance coverage to the full amount of the Gap Financing Loan and containing no additional exceptions not previously approved by OCD;

(g) A complete set of signed and sealed "as built" Plans and Specifications; and

(h) OCD shall have approved the Cost Certification Audit, as set forth in the CDBG Loan Documents, from Borrower and shall have completed the final subsidy layering review of the Project costs, which may reduce the amount of the final disbursement.

1.06 Right to Withhold Funding. OCD may elect to withhold funding of any Draw Request, if it fails to receive any of the inspection reports on the Project, or if OCD reasonably determines at any time that the actual construction costs incurred to date or the progress of construction differs materially from that as shown on the construction budget or cost breakdown for the Project, or that the percentage of progress of construction of the Project differs materially from that as shown on the Draw Request for the period in question. Furthermore, if any instrument or document submitted by Borrower in connection with any Draw Request shall not, in the reasonable exercise of OCD's discretion, comply in all material respects with the conditions and requirements of this Agreement then OCD may amend, reduce or withhold funding of any request, as OCD, in its reasonable and timely discretion, shall deem proper under the circumstances. If OCD withholds funding because it is not satisfied with any of the information provided by Borrower pursuant to this Agreement (including without limitation the inspection reports), OCD shall notify Borrower of the deficiencies in such information, and Borrower shall have the opportunity to re-submit its Draw Request and include any additional information or clarification of any previously submitted information in order to receive OCD's approval of such information and funding of the Draw Request.

Section 2. Default

2.01 Default Under the Gap Financing Loan. OCD or its representatives shall give to Construction Lender prompt written notice of any default under the CDBG Loan Documents ("**Gap Financing Loan Default**") which has not been cured within any applicable notice and/or cure period; provided however, the failure to give such notice shall not constitute a waiver of such default or limit or otherwise affect Borrower's duties and obligations under the CDBG Loan Documents.

2.02 Default Under the Construction Loan. Construction Lender shall give to OCD or its representatives prompt written notice of any default under the Construction Loan Documents ("**Construction Loan Default**") which has not been cured within any applicable notice and/or cure period; provided however, the failure to give such notice shall not constitute a waiver of such default or limit or otherwise affect Borrower's duties and obligations under the Construction Loan Documents.

Section 3. Taking or Casualty. In the event of a taking or threatened taking by condemnation, expropriation or other exercise of the power of eminent domain of all or any portion of the Mortgaged

Property (collectively, a “**Taking**”) or in the event of an occurrence of a fire or other casualty resulting in damage to all or any portion of the Mortgaged Property (collectively, a “**Casualty**”), at any time or times when any Gap Financing Loan or Construction Loan remain outstanding, the following provisions shall apply:

(a) OCD and Construction Lender agree to participate equally in any proceeding or action relating to a Taking or a Casualty, or to participate or join in any settlement of any claims resulting from a Taking or a Casualty;

(b) All proceeds received or to be received by OCD or Construction Lender on account of a Taking or a Casualty shall be shared on a *pari passu* basis (based on the principal amount of the Gap Financing Loan and the Construction Loan only) until the Construction Loan and the Gap Financing Loan are paid in full;

(c) OCD and Construction Lender agree to execute and deliver, at the Borrower’s sole cost and expense, any documents, instruments, agreements or further assurances required to effectuate the foregoing agreements.

Section 4. Agreement by the Borrower. Borrower agrees that it will not make any payment of any of the Construction Loan proceeds or the Gap Financing Loan proceeds, except in accordance with the Construction Loan Documents or the CDBG Loan Documents, as applicable, or take any other action, in contravention of the provisions of this Agreement or that OCD and the Construction Lender would not be permitted to receive as a result of the application of the provisions of this Agreement.

Section 5. Miscellaneous.

5.01 Notices and Other Communications.

(a) Except as expressly otherwise provided herein, all notices, requests, demands, consents, instructions or other communications to or upon the parties to this Agreement shall be deemed to have been duly given or made only when delivered in writing or by telecopy to the party to which such notice, request, demand, consent, instruction or other communication is required or permitted to be given or made hereunder, at the addresses or telecopy numbers of the parties, and to the attention of the person, specified below, or to such other address, telecopy number or attention as any party may hereafter specify to the others in writing in accordance with this Section 5.01:

(i) If to OCD:

(ii) If to the Construction Lender:

(iii) If to Borrower:

(b) All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication.

Section 6. Representations and Warranties. Each party to this Agreement represents and warrants for the benefit of the other parties to this Agreement that this Agreement has been duly authorized, executed and delivered by it and constitutes its legal, valid, binding and enforceable obligation, enforceable against it in accordance with the terms of this Agreement, except to the extent

such enforceability may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

Section 7. **Further Assurances.** Each party to this Agreement covenants and agrees that it shall promptly execute and deliver from time to time all further instruments and documents, and take such further actions that may be necessary or desirable, or that any other party to this Agreement may reasonably request, in order to protect, exercise or enforce any right, remedy or interest granted or purported to be granted hereunder.

Section 8. **Binding Effect.** This Agreement and all of the terms of this Agreement shall be binding upon, and shall inure to the benefit of and be enforceable by, the parties to this Agreement and their respective successors and permitted assigns.

Section 9. **Amendments and Waivers.** This Agreement may only be amended or waived in whole or in part by a written document signed by OCD and Construction Lender.

Section 10. **Termination.** This Agreement and the rights and obligations created hereby shall continue to be effective until completion of the Project and disbursement of all Construction Loan proceeds and Gap Financing Loan proceeds, and shall terminate and be of no further force and effect automatically upon receipt by OCD of notice of the payment in full of the principal and interest and premium, if any, on the Gap Financing Loan that are then due and payable.

Section 11. **Third-Party Beneficiaries.** There shall be no third-party beneficiaries of the obligations of the parties hereunder.

Section 12. **Headings Descriptive.** The headings of the several Sections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

Section 13. **Counterparts.** This Agreement may be executed in any number of counterparts and by the different parties to this Agreement on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

Section 14. **Fees.** OCD shall have no liability for any costs, fees, or expenses to Borrower or Construction Lender under this Agreement.

Section 15. **Governing Law; Submission to Jurisdiction, etc.** THIS AGREEMENT AND ALL ISSUES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF LOUISIANA. TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO UNDER APPLICABLE LAW, EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY LOUISIANA STATE COURT SITTING IN THE PARISH OF EAST BATON ROUGE OR ANY FEDERAL COURT SITTING IN THE PARISH OF EAST BATON ROUGE IN RESPECT TO ANY SUIT, ACTION OR PROCEEDING, WHETHER IN TORT, CONTRACT OR OTHERWISE, ARISING OUT OF OR RELATING TO THIS AGREEMENT. EACH OF THE PARTIES TO THIS AGREEMENT IRREVOCABLY WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO UNDER APPLICABLE LAW, TRIAL BY JURY AND ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT AND ANY CLAIM THAT ANY SUCH

SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTHING HEREIN SHALL AFFECT THE RIGHT OF ANY LENDER OR ITS AGENTS TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY PARTY IN ANY COLLATERAL ACTION IN ANY OTHER JURISDICTION.

IN WITNESS WHEREOF, OCD has executed this Intercreditor Agreement on this ____ day of _____, _____, at _____, Louisiana, in the presence of the undersigned witnesses and Notary Public after due reading of the whole.

WITNESSES:

**State of Louisiana, Division of
Administration, Office of Community
Development**

Print Name:_____

By:_____

Print Name:_____

Its:_____

NOTARY PUBLIC

Print Name:_____

Bar Roll/Notary No.:_____

My Commission Expires:_____

IN WITNESS WHEREOF, Construction Lender has executed this Intercreditor Agreement on this ____ day of _____, _____, at _____, Louisiana, in the presence of the undersigned witnesses and Notary Public after due reading of the whole.

WITNESSES:

Print Name:_____

By:_____

Print Name:_____

Its:_____

NOTARY PUBLIC

Print Name:_____

Bar Roll/Notary No.:_____

My Commission Expires:_____

IN WITNESS WHEREOF, Borrower has executed this Intercreditor Agreement on this ____ day of _____, _____, at _____, Louisiana, in the presence of the undersigned witnesses and Notary Public after due reading of the whole.

WITNESSES:

Print Name:_____

By:_____

Print Name:_____

Its:_____

NOTARY PUBLIC

Print Name:_____

Bar Roll/Notary No.:_____

My Commission Expires:_____

Schedule of Exhibits:

Exhibit A: Property Description

Exhibit B: Construction Loan Documents

Exhibit C: CDBG Loan Documents

