**SUBORDINATION AGREEMENT – REGULATORY AGREEMENT ONLY**

**GOVERNMENTAL ENTITY – TEL (Forward)**

**(Revised 10-10-2023)**

Freddie Mac Loan Number: \_\_\_\_\_\_\_\_\_\_

Property Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SUBORDINATION AGREEMENT - REGULATORY AGREEMENT ONLY**

**GOVERNMENTAL ENTITY – TEL (Forward)**

**(NO SUBORDINATE DEBT)**

**(Revised 10-10-2023)**

THIS SUBORDINATION AGREEMENT FOR REGULATORY AGREEMENT ONLY (“**Agreement**”) is effective as of the \_\_\_ day of \_\_\_\_\_\_\_\_\_, 20\_\_ by **[NAME OF GOVERNMENTAL ENTITY]**, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Governmental Entity**”), and **[NAME OF BORROWER]**, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (**“Borrower”),** for the benefit of **[NAME OF FISCAL AGENT]**, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Lender**”).

**RECITALS**

A. Simultaneously herewith Borrower is [acquiring] [refinancing a loan secured by] certain improved real property located in the County of \_\_\_\_\_\_\_\_\_\_\_\_, State of \_\_\_\_\_\_\_\_\_\_\_, as more particularly described on Exhibit A attached hereto (“**Property**”).

B. [In connection with such acquisition, Borrower is assuming] [Borrower has assumed] certain obligations under the **[NAME OF REGULATORY AGREEMENT]** dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_, \_\_\_\_ (“**Regulatory Agreement**”) between Governmental Entity and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Prior Owner**”) and recorded on title to the Property on \_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_, \_\_\_\_ as Document No. \_\_\_\_\_\_\_\_\_\_\_in the **[NAME OF COUNTY]** Official Records (“**Official Records**”), pursuant to which the Property was subjected to certain restrictions by Governmental Entity in connection with the prior development or rehabilitation of the Property.

C. **[NAME OF GOVERNMENTAL LENDER],** a \_\_\_\_\_\_\_\_\_ [limited partnership/limited liability company/corporation] organized under the laws of the [State][Commonwealth] of \_\_\_\_\_\_\_\_(“**Governmental Lender**”) has made a loan to Borrower in the original principal amount of $ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Project** **Loan**”) upon the terms and conditions of a Project Loan Agreement dated as of \_\_\_\_\_\_\_\_\_\_ (“**Project Loan Agreement**”) among Governmental Lender, Lender (in its capacity as Fiscal Agent under the Funding Loan Agreement (defined below)) and Borrower in connection with the Property. The Project Loan is evidenced by that certain [**PROJECT NOTE**] dated as of \_\_\_\_\_\_\_\_\_\_\_, from Borrower to Governmental Lender (the “**Project** **Note**”). The Project Loan is secured by a **[NAME OF MORTGAGE]** dated as of \_\_\_\_\_\_\_\_\_\_ (“**Mortgage**”) encumbering the Land, the Improvements and related personal and other property described and defined in the Mortgage as the “**Mortgaged Property**.”

D. The Mortgage is being recorded in the Recording Office [at **[INSERT RECORDING INFORMATION IF KNOWN]][**contemporaneously herewith].

E. The Project Note was assigned by Governmental Lender to Lender as security for the loan made by [**INSERT NAME OF CONSTRUCTION LENDER**] (“**Initial Funding Lender**”) to the Governmental Lender (the “**Funding Loan**” and together with the Project Loan, the “**Loans**”) pursuant to a Funding Loan Agreement dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ among Initial Funding Lender, Governmental Lender and Lender (the “**Funding Loan Agreement**”). The Governmental Lender also assigned the Mortgage to Lender as security for the Funding Loan pursuant to an Assignment of Security Instrument to be recorded in the Recording Office contemporaneously herewith.

F. Subject to the terms and conditions of that certain Construction Phase Financing Agreement (the “**Construction Phase Financing Agreement**”) dated as of \_\_\_\_\_\_\_\_\_\_ between Borrower, Initial Funding Lender, Federal Home Loan Mortgage Corporation and [**NAME OF PERMANENT FUNDING LENDER]** (“**Permanent Funding Lender**”, and together with the Initial Funding Lender, the “**Funding Lender**”), Initial Funding Lender will subsequently assign and deliver the documents comprising the Funding Loan to the Permanent Funding Lender and, in connection therewith, the Project Note and the Mortgage will be amended and restated (“**Conversion**”). “**Loan Documents**” collectively means the “Project Loan Documents” as defined in the Funding Loan Agreement, as such documents may be amended.

G. Upon Conversion, the Funding Lender will have the right to amend and restate the Project Note and the Mortgage, and the right to amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provision of any of the Loan Documents, without notice to or the consent or joinder of the Governmental Entity.

H. As a condition to making of the Funding Loan by the Initial Funding Lender and the subsequent purchase thereof by the Permanent Funding Lender, each requires that the Loan Documents be a lien on the Property superior to the lien of the Regulatory Agreement and that the rights of Lender under the Loan Documents be superior to the rights of Governmental Entity and Borrower under the Regulatory Agreement. Initial Funding Lender will not make, and Permanent Funding Lender will not purchase, the Funding Loan unless Governmental Entity and Borrower agree to subordinate their rights and obligations under the Regulatory Agreement.

I. Borrower and Governmental Entity hereby agree to subordinate the Regulatory Agreement on and subject to the terms, conditions and requirements set forth in this Agreement.

**AGREEMENT**

NOW, THEREFORE,in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. Recitals.** The foregoing Recitals are hereby incorporated into this Agreement as agreements among the parties.

**2. Subordination.** The Governmental Entity hereby covenants and agrees that the Regulatory Agreement is and will at all times continue to be, subordinate, subject and inferior to the rights of Lender and Funding Lender under the Loan Documents and that the liens, rights (including approval and consent rights), remedies, payment interests, priority interests, and security interests granted to Governmental Entity pursuant to or in connection with the Regulatory Agreement are hereby expressly acknowledged to be in all respects and at all times, subject, subordinate and inferior in all respects to the liens, rights (including approval and consent rights), remedies, payment, priority and security interests granted to Lender and Funding Lender pursuant to the Loan Documents and the terms, covenants, conditions, operations and effects thereof. Notwithstanding the above, Governmental Entity may exercise the remedies of specific performance or injunctive relief.

**3. Financing, Encumbrance and Transfer Approval.** Governmental Entity hereby approves **[**the transfer of the Property to the Borrower and**]** the financing evidenced by the Project Note and secured by the Mortgage. Governmental Entity further agrees that any transfer of the Property in connection with foreclosure or deed in lieu thereof will not require Governmental Entity’s consent.

**[USE THIS VERSION OF SECTION 4 IF RESTRICTIONS ARE LIHTC RELATED]**

**[4. Surviving Provisions.** Lender and Funding Lender acknowledge and agree that, in the event of a foreclosure under the Mortgage or delivery by Borrower of a deed in lieu thereof (collectively, a “**Loan Foreclosure**”), the following rule contained in Section 42(h)(6)(E)(ii) of the Internal Revenue Code will apply:

For a period of 3 years from the date of the Loan Foreclosure, with respect

to any unit that had been regulated by the Regulatory Agreement, (i) none of the eligible

tenants occupying those units at the time of Loan Foreclosure may be evicted or their tenancy terminated (other than for good cause, including but not limited to, the tenants’ ineligibility pursuant to Section 42 of Code), and (ii) no rent for any such unit may be increased except as otherwise permitted under Section 42 of the Code. The termination of the Regulatory Agreement and the use restrictions contained in it will not be construed to permit the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit (the “**Surviving Provisions**”) before the close of the 3-year period following such termination.**]**

**[USE THIS VERSION OF SECTION 4 IF RESTRICTIONS ARE NOT LIHTC RELATED]**

**[4. Reserved]**

**5. Lender Notice of Default.** In consideration of Governmental Entity’s agreements contained in this Agreement, Lender agrees that in the event of any default by Borrower under the Loan Documents, Governmental Entity will be entitled to receive a copy of any notice of default given by Lender or Funding Lender to Borrower under the Loan Documents. Neither the giving nor the failure to give a notice to Governmental Entity pursuant to this Section 5 will affect the validity of any notice given by Lender or Funding Lender to the Borrower.

**6. Governmental Entity Notice of Default.** Governmental Entity must give Lender and Funding Lender a concurrent copy of each material notice (including without limitation each notice of default) given by Governmental Entity under or with respect to the Regulatory Agreement, and agrees that Lender or Funding Lender, at Lender’s and Funding Lender’s sole election, will have the right (but not the obligation) to cure any default by Borrower under the Regulatory Agreement on its and/or Borrower’s behalf. Governmental Entity hereby represents and warrants that, to the best of its knowledge, there is no current default under the Regulatory Agreement [**USE IF LIHTC PROPERTY**: and that there are no outstanding IRS 8823 Reports of Non-Compliance**]**.

**7. Governmental Entity’s Rights.** Except as set forth in Sections 2 and 8 of this Agreement, nothing in this Agreement is intended to abridge or adversely affect any right or obligation of Borrower and/or Governmental Entity, respectively, under the Regulatory Agreement; provided that, (A) the Regulatory Agreement may not be modified, amended, changed or altered without the prior written consent of Funding Lender so long as the Loans are secured by the Property and (B) for so long as the Loans are secured by the Property, notwithstanding the terms of the Regulatory Agreement to the contrary, neither Borrower nor Governmental Entity will, without Funding Lender’s prior written consent, exercise or seek any right or remedy under the Regulatory Agreement or available at law or in equity which will or could result in (i) a transfer of possession of the Property or the control, operations or management thereof, (ii) collection or possession of rents or revenues from or with respect to the Property by any party other than Borrower or Funding Lender; (iii) appointment of a receiver for the Property; (iv) application of insurance or condemnation proceeds other than as approved by Funding Lender pursuant to the Loan Documents; (v) removal or replacement of the existing property manager of the Property; or (vi) a material adverse effect on Lender’s or Funding Lender’s security for the Loans.

**8. Foreclosure by Lender.** In the event of foreclosure, deed in lieu of foreclosure, or similar disposition of the Property by Lender, (a) no consent will be required from Governmental Entity, and (b) the Regulatory Agreement will automatically terminate [**USE ONLY IF REGULATORY AGREEMENT CONTAINS INDEMNIFICATION PROVISION FROM BORROWER TO GOVERNMENTAL ENTITY**: and (c) Lender will have no indemnification obligations to Governmental Entity for any period during which Lender does not own or is not in possession of the Property**]**.

**9. Refinancing.** Governmental Entity agrees that its agreement to subordinate hereunder will extend to any new mortgage debt which is for the purpose of refinancing all or any part of the indebtedness evidenced by the Loan Documents (including reasonable and necessary costs associated with the closing and/or the refinancing, and any reasonable increase in proceeds for rehabilitation in the context of a preservation transaction). All terms and covenants of this Agreement will inure to the benefit of any holder of any such refinanced debt, and all references to the Loan Documents and Lender will mean, respectively, the refinance loan documents and the holder of such refinanced debt.

**10. Miscellaneous Provisions.**

(a) This Agreement represents the entire understanding and agreement between the parties with regard to the matters addressed herein, and will supersede and cancel any prior agreements with regard to such matters.

(b)If there is any conflict or inconsistency between the terms of the Regulatory Agreement and the terms of this Agreement, then the terms of this Agreement will control.

(c) This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties to this Agreement, which will include with regard to the Governmental Entity any permitted successor or assign of the Governmental Entity under or pursuant to the terms of the Regulatory Agreement and, with regard to Lender, any subsequent holder of the Project Note. Except for Funding Lender, no other party will be entitled to any benefits hereunder, whether as a third-party beneficiary or otherwise.

(d) If any one or more of the provisions contained in this Agreement, or any application of any such provisions, is invalid, illegal, or unenforceable in any respect, the validity, legality, enforceability, and application of the remaining provisions contained in this Agreement will not in any way be affected or impaired.

(e) Each notice, request, demand, consent, approval or other communication (collectively, “**Notices**,” and singly, a “**Notice**”) which is required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery (any Notice so delivered will be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery (any Notice so delivered will be deemed to have been received on the next Business Day following receipt by the courier), or (iii) 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 will be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

If to Governmental Entity:

[Name]

[Address]

Attention:

Facsimile:

Telephone:

If to Lender:

[Name]

[Address]

Attention:

Facsimile:

Telephone:

Notices intended for Funding Lender will be addressed to:

Prior to Conversion:

[Name]

[Address]

Attention:

Facsimile:

Telephone

On and after Conversion:

[Name]

[Address]

Attention:

Facsimile:

 Telephone

If to Borrower:

[Name]

[Address]

Attention:

Facsimile:

Telephone:

Any party, by Notice given pursuant to this Section, may 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 will only be effective upon receipt. Neither party will refuse or reject delivery of any Notice given in accordance with this Section.

(f)Each of the parties will, whenever and as often as they are requested to do so by the other, execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, any and all such further instruments and documents as may be reasonably necessary to carry out the intent and purpose of this Agreement, and to do any and all further acts reasonably necessary to carry out the intent and purpose of this Agreement.

(g) This Agreement will be governed by the laws of the State in which the Property is located.

(h) Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations under this Agreement.

(i) No failure or delay on the part of any party to this Agreement in exercising any right, power, or remedy under this Agreement will operate as a waiver of such right, power, or remedy, nor will any single or partial exercise of any such right, power or remedy preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power or remedy under this Agreement.

(j) Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.

(k) This Agreement may be assigned at any time by Lender to any subsequent holder of the Project Note.

(l)This Agreement may be amended, changed, modified, altered or terminated only by a written instrument signed by the parties to this Agreement or their successors or assigns.

(m) This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

(n) Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by Governmental Entity of its governmental powers (including police, regulatory and taxing powers) with respect to Borrower or the Property to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.

(o) Funding Lender’s Rights to Control. Notwithstanding anything herein to the contrary, pursuant to the Senior Mortgage and Section 6.03 of the Funding Loan Agreement, all acts, consents, approvals and undertakings of the Lender hereunder will be solely at the written direction of the Funding Lender. The parties hereto acknowledge and agree that the Funding Lender is a third-party beneficiary of this Agreement, with full rights as such.

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN THE REGULATORY AGREEMENT BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF THE MORTGAGE.

**[SIGNATURE AND ACKNOWLEDGMENT PAGES FOLLOW]**

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

**GOVERNMENTAL ENTITY**

**[NAME OF GOVERNMENTAL ENTITY]**, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, before me \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ a Notary Public, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Notary)

**BORROWER**

**[NAME OF BORROWER]**, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, before me \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ a Notary Public, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Notary)

**LENDER**

**[NAME OF FISCAL AGENT],** a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By:

STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

 ) ss.

COUNTY OF\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

 I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

 On this \_\_\_\_\_ day of , 20\_\_, before me personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, to me known to be the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 WITNESS my hand and official seal hereto affixed the day and year first above written.

|  |
| --- |
|  Notary Public in and for the State of \_\_\_\_\_\_\_\_\_, residing at My commission expires:  [Type or Print Notary Name] |

(Use This Space for Notarial Seal Stamp)

 **EXHIBIT A**

 LEGAL DESCRIPTION