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Project Name: _____
HUD Project No: _____

THIS SUBORDINATION AGREEMENT (~~this~~ "Agreement") is entered into this _____ day of _____, _____ by and among (i) _____, a _____ (~~the~~ "Senior Lender"), (ii) _____, a _____ (~~the~~ "Subordinate Lender"), and (iii) _____ (~~the~~ "Borrower").

Recitals

WHEREAS, Borrower is the owner of that certain _____ unit residential rental development known as " _____ " (~~the~~ "Development Project"), located at _____. ~~The Senior Lender~~ Senior Lender has made or is making the senior mortgage loan as described on Schedule A hereto (~~the~~ "Senior Indebtedness") to ~~the Borrower~~ Borrower in the original principal amount(s) as shown on Schedule A, evidenced by the ~~Mortgage~~ Note described in Schedule A (~~the~~ "Senior Note"), and secured by, among other things, the Security Instrument as described in Schedule A (collectively, ~~the~~ "Senior Mortgage Security Instrument"), covering the property described in Exhibit A attached hereto together with all improvements thereon and personal property used relative thereof, all as more particularly described in the Senior ~~Mortgage~~ Security Instrument (~~the~~ "Mortgaged Property").

WHEREAS, Borrower has requested ~~the Senior Lender~~ Senior Lender to permit ~~the Subordinate Lender~~ Subordinate Lender to make a subordinate loan to Borrower in the amount of \$ _____ (~~the~~ "Subordinate Loan") and to secure the Subordinate Loan by, among other things, placing a mortgage lien against the Mortgaged Property.

WHEREAS, Senior Lender, with the approval of the Secretary of U.S. Department
Subordination Agreement HUD-9xxxx

of Housing and Urban Development ("**HUD**"), has agreed to permit ~~the Subordinate Lender~~Subordinate Lender to make the Subordinate Loan and to place a subordinate mortgage lien against the Mortgaged Property subject to all of the conditions contained in this Agreement.

NOW, THEREFORE, in order to induce ~~the Senior Lender~~Senior Lender to permit ~~the Subordinate Lender~~Subordinate Lender to make the Subordinate Loan to ~~the Borrower~~Borrower and to place a subordinate mortgage lien against the Mortgaged Property, and in consideration thereof, ~~the Senior Lender~~Senior Lender, ~~the Subordinate Lender~~Subordinate Lender and ~~the Borrower~~Borrower agree as follows:

1. Definitions.

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

(a) "**Affiliate**" is defined ~~herein to mean the same as that term is defined in the Regulatory Agreement between the Borrower and the Secretary in 24 CFR 200.215, or any successor regulation.~~

(b) "**Bankruptcy Proceeding**" means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to ~~the Borrower~~Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.

(c) "**Borrower**" means all ~~persons or~~ entities identified as "Borrower" in the first paragraph of this Agreement, together with ~~their~~any successors, heirs, and assigns (jointly and severally). ~~Borrower shall include, and any other person or any entity taking who acquires~~ title to the Mortgaged Property, whether or not such entity assumes the Note, ; provided that the term "Borrower" shall not include ~~the Senior Lender~~Senior Lender in the event that ~~the Senior Lender~~Senior Lender may acquire title to the Mortgaged Property. Whenever the term "Borrower" is used herein, the same shall be deemed to include the obligor of the debt secured by the Senior Security Instrument.

(d) "**Business Day**" means any day other than Saturday, Sunday or ~~any other~~ day on which ~~the Senior Lender~~Senior Lender or HUD is not open for business.

(e) "Covenant Event of Default" is defined in the Senior Security Instrument.

(ef) "**Enforcement Action Notice**" means a written notice from ~~the Subordinate Lender~~Subordinate Lender to ~~the Senior Lender~~Senior Lender, or from ~~the Senior Lender~~Senior Lender to ~~the Subordinate Lender~~Subordinate

Lender, given following a Subordinate Mortgage Default or ~~Senior Mortgage~~Senior Security Instrument Default, respectively, and the expiration of any notice or cure period provided for such Subordinate Mortgage Default or ~~Senior Mortgage~~Senior Security Instrument Default, in the Subordinate Loan Documents, or the Senior Loan Documents, setting forth in reasonable detail the Enforcement Action proposed to be taken by ~~the Subordinate Lender~~Subordinate Lender or Senior Lender.

(g) "Entity" means an estate, trust, partnership, corporation, limited liability company, limited liability partnership, governmental department or agency or any other entity which has the legal capacity to own property.

~~(fh)~~ **"Loss Proceeds"** means all monies received or to be received under any hazard insurance policy covering the Mortgaged Property, from any condemning authority, or from any other source, as a result of any damage or destruction of the Mortgaged Property or the taking of all or any portion of the Mortgaged Property by eminent domain proceedings.

(i) "Monetary Event of Default" is defined in the Senior Security Instrument.

~~(gj) "Person" means an individual, estate, trust, partnership, corporation, limited liability company, limited liability partnership, governmental department or agency or any other entity which has the legal capacity to own property.~~

~~(h) "Secretary" means the Secretary of Housing and Urban Development.~~

~~(j) (i) "Senior Indebtedness" means the Senior Note secured by the Senior Mortgage~~Senior Security Instrument.

(k) "Senior Lender" means the Entity named as such in the first paragraph on page 1 of this Agreement.

~~(jl) "Senior Loan Documents" means the Senior Note, the Senior Mortgage~~Security Instrument, and the Regulatory Agreement between the Borrower~~Borrower and the Secretary~~HUD, as such documents may be amended from time to time and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Senior Indebtedness.

~~(km)~~ **"Senior Loan Enforcement Action"** means the acceleration of all or any part of the Senior Indebtedness, the advertising of or commencement

of any foreclosure or trustee's sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Senior Note or any other of the Senior Loan Documents, the exercising of any banker's lien or rights of set-off or recoupment, or the taking of any other enforcement action against ~~the Borrower~~Borrower, any other party liable for any of the Senior Indebtedness or obligated under any of the Senior Loan Documents, or the Mortgaged Property.

(ln) "~~Senior Mortgage~~Senior Security Instrument Default" means a "Monetary Event of Default" or a "Covenant Event of Default" as defined in the ~~Senior Mortgage~~Senior Security Instrument.

~~(m) "Senior Lender" means the Person named as such in the first paragraph on page 1 of this Agreement.~~

(no) "~~Subordinate Indebtedness~~" means all present and future indebtedness, obligations, and liabilities of ~~the Borrower~~Borrower to ~~the Subordinate Lender~~Subordinate Lender under or in connection with the Subordinate Loan or the Subordinate Loan Documents.

(op) "~~Subordinate Lender~~" means the ~~Person~~Entity named as such in the first paragraph on page 1 of this Agreement.

(pq) "~~Subordinate Loan Documents~~" means the Subordinate Note, the Subordinate Mortgage, and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness.

(qr) "~~Subordinate Loan Enforcement Action~~" means the acceleration of all or any part of the Subordinate Indebtedness, the advertising of or commencement of any foreclosure or trustee's sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Subordinate Note or any other of the Subordinate Loan Documents, the exercising of any banker's lien or rights of set-off or recoupment, or the taking of any other enforcement action against ~~the Borrower~~Borrower, any other party liable for any of the Subordinate Indebtedness or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.

(rs) "~~Subordinate Mortgage Default~~" means any act, failure to act, event, conditions, or occurrence which allows (but for any contrary provision of

this Agreement), or which with the giving of notice or the passage of time, or both, would allow (but for any contrary provision of this Agreement), ~~the Subordinate Lender~~ Subordinate Lender to take a Subordinate Loan Enforcement Action.

(st) "Surplus Cash" is defined herein to mean the same as that term is defined in the Regulatory Agreement between ~~the Borrower~~ Borrower and ~~the Secretary~~ HUD.

2. Permission to Place Mortgage Lien Against Mortgaged Property.

~~The Senior Lender~~ Senior Lender agrees, notwithstanding the prohibition against inferior liens on the Mortgaged Property contained in the Senior Loan Documents and subject to the provisions of this Agreement, to permit ~~the Subordinate Lender~~ Subordinate Lender to record the Subordinate Mortgage and other recordable Subordinate Loan Documents against the Mortgaged Property (which are subordinate in all respects to the lien of the ~~Senior Mortgage~~ Senior Security Instrument) to secure ~~the Borrower~~ Borrower's obligation to repay the Subordinate Note and all other obligations, indebtedness and liabilities of ~~the Borrower~~ Borrower to ~~the Subordinate Lender~~ Subordinate Lender under and in connection with the Subordinate Loan. Such permission is subject to the condition that each of the representations and warranties made by ~~the Borrower~~ Borrower and ~~the Subordinate Lender~~ Subordinate Lender in Section 3 are true and correct on the date of this Agreement and on the date on which the proceeds of the Subordinate Loan are disbursed to ~~the Borrower~~ Borrower. If any of the representations and warranties made by ~~the Borrower~~ Borrower and ~~the Subordinate Lender~~ Subordinate Lender in Section 3 ~~is~~ are not true and correct on both of those dates, the provisions of the Senior Loan Documents applicable to unpermitted liens on the Mortgaged Property shall apply.

3. Borrower's and Subordinate Lender's Representations and Warranties.

~~The Borrower~~ Borrower and ~~the Subordinate Lender~~ Subordinate Lender each makes the following representations and warranties to ~~the Senior Lender~~ Senior Lender:

(a) Subordinate Loan Documents. The Subordinate Loan is evidenced by the Subordinate Note and is secured by the Subordinate Mortgage.

(b) Terms of the Subordinate Loan. The original principal amount of the Subordinate Note is \$ _____. Interest on the Subordinate Note is payable monthly at the rate of _____% per annum. The Subordinate Note is due and payable in full on _____, _____, ("Maturity"). The principal of the Subordinate Note will [be fully amortized at Maturity] [have a balloon principal payment of \$ _____ due at Maturity]. The promissory note evidencing the Subordinate Note obligates ~~the~~

~~Borrower~~Borrower to make monthly payments of \$_____ of which \$_____ represents interest, subject to available Surplus Cash. As long as ~~the Secretary~~HUD is the insurer or holder of the Senior Note on FHA Project No. _____, any payments due from project income under the Subordinate Note shall be payable only (i) from permissible distributions from {omit "permissible distributions from" if a profit-motivated mortgagor} surplus cash of the ~~said p~~Project as that term is defined in the Regulatory Agreement dated _____ between ~~the Secretary~~HUD and ~~the Borrower~~Borrower; but in no event greater than seventy-five percent (75%) of the total dollar amount of such permissible distribution of surplus cash; or (ii) from monies received from non-Project sources. No prepayment of the Subordinate Note shall be made until after final endorsement by ~~the Secretary~~HUD of the Senior Note, unless such prepayment is made from non-Project sources and is approved in writing by ~~the Secretary~~HUD. The restriction on payment imposed by this paragraph shall not excuse any default caused by the failure of the maker to pay the indebtedness evidenced by ~~the~~ Subordinate Note.

(c) Relationship of Borrower to Subordinate Mortgagee and Servicer.

~~The Subordinate Lender~~Subordinate Lender is not an Affiliate of ~~the Borrower~~Borrower.

(d) Term. The term of the Subordinate Note does not end before the term of the Senior Note.

(e) Subordinate Loan Documents. The executed Subordinate Loan Documents are substantially in the same forms as those submitted to, and approved by, ~~the Secretary~~HUD prior to the date of this Agreement. Upon execution and delivery of the Subordinate Loan Documents, Borrower shall deliver to Senior Lender an executed copy of each of the Subordinate Loan Documents, certified to be true, correct and complete.

(f) Senior Loan Documents. The executed Senior Loan Documents are the same forms as approved by ~~the Secretary~~HUD prior to the date of this Agreement. Upon execution and delivery of the Senior Loan Documents, Borrower shall deliver to Subordinate Lender an executed copy of each of the Senior Loan Documents, certified to be true, correct and complete.

4. Deliveries.

~~The Subordinate Lender~~Subordinate Lender shall submit the following items to ~~the Secretary~~HUD within ten (10) Business Days after the date on which the proceeds of the Subordinate Loan are disbursed to ~~the Borrower~~Borrower.

(a) **Title Policy Endorsement.** An endorsement to the policy of title insurance insuring the lien of the ~~Senior Mortgage~~Senior Security Instrument which insures that (i) there are no liens or other encumbrances affecting the Mortgaged Property (other than those approved by ~~the Secretary~~HUD in writing), (ii) the lien of the Subordinate Mortgage is subordinate to the lien of the Senior Mortgage, and (iii) this Agreement has been recorded among the applicable land records.

(b) **Certification.** A certification from ~~the Borrower~~Borrower and ~~the Subordinate Lender~~Subordinate Lender to ~~the Secretary~~HUD that the Subordinate Loan Documents do not contain any changes from the Subordinate Loan Documents submitted to, and approved by, ~~the Secretary~~HUD, before the date of this Agreement.

(c) **Loan Documents.** A complete set of the Subordinate Loan Documents.

5. Terms of Subordination.

(a) **Agreement to Subordinate.** ~~The Senior Lender~~Senior Lender and ~~the Subordinate Lender~~Subordinate Lender agree that: (i) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement, to the prior payment in full of the indebtedness evidenced by the Senior Loan Documents, and (ii) the Subordinate Mortgage and the other Subordinate Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the ~~Senior Mortgage~~Senior Security Instrument and the other Senior Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the ~~Senior Mortgage~~Senior Security Instrument and the other Senior Loan Documents (including but not limited to, all sums advanced for the purposes of (1) protecting or further securing the lien of the ~~Senior Mortgage~~Senior Security Instrument, curing defaults by ~~the Borrower~~Borrower under the Senior Loan Documents or for any other purpose expressly permitted by the ~~Senior Mortgage~~Senior Security Instrument, or (2) constructing, renovating, repairing, furnishing, fixturing or equipping the Mortgaged Property).

(b) **Subordination of Subrogation Rights.** ~~The Subordinate Lender~~Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of ~~the Borrower~~Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Mortgaged Property which (but for this subsection) would be senior to the lien of the ~~Senior~~

~~Mortgage~~Senior Security Instrument, then, in that event, such lien shall be subject and subordinate to the lien of the ~~Senior Mortgage~~Senior Security Instrument.

(c) **Payments Before ~~Senior Mortgage~~Senior Security Instrument Default.** Until ~~the Subordinate Lender~~Subordinate Lender receives a default notice of a ~~Senior Mortgage~~Senior Security Instrument Default from ~~the Senior Lender~~Senior Lender, ~~the Subordinate Lender~~Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Documents.

(d) **Payments After ~~Senior Mortgage~~Senior Security Instrument Default.** ~~The Borrower~~Borrower agrees that, after it receives notice (or otherwise acquires knowledge) of a ~~Senior Mortgage~~Senior Security Instrument Default, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without ~~the Senior Lender~~Senior Lender's prior written consent. ~~The Subordinate Lender~~Subordinate Lender agrees that, after it receives a default notice from ~~the Senior Lender~~Senior Lender with written instructions directing ~~the Subordinate Lender~~Subordinate Lender not to accept payments from ~~the Borrower~~Borrower on account of the Subordinate Loan, it will not accept any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without ~~the Senior Lender~~Senior Lender's prior written consent. If ~~the Subordinate Lender~~Subordinate Lender receives written notice from ~~the Senior Lender~~Senior Lender that the ~~Senior Mortgage~~Senior Security Instrument Default which gave rise to ~~the Subordinate Lender~~Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by ~~the Senior Lender~~Senior Lender, the restrictions on payment to ~~the Subordinate Lender~~Subordinate Lender in this Section 4 shall terminate, and ~~the Senior Lender~~Senior Lender shall have no right to any subsequent payments made to ~~the Subordinate Lender~~Subordinate Lender by ~~the Borrower~~Borrower prior to ~~the Subordinate Lender~~Subordinate Lender's receipt of a new default notice from ~~the Senior Lender~~Senior Lender in accordance with the provisions of this Section 5(d).

(e) **Remitting Subordinate Loan Payments to Senior Lender.** If, after ~~the Subordinate Lender~~Subordinate Lender receives a default notice from ~~the Senior Lender~~Senior Lender in accordance with subsection (d) above, ~~the Subordinate Lender~~Subordinate Lender receives any payments under the Subordinate Loan Documents, ~~the Subordinate Lender~~Subordinate Lender agrees that such payment or other distribution will be received and held in trust for ~~the Senior Lender~~Senior Lender and unless ~~the Senior Lender~~Senior Lender

otherwise notifies ~~the Subordinate Lender~~Subordinate Lender in writing, will be promptly remitted, in kind to ~~the Senior Lender~~Senior Lender, properly endorsed to ~~the Senior Lender~~Senior Lender, to be applied to the principal of, interest on and other amounts due under the Senior Loan Documents in accordance with the provisions of the Senior Loan Documents. By executing this Agreement, ~~the Borrower~~Borrower specifically authorizes ~~the Subordinate Lender~~Subordinate Lender to endorse and remit any such payments to ~~the Senior Lender~~Senior Lender, and specifically waives any and all rights to have such payments returned to ~~the Borrower~~Borrower or credited against the Subordinate Loan. Borrower and Senior Lender acknowledge and agree that payments received by ~~the Subordinate Lender~~Subordinate Lender, and remitted to ~~the Senior Lender~~Senior Lender under this Section 5, shall not be applied or otherwise credited against the Subordinate Loan, nor shall the tender of such payment to ~~the Senior Lender~~Senior Lender waive any Subordinate Mortgage Default which may arise from the inability of ~~the Subordinate Lender~~Subordinate Lender to retain such payment or apply such payment to the Subordinate Loan.

(f) Agreement Not to Commence Bankruptcy Proceeding. ~~The Subordinate Lender~~Subordinate Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing any bankruptcy reorganization, arrangement, insolvency or liquidation proceedings with respect to ~~the Borrower~~Borrower, without ~~the Senior Lender~~Senior Lender's prior written consent.

6. Default Under Subordinate Loan Documents.

(a) Notice of Default and Cure Rights. ~~The Subordinate Lender~~Subordinate Lender shall deliver to ~~the Senior Lender~~Senior Lender a default notice within five Business Days in each case where ~~the Subordinate Lender~~Subordinate Lender has given a default notice to ~~the Borrower~~Borrower. Failure of ~~the Subordinate Lender~~Subordinate Lender to send a default notice to ~~the Senior Lender~~Senior Lender shall not prevent the exercise of ~~the Subordinate Lender~~Subordinate Lender's rights and remedies under the Subordinate Loan Documents, subject to the provisions of this Agreement. ~~The Senior Lender~~Provided the default under the Subordinate Loan Documents is also a default under the Senior Loan Documents, then Senior Lender shall have the ~~right~~opportunity, but not the obligation, to cure any Subordinate Mortgage Default within 60 days following the date of such notice; provided, however that ~~the Subordinate Lender~~Subordinate Lender shall be entitled, during such 60-day period, to continue to pursue its rights and remedies under the Subordinate Loan Documents, ~~subject to the limitations set forth in Section 6(b) below.~~ ~~All amounts paid by the Senior Lender in accordance with the Senior Loan Documents to cure a Subordinate Mortgage Default shall be deemed to have been advanced by the~~

~~Senior Lender pursuant to, and shall be secured by the lien of, the Senior Mortgage Senior Security Instrument.~~

(b) Subordinate Lender's Exercise of Remedies After Notice to Senior Lender. If a Subordinate Mortgage Default occurs and is continuing, ~~the Subordinate Lender Subordinate Lender~~ agrees that, ~~without the Senior Lender Senior Lender's prior written consent,~~ it will not commence foreclosure proceedings with respect to the Mortgaged Property under the Subordinate Loan Documents or exercise any other rights or remedies it may have under the Subordinate Loan Documents, including, but not limited to accelerating the Subordinate Loan, collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder ~~without the Senior Lender Senior Lender's prior written consent, unless and until it has given the Senior Lender Senior Lender at least 60 days' prior written notice; during such 60 day period, h~~ however, ~~the preceding sentence shall not preclude the Subordinate Lender Subordinate Lender shall be entitled to~~ ~~from~~ exercising and enforcing all other rights and remedies available to ~~the Subordinate Lender Subordinate Lender~~ under the Subordinate Loan Documents and/or under applicable laws, including without limitation, rights to enforce covenants and agreements of ~~the Borrower Borrower~~ relating to income, rent, or affordability restrictions ~~contained in the [Land Use Restriction Agreement].~~

7. Default Under Senior Loan Documents.

(a) Notice of Default and Cure Rights. ~~Senior Lender shall deliver to Subordinate Lender a default notice within five Business Days in each case where Senior Lender has~~^[epd1] given a default notice to Borrower. ~~Borrower agrees that Subordinate Lender shall have the opportunity~~^[epd3], but not the obligation, to cure either a Monetary Event of Default or a Covenant Event of Default within 30 days following the date of such notice, or any time prior to an assignment of the Senior Security Instrument from Senior Lender to HUD, whichever date is later. ~~Subordinate Lender acknowledges that Senior Lender shall be entitled during such period described above to continue to pursue its remedies under the Senior Loan Documents. Subordinate Lender may have an opportunity~~^[epd4] to cure a Covenant Event of Default during such period described above so long as Subordinate Lender keeps current all payments required by the Senior Loan Documents. All amounts paid by Subordinate Lender to Senior Lender to cure any Monetary Default shall be deemed to have been advanced by Subordinate Lender pursuant to, and shall be secured by the lien of, the Subordinate Mortgage.

~~**(a) Notice of Default and Cure Rights.** The Senior Lender and/or the Secretary HUD shall deliver to the Subordinate Lender a default notice within five~~

~~Business Days in each case where the Senior Lender and/or the Secretary HUD has given a default notice to the Borrower. Failure of the Senior Lender and/or the Secretary HUD to send a default notice to the Subordinate Lender shall not prevent the exercise of the Senior Lender's or the Secretary HUD's rights and remedies under the Senior Loan Documents, subject to the provisions of this Agreement. The Subordinate Lender shall have the right, but not the obligation, to cure any such Senior Mortgage Monetary Event of Default within 30 days following the date of such notice, or any time prior to an assignment of the Senior Security Instrument from Senior Lender to HUD pursuant to the Contract of Insurance as defined in the Senior Security Instrument, whichever date is later; provided, however, that the Senior Lender and/or the Secretary HUD shall be entitled during such 30-day period described above to continue to pursue its remedies under the Senior Loan Documents. Subordinate Lender may have up to 30 days from the date of the default notice to cure a non-monetary default Covenant Event of Default if during such 30-day period described above Subordinate Lender keeps current all payments required by the Senior Loan Documents. [An assignment of the Senior Security Instrument can only be made to HUD as a result of an uncured Monetary Event of Default. A Covenant Event of Default may trigger the Senior Lender into accelerating the Senior Indebtedness, which could then subsequently cause a Monetary Event of Default.] In the event that such a non-monetary default Covenant Event of Default creates an unacceptable level of risk relative to the Mortgaged Property, or Senior Lender's secured position relative to the Mortgaged Property, as determined by Senior Lender in its sole discretion, then Senior Lender may exercise during such 30-day period described above all available rights and remedies to protect and preserve the Mortgaged Property and the rents, revenues and other proceeds from the Mortgaged Property. All amounts paid by the Subordinate Lender to the Senior Lender to cure a Senior Mortgage Senior Security Instrument Default shall be deemed to have been advanced by the Subordinate Lender pursuant to, and shall be secured by the lien of, the Subordinate Mortgage.~~

(b) Cross Default. ~~The Subordinate Lender~~ Subordinate Lender agrees that, notwithstanding any contrary provision contained in the Subordinate Loan Documents, a ~~Senior Mortgage Senior Security Instrument~~ Senior Mortgage Senior Security Instrument Default shall not constitute a default under the Subordinate Loan Documents if no other default occurred under the Subordinate Loan Documents.

8. Conflict.

~~The Borrower~~ Borrower, ~~the Senior Lender~~ Senior Lender and ~~the Subordinate Lender~~ Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the Senior Loan Documents, the Subordinate Loan Documents and the terms of this Agreement, the terms of this

Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of ~~the Senior Lender~~Senior Lender and ~~the Subordinate Lender~~Subordinate Lender in the Mortgaged Property; ~~(b) the timing of the exercise of remedies by the Senior Lender and the Subordinate Lender under the Senior Mortgage~~Senior Security Instrument and ~~the Subordinate Mortgage, respectively;~~ and ~~(c)~~ solely as between ~~the Senior Lender~~Senior Lender and ~~the Subordinate Lender~~Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which ~~the Senior Lender~~Senior Lender and ~~the Subordinate Lender~~Subordinate Lender have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower's time to cure any ~~Senior Mortgage~~Senior Security Instrument Default or Subordinate Mortgage Default, as the case may be; give ~~the Borrower~~Borrower the right to notice of any ~~Senior Mortgage~~Senior Security Instrument Default or Subordinate Mortgage Default, as the case may be other than that, if any, provided, respectively under the Senior Loan Documents or the Subordinate Loan Documents; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

9. Rights and Obligations of ~~the Subordinate Lender~~Subordinate Lender under the Subordinate Loan Documents and of ~~the Senior Lender~~Senior Lender under the Senior Loan Documents.

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Documents covering the same subject matter:

(a) Protection of Security Interest. ~~The Subordinate Lender~~Subordinate Lender shall not, without the prior written consent of ~~the Senior Lender~~Senior Lender in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that ~~the Subordinate Lender~~Subordinate Lender shall have the right to advance funds to cure ~~Senior Mortgage~~Senior Security Instrument Defaults pursuant to Section 6(a) above and advance funds pursuant to the Subordinate Mortgage for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Mortgaged Property and curing other defaults by ~~the Borrower~~Borrower under the Subordinate Loan Documents.

(b) Condemnation or Casualty. In the event of: a taking or threatened taking by condemnation or other exercise of eminent domain of all or a portion of the Mortgaged Property (collectively, a "Taking"); or the occurrence of a fire or other casualty resulting in damage to all or a portion of the Mortgaged Property

(collectively, a "Casualty"), at any time or times when the ~~Senior Mortgage~~Senior Security Instrument remains a lien on the Mortgaged Property the following provisions shall apply:

(1) ~~The Subordinate Lender~~Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Taking and/or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Taking or a Casualty shall be and remain subordinate in all respects to ~~the Senior Lender~~Senior Lender's rights under the Senior Loan Documents with respect thereto, and ~~the Subordinate Lender~~Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Taking or a Casualty made by ~~the Senior Lender~~Senior Lender; and

(2) all proceeds received or to be received on account of a Taking or a Casualty, or both, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the ~~Senior Mortgage~~Senior Security Instrument) in the manner determined by ~~the Senior Lender~~Senior Lender in its sole discretion; provided, however, that if ~~the Senior Lender~~Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the ~~Senior Mortgage~~Senior Security Instrument, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the ~~Senior Mortgage~~Senior Security Instrument shall be paid to, and may be applied by, ~~the Subordinate Lender~~Subordinate Lender in accordance with the applicable provisions of the Subordinate Loan Documents. Any proceeds then remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Subordinate Loan Documents shall be paid by the Subordinate Lender to Borrower.

(c) **No Modification of Subordinate Loan Documents.** ~~The Borrower~~Borrower and ~~the Subordinate Lender~~Subordinate Lender each agrees that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of ~~the Senior Lender~~Senior Lender in each instance, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon ~~the Senior Lender~~Senior Lender under the Senior Loan Documents. Any unauthorized amendment of the Subordinate Loan Documents or assignment of ~~the Subordinate~~

~~Lender~~Subordinate Lender's interest in the Subordinate Loan without ~~the Senior Lender~~Senior Lender's consent shall be void ab initio and of no effect whatsoever.

10. Modification or Refinancing of ~~Senior Mortgage~~Senior Security Instrument.

~~The Subordinate Lender~~Subordinate Lender consents to any agreement or arrangement in which ~~the Senior Lender~~Senior Lender waives, postpones, extends, reduces or modifies any provisions of the Senior Loan Documents, including any provision requiring the payment of money. Subordinate Lender further agrees that its agreement to subordinate hereunder shall extend to any new mortgage debt which is for the purpose of refinancing all or any part of the ~~Senior Mortgage~~Senior Security Instrument (including reasonable and necessary costs associated with the closing and/or the refinancing); and that all the terms and covenants of this Agreement shall inure to the benefit of any holder of any such refinanced debt; and that all references to the Senior Note, the ~~Senior Mortgage~~Senior Security Instrument, the Senior Loan Documents and Senior Lender shall mean, respectively, the refinance loan, the refinance note, the mortgage securing the refinance note, all documents evidencing securing or otherwise pertaining to the refinance note and the holder of the refinance note.

11. Default by ~~the Subordinate Lender~~Subordinate Lender or Senior Lender.

If ~~the Subordinate Lender~~Subordinate Lender or Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting Lender shall have the right to all available legal and equitable relief.

12. Notices.

Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as "notices" and referred to singly as a "notice") which ~~the Senior Lender~~Senior Lender or ~~the Subordinate Lender~~Subordinate Lender is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating early morning delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two days after mailing in the United States), addressed to the respective parties as follows:

SENIOR LENDER:

Attention: _____

With a copy to:

U.S. Department of Housing and Urban Development
Director - Office of Multifamily Asset Management
Room 6160
451 Seventh Street, S.W.
Washington, DC 20410

SUBORDINATE LENDER:

Attention: _____

Either party may, by notice given pursuant to this Section, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses for its notices, but notice of a change of address shall only be effective upon receipt.

14. General.

(a) **Assignment/Successors.** This Agreement shall be binding upon ~~the Borrower~~Borrower, ~~the Senior Lender~~Senior Lender and ~~the Subordinate Lender~~Subordinate Lender and shall inure to the benefit of the respective legal successors and assigns of ~~the Senior Lender~~Senior Lender and ~~the Subordinate Lender~~Subordinate Lender.

(b) **No Partnership or Joint Venture.** ~~The Senior Lender~~Senior Lender's permission for the placement of the Subordinate Loan Documents does not constitute ~~the Senior Lender~~Senior Lender as a joint venturer or partner of ~~the Subordinate Lender~~Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of the other party hereto.

(c) **Senior Lender's and Subordinate Lender's Consent.** Wherever ~~the Senior Lender~~Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by ~~the Senior Lender~~Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever ~~the Subordinate Lender~~Subordinate Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by ~~the Subordinate Lender~~Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

(d) **Further Assurances.** ~~The Subordinate Lender~~Subordinate Lender, ~~the Senior Lender~~Senior Lender and ~~the Borrower~~Borrower each agree, at ~~the Borrower~~Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Mortgage is subordinate to the lien, covenants and conditions of the ~~Senior Mortgage~~Senior Security Instrument, or to further evidence the intent of this Agreement.

(e) **Amendment.** This Agreement shall not be amended except by written instrument signed by all parties hereto.

(f) **Governing Law.** This Agreement shall be governed by the laws of the State in which the Mortgaged Property is located.

(g) **Severable Provisions.** If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

(h) **Term.** The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the

payment of all of the principal of, interest on and other amounts payable under the Senior Loan Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under the Subordinate Loan Documents, other than by reason of payments which ~~the Subordinate Lender~~Subordinate Lender is obligated to remit to ~~the Senior Lender~~Senior Lender pursuant to Section 4 hereof; (iii) the acquisition by ~~the Senior Lender~~Senior Lender of title to the Mortgaged Property pursuant to a foreclosure ~~or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Senior Mortgage~~; or (iv) the acquisition by ~~the Subordinate Lender~~Subordinate Lender of title to the Mortgaged Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Subordinate Mortgage, but only if such acquisition of title does not violate any of the terms of this Agreement.

(i) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

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

SENIOR LENDER:

By:

Name: _____

Title: _____

SUBORDINATE LENDER:

By: _____

Name: _____

Title: _____

BORROWER:

By:

Name:

Title:

[Jurats to be added]