

# SUBORDINATION AGREEMENT

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This Subordination Agreement (this "**Agreement**") is entered into as of [EFFECTIVE DATE] (the "**Effective Date**") by and among:

[SUBORDINATING LENDER LEGAL NAME], a [STATE] [ENTITY TYPE] or individual, with an address at [SUBORDINATING LENDER ADDRESS] (the "**Subordinating Lender**"); and

[SENIOR LENDER LEGAL NAME], a [STATE] [ENTITY TYPE] or individual, with an address at [SENIOR LENDER ADDRESS] (the "**Senior Lender**"); with the acknowledgment and agreement of:

[BORROWER / OWNER LEGAL NAME], with an address at [BORROWER ADDRESS] (the "**Borrower**").

The Subordinating Lender and Senior Lender are each a "**Party**" and together the "**Parties**." The Borrower joins as an acknowledging party.

**Recitals.** The Borrower is or will be obligated to the Senior Lender under [DESCRIBE SENIOR LOAN, e.g. a promissory note and mortgage/deed of trust dated [DATE]] in the original principal amount of [AMOUNT] (the "**Senior Debt**"), secured by [DESCRIBE COLLATERAL OR PROPERTY AT [PROPERTY ADDRESS / LEGAL DESCRIPTION]] (the "**Collateral**"). The Borrower is also obligated to the Subordinating Lender under [DESCRIBE JUNIOR LOAN/LIEN] in the amount of [AMOUNT] (the "**Subordinate Debt**"), which is or would otherwise be secured by the same Collateral. As a condition to making, renewing, or continuing the Senior Debt, the Senior Lender requires that the Subordinate Debt and any lien securing it be subordinated to the Senior Debt. In consideration of the mutual promises below and other good and valuable consideration, the Parties agree as follows.

## 1. Definitions and Subject Interests

**1.1 Senior Debt.** "**Senior Debt**" means all principal, interest, fees, costs, and other amounts now or hereafter owing by the Borrower to the Senior Lender under the senior loan documents, including any renewal, extension, modification, refinancing, or replacement of those obligations, subject to Section 4.

**1.2 Subordinate Debt.** "**Subordinate Debt**" means all amounts now or hereafter owing by the Borrower to the Subordinating Lender under the subordinate loan documents, and the lien, mortgage, deed of trust, security interest, or other encumbrance securing it (the "**Subordinate Lien**").

**1.3 Senior Lien.** "**Senior Lien**" means the lien, mortgage, deed of trust, or security interest securing the Senior Debt against the Collateral.

**1.4 Loan documents.** "**Loan documents**" means, for each obligation, the notes, security instruments, guaranties, and related agreements evidencing or securing that obligation, as identified in the recitals or in an exhibit.

## 2. Agreement to Subordinate

**2.1 Subordination of lien.** The Subordinating Lender subordinates the Subordinate Lien to the Senior Lien. The Senior Lien is and will remain a lien on the Collateral prior and superior to the Subordinate Lien, regardless of the order in which the liens were created, attached, or recorded, and regardless of any rule of priority that would otherwise apply.

**2.2 Subordination of payment.** Except for the regularly scheduled payments expressly permitted in Section 3, the Subordinating Lender subordinates its right to receive payment on the Subordinate Debt to the prior payment in full of the Senior Debt, to the extent and only to the extent set out in this Agreement.

**2.3 Scope and continuing nature.** This subordination applies to the full amount of the Senior Debt as permitted by Section 4 and continues until the Senior Debt is paid in full and all commitments to extend further Senior Debt have terminated.

## 3. Permitted and Restricted Payments

**3.1 Permitted payments.** Unless and until a default exists under the Senior Debt, the Borrower may make, and the Subordinating Lender may receive, the regular scheduled payments of principal and interest on the Subordinate Debt as they come due under the subordinate loan documents.

**3.2 Payment blockage on default.** Upon written notice from the Senior Lender to the Subordinating Lender that a default exists under the Senior Debt, the Borrower will not make, and the Subordinating Lender will not accept, any payment on the Subordinate Debt until the default is cured or waived or the Senior Debt is paid in full, except as required by applicable law.

**3.3 Turnover.** If the Subordinating Lender receives any payment or distribution on the Subordinate Debt in violation of this Agreement, it will hold that amount in trust for the Senior Lender and promptly pay it over to the Senior Lender to be applied to the Senior Debt.

## 4. Limits on the Senior Debt

**4.1 Cap.** The subordination in this Agreement secures the Senior Debt up to a maximum principal amount of **[CAP AMOUNT]**, plus accrued interest, protective advances, and reasonable enforcement costs. Senior principal advanced above the cap is not entitled to the benefit of this subordination unless the Subordinating Lender consents in writing.

**4.2 Permitted modifications.** The Senior Lender may renew, extend, or modify the Senior Debt without notice to or consent of the Subordinating Lender, provided that any increase in the principal amount above the cap, or any material increase in the interest rate beyond **[RATE / PERCENTAGE POINTS]**, requires the Subordinating Lender's prior written consent.

**4.3 Protective advances.** Advances the Senior Lender makes to protect the Collateral (such as taxes, insurance, and preservation costs) are part of the Senior Debt and entitled to the benefit of this Agreement.

## 5. Enforcement and Remedies

**5.1 Standstill.** Until the Senior Debt is paid in full, the Subordinating Lender will not, without the Senior Lender's prior written consent, accelerate the Subordinate Debt, commence foreclosure, exercise any other enforcement remedy against the Collateral, or join in any involuntary proceeding against the Borrower, except as required to preserve a claim or as permitted by applicable law.

**5.2 Senior Lender control.** The Senior Lender may exercise its rights and remedies under the senior loan documents and applicable law without regard to the Subordinate Lien, and the Subordinating Lender will not interfere with or contest those actions.

**5.3 Application of proceeds.** Proceeds from any sale, foreclosure, or other disposition of the Collateral will be applied first to the Senior Debt (up to the cap and permitted amounts) before any application to the Subordinate Debt, subject to applicable law and the rights of any prior or governmental claimant.

**5.4 No subrogation until paid.** The Subordinating Lender will not exercise any right of subrogation to the Senior Lender's position until the Senior Debt is paid in full.

## 6. Insolvency Provisions

**6.1 Subordination in insolvency.** In any bankruptcy, insolvency, receivership, assignment for the benefit of creditors, or similar proceeding involving the Borrower, the Senior Debt will be paid in full (up to the cap and permitted amounts) before the Subordinating Lender receives any payment or distribution on the Subordinate Debt.

**6.2 Authorization to act.** If the Subordinating Lender fails to file a timely proof of claim, the Senior Lender may, but is not obligated to, file such claim on the Subordinating Lender's behalf solely to preserve the claim, without thereby acquiring or waiving any right.

**6.3 Turnover in insolvency.** Any payment or distribution the Subordinating Lender receives in such a proceeding in respect of the Subordinate Debt, in violation of this Agreement, will be held in trust and turned over to the Senior Lender for application to the Senior Debt.

## 7. Representations and Covenants

**7.1 Authority.** Each Party represents that it has full power and authority to enter into this Agreement and that this Agreement is its valid and binding obligation.

**7.2 Ownership of debt.** The Subordinating Lender represents that it is the lawful owner of the Subordinate Debt, free of any prior assignment or subordination that conflicts with this Agreement.

**7.3 Notice of transfer.** The Subordinating Lender will not assign or transfer the Subordinate Debt unless the transferee agrees in writing to be bound by this Agreement, and the Subordinate loan documents will be marked to reference this Agreement.

**7.4 Borrower acknowledgment.** The Borrower acknowledges this Agreement, agrees not to make payments in violation of it, and agrees that a breach of this Agreement is a default under the subordinate loan documents.

## 8. General Provisions

**8.1 Continuing agreement; reinstatement.** This Agreement is continuing and remains in effect until the Senior Debt is paid in full. If any payment to the Senior Lender is later avoided or recovered, this Agreement is reinstated as if the payment had not been made.

**8.2 Recording.** This Agreement may be recorded in the real property or other applicable records of [COUNTY, STATE] to give notice of the agreed priority.

**8.3 Governing law and venue.** This Agreement is governed by the laws of the State of [STATE], without regard to its conflict-of-laws rules. The Parties submit to the exclusive jurisdiction of the state and federal courts located in [COUNTY, STATE].

8.4 **Notices.** Notices must be in writing and sent to the addresses above (or as updated in writing) and are effective on receipt.

8.5 **Successors and assigns.** This Agreement binds and benefits the Parties and their respective successors and assigns, including any holder of the Senior Debt.

8.6 **Entire agreement; amendment.** This Agreement is the entire agreement among the Parties on its subject and may be amended only by a writing signed by the Subordinating Lender and the Senior Lender.

8.7 **Severability and counterparts.** If any provision is unenforceable, the rest remains in effect. This Agreement may be signed in counterparts and by electronic signature, each of which is an original.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the Effective Date.

**SUBORDINATING LENDER**

**SENIOR LENDER**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed name: **[NAME]**

Printed name: **[NAME]**

Title: **[TITLE / N/A]**

Title: **[TITLE / N/A]**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**BORROWER (ACKNOWLEDGED AND AGREED)**

Signature: \_\_\_\_\_

Printed name: **[NAME]**

Title: **[TITLE / N/A]**

Date: \_\_\_\_\_

**[NOTARY ACKNOWLEDGMENT — if required for recording in [COUNTY, STATE], attach the form of acknowledgment required by local law.]**

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