

## REPLACEMENT RESERVE INTERCREDITOR AGREEMENT

This Replacement Reserve Intercreditor Agreement is entered into this [ ] day of [ ], 20[ ] (the "Closing Date"), by and between [ ] (the "Lender"), the United States of America acting through the United States Department of Agriculture, Rural Housing Service, c/o Rural Development, with an address of [address] (the "Government"), and [ ] (the "Borrower") with an address at [ ].

### RECITALS

A. Borrower has [received or assumed from [ ]] a loan made by the Government in the original principal amount of \$[ ] for the purpose of financing rural rental housing eligible for occupancy as provided in Section 515 of Title V of the Housing Act of 1949 (the "515 Loan") which amount is secured by a mortgage on the Borrower's property. The Borrower, as part of the terms and conditions of its receipt of the 515 Loan, is required to maintain a reserve account satisfying the requirements of 7 CFR § 3560.306 (the "515 Reserve Account").

B. The Lender has agreed to make a loan to the Borrower under the Government's Guaranteed Rural Rental Housing Program ("Section 538 Program") in the amount of [ ] Dollars (\$[ ]) ("538 Loan"), which loan will be guaranteed by the Government in accordance with that certain Conditional Commitment from the Government to the Lender dated [ ]. The 538 Loan will be used to finance, in whole or in part, the rehabilitation of a [ ]-unit low-income multi-family housing project known as [ ] Apartments, the ancillary and appurtenant facilities located in City of [ ], County of [ ], State of [ ] ("Project").

C. The 538 Loan is to be secured by a mortgage on the Project. The Government and the Lender will separately enter into a Subordination Agreement pursuant to which the Lender's mortgage will take priority and first position, and the Government's mortgage will be subordinated and in second position. The Lender, pursuant to the requirements of 7 C.F.R. Part 3565 or successor regulation and other Government guidance concerning the Section 538 Program, has also required the Borrower to maintain a reserve account (the "538 Reserve Account").

D. To avoid the need to maintain multiple reserve accounts, the Government and Lender desire to coordinate their respective requirements regarding reserves which Borrower must maintain with respect to the Project. In particular, the Government and the Lender have agreed that the Lender may hold the 515 Reserve Account together with the 538 Reserve Account (together such accounts are the "Combined Reserve Account") in order to meet both the Lender and the Government's reserve requirements and the Lender agrees to comply with federal requirements applicable to the 515 Reserve Account, including the requirements set forth in 7 CFR Part 3560.

Therefore, in consideration of the above and the mutual promises contained in this Agreement, the receipt and sufficiency of which are acknowledged, Borrower, Government, and Lender agree as follows:

## **AGREEMENT**

### **1. Reserve Account**

Borrower will maintain, with Lender or its designee, a Combined Reserve Account with an initial level as required pursuant to the terms of the 515 Loan and the 538 Loan. Borrower will continue to maintain the Combined Reserve Account level as required by the Government in compliance with 7 CFR Part 3560 or successor regulation, including without limitation those requirements in 7 CFR §§ 3560.65, 3560.302 and 3560.306. The Combined Reserve Account's level will be the greater of (a) the amount outlined in 7 CFR §§ 3560.65, 3560.302 and 3560.306 or (b) the requirements of the 538 Loan. The amount to be maintained in the Combined Reserve Account must be able to meet the needs of the Project as determined by the most recent Government-approved Capital Needs Assessment ("CNA"). The Government may require a new CNA to be commissioned in the future. The Government may also approve a change in the Combined Reserve Account funding level based on the findings of a CNA in accordance with 7 CFR § 3560.306(j) or successor regulation. The approval to increase Combined Reserve Account funding levels will take into consideration the Project's approved budget and the ability to support increased Combined Reserve Account deposits without causing basic rents to exceed conventional rents for comparable units in the area. The Lender agrees to provide the Government with balance levels highlighting deposits, withdrawals, and general account information for the Combined Reserve Account on an annual basis.

Borrower and the Lender agree that the Combined Reserve Account will be an interest-bearing account.

The Lender agrees to meet those requirements of 7 CFR Parts 3560 and 3565 applicable to its role in holding and administering the Combined Reserve Account. If Lender elects to have a designee institution hold the Combined Reserve Account, Lender will ensure that the designee is an institution qualified to hold the Combined Reserve Account and that the designee institution complies with all requirements of 7 CFR Parts 3560 and 3565 applicable to the institution holding and administering the Combined Reserve Account.

### **2. Release of Funds**

For any requested withdrawal from the Combined Reserve Account, Borrower will submit to the Government a written request for withdrawal of Combined Reserve Account funds using *RD Form 3560-12, Request for Authorization to Withdraw Reserve Funds*. The request and approval of the request from the Government must be completed prior to submission of the request to the Lender. The Government will review the request and promptly notify the Borrower in writing of the decision to approve or deny the request. Once approved, the Borrower may then submit the request to the Lender. The Lender agrees not to release funds from the Combined Reserve Account without the Government's prior written approval.

*(SIGNATURE PAGE(S) FOLLOW THIS PAGE)*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the day and year first above written.

**[borrower]**, a [state, entity type]

By: [ ]

By: \_\_\_\_\_

[lender]

a [ ]

By: \_\_\_\_\_

[ ]

Its: [ ]

**GOVERNMENT:**

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

By: \_\_\_\_\_

[ ]