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Fee Amount: \$77.00
Revenue Tax:
LISA SMITH RECORDER
Madison County, Iowa

Subordination Agreement

Recorder's Cover Sheet

Preparer Information: John B. Lindsay
Kirton McConkie
50 East South Temple, Suite 400
Salt Lake City, UT 84111
Telephone: 801-239-3188

Taxpayer Information: N/A

Return Document To: John B. Lindsay
Kirton McConkie
50 East South Temple, Suite 400
Salt Lake City, UT 84111
Telephone: 801-239-3188

Grantors: Bonneville Mortgage Company, Rural Development and RD ESW, LLC

Grantees: N/A

Parcel Identification Number: N/A

Legal Description: See attached Exhibit A

Document or instrument number of associated documents previously recorded: N/A

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT is entered into this 15th day of August, 2017, by and among Bonneville Mortgage Company, a Utah corporation ("Senior Lender"), Rural Development, acting through the Rural Housing Service, U. S. Department of Agriculture, United States of America or successor Agency ("Rural Development"), and RD ESW, LLC, an Iowa limited liability company ("Borrower").

Recitals

- A. Rural Development previously made loans to, or permitted the assumption of loans by, the Borrower in the original combined principal amount of \$962,603.60 (the "Rural Development Loan") which loans are currently secured by a mortgage (the "Rural Development Mortgage") on multifamily housing projects located in Adair County and Madison County, State of Iowa (collectively the "Property"). The Property is more fully described in the attached Exhibit A.
- B. The Senior Lender is about to make a loan (the "First Mortgage Loan") to the Borrower in the original principal amount of Three Million Eight Hundred Thirty Thousand Dollars (\$3,830,000.00). The First Mortgage Loan will be secured by a first mortgage lien (the "First Mortgage") on the Property. The Borrower's obligation to repay the First Mortgage Loan is evidenced by a Promissory Note dated August 15, 2017 (the "First Mortgage Note").
- C. The Borrower has requested Rural Development, and Rural Development has agreed, to subordinate the Rural Development Mortgage to the First Mortgage.

NOW, THEREFORE, in order to induce Rural Development to subordinate its Rural Development Mortgage to the First Mortgage Lien, and in consideration thereof, the Senior Lender, Rural Development and the Borrower agree as follows:

Subordination

Rural Development hereby subordinates its Rural Development Loan and the lien of its Rural Development Mortgage on the Property to the First Mortgage Loan and the lien of the First Mortgage in an amount not to exceed Three Million Eight Hundred Thirty Thousand Dollars (\$3,830,000.00), plus, any accrued interest, protection advances, and expenses, including attorney fees and costs incurred by Senior Lender in connection with the enforcement of its rights under the Senior Loan ("Subordination Cap") subject to the terms and conditions set forth herein.

1. Status of Rural Development Mortgage.

The Senior Lender understands that the Property is subject to the lien of the Rural Development Mortgage. The existence of the Rural Development Mortgage shall not constitute an event of default under the first Mortgage Loan Documents.

2. Terms of Subordination.

a. **Agreement to Rural Development.** The Senior Lender and Rural Development agree that: (i) the indebtedness evidenced by the Rural Development Loan Documents is and shall be subordinate in right of payment, to the extent and in the manner provided in the Subordination Cap and in the manner set forth in this Agreement, to the prior payment in full of the indebtedness secured by the First Mortgage, and (ii) the Rural Development Mortgage and the other Rural Development Loan Documents are and shall be subject in all respects to the liens, terms, covenants and conditions of the First Mortgage and such other sums which may hereafter be made pursuant to the First Mortgage for the purposes of protecting the lien of the First Mortgage, curing defaults by the Borrower under the First Mortgage or for any other purpose expressly permitted by the First Mortgage.

b. **Loan Payments and Servicing.** Rural Development and the Senior Lender shall each service and collect payments on their respective loans.

3. Default under Rural Development Loan Documents.

a. **Notice of Default and Cure Rights.** Rural Development shall deliver to the Senior Lender a notice of Rural Development Loan Default within five Business Days in each case where Rural Development has given a notice of Rural Development Loan Default to the Borrower. The Senior Lender shall have the right, but not the obligation, to cure any Rural Development Loan Default within 60 days following the date of such notice; provided, however that Rural Development shall be entitled, during such 60-day period, to continue to pursue its rights and remedies under the Rural Development Loan Documents. All amounts paid by the Senior Lender in accordance with the First Mortgage Loan Documents to cure a Rural Development Loan Default shall be deemed to have been advanced by the Senior Lender pursuant to, and shall be secured by the lien of, the First Mortgage. Failure of Rural Development to send a notice of Rural Development Loan Default to the Senior Lender shall not prevent the exercise of Rural Development's rights and remedies under the Rural Development Loan Documents, subject to the provisions of this Agreement.

b. **Rural Development's Exercise of Remedies After Notice to Senior Lender.** If an Rural Development Loan Default occurs and is continuing, Rural Development agrees to notify the Senior Lender, in writing, of its intent to commence foreclosure proceedings with respect to the Property under Rural Development Loan Documents or exercise any other rights or remedies it may have under Rural Development Loan Documents, including, but not limited to accelerating the Rural Development Loan, collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder unless and until it has given the Senior Lender at least 60 days' prior written notice; during such 60 day period,

however, Rural Development shall be entitled to exercise and enforce all other rights and remedies available to Rural Development under Rural Development Loan Documents and/or under applicable laws, including without limitation, rights to enforce covenants and agreements of the Borrower relating to income, rent, or affordability restrictions including the imposition of civil monetary penalties.

4. Default under First Mortgage Loan Documents.

Notice of Default and Cure Rights. The Senior Lender shall deliver to Rural Development a default notice within five business days in each case where the Senior Lender has given a notice of First Mortgage Loan Default to the Borrower. Rural Development shall have the right, but not the obligation, to cure any such monetary First Mortgage Loan Default within 60 days following the date of such notice; provided, however, that the Senior Lender shall be entitled during such 60-day period to continue to pursue its remedies under the First Mortgage Loan Documents. Rural Development may have up to 90 days from the date of the notice of First Mortgage Loan default to cure a non-monetary default. In the event the Senior Mortgagee commences an enforcement action under the Senior Loan Documents following the occurrence of a Senior Mortgage Default the Subordinate Mortgagee agrees to cooperate with the Senior Mortgagee in maintaining the rental assistance agreements as permitted by the applicable regulatory and statutory requirements.

5. Conflict.

The Borrower, the Senior Lender and Rural Development each agrees that, in the event of any conflict or inconsistency between the terms of the First Mortgage Loan Documents, Rural Development Loan Documents and the terms of this Agreement, the Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of the Senior Lender and Rural Development in the Property; (b) the timing of the exercise of remedies by the Senior Lender and Rural Development under the First Mortgage and Rural Development Mortgage, respectively; and (c) solely as between the Senior Lender and Rural Development, the notice requirements, cure rights, and the other rights and obligations which the Senior Lender and Rural Development 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 time to cure any First Mortgage Loan Default or Rural Development Loan Default, as the case may be, give the Borrower the right to notice of any First Mortgage Loan Default or Rural Development Loan Default, as the case may be other than that, if any, provided, under the First Mortgage Loan Documents or Rural Development Loan Documents; or create any other right or benefit for Borrower as against Senior Lender or Rural Development.

6. Rights and Obligations of Rural Development under Rural Development Loan Documents and of the Senior Lender under the First Mortgage Loan Documents.

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

a. Insurance; Condemnation or Casualty. (i) The Senior Lender agrees that, in addition to the Senior Lender, Rural Development shall be listed as loss payee as its interest appears on all insurance policies maintained on the Property; (ii) In the event of a taking or threatened taking by condemnation or other exercise of eminent domain of all or a portion of the Property or the occurrence of a fire or other casualty resulting in damage to all or a portion of the Property (collectively, a "Casualty"), at any time or times when the First Mortgage remains a lien on the Property the following provisions shall apply:

i. The Rural Development hereby agrees that its rights (under the Rural Development Loan Documents or otherwise) to participate in any proceeding or action relating to a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Casualty shall be and remain subordinate in all respects to the Senior Lender's rights under the First Mortgage Loan Documents with respect thereto; provided, however, this subsection or anything contained in this Agreement shall not limit the rights of the Rural Development to file any pleadings, documents, claims or notices with the appropriate court with jurisdiction over the proposed Casualty;

ii. All proceeds received or to be received on account of Casualty, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment on the First Mortgage Loan) in the manner determined by the Senior Lender; provided, however, that if the Senior Lender elects to apply such proceeds to payment on the principal of, interest on and other amounts payable under the First Mortgage Loan, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the First Mortgage Loan shall be paid to, and may be applied by, Rural Development in accordance with the applicable provisions of the Rural Development Loan Documents.

7. Interference with Rural Development Loan Obligations.

The Senior Lender will take no action that would preclude Borrower from being able to comply with applicable government statutes, regulations, instructions and terms of Rural Development's loan documents.

8. 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 or Rural Development 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 based upon the date of actual receipt), addressed to the respective parties as follows:

SENIOR LENDER:

Bonneville Mortgage Company
111 Main, Suite 1600
Salt Lake City, Utah 84111
Attn: Brent H. Peterson

With a copy to:

Kirton McConkie
50 East South Temple, Suite 400
Salt Lake City, Utah 84111
Attn: John B. Lindsay

RURAL DEVELOPMENT:

UNITED STATES OF AMERICA, acting through the
RURAL DEVELOPMENT
RURAL HOUSING SERVICE,
U. S. DEPARTMENT OF AGRICULTURE
201 Walnut Street, Room 873
Des Moines, Iowa 50309

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.

9. General.

a. Assignment/Successors. This Agreement shall be binding upon and inure to the heirs, executors, administrators, successors and assigns of the respective parties.

b. No Partnership or Joint Venture. The Senior Lender's permission for the subordination of Rural Development Loan Documents does not constitute the Senior Lender as a joint venturer or partner of Rural Development. Neither party hereto shall hold itself out as a partner, agent or affiliate of the other party hereto.

c. Senior Lender's and Rural Development's Consent. Wherever the 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 in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever Rural Development's consent or approval is required by any provision of this Agreement, such consent or approval may be

granted or denied by Rural Development in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

d. Further Assurances. Rural Development, the Senior Lender and the Borrower each agree, at the 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 Rural Development Mortgage is subordinate to the lien, covenants and conditions of the First Mortgage, or to further evidence the intent of this Agreement. **e. Amendment.** This Agreement shall not be amended or terminated except by written instrument signed by all parties hereto.

f. Governing Law. This Agreement shall be governed by federal law and disputes will be resolved in Federal Court.

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 First Mortgage Loan Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under Rural Development Loan Documents, other than by reason of payments which Rural Development is obligated to remit to the Senior Lender pursuant to Section 4 hereof; (iii) the acquisition by the Senior Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the First Mortgage; or (iv) the acquisition by Rural Development of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, Rural Development 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:

BONNEVILLE MORTGAGE COMPANY,
a Utah corporation

By: 
Brent H. Peterson
President, Multifamily Division

RURAL DEVELOPMENT:

UNITED STATES OF AMERICA, acting through the
RURAL DEVELOPMENT RURAL HOUSING
SERVICE, U. S. DEPARTMENT OF AGRICULTURE

By: Mary Beth Guergens
Name: Mary Beth Guergens
Title: Housing Program Director

BORROWER:

RD ESW, LLC,
an Iowa limited liability company

By: ESW I, LLC,
an Iowa limited liability company
Its: Managing Member

By: National Affordable Housing Foundation,
an Iowa Non-Profit Corporation
Its: Sole Member

By:

Jodi Page

Its:

President

STATE OF UTAH

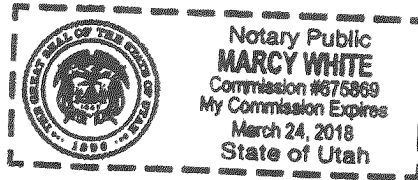
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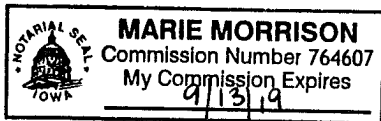
The foregoing instrument was acknowledged before me this 9th day of August, 2017, by Brent H. Peterson, President, Multifamily Division, Bonneville Mortgage Company, a Utah corporation.

Notary Public



STATE OF IOWA)
) SS
COUNTY OF Polk)

The foregoing instrument was acknowledged before me this 11th day of August, 2017, by Mary Beth Juergens, as Housing Program Director of UNITED STATES OF AMERICA, acting through the RURAL DEVELOPMENT RURAL HOUSING SERVICE, U. S. DEPARTMENT OF AGRICULTURE.



Marie Morrison
Notary Public

STATE OF IOWA

COUNTY OF POLK

On this 18th day of August, 2017, before me the undersigned, a notary public in and for the State of Iowa, personally appeared Jodi Page, to me personally known, who, being by me duly sworn, did say that s/he is President of National Affordable Housing Foundation, an Iowa Non-Profit Corporation which is the sole member of ESW I, LLC, an Iowa limited liability company which is the Managing Member of RD ESW, LLC, an Iowa limited liability company, executing the foregoing instrument, that the instrument was signed on behalf of the limited liability company, by authority of the limited liability company and the said President acknowledged the execution of the instrument to be the voluntary act and deed of the limited liability company.

Kelly Lynn Karns
Notary Public

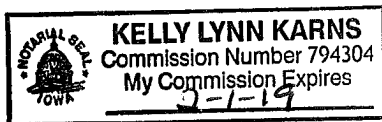


EXHIBIT A

Real property in the City of Stuart, County of Adair, State of Iowa, described as follows:

Parcel 1:

The West 122.5 feet of Lot Three (3) of Lot Two (2) of the Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$), and the East 45 feet of the North 209.33 feet of Lot Three (3) of Lot Four (4) of Lot Two (2) of the Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$), all in Section Five (5), Township Seventy-seven (77) North, Range Thirty (30) West of the 5 P.M., Iowa.

Parcel 2:

Lot Three (3) of Lot Four (4) of Lot Two (2), except the East 45 feet thereof in the Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section Five (5), Township Seventy-seven (77) North, Range Thirty (30) West of the 5th P.M. in the Town of Stuart, Adair County, Iowa.

Real property in the City of Earlham, County of Madison, State of Iowa, described as follows:

A parcel of land located in the Southeast Quarter ($\frac{1}{4}$) of the Northeast Quarter ($\frac{1}{4}$) of Section One (1), Township Seventy-seven (77) North, Range Twenty-nine (29) West of the 5th P.M., City of Earlham, Madison County, Iowa, described more particularly as follows, to wit: Commencing at a point 33 feet North and 932 feet West of the Southeast corner of the Northeast Quarter ($\frac{1}{4}$) of said Section One (1), thence West 360-feet, thence North $00^{\circ}31'$ East 330 feet, thence East 360 feet, thence South $00^{\circ}31'$ West 330 feet to the point of beginning.

Real property in the City of Winterset, County of Madison, State of Iowa, described as follows:

Lots Twenty-four (24), Twenty-five (25) and Twenty-six (26), and all that part of Lot Twenty-seven (27) which is West of a line described as commencing at the Northeast corner of Lot Twenty-six (26), and running thence South to the South line of said Lot Twenty-seven (27), all in Northwest Development - Plat 1, to the City of Winterset, Madison County, Iowa.

ADDENDUM TO SUBORDINATION AGREEMENT

The Rural Development Mortgage as defined in the Subordination Agreement shall include all of the following Rural Development mortgages:

1. Mortgage from BeaCam Apartments LTD, L.P. to United States of America, acting through the Farmers Home Administration, United States Department of Agriculture recorded April 1, 1991 in Book 304, Page 302 of the Adair County, Iowa Recorder's Office.
2. Mortgage from BeaCam Apartments, LTD, L.P. to United States of America, acting through the Farmers Home Administration, recorded August 7, 1979 in Book 234, Page 246 of the Adair County, Iowa Recorder's Office.
3. Mortgage from BeaCam Apartments, LTD, L.P., to United States of America, acting through the Farmers Home Administration, recorded June 17, 1988 in Book 278, Page 109 of the Adair County, Iowa Recorder's Office.
4. Mortgage from Madison Manor Company, Ltd., to United States of America recorded January 5, 1981 in Book 133, Page 797 of the Madison County, Iowa Recorder's Office.
5. Mortgage from National Affordable Housing Foundation to United States of America recorded December 30, 2005, in Book 2005, Page 6199 of the Madison County, Iowa Recorder's Office.
6. Mortgage from Winterset Development Company to United States of America, acting through the Farmer's Home Administration, U.S. Dept. of Agriculture, recorded October 20, 1982 in Book 136, Page 507 of the Madison County, Iowa Recorder's Office.
7. Mortgage from Winterset Development Company II to United States of America, acting through the Farmers Home Administration, U.S. Dept. of Agriculture recorded December 19, 1985 in Book 144, Page 519 of the Madison County, Iowa Recorder's Office.
8. Mortgage from National Affordable Housing Foundation to United State of America, acting through the Farmers Home Administration, U.S. Dept. of Agriculture recorded November 4, 2005 in Book 2005, Page 5352 of the Madison County, Iowa Recorder's Office.
9. Mortgage from National Affordable Housing Foundation to United States of America, acting through the Farmer's Home Administration, U.S. Dept. of Agriculture recorded December 30, 2005 in Book 2005, Page 6190 of the Madison County, Iowa Recorder's Office.