

INTERCREDITOR AGREEMENT

THIS INTERCREDITOR AGREEMENT (this “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, will obtain a loan(s) from the USDA to construct or improve, [INSERT PROPERTY NAME] (“Project”) 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”) in the amount of \$ _____ pursuant to the terms of a Letter of Conditions dated _____, 20____, which is hereby incorporated by reference that is to be secured by a first Deed of Trust or Mortgage on the Project together with a first security interest in the Project and its revenue.

WHEREAS the Lender has agreed to also make a loan to the Borrower in the amount of \$ _____ pursuant to a certain commitment dated _____, 20____, which is hereby incorporated by reference;

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 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”);

WHEREAS the Borrower, USDA, and Lender desire to further define and determine their relationship with respect to their security interests in the Project and its revenue;

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 0575-0189. Public reporting for this collection of information is estimated to be approximately 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering, and maintaining the data needed, completing, and reviewing the collection of information. All responses to this collection of information are voluntary. However, in order to obtain or retain a benefit, the information in this form is required under Section 515 Rural Rental Housing, which includes Congregate Housing, Group Homes, and Rural Cooperative Housing. Rural Development has no plans to publish information collected under the provisions of this program. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Rural Development Innovation Center, Regulations Management Division at ICRMTRequests@usda.gov

WHEREAS, all acts necessary to make this Agreement a valid and binding legal instrument have been in all respects duly authorized;

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and obligations herein set forth and for other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, and in reliance upon the representations, warranties and covenants herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Lender and USDA each agree that the lien on the Mortgages or Deeds of Trust of the Bank and USDA shall be held in parity regardless of the order in which their respective mortgages may be recorded. Lender and USDA agree that if any interest they may have in the Property is liquidated, the net proceeds, except with respect to revenues, shall be divided pro rata based on the amounts loaned, but not including protective advances. For the purposes of this Agreement, the term "liquidation" means voluntary or involuntary sale, condemnation, forfeiture, casualty loss, or other disposition.
2. Lender understands and agrees that any interest in the revenues of the Project are subordinate to the USDA's interest.
3. 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 and superior to the Lender's Deed of Trust or Mortgage, and that the USDA RUC will run with the land and will remain in full force and effect notwithstanding a foreclosure or transfer of title.
4. 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.
5. The Lender agrees to give notice in writing to the USDA within 15 days of the occurrence of a default under the terms of its loan documents. Such notice shall specify the nature of the default and state what action, if any, the Lender intends to take. The USDA agrees to give the Lender notice in writing within 15 days of the occurrence of default under the terms of its loan documents. Such notice shall specify the nature of the default and state what action, if any, the USDA intends to take. Each party agrees to promptly send other a copy of any notice or demand that it sends to the Borrower.
6. Unless otherwise directed by USDA, all notices to USDA will be sent to the following address:

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State Director, Rural Development
[USDA ADDRESS]

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

[LENDER'S ADDRESS]

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

7. 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.

8. 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.

9. 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.

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

11. Lender acknowledges and agrees in the event that the Borrower shall not have sufficient funds available to pay the regularly scheduled installment due under the terms of the Promissory Note given to the Lender and the USDA (adjusted for interest credit and rental assistance), the Borrower will pay such funds as are available to the Lender

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and the USDA, pro rata, based on the amounts of the respective regularly scheduled installments.

12. Lender understands and agrees it will not advance funds without first securing the concurrence of a duly authorized officer of the USDA.

13. Lender and USDA agree that neither will foreclose nor accept a deed in lieu of foreclosure without consulting one another.

14. 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 the USDA. Any participation of Lender's interest in its loan shall be made in accordance with any applicable USDA regulations.

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.

19. This Agreement shall continue only so long as Lender and USDA hereto hold a security interest in any portion of the Project.

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

[LENDER]

By: _____ **[PRINTED NAME AND TITLE]** _____

Dated: _____

UNITED STATES OF AMERICA,

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