

WHEN RECORDED, RETURN TO:  
[LENDER NAME & ADDRESS]

### SUBORDINATION AGREEMENT

This Subordination Agreement (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_ by and between [LENDER NAME], a [STATE & ENTITY TYPE] having its principal office at [LENDER ADDRESS] (“Lender”), and the United States of America, acting through the Rural Housing Service, United States Department of Agriculture (“USDA”).

#### RECITALS:

WHEREAS, [BORROWER NAME], a [STATE & ENTITY TYPE], having its principal office at [ADDRESS] (“Borrower”), or a predecessor in interest, obtained or will obtain a loan(s) from the USDA to construct or improve a Rural Rental, Rural Cooperative, or Farm Labor Housing project pursuant to Title V of the Housing Act of 1949, as amended (the “Housing Act”), which is/are evidenced by a promissory note(s) and/or assumption agreements(s) and secured by the USDA Deed(s) of Trust or Mortgage(s) described below that is or shall be of record in the County of \_\_\_\_\_, State of \_\_\_\_\_, in favor of USDA, and that collectively constitute or shall constitute an encumbrance upon certain real property owned by Borrower that is more particularly described in the legal description in the USDA’s Deed(s) of Trust or Mortgage(s) (the “Property”);

<u>Date of</u> <u>Instrument</u>	<u>Principal</u> <u>Amount</u>	<u>Date of</u> <u>of Recordation</u>	<u>Book/Page</u>
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AND WHEREAS, as a condition of receiving federal financial assistance from the USDA, the Borrower, on behalf of itself and its successors in interest, agreed to place a use restriction on the Property in compliance with 42 U.S.C. § 1484 or § 1485, whichever is

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applicable, and 7 CFR part 3560, and any other applicable regulations and amendments, for the purpose of housing program eligible very low-, low-, or moderate-income tenants, that it is incorporated by reference into the USDA Real Estate Deed of Trust or Mortgage and/or a separate Restrictive Use Covenant that is or shall be filed of record against the Property (the “USDA RUC”); and

WHEREAS, Lender has agreed to make a loan to Borrower in the amount of \_\_\_\_\_ as evidenced by a promissory note dated \_\_\_\_\_ (“Lender’s Promissory Note”) and a Deed of Trust or Mortgage dated \_\_\_\_\_ (“Lender’s Deed of Trust or Mortgage”), both in favor of Lender; and

WHEREAS, Lender requires, as a term and condition of its loan to Borrower, that Lender’s Deed of Trust or Mortgage shall be senior to the USDA Deed(s) of Trust or Mortgage(s); and

WHEREAS, Borrower has requested that USDA subordinate the lien created by the USDA Deed(s) of Trust or Mortgage(s) so that Borrower can obtain a loan from Lender for [LOAN PURPOSE]; and

WHEREAS, USDA has agreed to subordinate the USDA Deed(s) of Trust or Mortgage(s) to Lender’s Deed of Trust or Mortgage under the terms and conditions specified herein; and

NOW, THEREFORE, in consideration of the above and for other valuable consideration, the receipt of which is hereby acknowledged, LENDER and USDA agree as follows:

1. USDA subordinates its lien on the Property created by the USDA Deed(s) of Trust or Mortgage(s) to the lien created by Lender’s Deed of Trust or Mortgage in the total amount of \_\_\_\_\_ (the “Subordination Amount”). The subordination effected by this agreement will not exceed the Subordination Amount, unless agreed to in writing by USDA.

2. Lender understands and agrees that the USDA RUC is not subordinated to the Lender’s Deed of Trust or Mortgage, that the USDA RUC will be, or will remain, recorded ahead of and superior to Lender’s Deed of Trust or Mortgage, and that the USDA RUC will run

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with the land and will remain in full force and effect notwithstanding a foreclosure or transfer of title.

3. [IF APPLICABLE] Lender agrees that the USDA Assignment of Rents is not subordinated to the Lender's Deed of Trust or Mortgage, that the USDA Assignment of Rents will be, or will remain, recorded ahead of and superior to Lender's Deed of Trust or Mortgage, and that the USDA Assignment of Rents will run with the land and will remain in full force and effect notwithstanding a foreclosure or transfer of title.

4. [IF APPLICABLE] Lender and USDA agree that the Extended Use Agreement between Borrower and issuer of State tax credits, which is required as a condition of participation in the Low-Income Housing Tax Credit program, shall be superior to the USDA RUC and both the Lender Deed of Trust or Mortgage and the USDA Deed(s) of Trust or Mortgage(s) in accordance with its terms regardless of the time at which the Extended Use Agreement is recorded.

5. Lender agrees that, in addition to Lender, USDA shall be listed as loss payee as its interest appears in all insurance policies maintained on the Property.

6. Lender and USDA each agree that they will provide each other written notice of the occurrence of default by Borrower under their respective loan instruments, which notice shall be sent no later than 15 days after Lender or USDA has made a determination that a default has occurred, whichever occurs first. Lender and USDA each agree not to foreclose on the Property or accept a deed in lieu of foreclosure without first providing no less than 60 days prior written notice to the other lender and an opportunity for that lender to cure any default. The foregoing limitation shall be solely for the benefit of Lender and USDA and shall not be construed to provide Borrower with any additional notice or grace period.

7. Unless otherwise directed by USDA, all notices to USDA will be sent to the following address:

State Director, Rural Development  
[USDA ADDRESS]

Unless otherwise directed by Lender, all notices to Lender will be sent to the following address:

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[LENDER'S ADDRESS]

With a courtesy copy to: [LENDER'S COUNSEL'S ADDRESS]

8. Lender acknowledges that Borrower is required during the full term of the USDA Loan to use the land, and all of the improvements located on the Property, for the purpose of [HOUSING TYPE], as provided in [SECTION 514/516] or [SECTION 515] of the Housing Act and its implementing federal regulations.

9. Lender acknowledges that prepayment of the USDA Loan and future transfers of the Property are subject to the restrictions of 42 U.S.C. §1472(c) and its implementing regulations. Any release of the Property from the multi-family housing program by USDA will be governed by applicable federal law and regulations at the time such release is requested.

10. Lender's Promissory Note, Deed of Trust, or Mortgage shall not be extended, renewed, modified, refinanced, assigned, sold, or transferred without prior written approval from USDA. Any participation of Lender's interests in its loan shall be made in accordance with any applicable USDA regulations.

11. Lender will not make any protective advances with respect to the Property without obtaining prior written approval from USDA. The written approval from USDA will constitute an additional subordination in the amount specified in such approval. Protective advances subject to this section include only: payment of taxes, payment of insurance premiums, and payments on liens prior to the Lender's lien.

12. Lender acknowledges and agrees that none of the accounts that Borrower has been required by USDA to maintain for the Property pursuant to the Housing Act, including, without limitation, general operating accounts, reserve accounts, real estate tax and insurance accounts, and tenant security deposit accounts (collectively the "Housing Act Accounts"), provide security for Lender's Promissory Note. Lender will take no action to create security interests or execute upon funds deposited in the Housing Act Accounts.

13. Lender will not take an assignment of, or as security or collateral, or execute upon or collect, any payments from USDA to Borrower made pursuant to the Housing Act for the

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benefit of the Property or its tenants, including, without limitation, protective advance payments, rental assistance payments, or interest credit subsidies.

14. Borrower's default under its obligations to Lender shall constitute a cross default under its obligations to USDA; Borrower's default under its obligations to USDA shall constitute a cross default under its obligations to Lender.

15. This Agreement shall be governed by the laws of the State in which the Property is located and by federal law, as applicable.

16. This Agreement shall be binding upon the successors and assigns of the respective parties.

17. This Agreement may only be modified, amended or terminated by mutual written consent of the parties.

18. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

**[LENDER]**

\_\_\_\_\_  
By:           [PRINTED NAME AND TITLE]          

Dated: \_\_\_\_\_

**UNITED STATES OF AMERICA,  
acting through the RURAL HOUSING SERVICE,  
UNITED STATES DEPARTMENT OF AGRICULTURE**

\_\_\_\_\_  
By:           [PRINTED NAME & TITLE]          

Dated: \_\_\_\_\_

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