

Subordination, Non-Disturbance, and Attornment Agreement

THIS INSTRUMENT PREPARED BY AND WHEN RECORDED MAIL TO:
FARM SERVICE AGENCY

_____ (1)

SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance, and Attornment Agreement (the "Agreement") is made and entered into this ____ (2) day of _____ (3), 20____ (4) by and between the United States of America, acting through the Farm Service Agency, an agency of the United States Department of Agriculture, and its successors and assigns, (collectively, the "Lender"), _____ (5) (the "Grantor(s)"), and _____ (6) a _____ (7) _____ (8), and its subsidiaries, affiliates, successors, and assigns (collectively, the "Grantee").

Lender has made or is making a loan or loans (collectively, the "Loan") to _____ (9) (the "Borrower") as evidenced by a Promissory Note(s). The Loan will be secured by, without limitation, a Security Agreement, Mortgage or Deed of Trust, and Fixture Filing from the Borrower and/or Grantor (a "Security Instrument," or "Security Instruments"), some of which will be recorded in the real estate records of _____ (10) County or Parish, State of _____ (11), and encumbering all or a portion of the real property described in Exhibit A, attached hereto, and incorporated herein (the "Property").

Grantee and Grantor are parties to that certain _____ (12), dated as of _____ (13), 20____ (14), as evidenced by that certain memorandum recorded on _____ (15), 20____ (16) as Document or Instrument Number _____ (17) (or) in Book ____ (18) at Page ____ (19) in the real estate records of _____ (20) County, State of _____ (21), (collectively the "Lease Agreement", but such defined term not including any later amendments, riders, or modifications not identified herein that materially increase the physical burdens or size or amount of staging, operation, construction, or facilities upon the real estate or other burdens upon the Grantor, or prepays rents and other sums due the Grantor) in which the Grantors granted to Grantee the right to use the Property for the purposes as set forth in the Lease Agreement.

Lender would not make the Loan or may discontinue the Loan to Borrower secured by the Property without obtaining assurances from Grantee with respect to Lender's rights and obligations under the Lease Agreement.

Grantee understands and acknowledges the benefit to the Borrower in obtaining and continuing the Loan and therefore agrees to enter into this agreement with respect to the Loan.

For good and valuable consideration, the receipt of which is hereby acknowledged and accepted, Lender, Grantor, and Grantee hereby covenant and agree as set forth below:

1. Subordination. The Security Instrument shall unconditionally be and remain at all times a lien or charge upon the Property prior and superior to the Lease Agreement, but the Lender agrees to comply with the provisions of this Agreement. The Lease Agreement, and all rights and privileges of Grantee are hereby unconditionally subjected and made subordinate to the lien or charge of the Security Instrument.
2. Non-Disturbance. Provided any Security Instrument and the Lease Agreement are in effect and Grantee is not then in default under the Lease Agreement beyond applicable notice and cure periods, then, in the event of foreclosure of any Security Instrument, Lender's acceptance of a deed in lieu of foreclosure or, the Lender's other acquisition of the Property voluntarily, or through any action or proceeding:

- a. the Lease Agreement, except as modified by this Agreement, shall continue in full force and effect and Grantee's possession, use, occupancy, and/or encumbrance of the Property including all improvements thereon and all appurtenant rights thereto under the Lease Agreement shall not be disturbed by Lender during the term thereof (including any extensions, renewals or modifications);
 - b. Lender will not name Grantee as a party in any action or proceeding to foreclose on the Security Instrument or to exercise any of the Lender's other rights under the Security Instrument or under the applicable law (unless required by the applicable law); and
 - c. any sale of the Property by foreclosure or otherwise will be subject to the Lease Agreement and all of Grantee's rights under the Lease Agreement.
3. **Attornment.** If Lender succeeds to the rights of Grantor under the Lease Agreement, whether by foreclosure, deed in lieu of foreclosure or otherwise, Grantee will attorn to Lender and Lender will accept such attornment, for the unexpired Lease Agreement term, subject to the terms of the Lease Agreement as modified herein; provided, however:
 - a. No payments to Grantor of rent and other sums made by or for Grantee to Grantor that were paid more than twelve (12) months in advance of the date when due under the Lease Agreement shall be attributable as rents or other sums due the Lender, unless such sums are actually received by Lender;
 - b. Lender shall not be liable for any act or omission of Grantor, or for any fact, circumstance or condition existing or arising prior to Lender's succession in interest to Grantor, unless such acts or omissions are of a continuing nature and continue after such time as Lender comes into possession of or acquires title to all or any portion of the Property. For so long as the Lender is the United States, nothing within the Lease Agreement shall cause or be construed to require or obligate the Lender to provide insurance, indemnify any party, hold parties harmless in a manner not permitted by Federal law, reimburse parties for the costs of litigation including attorney's fees, or commit any violation of the Anti-Deficiency Act;
 - c. Lender shall not be subject to any offsets, claims or defenses Grantee might have against Grantor;
 - d. Lender shall not be required to refund, credit or reimburse Grantee for any overpayment of taxes under the Lease Agreement, unless the funds which are the basis for such refund, credit or reimbursement were actually received by Lender. For so long as the Lender is the United States, nothing within the Lease Agreement shall cause or be construed to require or obligate the Lender to pay any taxes, charges, or fees that are or should be apportioned to the Grantee; and
 - e. Upon Lender's filing of a complaint seeking foreclosure, acceptance of deed in lieu of foreclosure, or other succession to or acquisition of the Property, any option to purchase or other condition or restriction placed upon the transfer, sale, or partition of the Property in favor of the Grantee found within the Lease Agreement or any amendments or modifications thereto is automatically severed from the Lease Agreement and extinguished. The severance and extinguishment of any option to purchase found within the Lease Agreement shall not otherwise cause to become or render any other provision of the Lease Agreement unenforceable.
4. **Notices.** Any notices given in connection with this Agreement shall be sent by (a) certified mail, return receipt requested with postage prepaid, or (b) via a nationally recognized overnight courier service for next day delivery, and addressed to the recipient at the address stated herein or addressed as such recipient may from time to time designate by written notice to the other parties. Lender shall not be bound to send notices to any subsidiary, affiliate, successor or assign, mortgagee, secured party, or other necessary party of Grantee's interest in the Lease Agreement unless and until Lender receives written notice of such succession, assignment, transfer, encumbrance, or other event or occurrence, and the name and address of the party to receive notice. Grantee shall not be bound to send notices to any assignee of Lender's interest unless and until Grantee receives written notice of such assignment, succession, transfer, or other event or occurrence, and the name and address of the party to receive notice. The current addresses of the parties to which any notice provided for herein shall be sent, are as follows:

If to Lender:
Farm Service Agency

_____ (22)

If to Grantor:

_____ (23)

If to Grantee:

_____ (24)

5. Successors. The terms and provisions of this Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns and are specifically intended to be relied upon and enforceable by (i) any person or entity holding a security interest secured by a Security Instrument, or Grantor or Grantee's interest in the Lease Agreement, and (ii) any successors or assigns through foreclosure, deed in lieu, or other succession to the Property or Grantor or Grantee's interest in the Lease Agreement.

6. Choice of Law and Venue. This Agreement shall be governed by, and construed in accordance with, first, applicable Federal Law, (including Federal Law governing or permitting any appropriate forum) and then the laws of the State of _____ (25), excluding the choice of law provisions thereof.

7. Entire Agreement. This Agreement supersedes all previous oral and written understandings and agreements with respect to the priority of the Security Instrument and the Lease Agreement, or the extent of the Lender's liability under the Lease Agreement, and comprises the entire agreement of the parties with respect thereto. No provisions of this Agreement may be modified or waived except through the execution and recordation of a subsequent written agreement by the party to be charged therewith.

8. Execution in Counterparts. Recording. This Agreement may be executed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures were upon the same instrument. Counterparts thus executed shall together constitute one and the same instrument. The parties agree that any party may record this Agreement in the real estate records of any county where the Property is located.

9. No violation of the Anti-Deficiency Act. Notwithstanding anything to the contrary herein, no provision contained in this Agreement, the Lease Agreement, nor any purported contract, express or implied, between the Lender and other parties to this Agreement or the Lease Agreement shall give rise or permit the entry or enforcement of a money damages award including entry of attorney's fees against the United States, its agencies, officers, employees, or contractors; be construed to create or authorize an obligation under any appropriation or fund; or otherwise be construed to obligate the United States, or its agencies, officers, employees, or contractors to indemnify the Grantor or Grantee.

10. No violation of Federal Law. For so long as the Lender is the United States, notwithstanding anything to the contrary herein, no provision contained in this Agreement, the Lease Agreement, nor any purported contract, express or implied, between the Lender and other parties to this Agreement or the Lease Agreement shall prohibit the Lender from complying with obligations it may have under the Freedom of Information Act or congressional review; restrict, modify or amend the Lender's rights or responsibilities under the National Environmental Policy Act or other environmental law; cause or require the Lender to take any action that may cause it to become an owner, operator, transporter, or otherwise participate in management under the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act; allow or permit the Grantee to serve as the Lender's agent or attorney-in-fact; cause or require the Lender to serve as Grantee's agent or attorney-in-fact; cause or require

the Lender to initiate litigation or proceedings of any type and for any purpose; warrant or defend title; or cause or require the Lender to take, forbear, waive, or decline to take any action inconsistent with Federal Law. To the extent that any provision in this Agreement, the Lease Agreement or any purported contract express or implied creates rights, burdens, or obligations inconsistent with Federal Law, such provision shall be read to conform to Federal Law to the greatest extent possible, but otherwise is severed, voidable, and unenforceable so long as the Lender is the United States.

Public Burden Statement (Paperwork Reduction Act): According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0560-0236. The time required to complete this information collection is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden by emailing to: askusda@usda.gov.

Non-Discrimination Statement: In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact the State or local Agency that administers the program or contact USDA through the Telecommunications Relay Service at 711 (voice and TTY). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Mail Stop 9410, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of this Date.

LENDER:

FARM SERVICE AGENCY

By: _____(26)

Name: _____(27)

Title: _____(28)

Date: _____(29)

STATE OF _____(30)

COUNTY OF _____(31)

The foregoing instrument was acknowledged before me this _____(32) day of _____(33), 20____(34) by _____(35) as the _____(36) for Farm Service Agency, on behalf of the Lender.

_____(37)

Notary Public

Commission No: _____(38)

Commission Expiration: _____(39)

[SEAL]

GRANTOR (entity):

_____(40)
A _____(41)

By: _____(42)
Name: _____(43)
Title: _____(44)

Date: _____(45)

STATE OF _____(46)

COUNTY OF _____(47)

The foregoing instrument was acknowledged before me this _____(48) day of
_____(49), 20____(50) by _____(51) as
the _____(52) for _____(53), on behalf of the Grantor.

_____(54)
Notary Public

Commission No: _____(55)
Commission Expiration: _____(56)

[SEAL]

GRANTOR (individual):

By: _____(57)

Name: _____(58)

Date: _____(59)

STATE OF _____(60)

COUNTY OF _____(61)

The foregoing instrument was acknowledged before me this _____(62) day of
_____(63), 20____(64) by _____(65).

_____(66)

Notary Public

Commission No: _____(67)

Commission Expiration: _____(68)

[SEAL]

GRANTEE:

_____(69)
A _____(70)

By: _____(71)
Name: _____(72)
Title: _____(73)

Date: _____(74)

STATE OF _____(75)

COUNTY OF _____(76)

The foregoing instrument was acknowledged before me this _____(77) day of
_____(78), 20____(79) by _____(80) as the
_____(81) for _____(82), on behalf of the Grantee.

_____(83)
Notary Public

Commission No: _____(84)
Commission Expiration: _____(85)

[SEAL]

EXHIBIT A

[Replace This Text with Description of Real Property and Permanent Index Number for Each Legal Description]