

INTER-CREDITOR AGREEMENT
NORTH DAKOTA DIVISION OF COMMUNITY SERVICES
 SFN 54205 (11/04)

This Inter-creditor Agreement is made as of the _____ day of _____ 20____ among the _____ (“Bank”), the _____ (“City/County and/or Council”), and _____ (“Borrower”). (Include all other interested parties).

Preliminary Statement

_____ (“Bank”), and the _____ (“City/County, Council”), (each a “Party” and collectively, the “Parties”) have entered into separate investment/loan agreements with _____ (“Borrower”), _____ (“Borrower Address”) to provide a \$_____ funding package (the “Funding Transactions”) to establish and operate a facility in _____, (“City”) North Dakota. The Parties desire to set forth in writing the priorities and wishes of each Party in respect to the rights, duties, and responsibilities of the Parties and _____ (“Borrower”) to this transaction as well as the funding procedure.

Sources and Uses of Funds

Source	Amount	Use	Form
Total			

For valuable consideration, the Parties and _____ (“Borrower”) agree as follows:

1. The _____ (“City/County, Council”) shall provide (“loan/preferred stock”) in the amount of \$_____.
2. The _____ (“Bank”) shall provide a loan in the amount of \$_____.
3. None of the Parties shall make an additional loan or extend additional credit to _____ (“Borrower”) except in accordance with the existing agreements entered into as part of the Funding Transactions (the “Principal Agreements”) of each such Party without the written consent of the other Party.

4. If _____ (“Borrower”) should default under its agreement with either of the Parties, the Party shall promptly notify the other Parties of the nature and extent of the default.
5. If either of the Parties shall take or accept collateral for _____ (“Borrower”) obligation to it, other than that shown on the Principal Agreements referred to above, the Party receiving the collateral shall promptly notify the other Parties of receipt of such collateral.
6. None of the Parties shall accept any payment from _____ (“Borrower”) except such payment as is required by the existing Principal Agreements without the consent of the other Parties.
7. If any Party shall cancel, curtail, change or limit its Principal Agreement with _____ (“Borrower”), such Party will promptly notify the other Parties.
8. Each Party shall promptly provide to the other Party a copy of its Principal Agreement.
9. In the event of bankruptcy, receivership, or insolvency, the claims filed by any of the Parties to this Agreement shall have the priority expressed in the Preliminary Statement to this agreement.
10. In the event of default the Parties agree to make a reasonable attempt to work together on collection efforts to minimize potential loss to the Parties.

Funding Procedures and Conditions

As part of the financing package, each Party was provided three years of monthly income and expense assumptions for the proposed _____ (“City/County, Council”) facility to be operated by _____ (“Borrower”).

It is proposed that funding will take place based on needs outlined in the pro forma cash flows provided to the Parties and attached to this Agreement along with evidence that the jobs are in place as proposed. It is understood that projections are based on assumptions and that they may be different from the actual results and that the Parties will allow up to a 10% variance from the projected pre-tax net income.

Initial funding (first draw) of the project will take place upon close. Thereafter, funding will be based on _____ FTE jobs created upon the (second draw), _____ additional FTE jobs created (Total of _____ jobs) prior to (third draw), and maintaining a total of _____ jobs upon (final draw) after _____ months of operation.

It is understood that _____ (“Borrower”) will provide to the Parties internally prepared financial statements and employment reports monthly. Financial and employment reports must be received prior to the funding request for that period.

The funding schedule is attached.

ACKNOWLEDGEMENT OF CONSENT

The undersigned have reviewed and agree to the above conditions. The "Borrower" acknowledges receipt of a copy of the agreement entered into between "Bank" and "City/County, Council". We do consent to "Bank", releasing to "City/County, Council", all information concerning any future advances made to and all payments made by "Borrower". This consent shall expire upon the payment in full of the loan agreement between "City/County, Council" and "Borrower".

Dated at _____, this _____ day of _____, 20_____.

Borrower

Name of Borrower

The undersigned have reviewed and agree to the above conditions.

Bank

By: _____

Its: _____

City/County_____

By: _____

Its: _____

_____ (borrower)

By: _____

Its: _____