

## CHAPTER 15: PROJECT RESERVATION

### 15.1 INTRODUCTION

Some borrowers may want to prepay their Agency loans and convert their properties to conventional use. To protect the supply of affordable housing and to ensure that tenants of multi-family housing properties do not suffer from rent overburden or the loss of their units; the Agency requires that borrowers obtain approval before prepaying their loans [7 CFR part 3560, subpart N]. The approval process allows the Agency to offer the borrower incentives to forgo prepayment and maintain the affordability of the housing. This chapter explains prepayment requirements and describes the prepayment request and approval process.

### 15.2 OVERVIEW OF THE CHAPTER

The key decision points in the prepayment process are shown in Exhibit 15-D of this section. For an overview of the process, see **Attachment 15-A**.

This chapter addresses the process in five parts:

- Section 1 outlines the key eligibility requirements for participating in the process and obtaining approval to prepay.
- Section 2 describes requirements and procedures for processing and evaluating prepayment requests for loans closed before 1979 or loans with no restrictive covenants.
- Section 3 describes requirements and procedures for processing and evaluating prepayment requests for loans closed between 1979 and 1989 that have restrictive covenants. This section also describes the process of offering the property for sale to non-profit organizations and public agencies.
- Section 4 discusses properties subject to special circumstances, including foreclosure, bankruptcy, acceleration and the advance payment of accounts.

#### Office of Rental Housing Preservation (ORHP)

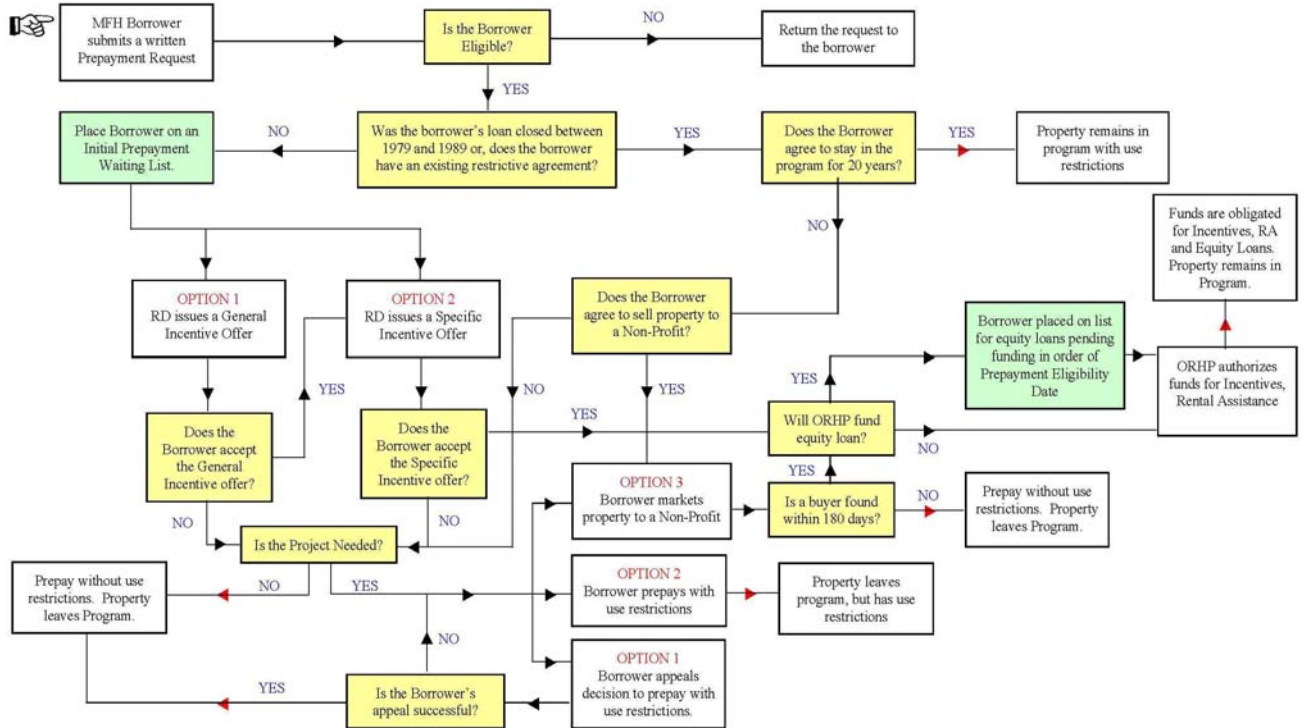
ORHP was established to ensure a standard approach to the prepayment decision-making process. ORHP will approve all incentive offers made by the Field Offices and authorize the closing of these offers.

Through Prepayment Tracking and Concurrence (PRE-TRAC), ORHP should be kept informed of the prepayment request's progress through the process. Field Offices should inform ORHP when:

- A prepayment request is received;
- A request is to be removed from the list;
- An incentive offer is developed and ready for ORHP approval before being offered;
- A borrower accepts incentives;
- A borrower rejects an incentive offer;
- The State Office is ready to process a transfer to a non-profit or public body; or
- The State Office requests prepayment with or without restrictive-use provisions.

Loan Servicers should use PRE-TRAC, which is an Internet-ready database application that allows Loan Servicers to process multi-family housing prepayment requests.

### Flow Chart of Prepayment Requests & Incentives



## **SECTION 1: PRESERVATION AND ELIGIBILITY FOR PREPAYMENT**

### **15.3 OVERVIEW**

This section covers key eligibility requirements that apply to prepayment process, including:

- Determining eligibility to submit a prepayment request;
- Meeting with the borrower;
- Notifying tenants;
- Receiving a prepayment request and conducting a completeness review; and
- Determining prepayment feasibility.

### **15.4 BORROWERS ELIGIBLE TO REQUEST PREPAYMENT [7 CFR 3560.652]**

Before submitting a prepayment request, borrowers should confirm that they are eligible to prepay and that they are required to submit a written prepayment request. All loans approved prior to December 15, 1989, are subject to prepayment regulations and must file a prepayment application to request payoff of the loan(s). Loans made on or after December 15, 1989, to build or acquire new multi-family housing units are prohibited from prepayment.

### **15.5 MEETING WITH THE BORROWER**

Whenever Loan Servicers receive an inquiry concerning prepayment, they should invite the borrower to a meeting. If the borrower begins the prepayment request process with an understanding of the steps involved and the incentives available, the process is more likely to proceed with fewer miscommunications and delays.

At the meeting, the Loan Servicers should:

- Provide the borrower with the items necessary to constitute a prepayment request in accordance with 7 CFR 3560.653 and review the list of items to be submitted. Answer any questions regarding the submissions. Make clear that a complete request includes evidence that the borrower is able to prepay the loan;
- Explain the prepayment process, including the procedures for requesting prepayment, the offer of incentives, and the sale to non-profit organizations or public agencies;
- Recommend that the borrower hold a meeting with tenants to inform them of the prepayment request and explain the implications of the prepayment process for tenants. The borrower may invite other affordable housing agencies to this meeting to discuss options with the tenants. The Loan Servicer may attend this meeting as well;

- Describe the incentives that are available and explain that the offer will depend on the value of the borrower’s project and its potential conventional use (**Attachment 15-B** provided a description of incentives and the incentive development process that can be given to the borrower); and
- Explain the restrictive use covenants that will apply if the borrower accepts the Agency’s offer of incentives (see **Attachment 15-E**).

**15.6 TENANT NOTIFICATION REQUIREMENTS [7 CFR 3560.654]**

Throughout the prepayment process, the Agency and the borrower both have a responsibility to inform tenants of the status of the prepayment request.

- **Initial notice.** Within 30 days of the receipt of a written request to prepay the loan, the Loan Servicer must send a notification to each tenant in the project. A sample letter is attached as **Attachment 15-C**.

- The Agency may deliver the notices to the borrower by mail or directly.
- The Agency should also send copies of the notification to the borrower and the management agent because the borrower must post copies of the notifications in public areas in the project. These notices must remain posted until the next notice providing an update on the status of the prepayment request is sent.
- The borrower must provide copies of the notifications to any tenants who occupy units after these notices were sent.

Tenants are often alarmed by the prospect of prepayment and uninformed about its implications for their housing situation. The Agency recommends that owners hold a meeting early in the request process. Items to cover at such a meeting include:

- The meaning of the first tenant notification letter;
- The steps in the prepayment process;
- Potential outcomes for the property;
- Alternative housing options for the tenants; and
- Tenants’ eligibility for LOPE letters.

- **Subsequent notices.** To keep the tenants informed of the progress of the prepayment request, additional notifications are sent after key decisions in the process are made. These notices should be sent, posted and provided to new tenants, as described for the initial notice. A list of appropriate times to send these notices is provided in **Exhibit 15-2**.
- **Other interested parties.** Whenever Loan Servicers provide notices to tenants regarding the prepayment process, they must also notify other interested parties such as non-profit organizations and public bodies.

**Exhibit 15-2**  
**List of Notices to be Provided to Tenants**  
**During the Prepayment Process**

The following notifications must be sent to tenants at the times indicated below. These notices must be sent to individual tenant households and posted in the project.

**1. Within 30 days of receipt of the prepayment request:**

*Tenant Notification #1:* This notice must be sent within 30 days of receipt of a complete prepayment request. This letter informs tenants that the borrower has submitted a request to prepay. This letter may be coordinated with a meeting including the borrower, the tenants, and the Agency. [7 CFR 3560.654(a)]

**2. After a decision has been made to accept prepayment or offer incentives:**

*Tenant Notification #2A:* If the borrower's prepayment request is withdrawn, the Loan Servicer will send a letter to the tenants informing them that prepayment will not take place. If there is an appeal, this letter should be delayed until the outcome of the appeal is known. [7 CFR 3560.654(d)]

*Tenant Notification #2B:* If the borrower is permitted to prepay with or without use restrictions, the Loan Servicer will send a letter to the tenants informing them of the prepayment and providing them information on their rights (such as reimbursement of relocation costs). This letter must be sent 60 days prior to prepayment. [7 CFR 3560.654(c)]

**3. After the offer of incentives has been accepted or rejected:**

*Tenant Notification #3A:* If the borrower accepts the incentives and related use restrictions, the Loan Servicer will send tenants a letter informing them of the outcome and describing the use restrictions. [7 CFR 3560.654(e)]

*Tenant Notification #3B:* If the borrower rejects the incentives, the Agency will decide if prepayment will be accepted with or without use restrictions. The Loan Servicer will send letters to the tenants informing them that the borrower is prepaying with or without and explaining their rights under the use restrictions. This letter must be sent 60 days prior to prepayment. [7 CFR 3560.654(c)]

*Tenant Notification #3C:* If the borrower chooses to offer the property for sale to a non-profit organization or a public agency, the Loan Servicer will send a letter to the tenants informing them that the borrower is offering the property for sale and explaining the sale process. [7 CFR 3560.654(f)]

**4. After the offer for sale is complete:**

*Tenant Notification #4A:* If the borrower does not receive a good faith offer within 180 days and is proceeding to prepay the loan, the Loan Servicer will notify tenants of the prepayment. This letter must be sent 60 days prior to prepayment (i.e., 60 days prior to the end of the 180-day marketing period). If a good faith offer is received within the final 60 days of the marketing period, a new letter must be sent to the tenants as described in Tenant Notification #4B. [7 CFR 3560.654(h)]

*Tenant Notification #4B:* If a tenant applicant signs a lease in a housing project for which a prepayment request has been submitted, the borrower must provide the tenant with copies of all notifications provided to tenants by the Agency or the borrower prior to the tenant's occupancy in the housing project. [7 CFR 3560.654(g)]

## 15.7 REQUIREMENTS FOR PREPAYMENT REQUEST [7 CFR 3560.653]

To be considered for prepayment, the borrower must submit a complete written request at least 180 days before the expected date of prepayment. This timeframe allows the Agency time to review the request, complete the application analyses, and offer incentives, if appropriate, prior to the prepayment date. If all required procedures can be completed in fewer than 180 days, the prepayment may occur at an earlier date.

A copy of all items to be submitted by the borrower can be found in PRE-TRAC on the Prepayment Application Checklist Screen.

### Good Practice-Notification to Borrowers

Some borrowers may pay their loans on an accelerated schedule. As these borrowers approach 180 days from their last payment, the Agency should notify them of their status and of their obligation to submit a prepayment request. See Paragraph 15.33 for more information on the advance payment of accounts.

## 15.8 RECEIPT OF PREPAYMENT REQUESTS

When a request for prepayment is received, the Loan Servicer must take the following steps to establish the date of receipt and begin a project file.

- Immediately upon receipt of a written prepayment request, date stamp the request and enter the date of receipt in PRE-TRAC on the Timeline Screen at Activity A00. If the completeness review shows the request to be complete (as described in Paragraph 15.9) the date stamped on the request will be used as the date of receipt. (This date will be the date the Agency receives written notification of the owner's intent to prepay.)
- Begin a project file. The Agency should have a separate file on each prepayment request that includes:
  - Application (with coversheet that summarizes all key project information);
  - Tenant notifications;
  - Project appraisal;
  - Documentation of all analysis performed;
  - Communications with the borrower; and
  - The mortgage.
- Enter prepayment-related project data into Multi-Family Information System (MFIS) and PRE-TRAC.

## 15.9 COMPLETENESS REVIEW

Within 10 days of receiving the prepayment request, the Loan Servicer must review it for completeness. This entails a brief look at the submission to ensure that all the items listed in the PRE-TRAC Prepayment Application Checklist Screen are included.

- **Complete request.** If the Loan Servicer determines that the request is complete, the Loan Servicer must:

- Send a letter to the borrower providing the date of receipt of the request, and informing the borrower that the Agency is reviewing the request and may ask for additional information;
  - Send a letter to tenants informing them that the borrower has submitted a request to prepay. This letter must be sent within 30 days of receiving the request (as described in Paragraph 15.6). Also notify other interested parties at this time; and
  - Complete a review of the request for the feasibility of prepayment. This review must be completed within 60 days of the receipt of the complete request and is described in Paragraph 15.10.
- **Incomplete requests.** If the Loan Servicer finds that all items are not included, the incomplete request must be returned to the borrower with a letter listing the missing items. The borrower may submit a new request to begin the prepayment request process again.

## 15.10 DETERMINATION OF PREPAYMENT REASIBILITY

To receive an offer of incentives, the borrower must demonstrate the ability to prepay the Agency loan. Within 60 days of the receipt of a complete application, the Loan Servicer must review the prepayment request to determine the feasibility of prepayment and enter the date of complete application into PRE-TRAC on the Timeline Screen at Activity A06.

To determine the feasibility of prepayment, the Loan Servicer must review the borrower's ability to prepay. To be considered "feasible", the borrower must have the ability to prepay the loan, as discussed below. It is not in the Agency's best interest to offer incentives to a borrower who does not have the financial capacity to prepay the loan since there is little risk that the borrower will actually prepay and remove the project from the program.

The borrower may be planning to refinance the prepayment in one of three ways:

- From the borrower's own resources;
- With financing from a lender or other third-party; or
- By selling the project.

Regardless of the source of funds, the borrower must be able to show that the proposed source of financing is available. The Loan Servicer must review the borrower's prepayment request to ensure that the borrower has submitted sufficient evidence that the funding is available, as described below.

### A. BORROWER'S FUNDS

If using their own funds, the borrower must provide:

- A balance sheet and income statement showing that sufficient cash is available to pay the loan principal or that assets of sufficient value are available and can be readily converted to cash; and

- Certification that the income or assets are not pledged elsewhere (e.g., to other prepayment requests or other loans).

## **B. THIRD-PARTY LENDER**

If obtaining a loan, the borrower must provide an original copy of the precommitment letter from the lender, stating:

- The rates and terms of loan;
- The amount financed; and
- A description of the security of the loan.

## **C. SALE**

If the borrower is planning to sell the project, the borrower must submit a purchase agreement and documentation of the purchaser's ability to pay. The purchaser's ability to pay can be documented in the same manner as the borrower's, as described in Paragraph 15.10 A.

### **15.11 ELIGIBILITY DETERMINATION**

If the Loan Servicer determines that the borrower is eligible with a complete prepayment request and prepayment is feasible, the Loan Servicer continues to process the request. If the borrower is not eligible for prepayment, the Loan Servicer notifies the borrower in writing stating the reasons that the borrower is not eligible for prepayment.

For loans that were closed prior to 1979, or if the loan does not have any existing restrictive covenants, the Loan Servicer follows the process described in Section 2 of this chapter. If the borrower's loan closed between 1979 and 1989 and has a restrictive agreement, the Loan Servicer follows the process described in Section 3 of this chapter.

## **SECTION 2: LOANS CLOSED BEFORE 1979 OR LOANS WITH NO RESTRICTIVE COVENANTS**

### **15.12 PREPAYMENT WAITING LIST**

For borrowers who meet the eligibility requirements of Section 1 of this chapter and who have loans that closed prior to 1979 or have no restrictive covenants, the Loan Servicer will place the borrower on an initial prepayment waiting list using PRE-TRAC.

### **15.13 MAKING THE INCENTIVE OFFER-OVERVIEW**

To encourage borrowers to forgo prepayment, the Agency offers incentives to all borrowers applicable under this section. Paragraph 15.14 through 15.21 of this section describes



the process for offering incentives and responding to the borrower's acceptance or rejection of Agency incentives.

#### **15.14 GENERAL INCENTIVE OFFER**

At the discretion of the Agency, the Loan Servicer may make a general incentive offer to the borrower before developing the specific incentive package. The Loan Servicer should make a general offer only if the borrower indicates that any specific incentive offer will be rejected. From the date of the general offer, the borrower has 30 calendar days to accept or reject the offer.

- If the borrower rejects the general offer in writing, the Agency will not develop a specific incentive offer. The Agency will determine the impact of prepayment as described in Paragraph 15.22.
- If the borrower accepts the general offer, the Agency will develop a specific incentive offer in accordance with this section.
- If the borrower rejects the general offer in writing after 30 calendar days, the Agency will not complete the specific incentive offer and will consider all incentives rejected.

#### **15.15 SPECIFIC INCENTIVE REQUIREMENTS [7 CFR 3560.656]**

Specific incentive offers are subject to the following requirements.

- **Value of incentive offer.** The incentive offer must be based on the Agency's assessment of:
  - The amount necessary to provide a fair return on the investment of the borrower;
  - An amount that will not cause project rents to increase above the Conventional Rents for Comparable Units (CRCU) standard in accordance with Chapter 4 of HB-2-3560; and
  - The lease costly alternative for the Federal Government that is consistent with extending the low-income use of the property.
- **Eligible recipients.** The Agency will offer incentives only to borrowers who have met the requirements outlined in Section 1 of this chapter.
- **Timeframe for offer response.** The Agency must develop the offer within 60 days of completing the review for feasibility and impact. The borrower must respond to an incentive offer within 30 calendar days. If no answer to the offer is received within 30 calendar days, the Agency must consider the incentive offer rejected.
- **Reserve requirements.** At the time the incentive is developed, the maximum reserve amount must be adjusted to include the costs of any deferred maintenance items or expected long-term repair or replacement costs of the project based on the project's capital plan. The Agency may require an additional deposit to the reserve account from the incentive package and/or reduce the incentive in order to allow the rents to be increased to fund the reserve at a level necessary to meet capital needs.
- **Capital improvements.** Any necessary capital improvements must be addressed (monies set-aside) prior to receiving any incentives.

- **Consolidation and reamortization of loans.** If a project has more than one Agency loan, existing project loans must be consolidated and reamortized unless consolidation is not necessary to maintain feasibility of the project for the current tenants or the level of monthly rental subsidies must be reduced.
- **Appraisal requirements.** An appraisal is required to provide the Agency the information needed to establish the appropriate value of the incentive offer. It is the Agency’s responsibility to assure that an appraisal is obtained.

**15.16 TYPES OF INCENTIVES [7 CFR 3560.656(C)]**

The Agency may offer the borrower one or more of the items discussed below as incentives to forgo prepayment. The following considerations apply to the development of the incentive package:

- Incentive offers must not be made without sufficient Rental Assistance (RA) to protect current tenants against rent overburden. Unused State RA may be used to facilitate these transactions; alternatively, borrowers may elect to be placed on the Agency waiting list until RA is available.
- If the incentive package involves a rent increase, the Agency must approve the rent increase in accordance with budget approval procedures outlined in Chapter 4 of HB-2-3560. In no case may the rent increase cause rents to increase above the CRCU standard; except that when determined necessary by the Agency to allow for decent, safe and sanitary housing to be provided in market areas where conventional rents are not sufficient to cover necessary operating, maintenance and reserve costs. Basic rents may be allowed to exceed comparable rents for conventional unit rent level; and 150 percent of the comparable rents for conventional unit level, as discussed in Chapter 4 of HB-2-3560 [7 CFR 3560.656(b)(3)]; and
- An Agency equity loan must be the last incentive option considered in developing an offer.

**A. Rental Assistance**

The Agency may offer RA if the project tenants will experience rent overburden as a result of the incentive offer.

**B. Increase in Annual Return**

The Agency may offer an increase in the amount of the borrower’s annual return on investment by one or both of the following methods:

- The Agency may recognize the borrower’s current equity in the project at the original rate of return; and/or
- The Agency may increase the borrower’s rate of return on the original equity.

The actual withdrawal of the return remains subject to conditions specified in Chapter 4 of HB-2-3560.

### **C. Excess HUD Section 8 Rents**

For projects with project-based HUD Section 8 assistance, the Agency may permit the borrower to receive rents paid to the project in excess of the amounts needed to meet annual project operating and maintenance expenses, debt service and reserve requirements. This payment is received in a lump sum.

In these cases, the reserve account will be adjusted to provide adequate funding for long-term capital repairs and maintenance based on the project's capital plan.

### **D. Project Conversion or Modifications of Interest Rate**

The Agency may agree to convert full-profit loans to limited profit Plan II loans or increase the interest subsidy for loans with HUD Section 8 assistance to lower the interest rate on the loan and make basic rents more financially feasible.

### **E. Agency Equity Loans**

The Agency may make an equity loan to the borrower. The Agency may offer an equity loan only after it determines that all other incentive options will not result in an adequate incentive offer. The equity loan may not exceed the difference between the current unpaid loan balance and 90 percent of the project's value appraised as unsubsidized conventional housing.

The following requirements apply to equity loans:

- Labor housing projects are not eligible for equity loans;
- The loan must not adversely affect the borrower's prepayment ability;
- Equity loans may be processed and closed with the current borrower or any eligible transferee; and
- If the equity loan is made in conjunction with excess HUD Section 8 funds, the equity will be paid using excess reserves before an equity loan is made.

### **F. Third-Party Equity Loans**

A third-party equity loan is not considered an incentive, but it is an option the Agency may give the borrower at the same time it makes an incentive offer.

- All incentive requirements described in Paragraph 15.15 apply to third-party equity loans;
- An offer to allow the borrower to receive a third-party equity loan must be included in the incentive calculation worksheet located in PRE-TRAC or by completing and Excel spreadsheet version for consideration in the Agency's incentive offer;
- In exchange for taking a third-party equity loan, the borrower must agree to the applicable 20-year use restrictions and all relevant requirements under this chapter;
- The Agency may subordinate its lien position on third -party transactions.

- The third-party lender must agree in writing that foreclosure action under its lien will not be initiated before holding a discussion with the Loan Servicer and after giving a reasonable period of notice to the Agency; and
- A third-party equity loan may be associated with a transfer of ownership.

### **15.17 DEVELOPMENT OF THE INCENTIVE OFFER**

Loan Servicers will develop the incentive offer based on calculation outlined in PRE-TRAC or using the electronic version in the form of an Excel spreadsheet. Loan Servicers should complete the worksheet, according to the directions in PRE-TRAC (also provided in **Attachment 15-D** for the electronic version) and submit it to ORHP prior to making the offer to the borrower.

To help ensure the consistency of incentive offers, ORHP will review each completed worksheet and approve the proposed incentives before the offer is made to the borrower.

### **15.18 AGENCY OFFER OF INCENTIVES**

Once ORHP approves the incentive package, the Loan Servicer must send a letter (located in REP-TRAC) to the borrower outlining the choice of incentives and informing the borrower that they must respond to the offer within 30 days.

### **15.19 BORROWER ACCEPTANCE OF INCENTIVES AND SUBSEQUENT ACTIONS** *[7 CFR 3560.657]*

If a borrower accepts the Agency's offer of incentives, both the borrower and the Loan Servicer have a number of responsibilities.

#### **A. Borrower Acceptance**

If the borrower accepts the Agency's offer of incentives, the borrower must complete the following actions:

- The borrower must agree to restrictive use covenants that prohibit prepayment for 20 years and adopt appropriate amendments to the project's loan documents and RA agreements;
- If the incentive offer accepted includes an Agency equity loan, the borrower must complete an application for the equity loan and the borrower must remain eligible for it. For additional information on how to process the equity loan, see Chapter 10 of HB-1-3560; and
- If the incentive offer accepted includes rent increases, the borrower must follow program requirements for rent increases. See Chapter 4 of HB-2-3560.

#### **B. Closing the Incentive Offer**

To close the incentive offer, the Loan Servicer must take the following steps:

- Prior to closing, notify ORHP via PRE-TRAC that the borrower has accepted the incentive offer and to request the allocation of equity loan funds or RA (as appropriate);
- ORHP will authorize all incentives and notify the State Office of the authorization;
- Insert appropriate restrictive-use provisions in the loan documents and RA agreements (e.g., the deed, security instruments, loan agreement/resolution, assumption agreement and/or reamortization agreement) with consultation from the Office of the General Counsel:
  - **For equity loans.** Execute a new loan agreement/resolution, *Form RD 3560-52, Promissory Note*, and mortgage and convert to Plan II if needed. Follow other loan closing procedures as described in Chapter 8 of HB-1-3560; and
  - **For RA or increase in owner return.** Execute a new *Form RD 3560-9, Interest Credit and Rental Assistance Agreement*, with the borrower and change the loan agreement/loan resolution as necessary.
- Notify tenants and other interested parties that prepayment will not take place.

### C. Transfers

If a transfer is to take place simultaneously with the Agency incentive offer, a complete transfer application package must be submitted as described in Chapter 7 of this handbook.

- If a proposed transferee is determined not to be eligible for the transfer and assumption, the borrower will be given an additional 45 days to reconsider whether to accept the original incentive offer or find another transferee; and
- In some cases, the Agency may make an offer of incentives contingent on the successful transfer of the project to an acceptable purchaser. The Agency may offer a smaller incentive if the transfer does not take place.

## 15.20 INSUFFICIENT FUNDING FOR INCENTIVES

In some cases, the borrower may be offer incentives that can not be provided immediately. For example, the Agency may lack funding for equity loans or sufficient RA. If a borrower accepts an incentive offer but the Agency is unable to fund the incentive within 15 months, the borrower will be removed from the incentive waiting list. The borrower then has three options:

- The borrower may offer to sell the project to a non-profit or public agency as described in Section 3 of this chapter;
- The borrower may stay on the list of borrowers awaiting incentives until the borrower's incentive offer is funded. If this option is chosen, the Agency will not renegotiate the incentive offer; and
- The borrower may withdraw the prepayment request and be removed from the list of borrowers awaiting incentives. If the borrower chooses this option, the borrower may submit a new request for prepayment and repeat the prepayment process.

### 15.21 BORROWER REJECTION OF INCENTIVE OFFER AND SUBSEQUENT ACTIONS [7 CFR 3560.658]

If the borrower rejects the incentive offer, the Loan Servicer must make a determination of the project's impact and whether it is needed, in accordance with Paragraph 15.22

If the Agency determines that the project is not needed and that there is no adverse impact on minorities, the borrower may prepay without restrictions. After prepayment, the property leaves the program. Processing the prepayment request is described in 15.22.

If the project is needed, or there is an adverse impact on minorities, the Loan Servicer must send the borrower a letter informing the borrower of four options:

- The borrower may prepay the Agency loan subject to use restrictions. The letter should describe the applicable use restrictions. Guidance on how to determine the appropriate use restriction is described in Paragraph 15.22 A.
- If the borrower does not want to accept the use restrictions, the borrower may offer the property for sale to non-profit organizations and public agencies. This process is described in Section 3 of this chapter.
- The borrower may forgo prepayment and stay in the program.
- The borrower may appeal the decision to prepay with use restrictions. The borrower and Agency follow the appeal procedures described in Chapter 1.

The letter should also request the borrower to send a written response indicating the borrower's intentions within 30 days.

If the borrower chooses to prepay the loan subject to restrictive-use provisions, the Loan Servicer must determine the appropriate use restrictions to apply. The analysis for making this determination follows:

- **For prepayments that will have an adverse impact on minorities.** If the borrower chooses to prepay subject to use restrictions, the Agency must make a determination regarding the impact of the prepayment on minorities. Loan Servicing Staff should consult with the Civil Rights Staff to make this determination. The Civil Rights Staff's role is limited to the assessment of prepayment impact on minorities. Accepting prepayment with or without restrictions is an Agency determination. Relevant factors include:
  - The percentage of minorities residing in the project and the percentage of minorities residing in the projects in the market area where displaced tenants are most likely to move;
  - The impact of prepayment on minority residents in the project and in the market area. Determine whether displaced minority tenants will be forced to move to other low-income housing in areas not convenient to their places of employment, to areas with a concentrated minority population and/or to areas with a concentration of substandard housing;

- The vacancy trends and number of potential minority tenants on the waiting list at the project being prepaid and at other projects in the market that might attract minority tenants; and
- The impact prepayment will have on the opportunity for minorities residing in substandard housing in the market area to have comparable decent, safe and affordable housing, as is offered by the project being prepaid.

If Civil Rights Staff determine that the prepayment will have a negative impact on minorities, the borrower must adopt use restrictions that protect the affordability of the project over the long term.

- **For prepayments that will have an adverse impact on the adequate supply of affordable housing.** In projects where the prepayment does not have an adverse impact on minorities, the borrower is required to adopt use restrictions that protect the access of current tenants to adequate affordable housing. The rent will remain at the subsidized amount even though the tenant will no longer receive RA. These provisions prohibit the borrower from raising rents for tenants who live in the property at the time of prepayment unless the rent increase is necessary to meet the operating cost of the project. (Their rents can not be raised as a result of actions associated with prepayment.)

## 15.22 DETERMINATION OF PREPAYMENT IMPACT

One of the Agency's key goals in the prepayment process is to ensure that affordable housing opportunities exist for program eligible tenants. Therefore, one of the most important issues to address is the impact of the prepayment on project tenants. In cases where prepayment will have little or no impact on project rents or availability of units, the Agency has less interest in keeping the property in the program than in cases where prepayment will likely result in the displacement of project tenants.

To make this determination, the Loans Servicer will review the following information:

- Existence of comparable conventional units, their rents and vacancy rates;
- Any plans to build a similar project in the market area; and
- Other subsidized units and the availability of RA.

The goal of this analysis is to determine if tenant will lose their units or suffer from rent overburden. The steps involved in the analysis of impact depend on whether the project has RA.

### A. Prepayment Impact on Projects without Rental Assistance

For these projects, the Loan Servicer must review the prepayment request, including market information and address the following items:

- **Change in rents or loss of units.** The Loan Servicer must look at the impact of the prepayment on tenant's ability to stay in the project. This analysis depends on the proposed use of the project after prepayment and rents for comparable conventional units

in the market area. (For example, if the proposed use of the project is conventional rental units, the Loan Servicer should compare rents in the project to conventional rents in the market area.) Likely rents should be compared to tenant’s income to ensure that a change in rents will not result in rent overburden.

- If prepayment is not likely to result in an increase in rents above current rents or 30 percent of tenant’s adjusted incomes, the prepayment is considered to have no adverse impact on project tenants; and
  - If prepayment is likely to result in an increase in rents that will create rent overburden, the Loan Servicer must consider the availability of alternative comparable housing as described below.
- **Availability of alternative housing.** If the proposed use of the project after prepayment is likely to cause an increase in rents or a loss of units, the Loans Servicer must assess the availability of comparable housing in the community. The Loan Servicer must determine if there is sufficient housing that is comparable in size and rent to house project tenants in local communities without causing them rent overburden.
    - If there is sufficient comparable housing in the local community to replace the units that will be lost after prepayment, then the prepayment is considered to have no adverse impact on project tenants; and
    - If sufficient comparable housing is not available in the local community, the prepayment is considered to have an adverse impact on project tenants.

**B. Prepayment Impact on Projects with Rental Assistance**

If project tenants have RA, the Loan Servicer must conduct the same analysis as described in Paragraph 15.22 A. However, in assessing the availability of comparable affordable units, the Loan Servicer must identify comparable units with RA or other rental subsidy such as HUD Section 8 (as long as the tenants will have priority for these units).

- If sufficient comparable units with RA are available in the local community to house all tenants with RA (for example, if another Section 515 project in the local community has vacancies to house the tenants from this prepaid property), the prepayment is considered to have no adverse impact.
- If insufficient units with RA are available, the prepayment is considered to have an adverse impact on project tenants.

Exhibit 15-3 of this section provides an overview of the full analysis of impact.



### **Exhibit 15-3**

#### **Analysis of Impact on Tenants**

**Step 1:** Answer the following questions about rents and loss of units.  
Will prepayment result in an increase in tenant payments and if so, will this new payment be higher than 30 percent of the current tenant's incomes?

**OR**

- A. Will prepayment result in a loss of units?  
*If the answer to both A and B is no, there is no adverse impact on tenants.  
If the answer to either A or B is yes, proceed to step 2*

**Step 2:** Answer the following questions about the availability of alternative housing:

- A. Are there sufficient comparable vacant units in the market area for displaced tenants to find alternative housing?

**AND**

- B. Are the tenants paying in these units equal to or less than the greater of their current rent of 30 percent of their income?  
*If the answer to both C and D is yes, there is no adverse impact on tenants.  
If the answer to either C or D is no, there is an adverse impact on tenants.*

#### **C. Processing the Prepayment**

Prior to prepayment, the Loan Servicer must take the following steps:

- Establish the target date for the prepayment to occur;
- Prepare the prepayment figures based on the borrower's outstanding balance on the Agency loan; and
- Notify tenants and other interested parties of the prepayment and its implications. Tenants must be notified 60 days in advance of the prepayment date.
- To finalize the prepayment, the Loan Servicer must:
- Document the borrower's satisfaction of the mortgage; and
- Place a deed restriction on the property to establish the use restrictions. Third-party subsidy (e.g., Section 8) will not be used as a substitute for Restrictive-Use Provisions (RUPs).

#### **D. Monitoring Compliance with the Use Restrictions**

If a borrower prepays a loan and the project remains subject to continued RUPs, the following requirements apply after prepayment:

- The owner of the prepaid project (formerly the borrower) is responsible for ensuring that the RUPs agreed to as a condition of prepayment are observed and must retain appropriate documentation to demonstrate compliance with the use restrictions;

- The owners must provide the Agency with a signed and dated certification within 30 days of the beginning of each calendar year for the full period of the RUPs establishing that these provisions are being met;
- The Loan Servicer must visit the site on an as needed basis to perform a physical inspection;
- The Loan Servicer must also investigate any complaints from tenants or other parties regarding the violation of the use restriction; and
- The State Director must establish a notification system to alert Agency personnel of upcoming annual certification due dates on all prepaid loans. The Loan Servicer must keep owner certifications and records of visits in the project file.

### **SECTION 3: LOANS CLOSED BETWEEN 1979 AND 1989 WITH A RESTRICTIVE AGREEMENT**

#### **15.23 APPLICABILITY**

For borrowers whose loans have restrictive covenants and which closed between 1979 and 1989, Loan Servicers should follow the procedures in this section. For loans closed between 1979 and 1989 with no restrictive covenants, follow the procedures in Section 2 of this chapter.

#### **15.24 REQUEST BORROWER TO REMAIN IN PROGRAM**

The Agency will make an effort to enter into a restrictive-use agreement with borrowers who received Section 514 or 515 loans on which RUPs are still in place, who received “restricted” loans, or who make a prepayment request and prepayment is feasible. If a borrower accepts the Agency’s request to enter into a 20-year restrictive-use agreement, without prepayment, no further action is necessary.

After receiving a complete application to prepay and determining the borrower’s ability to prepay, the Agency must make a reasonable effort to enter into a new restrictive-use agreement with the borrower before accepting prepayment of a restricted loan.

If a borrower declines the Agency’s offer, the Loan Servicer should document this in writing, noting the date on which this information was obtained. The document should be included in the case file. The Loan Servicer should then proceed to review the prepayment process to determine the impact of prepayment.

#### **15.24 SALE TO A NON-PROFIT OR PUBLIC BODY [7 CFR 3560.659]**

A borrower who rejects the Agency’s offer to enter into a restrictive-use agreement may offer the project for sale to non-profit or public agencies. A borrower who is being processed under Section 2 of this chapter, where the Agency’s incentive offer is rejected may offer the project for sale to non-profit or public agencies. A borrower, who accepts the incentives but does not receive them within 15 months of accepting them, may offer the project for sale to non-

profit and public agencies. This process can take up to 30 months to complete. At the end of this process, if the property has not been purchased, the borrower is permitted to prepay without RUPs.

The sale process has several steps:

- The property must be marketed for 180 days as described in Paragraph 15.27. Marketing for 180 days means that an advertisement must appear in newspapers, periodicals, newsletters, or be listed with a real estate agent for 180 days consecutively;
- The marketing information must include the following statement of the availability of financing from USDA Rural Development: USDA Rural Development may provide funding to make this purchase possible. Funding includes 100 percent RA a one percent loan for purchase and a \$50,000 grant for purchase expenses;
- The borrower must provide copies of documentation, e.g., copies of advertisements and marketing letters, a list of interested non-profit organizations and public bodies to which the marketing information was provided will be submitted to the Agency during the 180 days to verify marketing met all requirements.
- The first 60 days, the borrower will market to local non-profits and public agencies. After 60 days, the borrower will market to regional and national non-profit organizations and public bodies. It should also state local non-profit organizations and public agencies have priority over regional and national non-profit organizations and public agencies.
- If no offer is made within 180 days, the borrower may prepay the loan without use restrictions (**see Paragraph 15.31**);
- Offers received within the 180 days must be treated as described in Paragraph 15.28;
- If an offer is accepted, the purchaser must finalize the sale within 24 months. If the sale is not finalized, the borrower may prepay the loan without use restrictions (**see Paragraph 15.31**); and
- After a sale is completed, the Loan Servicer must oversee the transfer of the property and continue to monitor the project as a program property (**see Paragraph 15.30**).

## 15.26 ESTABLISHING THE PROJECT VALUE

To establish the value of the property (as an unsubsidized conventional property) and determine an acceptable offer, two independent “as-is” market value appraisals will be completed in accordance with Chapter 7 of HB-1-3560. The borrower must pay the expense of the borrower’s appraisal. The appraiser selected may not have an identity-of-interest with the borrower.

If the two appraisers fail to agree on the fair market value, the Agency and the borrower will jointly select an appraiser whose appraisal will be binding. The Agency and the borrower will jointly fund the cost of the appraisal.

## 15.27 MARKETING REQUIREMENTS

The Loan Servicer must ensure that the borrower takes appropriate actions to inform appropriate entities of the sale. The borrower must provide the Loan Servicer with appropriate

documentation (e.g., copies of advertisements) to demonstrate that the following actions occurred:

- The borrower must contact interested non-profit organizations and public agencies from the list maintained by ORHP.
- The borrower must provide these entities with sufficient information regarding the project and its operations for interested purchasers to make an informed decision. This information must include. It should include project name, project address (city, state, zip), the minimum acceptable bid prices based on the appraised market value (as discussed in Paragraph 15.26), total number of units, bedroom types, basic and market rents, owner's name, owner's address (city, state, zip), phone and fax number, borrower's contact person/representative, and the name of the Rural Development Office that services the loan, address (city, state, zip), and phone number. If a picture of the project is available; it should be included. It should also state the preference for local entities, as described in Paragraph 15.28.
- If an interested purchaser requests additional information concerning the project, the borrower must promptly provide the requested materials.
- The borrower must advertise and offer to sell the project for a minimum of 180 days. The borrower may choose to suspend advertising and other sales efforts while eligibility of an interested purchaser is determined. If the purchaser is determined to be ineligible, the borrower must resume advertising for the balance of the required 180 days.

#### **15.28 SELECTING AN OFFER**

The borrower must accept any good faith offer at or above the minimum acceptable bid price.

- **Requirements for non-profit organizations and public agencies to purchase.** To buy and operate a multi-family housing project, a non-profit organization or public agency must meet the requirements listed in Exhibit 15-4.

**Exhibit 15-4**  
**Requirements for Non-profit Organizations and**  
**Public Agencies to Purchase**

- The purchaser must agree to maintain the housing for very low- and low-income families or persons for the remaining useful life of the project and related facilities. However, currently eligible moderate-income tenants will not be required to move;
- The purchaser must agree that no subsequent transfer of the housing and related facilities will be permitted for the remaining useful life of the housing and related facilities unless the Agency determines that the transfer will further the provision of housing and related facilities for low-income families and persons, or there is no longer a need for such housing and related facilities;
- The purchaser must show financial feasibility of the project including anticipated funding;
- The purchaser must certify on *Form RD 3560-30* that there are no identity-of-interest relationships;
- The purchaser must complete an Agency-approved application and obtain Agency approval in accordance with 7 CFR part 3560, subpart I; and
- To be eligible to purchase properties, non-profit organizations must meet the criteria outlined in 7 CFR part 3650, subpart B. These requirements are discussed in Chapter 4 of HB-1-3560.

- **Preference for local non-profit and public agencies.** Local non-profit organizations and public agencies have priority over regional and national non-profit and public agencies. The borrower may not accept an offer from a regional or national non-profit organization or public agency during the first 60 days that the property is advertised.
  - If no offer from a local non-profit or public agency is received in the first 60 days, the borrower may accept an offer from a regional or national non-profit organization or public agency.
  - If more than one qualified non-profit organization or public agency submits an offer to purchase the project, the Agency will give priority to qualified local non-profit organizations and public agencies over regional and national non-profit organizations and public agencies.
  - If additional criteria are needed to make a selection, the borrower must consider the organization's past success in developing and maintaining subsidized housing and the length of experience in developing and maintaining subsidized housing. Past success is given priority over length of experience when comparing equal offers.

- **Approving an offer.** The Loan Servicer must approve the borrower's acceptance or rejection of any offer for purchase. If the borrower receives an offer, they must notify the Loan Servicer of the offer and whether or not they want to accept the offer. The Loan Servicer must review the borrower's decision.
  - If the borrower wants to reject the offer, the Loan Servicer must concur with the borrower's reasons for rejection. If the Loan Servicer does not concur, the borrower must accept the offer.
  - If the offer is to be accepted, the proposed purchaser must submit appropriate documentation to the Agency to demonstrate eligibility for the transfer. The Loan Servicer must approve the transfer and then take appropriate steps to close the transfer (see Chapter 7 for the procedures for transfer).

### **15.29 LOANS MADE BY THE AGENCY OR OTHER SOURCES TO NON-PROFIT ORGANIZATIONS AND PUBLIC AGENCIES**

The Agency may make loans to non-profit organizations or public agencies to facilitate the purchase of the project. Alternatively, the Agency may approve a loan from another entity. These loans must be approved as described in HB-1-3560. They may be made for either of the purposes described below.

- A loan may be made to enable the non-profit organization or public agency to purchase a project at the appraised value; and
- With proper justification, a loan may be made to help meet the project's first-year operating expense if current operating funds are not sufficient. This loan may not exceed two percent of the project's appraised value.

The Agency may also make an advance of up to \$50,000 to a non-profit organization or public agency to cover the costs to develop a loan application package or close a loan to purchase a property.

### **15.30 POST SALE REQUIREMENTS**

Once the property has been sold to a non-profit or public agency, the new owner of the property is subject to all applicable program requirements and use restrictions that applied to the property prior to the sale.

- The Loan Servicer must ensure that the transfer of the property takes place according to Agency rules and that the new owner is made subject to all applicable use restrictions (see Chapter 7)
- The Loan Servicer must notify tenants and other interested parties that the sale will take place; and
- The Loan Servicer will monitor this property as it monitors all other program properties (see Chapter 9 of HB-2-3560).

### **15.31 REQUIREMENTS FOR BORROWERS IF AN ACCEPTABLE PURCHASER IS NOT FOUND**

If no purchaser is found for the property within the 180-day period or if any offer is made but the purchaser fails to come up with the funds to complete the purchase within 24 months, the borrower is considered to have fulfilled the requirements for offering the property for sale. At this time, the borrower is permitted to prepay the Agency loan without use restrictions.

The Loan Servicer must:

- Send a letter to the borrower notifying him or her that prepayment is permitted; and
- Close out the application in PRE-TRAC.

## **SECTION R: SPECIAL CIRCUMSTANCES**

### **15.32 PROPERTIES UNDER BANKRUPTCY ON FORECLOSURE**

Bankruptcy proceedings will have no effect on contractual requirements for restrictive use.

If a project that is subject to restrictive-use provisions is sold outside the program at a foreclosure sale, the Agency has no means to continue to enforce restrictive-use provisions after the purchase.

### **15.33 ADVANCE PAYMENT OF ACCOUNTS**

When an Agency loan, which is not subject to prepayment prohibitions, reaches or falls below six remaining payments due to a borrower's voluntary advance payments or extra payments required by the Agency, the borrower will be notified that the final payment on the account can not be accepted unless a prepayment request is made. The borrower will be required to submit all applicable information to a prepayment request.

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## **ATTACHMENT 15-A OVERVIEW OF PREPAYMENT PROCESS**

Outlined below is a summary of the conditions to be met for making key decisions related to the prepayment process.

### **What are the criteria for accepting a prepayment request?**

- The borrowers' loans were closed before 1989;
- All items on the application checklist have been submitted; and
- The borrowers submit proof of their ability to prepay their loans.

### **You may issue a general or specific incentive offer to a borrower if the following conditions are met:**

- The application has been accepted (see criteria listed above);
- The existing loan is a Rural Rental Housing (RRH) loan or an Off-Farm Labor Housing loan;
- The loan closed prior to 1979; and
- There are no restrictive-use provisions associated with the loan.

**Note:** If the borrower is inclined not to accept a specific incentive offer, you may proffer a general offer and proceed from there when the borrower declines the offer. If, however, the borrower accepts the general offer, you must then proceed with a specific incentive offer.

### **A borrower may prepay WITHOUT use restrictions when the following conditions are met:**

- If the borrower rejects the general and/or specific incentive offers and the property is not needed;
- If the borrower appeals the decision to prepay with use restrictions, when the property is needed, and wins the appeal;
- If the borrower markets the property to a non-profit organization and a buyer is not found within 180 days; and
- If the borrower markets the property and a buyer is found, but the deal fails to close.

### **A borrower may prepay WITH use restrictions when the following conditions are met:**

- If the borrower rejects the general or specific incentive offer and the property is needed.

### **A borrower can market the property to a non-profit organization under the following circumstances:**

- If the borrower's loan closed between 1979 and 1989 and the borrower does not wish to continue in the program, but agrees to sell the property to a non-profit organization;
- If the borrower's loan closed between 1979 and 1989 and the borrower does not wish to continue in the program or sell to a non-profit organization. However, a subsequent needs assessment reveals that minority tenants will be materially affected. In this case, the borrower is obligated to sell to a non-profit organization;
- If a pre-1979 borrower declines both the general and specific incentive offers, but a needs assessment reveals that the property is needed. The borrowers can then appeal the decision. However, if they lose the appeal or choose not to appeal, they can agree to sell to a non-profit organization if they do not wish to prepay with use restrictions.

**A request is returned to the borrower under the following circumstances:**

- If the borrower's loan closed after 1989;
  - If the borrower's prepayment request is withdrawn or rejected; and
  - If the project is needed, the borrower is obligated to prepay with use restrictions. The borrower can then appeal. If the borrower loses the appeal, he or she may decide to withdraw the application rather than have to sell to a non-profit organization.
-

## **Attachment 15-B**

### **EXPLANATION OF INCENTIVE OFFERS**

- A. The Agency may increase the borrower's annual return on equity by one of the following two methods. The actual withdrawal of the return remains subject to the procedures and conditions for withdrawal specified in 7 CFR part 3560 subpart G of this part.
- B. The Agency may recognize the borrower's current equity in the housing project. The equity will be determined using an Agency accepted appraisal based on the housing project's MARKET value.
- C. When a current appraisal indicates an equity loan can not be made, the Agency may recognize the borrower's current equity in the housing project at the higher of the original rate of return or the current 15-year Treasury bond rate plus 2 percent rounded to the nearest one-quarter percent. The equity will be determined using the most recent Agency accepted appraisal of the housing project prior to receiving the prepayment request.
- D. The Agency may agree to convert projects without interest credit or with Plan I interest credit to Plan II interest credit or increase the interest credit subsidy for loans with HUD Section 8 assistance to lower the interest rate on the loan and make basic rents more financially feasible.
- E. The Agency may offer additional rental assistance, or an increase in assistance provided under existing contracts under §§ 521(a)(2), 521(a)(5) of the Housing Act of 1949 [42 U.S.C. 1490a (a)(2)] or section 8 of the United States Housing Act of 1937 [42 U.S.C. § 1437f].
- F. The Agency may make an equity loan to the borrower. The equity loan must not adversely affect the borrower's ability to repay other Agency loans held by the borrower and must be made in conformance with the following requirements:

The equity loan must not exceed the difference between the current unpaid loan balance and 90 percent of the housing project's value as determined by an "as-is" market value appraisal conducted in accordance with 7 CFR part 3560 subpart P.

- 1. Borrowers with farm labor housing loans are not eligible to receive equity loans as incentives.
  - 2. If an incentive offer for an equity loan is accepted, the equity loan may be processed and closed with the borrower or any eligible transferee.
  - 3. Excess reserve funds will be used to reduce the amount of an equity loan offered to a borrower.
  - 4. Equity loans may not be offered unless the Agency determines that other incentives are not adequate to provide a fair return on the investment of the borrower to prevent prepayment of the loan or to prevent displacement of project tenants.
- G. The Agency will offer rental assistance to protect tenants from rent overburden caused by any rent increase as a result of a borrower's acceptance of an incentive offer or to protect tenants who are currently paying more than 30 percent of their annual adjusted income.

All incentives will be processed using the Incentive Calculation Worksheet. The Worksheet has two versions:

- A Stand Alone Excel Spreadsheet located on the Agency's Intranet; or
  - The PRE-TRAC version.
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**SAMPLE LETTERS TO TENANTS**  
*Initial Tenant Notification of Owner's Intent to Prepay and Voucher Availability*

TO: The Tenants of Riddlebrook Apartments

SUBJECT: Notice of Prepayment Request

Your apartment was developed with assistance from a loan given by the U.S. Department of Agriculture (USDA), Rural Development, and an Agency of the U.S. Government. The owners of your apartment recently asked USDA for permission to pay off their USDA loan ahead of its final due date.

Based on USDA's communications with the owner so far, it is not clear whether:

- The owner plans to continue to operate the apartments as affordable rental housing.
- The owner wants to prepay their USDA loan, and then either sell or operate the apartment as non-subsidized apartments.
- The owner wants to sell the property to a new owner who is willing to continue to operate the apartments as affordable rental housing.
- The owner does not really plan to pay their USDA loan early. The owner has applied for financial incentives from USDA. In return for the incentives, the owner must agree to operate the apartments as affordable housing.

If USDA agrees to the owner's request and the owner pays off the USDA loan, rents at the apartments could go up and USDA would not be able to provide rent subsidy for tenants. Also, USDA would no longer be involved in supervising the apartment's management, leases, and rents.

USDA WOULD LIKE TO KNOW YOUR OPINION ABOUT THE OWNER'S REQUEST. We would like to know how you think the effect of paying off the loan would have on you, other tenants in the apartments, other people in the community, and any minorities living in the apartments and in the community.

You have 30 days from the date of this letter to give us your opinion in writing. If you wish to write us, please send your comments to the local USDA Office at the address shown above. It may be helpful to know that USDA follows a very careful process before deciding whether or not to allow apartment owners to pay off their USDA loans.

For example, USDA evaluates how prepayment would affect the tenants of the apartments.

- If USDA decides that housing opportunities for minorities would be materially affected by a prepayment, USDA will require that the owner try to sell the apartments to a non-profit organization or public agency which would continue to operate the apartment for affordable rental housing.

- If USDA decides that there is an inadequate supply of affordable housing nearby, USDA will require the owner to prepay the loan and agree to protect the existing tenants at the time of prepayment until the tenants voluntarily vacate their apartment. Even if USDA's loan is paid off, the owner will not be able to evict any tenant without cause.
- If USDA decides to allow the owner to prepay, you and the other tenants may be given immediate priority for other USDA financed apartments.

USDA has developed a rental housing voucher program. The intent of the program is to protect you if your landlord prepays the USDA loan.

If you are a tenant at a property where the owner pays off a loan before its final due date, you may be eligible for a voucher. This voucher will pay the difference between the market rent for your unit and the amount of the rent payment for that unit at the time the owner pays off the loan. This voucher will enable you to remain in your current home or move to another comparable rental unit.

We will keep you notified of the status of this request. You will be allowed to review the information used by USDA to make its decisions regarding prepayment.

If the owner disagrees with the decision that USDA makes on the prepayment request, the owner may be given an opportunity to appeal USDA's decision. If the owner appeals, tenants will be given the opportunity to submit evidence at the appeal hearing.

Please contact our office if you have any questions or concerns.

Sincerely,

Attachment  
Voucher Program Form  
Voucher Program Brochure

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TO: The Tenants of

SUBJECT: Notice of Prepayment Request Withdrawal

Your apartment was developed with assistance from a loan made by U.S. Department of Agriculture (USDA) Rural Development, an Agency of the United States Government. The owners of your apartment complex recently asked USDA for permission to pay off their USDA loan ahead of schedule.

Based on USDA's communications with the owner so far, the owner plans to continue to operate the apartments as affordable rental housing and has withdrawn their prepayment request. You may remain as long as you are eligible and wish to occupy your apartment.

If you have any questions, please contact me at

Sincerely,

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(Servicing Official)

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## TENANT LETTER #2 - Prepayment Request Approved

### Tenant Notification of Owner's Prepayment Acceptance (With/Without Restrictions)

TO: The Tenants of \_\_\_\_\_

SUBJECT: Notice of Prepayment Acceptance

Rural Development has reviewed the information concerning your landlord's request to pay off the loan on **[Project Name]** and will be accepting the payment on **[Insert Date]**. As a result, you may experience an increase in your rent. This letter is following up on the letter you should have received **[Insert Date of Initial Tenant Notification Letter]**. The rent for your apartment will **[Become or Remain \$]** on **[Insert Date]**.

RURAL DEVELOPMENT accepted the owner's request to payoff the loan because of the following reason(s):

- The local housing market can not support a higher rent.
- There are many empty apartments similar to yours in quality, size, location, and rent in (name of community)
- The owner is legally agreeing to rent the apartments to (very- low, low- and moderate-income tenant) and to calculate the rents the same way they are now until \_\_\_\_\_.

[If restrictive-use provisions apply]: The owner has legally agreed to continue to rent to very-low/low-/moderate-income tenants. Rents can not be higher than what the Government determines you can afford, and will be calculated the same way as they are now, until **[Insert Date]**. The owner also has to keep the apartment as a suitable place for you to live. Any tenant, as well as USDA, may enforce the owner's agreement to rent to very-low/low-/moderate-income tenants. In order to comply with this agreement, the owner must certify your income every year.

**[If Section 8 or other subsidy]**: Part of your rent will continue to be paid by \_\_\_\_\_. However, even if \_\_\_\_\_ stops making these payments, the owner will have to continue to calculate your rent the same way it is calculated now until \_\_\_\_\_.

If you decide to remain in your apartment, the owner can not evict you without good cause, whether you or someone else is paying the rent.

The information that is attached to this letter tells you what you can do after this mortgage is paid off.

To help protect you from the impact of your landlord's mortgage payoff, you may be eligible for a USDA voucher that will provide a short-term rental subsidy and allow you to remain where you are, or to move somewhere else. If you have any questions, please contact us.

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(Servicing Official)

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(Address)

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(Telephone Number)

Please contact our office if you want to see all the information Rural Development used to make this decision.

Attachments:

Attachment 1-B - Appeal Rights

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**ATTACHMENT 2A**  
**TENANT LETTER #1 - Prepayment Request Received**

TO: (Tenant Name)

SUBJECT: Notice of Prepayment Request

Your apartment was developed with a loan from U.S. Department of Agriculture (USDA) Rural Development, an Agency of the United States Government. The owners of your apartment recently asked USDA for permission to pay off their USDA loan ahead of schedule.

Based on USDA's communications with the owner so far, it is not clear whether:

- The owner plans to continue to operate the apartments as affordable rental housing, or to sell or operate the apartment as conventional, market rate apartments.
- The owner want to prepay their USDA loan, and then either sell or operate the apartment as conventional, market rate apartments.
- The owner wants to sell the property to a new owner who is willing to continue to operate the apartments as affordable rental housing.
- The owner does not really plan to prepay their USDA loan. The owner has applied in order to qualify for financial incentives from USDA. In return for the incentives, the owner must continue to operate the apartments as affordable rental housing.

In any case, if USDA agrees to the owner's request and if the owner actually does pay off the USDA loan, rents at the apartments could go up and USDA would not be able to provide rent subsidy for tenants. Also, USDA would no longer be involved in supervising the apartment's management, leases and rents.

USDA WOULD LIKE TO KNOW YOUR OPINION ABOUT THIS PAYOFF REQUEST. We would like to know what you think the effect of paying off the loan would be on you, other tenants in the apartments, other people in the community, and any minorities living in the apartments and in the community. You have 30 days from the date of this letter to give us your opinion in writing. If you wish to write us, please send your comments to the local USDA office at the address shown above.

It may be helpful to know that USDA follows a very careful process before deciding whether or not to allow apartment owners to pay off their USDA loans. First, USDA may offer various financial incentives to the owners to encourage them not to prepay their loan and to continue to operate the apartments for affordable rental housing. Often, such incentives are sufficient to prevent prepayment, and the apartment will continue to be operated without change for the tenants.

However, if the owner is not interested in the financial incentives that USDA can offer, USDA will evaluate how prepayment would affect the tenants of the apartments.

If USDA decides that housing opportunities for minorities would be materially affected by a prepayment, USDA will require that the owner try to sell the apartments to a non-profit organization or public agency which would continue to operate the apartments for affordable rental housing.

If USDA decides that there is an inadequate supply of affordable rental housing nearby, USDA may require that the owner continues to provide low rents to you and the other current renters, even if rents go up for future tenants.

If USDA decides to allow the owner to prepay, you and the other tenants may be given immediate priority for other USDA financed apartments. Even if USDA's loan is paid off, the owner will not be able to evict any tenant without cause. USDA has a rental housing voucher program. The intent of the program is to help protect you from the impact of your landlord's mortgage prepayment of payoff.

The USDA Voucher Program ***may be available to low-income tenant who is a citizen, United States non-citizen National, or qualified alien and resides at the property at the time of prepayment/payoff.*** This voucher will pay the difference between the comparable market rent for your unit and the amount of your rent payment for that unit at the time of prepayment/payoff. This voucher will enable you to remain in your current home or move to another comparable unit.

More information about this program and your eligibility will be sent to you within the next 60 days

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**ATTACHMENT 2B**  
**TENANT LETTER #2 - Prepayment Request Approved**

*Tenant Notification of Owner's Prepayment Acceptance*  
(With/Without Restrictions)

TO: The Tenants of \_\_\_\_\_

SUBJECT: Notice of Prepayment Acceptance

Rural Development has reviewed the information concerning your landlord's request to pay off the loan on **[Project Name]** and will be accepting the payment on **[Insert Date]**. As a result, you may experience an increase in your rent. This letter is following up on the letter you should have received **[Insert Date of Initial Tenant Notification Letter]**. The rent for your apartment will **[Become or Remain \$]** on **[Insert Date]**.

RURAL DEVELOPMENT accepted the owner's request to pay off the loan because of the following reason (s):

- The local housing market can not support a higher rent.
- There are many empty apartments similar to yours in quality, size, location, and rent in **(name of community)**
- The owner is legally agreeing to rent the apartments to **(very- low, low-moderate-income tenant)** and to calculate the rents the same way they are now until \_\_\_\_\_.

**[If restrictive-use provisions apply]:** The owner has legally agreed to continue to rent to very-low-/low-/moderate-income tenants. Rents can not be higher than what the Government determines you can afford, and will be calculated the same way as they are now, until **[Insert Date]**. The owner also has to keep the apartment as a suitable place for you to live. Any tenant, as well as the USDA, may enforce the owner's agreement to rent to very-low/low-/moderate-income tenants. In order to comply with this agreement, the owner must certify your income every year.

**[If Section 8 or other subsidy]:** Part of your rent will continue to be paid by \_\_\_\_\_.

However, even if \_\_\_\_\_ stops making these payments, the owner will have to continue to calculate your rent the same way it is calculated now until the end of the restrictive-use period.

If you decide to remain in your apartment after rents go up, the owner can not evict you without good cause, whether you or someone else is paying the rent.

The information that is attached to this letter tells you what you can do after this mortgage is paid off. To help protect you from the impact of your landlord's mortgage pay off, you may be eligible for a USDA voucher that will provide short-term rental subsidy payment and allow you to remain where you are, or to move somewhere else. If you have any questions, please contact us.

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(Servicing Official)

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(Address)

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(Telephone Number)

**Please contact our office if you want to see all the information Rural Development used to make this decision.**

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## CURRENT ELIGIBLE TENANTS

### WHAT CAN YOU DO TO PROTECT YOURSELF AFTER THE MORTGAGE IS PAID OFF?

#### **Tenants Eligible for LOPE Letter [REFERENCE: 7 CFR 3560 HB2 3560, Rural Development Handbook Letter 201]**

You may apply for a letter called a Letter of Priority Entitlement (LOPE). You may use the letter to go to the top of all waiting lists of any project Rural Development has the mortgage on, anywhere in the Country, if you are eligible to live there. You will have up to ONE-YEAR from the date of this letter to apply for your LOPE. You can use it to be placed on waiting lists for 60 days after you receive the letter. If Rural Development is paying part of your rent now and if you are eligible for this benefit at the project you are moving to, the Government will continue to help make your rent payment when you move. This letter may also help you get preference in a Department of Housing and Urban (HUD) apartment. The letter will be issued in accordance with all Civil Rights requirements.

#### **Tenants Ineligible for LOPE Letters**

If you think you will need to move some place you can afford after the rents are raised, you should give yourself enough time to find a new place to live, **OR** Until you voluntarily move, your rent can not be raised above what the rent would have been, if the owner had kept the Rural Development loan. If, at any time, you feel the owner or anyone who buys the project is violating the terms of the agreement with the Government, you should notify the Rural Development office at the address below.

### AVAILABILITY OF THE RURAL DEVELOPMENT VOUCHER

The Rural Development Voucher Program was created to offer some protection to eligible multi-family housing tenants of properties financed through Rural Development's Section 515 Rural Rental Housing Program who may be subject to economic hardship through prepayment of the Rural Development mortgage. When the owner of such a Rural Development pays off the loan, the Rural Development affordable housing requirements may be modified. Rents may increase thereby making the housing unaffordable to tenants. Rural Development will help eligible tenants by providing short-term rental subsidy that will supplement the tenant's rent payment in the event of an increase. ***Low-income tenants in the prepaying property may be eligible to receive a voucher that they may use at that property or take to any other rental unit in the United States that passes a unit inspection and where the owner will accept a Rural Development Voucher, with the exception of rental units in subsidized housing like Section 8 and public housing, where two housing subsidies would result. Low-income tenants who were not previously receiving Rural Development Rental Assistance may be eligible to receive a Rural Development Voucher also. Voucher assistance is available regardless of whether a property prepaid with or without restrictions.***

This voucher can be used to supplement your rent payment at any property where the owner will agree to accept the voucher, including the property that prepaid the Rural Development mortgage. However, the housing unit must be approved by Rural Development in order for you to use a voucher.

***We will send to you, under separate cover, a letter detailing eligibility requirements and the amount of the voucher for which you may qualify.***



## ATTACHMENT 2C

### RENT COMPARABILITY STUDY LETTER TO OWNERS

Dear Property Owner,

Upon prepayment of your U.S. Department of Agriculture (USDA) Section 515 loan, current tenants of your property at the time of prepayment may be eligible to receive USDA rental vouchers. To establish the value of these vouchers, we need to determine the market rent for each unit type at the property by conducting a Rent Comparability Study (RCS). The results of the RCS are used by USDA solely for the purpose of establishing the value of these vouchers. The RCS results are not used by USDA in the prepayment process, and have no effect on its outcome or your property.

USDA has contracted with a company called The Signal Group (Signal) to undertake an RCS to determine the current market rents for all unit types at your property. To prepare the RCS, Signal will need to make a site visit to your property to do a “walk through,” and ask some questions of you or your property manager. Signal will be contacting you directly to set up a date and time to conduct this property visit. Generally, the site visits are completed within one to two hours.

The purpose of the site visit is to document the characteristics of your property that are relevant for determining the market rent for units at your property. At the time of the site visit, Signal will need to walk through, photograph, and measure one unit of each unit type, and walk through and photograph all common areas. In addition to the walk through, Signal also will be asking questions to ascertain specific information about the property to fully understand its characteristics and features. Below is a list of possible items that they may ask about:

1. Unit mix (i.e., number of 1, 2, 3 BR units at the property) and the number of vacant units.
2. Current rents and utility allowances (if applicable) for each unit type.
3. Any charges to tenants in addition to rent, for example for storage, parking etc.
4. Sources of heat, hot water, cooking, and air conditioning (i.e. gas, electricity etc.)
5. Whether utilities are included or excluded in rent.
6. Age of property.
7. Recent renovations or capital improvements to the property.
8. Project amenities (conference/meeting rooms, cable television, recreational facilities etc).
9. Services provided, if any, to tenants (i.e. transportation, meal services, social and/or educational activities).

Please note that Signal may have some additional questions about your property beyond the items above.

Because of your familiarity with the area in which the property is located, the Signal representative may also ask your opinions (or those of your property management staff person) about the area and community. We recognize that these questions involve your personal opinions (or those of your property management staff person), and you should provide this information only to the extent that you are comfortable doing so. Your knowledge and insights regarding the area are very helpful in informing Signal's research and analysis, and we encourage you to share them.

Again, the RCS is only used to establish the amount of the rental vouchers offered to eligible tenants and has no impact on the prepayment process.

We hope this background about RCS is helpful, and we appreciate your cooperation with Signal during the site visit. If you have questions, please feel comfortable asking the Signal representative conducting the site visit, or contact me at (\_\_\_\_) \_\_\_\_ - \_\_\_\_.

Sincerely

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[Rural Development State or Area Office Contact Person]

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**ATTACHMENT 2D**  
**TENANT LETTER #3A**  
**PRELIMINARY VOUCHER DETERMINATION LETTER**

(Use this letter prior to prepayment)

Date

Tenant Name  
Tenant Address  
Tenant Address

**Re:** RURAL DEVELOPMENT VOUCHER INFORMATION - ELIGIBILITY AND VOUCHER AMOUNT DETERMINATION

Dear Tenant Name:

This letter is to advise you that USDA Rural Development has approved the mortgage prepayment request of the owner of your apartment complex. Prepayment means the USDA loan on the property no longer exists, and the rent for your unit may increase or you may wish to move.

This letter provides information about three types of future rent assistance that you may receive as a result of this action, specifically:

- **Letter of Priority Entitlement (LOPE)** moves you to the top of the waiting list for a rental unit in another Rural Development property;
- **Transfer of Rental Assistance (RA)** allows your rent payment to remain the same if you move to another Rural Development property; or
- **Rural Development Voucher** provides 12 monthly subsidy payments at most rental units anywhere in the United States.

*Carefully read this entire letter for full information about your possible benefits and the actions required for you to receive these benefits.*

---

**LETTER OF PRIORITY ENTITLEMENT TO ANOTHER USDA UNIT**

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If you currently reside in a Rural Development-financed property that is pre-paying its mortgage, or if USDA expects to foreclose the mortgage, you are eligible for a **Letter of Priority Entitlement or LOPE letter - which moves you to the top of the waiting list in other Rural Development-financed properties**. You have **up to one year from the date of the prepayment to apply for a LOPE letter**. Using the LOPE letter can make it easier for you to obtain another USDA-financed unit where rents are lower than in the general market.

To obtain a list of Rural Development properties where the LOPE letter can be used, please visit the following website: [http://rdmfhrentals.sc.egov.usda.gov/RDMFHRentals/select\\_state.jsp](http://rdmfhrentals.sc.egov.usda.gov/RDMFHRentals/select_state.jsp).

***To receive a LOPE letter or learn more about this option, contact [Insert Rural Development Contact for LOPE for that State.]***

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#### **TRANSFER OF RENTAL ASSISTANCE TO ANOTHER RURAL DEVELOPMENT PROPERTY**

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If you currently receive Rental Assistance (RA) in the Rural Development property where you live, RA will no longer be available when the owner pays off the mortgage or the foreclosure occurs. However, if you request, the **RA currently assigned to your unit can be transferred to another Rural Development property to which you want to move.**

- You have **up to four months after the owner pays off the mortgage to transfer and begin using the RA.**
- If RA is transferred, your rent should not change from what it is currently since your rent is based on 30 percent of your income.
- RA can not be transferred to a Rural Development -financed property that is 100 percent Section 8. (Management at the Rural Development property will be able to tell you whether or not the property is 100 percent Section 8.)
- You can not use RA in combination with a Rural Development Voucher. However, you can use the LOPE letter to get to the top of the waiting list, and then use the transferred RA to help you pay the rent.

***For more information on the transfer of Rental Assistance, contact [Insert Rural Development Contact for RA for that State.]***

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#### **AVAILABILITY OF THE PORTABLE RURAL DEVELOPMENT VOUCHER**

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If you live in the property on the date of actual prepayment you may be eligible to receive a Rural Development Voucher to assist in paying your rent in your current unit or elsewhere.

The Rural Development Voucher Program was created to offer some protection to eligible multifamily housing tenants of properties such as your complex who may be subject to economic hardship (for example, higher rents) as a result of the loan prepayment or foreclosure. **The Rural Development Voucher will help tenants by providing 12 monthly payments of rental subsidy that will supplement the tenant's rent payment.**

Eligible tenants may use the Rural Development Voucher to supplement rent at any rental unit in the United States, including your current unit, if -

1. The owner of the unit will accept a Rural Development Voucher; and
  2. The unit is in acceptable physical condition; and
  3. The unit is not already subsidized by Section 8 or as a public housing unit.
-

You should also understand the following information:

- ***You must be a citizen, United States non-citizen national or qualified alien to be eligible for the Rural Development Voucher Demonstration Program. A List of acceptable citizenship documentation is enclosed.***
- Even if you were not previously receiving Rural Development Rental Assistance (RA), you may be eligible to receive a Rural Development Voucher.
- Your Rural Development Voucher will provide 12 months of payment.
- You may not use your Rural Development Voucher in combination with a HUD Housing Choice Voucher or at a HUD-subsidized property. This means that in some instances, it may be more beneficial for you to give up your Rural Development Voucher than to keep it if you have the choice of other subsidy.
- You must use your Rural Development Voucher within 60 days of issuance. See additional information below in “Next Steps” for what this timeframe could mean.
- The amount of your Rural Development Voucher can not exceed the rent for your unit. If you want to use this voucher at another property where the amount of the voucher exceeds the rent, the voucher will be reduced to equal the rent. Your voucher amount could increase back to its original amount if your rent then increased above the voucher amount.

**If the owner does not prepay the Rural Development mortgage, or if foreclosure does not occur, vouchers will not be offered to tenants of this apartment complex. Vouchers are only available if the loan is paid off.**

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**PRELIMINARY RURAL DEVELOPMENT VOUCHER DETERMINATION**

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We [insert were/were not] able to determine that you are eligible for a Rural Development Voucher. See the attached Eligibility Determination for explanation of your eligibility.

**The value of the Rural Development Voucher for which you are eligible has been preliminarily established at \$\_\_\_\_\_ per month.** If this amount is \$0, this is because either you are ineligible (your annual income is above 80 percent of the Area Median Income, as explained in the attachment), or because your tenant contribution at the prepaying property was equal to or greater than the comparable market rent for your apartment unit size. See attached “Eligibility Information” for an explanation of how this voucher amount was calculated.

**Note that this eligibility and voucher amount determination is not final until prepayment occurs.** Provided you continue to reside in the property, immediately following prepayment you will receive another letter stating your final eligibility and voucher amount determination. See “**Eligibility Determination**” for additional information.

As stated above, **the amount of your Rural Development Voucher can not exceed the rent for your unit.** If you want to use this voucher at a property where the amount of the voucher exceeds the rent, the voucher will be reduced to equal the rent.

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NEXT STEPS

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***If you are interested in receiving a Rural Development Voucher, you must sign the enclosed "Voucher Obligation Form" and return the original document and a copy of proof of citizenship to Rural Development at the following address:***

**Attn:**

***You have until September 15, 2008, to return the original, signed VOF and copy of proof of citizenship to Rural Development. Returning the form will generate the Rural Development Voucher for you to use. Rural Development Vouchers will be issued within either 30 days of your return of the Voucher Obligation Form or 30 days after the prepayment, whichever is later.***

***You should use your Rural Development Voucher within 60 days of issuance. Therefore, return the Voucher Obligation Form (VOF) approximately 90 days before you expect to use the Rural Development Voucher with a new lease. Timing considerations for returning the VOF would include when your lease expires or, if you wish to move immediately and your lease has not yet expired, the date when you and your landlord mutually agree to terminate your lease. You may submit a written request for an extension of 60 days to use the voucher. The maximum voucher search period for any family participating in the Rural Development Voucher Program is 120 days. If the Rural Development Voucher remains unused after a period of 150 days from issuance, the Rural Development Voucher will become void and funding will be cancelled. After that time, the Rural Development Voucher will no longer be available.***

***If you disagree with either the income-eligibility determination or the voucher amount determination, you are entitled to appeal that determination, in accordance with 7CFR Part 11. Enclosed you will find information related to appeals.***

***If you have any question, please call \_\_\_\_\_.***

Sincerely,

Enclosure - Appeal Rights; Voucher Obligation Form, **Proof of Citizenship**, Preliminary Rural Development Voucher determination.

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**ATTACHMENT 2E**  
**TENANT LETTER #3B**  
**FINAL VOUCHER DETERMINATION LETTER**

(Use this letter immediately after prepayment to existing tenants and for new tenants that did not receive tenant letter #3A)

Date

Tenant Name  
Tenant Address  
Tenant Address

**Re: RURAL DEVELOPMENT VOUCHER INFORMATION - ELIGIBILITY AND VOUCHER AMOUNT DETERMINATION**

Dear (Tenant Name):

**[IF TENANTS RECEIVED TL 3A INSERT FOLLOWING: We notified you earlier that USDA Rural Development had approved the mortgage prepayment request of the owner of your apartment complex.]** The purpose of this letter is to notify you that prepayment of your apartment complex occurred on **[insert date of prepayment]**. Prepayment means that the USDA loan on the property no longer exists, and the rent for your unit may increase or you may wish to move.

This letter reminds you about three types of future rent assistance that you may receive as a result of this action, specifically:

- **Letter of Priority Entitlement (LOPE)** moves you to the top of the waiting list in another Rural Development property;
- **Transfer of Rental Assistance (RA)** allows your rent payment to remain the same if you move to another Rural Development property; or
- **Rural Development Voucher** provides 12 monthly subsidy payments at most rental units anywhere in the United States.

**Carefully read this entire letter for full information about your possible benefits and the actions required for you to receive these benefits.**

**AVAILABILITY OF THE LETTER OF PRIORITY ENTITLEMENT TO ANOTHER USDA UNIT**

If you currently reside in a Rural Development -financed property that is pre-paying its mortgage, or if USDA expects to foreclose the mortgage, you are eligible for a Letter of Priority Entitlement or LOPE letter - which moves you to the top of the waiting list in other Rural Development -financed properties. You have up to one year from the date of the prepayment to apply for a LOPE letter. Using the LOPE letter can make it easier for you to obtain another USDA-financed unit where rents are lower than in the general market.

To obtain a list of Rural Development properties where the LOPE letter can be used, please visit the following website: [http://rdmfhrentals.sc.egov.usda.gov/RDMFHRentals/select\\_state.jsp](http://rdmfhrentals.sc.egov.usda.gov/RDMFHRentals/select_state.jsp). To receive a LOPE letter or learn more about this option, contact **[Insert Rural Development Contact for LOPE for that State]**.

#### **TRANSFER OF RENTAL ASSISTANCE TO ANOTHER RURAL DEVELOPMENT PROPERTY**

If you currently receive Rental Assistance (RA) in the Rural Development property where you live, RA will no longer be available when the owner pays off the mortgage or the foreclosure occurs. However, if you request, the RA currently assigned to your unit can be transferred to another Rural Development property to which you want to move.

- You have up to four months after the owner pays off the mortgage to transfer and begin using the RA.
- If RA is transferred, your rent should not change from what it is currently since your rent is based on 30 percent of your income.
- RA can not be transferred to a Rural Development -financed property that is 100 percent Section 8. (Management at the Rural Development property will be able to tell you whether or not the property is 100 percent Section 8.)
- You can not use RA in combination with a Rural Development Voucher. However, you can use the LOPE letter to get to the top of the waiting list, and then use the transferred RA to help you pay the rent.

For more information on the transfer of Rental Assistance, contact **[Insert Rural Rural Development Contact for RA for that State.]**

#### **AVAILABILITY OF THE PORTABLE RURAL DEVELOPMENT VOUCHER**

If you live in the property on the date of actual prepayment you may also be eligible to receive a Rural Development Voucher to assist in paying your rent in your current unit or elsewhere.

The Rural Development Voucher Program was created to offer some protection to eligible multifamily housing tenants of properties such as your complex who may be subject to economic hardship (for example, higher rents) as a result of the loan prepayment or foreclosure. The Rural Development Voucher will help tenants by providing 12 monthly payments of rental subsidy that will supplement the tenant's rent payment.

Eligible tenants may use the Rural Development Voucher to supplement rent at any rental unit in the United States, including your current unit, if:

- The owner of the unit will accept a Rural Development Voucher; and
  - The unit is in acceptable physical condition; and
  - The unit is not already subsidized by Section 8 or as a public housing unit.
-



You should also understand the following information:

- ***You must be a citizen, United States non-citizen national or qualified alien to be eligible for the Rural Development Voucher Demonstration Program. A list of acceptable citizenship documentation is enclosed.***
- Even if you were not previously receiving Rural Development Rental Assistance (RA), you may be eligible to receive a Rural Development Voucher.
- Your Rural Development Voucher will provide 12 months of payment.
- You may not use your Rural Development Voucher in combination with a HUD Housing Choice Voucher or at a HUD-subsidized property. This means that in some instances, it may be more beneficial for you to give up your Rural Development Voucher than to keep it if you have the choice of other subsidy.
- You must use your Rural Development Voucher within 60 days of issuance. See additional information below in “Next Steps” for what this timeframe could mean.
- The amount of your Rural Development Voucher can not exceed the rent for your unit. If you want to use this voucher at another property where the amount of the voucher exceeds the rent, the voucher will be reduced to equal the rent. Your voucher amount could increase back to its original amount if your rent then increased above the voucher amount.

**[IF TENANTS RECEIVED TL 3A INSERT FOLLOWING:** In previous letters, we informed you of your preliminary Rural Development Voucher eligibility and award amount determinations.] This letter provides your final eligibility and award amount determinations based on your circumstances on the date of prepayment. If you moved from the property prior to the date of prepayment, you are not eligible to receive a voucher. If your net tenant contribution changed prior to prepayment, you may be ineligible to receive a voucher or your voucher amount may have changed.

#### **FINAL ELIGIBILITY DETERMINATION**

We [Insert were/were not] able to determine that you are eligible for a Rural Development Voucher. See the attached Eligibility Determination.

#### **FINAL VOUCHER AMOUNT DETERMINATION**

The value of the Rural Development Voucher for which you are eligible has been established at \$\_\_\_\_\_ per month. If this amount is \$0, this is because either you are ineligible (your annual income is above 80 percent of the Area Median Income, as explained in the attachment), or because your tenant contribution at the prepaying property was equal to or greater than the comparable market rent for your apartment unit size. See attached “Eligibility Information” for an explanation of how this voucher amount was calculated.

As stated above, the amount of your Rural Development Voucher can not exceed the rent for your unit. If you want to use this voucher at a property where the amount of the voucher exceeds the rent, the voucher will be reduced to equal the rent.

## NEXT STEPS

Our records indicate that you [**have/have not**] already returned a signed Voucher Obligation Form (VOF).

### **CHOOSE FROM FOLLOWING PARAGRAPHS:**

**IF TENANT HAS ALREADY RETURNED A SIGNED VOF** - Since you have already returned a signed VOF to us, you do not need to return the attached VOF. We will be issuing your Rural Development Voucher within 15 business days. If you do not receive your Rural Development Voucher within that timeframe or if you have decided you no longer want a Rural Development Voucher, please call Rural Development at toll-free at .

**IF TENANT HAS NOT ALREADY RETURNED A SIGNED VOF** - *If you are interested in receiving a Rural Development Voucher, you must sign the enclosed "Voucher Obligation Form" and return the original document along with a copy of your proof of citizenship to Rural Development at the following address:*

Attn:

*You have until September 15, 2008, to return the original, signed VOF with your copy of proof of citizenship to Rural Development.* Returning the form will generate the Rural Development Voucher for you to use. Rural Development Vouchers will be issued within either 30 days of your return of the VOF or 30 days after the prepayment, whichever is later.

*You should use your Rural Development Voucher within 60 days of issuance. Therefore, return the VOF approximately 90 days before you expect to use the Rural Development Voucher with a new lease. Timing considerations for returning the VOF would include when your lease expires or, if you wish to move immediately and your lease has not yet expired, the date when you and your landlord mutually agree to terminate your lease. You may submit a written request for an extension of 60 days to use the voucher. The maximum voucher search period for any family participating in the Rural Development Voucher Program is 120 days. After that time, the Rural Development Voucher will no longer be available.*

### **Preliminary Rural Development Voucher Eligibility Determination**

Eligibility to receive a voucher is based on you adjusted income indicated on the Tenant Certification in effect on the date of loan prepayment. Only those tenants who are low-income are eligible to receive a voucher. "Low-income" is defined as an annual adjusted income at or below 80 percent of the area median income.

**Note that this eligibility and voucher amount determination listed below is not final until prepayment occurs.** If you move from the property prior to the date of prepayment, you will not be eligible to receive a voucher. If your net tenant contribution changes prior to prepayment, you may become ineligible to receive a voucher or your voucher amount may change.

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**Immediately following prepayment, you will receive another letter stating your final eligibility and voucher amount determination.**

The area median income for your area is \$ \_\_\_\_\_ and 80 percent of that figure is \$ \_\_\_\_\_.

[Insert if tenant income unknown] We were unable to determine if your adjusted income is at or below 80 percent of the area median, therefore we can not determine your eligibility to receive a voucher at this time. **If you believe you may be eligible, you may forward your most recent income certification to:**

Attn:

**Your adjusted income is [at or below/above] 80 percent of the area median income; therefore, you [are/are not] income-eligible to participate in the Rural Development Program.**

**Preliminary Rural Development Voucher Amount Determination**

The amount of your Rural Development Voucher was calculated as follows:

	\$ _____	Comparable market rent for your unit in the area where you rent at the time of prepayment
Minus	\$ _____	Net tenant contribution toward rent on date of prepayment
<hr/>		
	\$ _____	Maximum Amount of your Rural Development Voucher

**The amount of the voucher can not exceed the amount of tenant rent; therefore, your voucher amount will be adjusted downward if you choose a unit where the maximum voucher amount exceeds the tenant rent. The voucher amount could later be adjusted back to the maximum if your tenant rent changes to exceed the voucher amount.**

**Final Eligibility Determination**

Eligibility to receive a voucher is based on your adjusted income indicated on the Tenant Certification in effect on the date of loan prepayment. Only those tenants who are low-income are eligible to receive a voucher. "Low-income" is defined as an annual adjusted income at or below 80 percent of area median income.

The area median income for your area is \$ \_\_\_\_\_ and 80 percent of that figure is \$ \_\_\_\_\_.

(Use this paragraph if you are unable to determine the adjusted income of the tenant). We were unable to determine if your adjusted income is at or below 80 percent of the area median; therefore, we can not determine your eligibility to receive a voucher at this time. If you believe you may be eligible, you may forward your most recent income certification to:

Attn:

**Your adjusted income is [at or below/above] 80 percent of the area median income; therefore, you [are/are not] income-eligible to participate in the Rural Development Voucher Program.**

**Final Voucher Amount Determination**

The amount of your Rural Development Voucher was calculated as follows:

	\$ _____	Comparable market rent for your unit in the area where you rent at the time of prepayment
Minus	\$ _____	Net tenant contribution toward rent on date of prepayment
	\$ _____	Maximum Amount of your Rural Development Voucher

**Remember that the amount of the voucher can not exceed the amount of tenant rent; therefore, your voucher amount will be adjusted downward if you choose a unit where the maximum voucher amount exceeds the tenant rent. If this occurs, the voucher amount could later be adjusted back up to the maximum if your tenant rent changes to exceed the voucher amount.**

If you disagree with either the income-eligibility determination or the voucher amount determination, you are entitled to appeal that determination, in accordance with 7 CFR Part 11. Enclosed you will find information related to appeals.

If you have any questions, please call Rural Development at \_\_\_\_\_.

Sincerely,

Enclosure - Appeal Rights; Voucher Obligation Form, *Proof of Citizenship*, Eligibility Determination, Voucher Amount Determination

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**Tenant Letter #3 -**  
**This should be generated by the Rural Development Office and sent Certified Mail**

Tenant Name  
Tenant Address  
Tenant Address

**Re: RURAL DEVELOPMENT VOUCHER INFORMATION -  
ELIGIBILITY AND VOUCHER AMOUNT DETERMINATION**

Dear (Tenant Name):

This letter is to advise you that either: 1) USDA Rural Development has approved the mortgage prepayment request of the owner of your apartment complex, or 2) USDA expects to complete foreclosure on this property soon. Foreclosure means the USDA loan on the property no longer exists.

**AVAILABILITY OF THE LETTER OF PRIORITY ENTITLEMENT**

If you currently reside in a Rural Development-financed property where the owner is pre-paying its mortgage or USDA expects to foreclose, you are also eligible for a Letter of Priority Entitlement or LOPE letter - which moves you to the top of the waiting list in other Rural Development-financed properties. You have up to one year from the date of this letter to apply for a LOPE letter. To obtain a list of Rural Development properties where the LOPE letter can be used, please visit the following website: [MFH Rentals \(USDA Rural Development\)](#) or call your nearest Rural Development Servicing Office.

**TRANSFER OF RENTAL ASSISTANCE**

If you currently receive Rental Assistance (RA) in the Rural Development property where you live, RA will no longer be available when the owner pays off the mortgage. RA will no longer be available if a foreclosure occurs unless Rural Development becomes owner of the property. However, the RA currently assigned to you can be transferred to another Rural Development property if you want to move. You must make a request to your local Rural Development Office to move with RA. For four months after the owner pays-off the mortgage or foreclosure, you will continue to receive RA. You can use the LOPE letter to get to the top of the waiting list at another Rural Development property and then use the transferred RA to help you pay the rent.

There are some situations where you can not transfer the RA. For example: If you are going to a property that is already 100 percent RA or if the property is not a Rural Development-financed property.

## **AVAILABILITY OF THE Rural Development VOUCHER**

If you live in the property on the date of actual prepayment, you may also be eligible to receive a Rural Development Voucher to assist you in paying your rent. The Rural Development Voucher Program was created to help tenants by providing a year's worth of vouchers that will supplement the tenant's rent payment. Eligible tenants receive a voucher that may be used at the property where he or she lives or at any other habitable rental unit in the United States where the owner will accept a Rural Development Voucher. Rural Development Vouchers can not be used if the tenant is receiving RA or living in Section 8 or other public housing. Even if you were not previously receiving Rural Development RA you may be eligible to receive a Rural Development Voucher. You may use a RD Voucher in combination with a LOPE letter.

## **ELIGIBILITY DETERMINATION**

To determine if you eligible to receive a voucher, Rural Development looks at your adjusted income from the Tenant Certification being used on the date the loan was prepaid or foreclosure occurred. Only those tenants who are low-income are eligible to receive a voucher. You must meet the standard for low-income if your income is at or below 80 percent of the median income for your area.

The area median income for your area is \$ \_\_\_\_\_ and 80 percent of that figure is \$ \_\_\_\_\_.

*(Use This Paragraph If You Are Unable To Determine The Adjusted Income of The Tenant).* **We were unable to determine if your adjusted income is at or below 80 percent of the area median, therefore we can not determine your eligibility to receive a voucher at this time. If you believe you may be eligible, you may forward your most recent income certification to:**

*Insert servicing office address, and contact name.*

**Because your adjusted income is [less than/more than] 80 percent of the area median income, you [are/are not] income-eligible to participate in the Rural Development Voucher Program.**

## **VOUCHER AMOUNT DETERMINATION**

If you are eligible to participate in the Rural Development Voucher program, the value of the Rural Development Voucher has been established at \$ \_\_\_\_\_ per month. If this amount is \$0, this is because your rental payment at the prepaid or foreclosed property was equal to or greater than the similar rent charge for that type of apartment. See below for information on how this voucher amount was calculated.

The Rural Development Voucher is good for 12 monthly payments at this rate to the property owner of the housing unit where you choose to live. In order to maintain your eligibility for the voucher program, your income must remain below the 80 percent of area median income. To

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confirm your eligibility, please contact the nearest Rural Development Office. Locations of the Rural D Offices can be found on the Internet at [http://www.rurdev.usda.gov/recd\\_map.html](http://www.rurdev.usda.gov/recd_map.html).

The amount of your Rural Development Voucher was calculated as follows:

\$ \_\_\_\_\_ = Similar market rent for your unit in the area when the loan was prepaid or foreclosure occurred.  
minus \$ \_\_\_\_\_ = Your contribution toward rent on date the loan was prepaid or foreclosure occurred.  
\$ \_\_\_\_\_ = Amount of your Rural Development Voucher

You should know that the amount of the Rural Development Voucher can not be more than the rent where you live. If you move and the amount of the voucher exceeds the rent, the voucher amount will be reduced to equal the rent.

If you are interested in receiving a Rural Development Voucher, please sign the enclosed "Voucher Obligation Form" on page 2 and return it to the Rural Development Servicing Office identified below.

For answers to any questions you may have and to express an interest in receiving a Rural Development Voucher, please contact the following:

Rural Development Area office contact name, address, phone number.

If you disagree with either the income-eligibility determination or the voucher amount determination, you are entitled to appeal that determination, in accordance with 7 CFR Part 11. Enclosed you will find information related to appeals.

Sincerely,

Rural Development Area Director

Enclosure - Appeal Rights; Rural Development Voucher Obligation Form

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TO: Tenants of [Project Name]

SUBJECT: Notification of Acceptance of Incentives to Avert Prepayment

Rural Development has reviewed information concerning a request from your landlord **[Insert Owner's Name]** to pay off the Rural Development loan on **[Insert Project Name]**. This letter is to inform you that your landlord will not be paying the loan off. The owner has legally agreed, through a Restrictive-Use Agreement, to continue to rent to very-low-/low-/ moderate-income individuals and families and those wanting to move into the property. You may remain as long as you are eligible and wish to occupy your apartment.

Rents can not be higher than what the Government says you can afford and will be calculated the same way as they are now until **[Insert Date (end of the 20-year RUP)]**. Additionally, the owner can not change any conditions or charges to tenants so that the project would no longer be a suitable place for you to live. **[Insert Owner's Name]** would only be released from this agreement when the Government determines that 1) there is no longer a need for the housing; and 2) that other financial assistance provided to the residents of the housing will no longer be needed or provided due to no fault, action, or lack of action on the part of **[Insert Owner's Name]**. This agreement is intended to protect only very-low-/low-/ moderate-income individuals and families and those wanting to move into the property for the next 20 years. Any tenant, as well as the Government, may pursue legal enforcement of this agreement. In order to comply with this agreement, the owner will continue to certify your income every year.

If you have any questions, please contact me prior to [enter date].

Sincerely,

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(Servicing Official)

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TO: The Tenants of

SUBJECT: Notice of Offer to Sell to a Non-profit

Rural Development has reviewed the information concerning your landlord's request to pay off the loan on **[Project Name]**. This letter is following up on the letter you should have received **[Insert Date of Initial Tenant Notification Letter]**.

Your landlord has chosen to advertise the property for sale to a non-profit organization or Public Housing Authority (PHA) who is willing to continue to operate the apartments as affordable rental housing. Your landlord will advertise the property for sale for a minimum of 180 days. Your landlord may suspend advertising and other sales efforts while eligibility of an interested purchaser is determined. If the purchaser is determined to be ineligible, your landlord must resume advertising for the balance of the required 180 days.

The property will first be offered to local non-profit and public bodies. If no eligible local non-profit and public bodies are found, the property will be offered for sale to regional or national non-profit organizations or public bodies.

To purchase and operate a housing complex, a non-profit or public body must agree to subsidize the housing complex for very low- and low-income families or persons for the remaining useful life of the housing and related facilities similar to how it is used now. Rural Development will notify you as soon as the 180 advertisement is concluded and a decision has been reached.

If you have any questions, please contact me at [insert contact information].

Sincerely,

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(Servicing Official)

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## **CURRENT ELIGIBLE TENANTS NOT PROTECTED BY HUD SUBSIDY/RESTRICTIVE-USE PROVISIONS**

### **WHAT CAN YOU DO TO PROTECT YOURSELF AFTER THE MORTGAGE IS PAID OFF?**

#### **AVAILABILITY OF THE LETTER OF PRIORITY ENTITLEMENT [REFERENCE: 7 CFR 3560 HB2 3560, RD Handbook Letter 201]**

If you currently reside in a Rural Development-financed property that is pre-paying its mortgage or USDA expects to foreclose the mortgage, you are also eligible for a Letter of Priority Entitlement or LOPE letter - which moves you to the top of the waiting list in other Rural Development-financed apartment projects. You have up to one year to apply for a LOPE letter. To obtain a list of Rural Development properties where the LOPE letter can be used, please visit the following website: **[insert website address]** or call your nearest Rural Development Servicing Office.

#### **TRANSFER OF RENTAL ASSISTANCE**

If you currently receive Rental Assistance (RA) in the Rural Development property where you live, RA will no longer be available when the owner pays off the mortgage. RA will no longer be available if a foreclosure occurs unless Rural Development becomes the owner of the property. However, if you request, the RA currently assigned to you can be transferred to another Rural Development property. You have up to four months after the owner pays-off the mortgage to use the RA. You can not use this RA with a Rural Development Voucher but you can use the LOPE letter to get to the top of the waiting list and then use the transferred RA to help you pay the rent.

There are some situations where you can not transfer the RA. For example: If you are going to a property that is already 100 percent RA or if the property is not a Rural Development-financed property.

If you live in the property on the date of actual prepayment, you may also be eligible to receive a Rural Development voucher to assist you in paying your rent.

#### **AVAILABILITY OF THE RURAL DEVELOPMENT VOUCHER**

The Rural Development Voucher Program was created to help tenants by providing a year's worth of vouchers that will supplement the tenant's rent payment. Eligible tenants receive a voucher that may be used at the property where he/she lives or at any other habitable rental unit in the United States where the owner will accept a Rural Development Voucher. Rural Development Vouchers can not be used if the tenant is receiving RA or living in Section 8 or other public housing. Even if you were not previously receiving Rural Development RA you may be eligible to receive a Rural Development Voucher. You may use a Rural Development Voucher and the LOPE letter.

**Tenants Ineligible for LOPES**

If the owner of the property prepays the loan and does not sign a restrictive-use agreement, rents can be raised. The increase in rent can occur as soon as USDA receives the final payment. If you think you will need to move to some place you can afford after the rents can be raised, you should give yourself enough time to find a new place to live, **OR**

Until you voluntarily move, your rent can not be raised above what the rent would have been, if the owner had kept the RURAL DEVELOPMENT loan. If, at any time, you feel the owner or anyone who buys the project is violating the terms of the agreement with the Government, you should notify the Rural Development Office at the address below.

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Serving Official

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Address

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Telephone Number

**[If applicable]:** Attached are lists of:

- Other Rural Development projects in the area, their addresses, telephone numbers and apartment sizes.
  - Other Government agencies which have apartments or may be able to help you find another apartment and their telephone numbers.
-

RE: Prepayment Request for [Name of Property]

Dear Mr./Mrs. [Owner/Designee's Name]:

Rural Development has completed its analysis of your request to prepay your Rural Rental Housing (RRH) loan on the above named property located in [City, State]. This loan is currently subject to Restrictive-Use Provisions (RUP) until **[Enter date]**. Until the RUP expires, you are ineligible for any incentives to avert prepayment. If prepayment is approved, you must agree to enter into a new RUP and sign a restrictive-use agreement (RUA) which will extend the current restrictive-use period for a period of 20 years from the date on which the new RUP and RUA are executed.

If you are unwilling to sign the new RUA, you must consider either withdrawing your prepayment request or offer to sell the property to a non-profit organization or public body. Otherwise your prepayment request will be denied. Please indicate your preference by initialing below.

Extend RUP				Sell to NP/PB			
Agree		Disagree		Agree		Disagree	

If you choose to offer to sell to a non-profit organization or public body and no bona fide offer is received after 180 days has elapsed, you may prepay your loan without further restrictions.

Please contact our office via fax, e-mail, or letter to let us know if you are willing to accept the provisions stated herein. If you have any questions regarding this matter, please contact our office at [enter phone number].

Sincerely,

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## ATTACHMENT 15-D INCENTIVE CALCULATION WORKSHEET AND DIRECTIONS INSTRUCTIONS FOR RHS INCENTIVE CALCULATION WORKSHEET

<b>State Office:</b>		<b>Contact Person:</b>	
<b>Project Name:</b>		<b>Project Location:</b>	
<b>Borrower Name:</b>		<b>Borrower I.D.:</b>	
<b>Date Submitted to ORHP:</b>		<b>Project Number:</b>	

Number of Units:	Current Basic Rents:	Comparable Rents:	Other Data:
.0 Bedroom	.0 Bedroom	.0 Bedroom	Original Debt
.1 Bedroom	.1 Bedroom	.1 Bedroom	Current Debt
.2 Bedroom	.2 Bedroom	.2 Bedroom	Initial Bor. contribution
.3 Bedroom	.3 Bedroom	.3 Bedroom	Original ROI rate
Other Br.	Other Br.	Other Br.	.30 yr. Tres. Bond rate
0 Total	#DIV/0! Average	#DIV/0! Average	Authorized reserve balance
Appraised value prior to prepayment			Current reserve balance
Appraised value as unsubsidized conventional housing			Required capital needs
Interest rate of third party equity loan			Add'l monthly reserve deposit per unit
Term of third party equity loan			Current Debt Service
Term of reamortized RHS debt			#DIV/0! Reamortized Debt Service
Term of Agency equity loan			Will you ream the debt? Enter yes or no.
1% Interest rate for Agency equity loan/reamortization			

MAXIMUM RHS EQUITY LOAN		MAXIMUM THIRD-PARTY EQUITY LOAN	
\$ -	Appraised value (msub. conv. housing)	#DIV/0!	Max. equity loan after using excess reserves for equity
-	Maximum equity (90%)	#DIV/0!	New debt service for third party equity loan
\$ -	(Current debt)	#DIV/0!	Debt Service for existing RHS loan
\$ -	90% RHS equity	#DIV/0!	New total debt service
\$ -	Total excess reserve	#DIV/0!	Difference between new and current debt service
\$ -	90% eq. loan, less excess res. for eq., w/o regard to comp. rent	#DIV/0!	Monthly/per unit increase to debt service
#DIV/0!	Max. eq. loan w/ comp. rents, less ex. res. for eq.	#DIV/0!	TOTAL INCENTIVE (EQ. LOAN + EX. RESERVES)
#DIV/0!	TOTAL INCENTIVE (EQ. LOAN + EX. RESERVES)	#DIV/0!	Average current rent
#DIV/0!	New basic rent after RHS equity loan	#DIV/0!	Average rent with new debt service
#DIV/0!	Amount above or (below) comparable rent	#DIV/0!	Plus any additional reserve requirement
MAXIMUM RHS EQUITY LOAN AND INCREASED ROI		#DIV/0!	Average comparable rent
#DIV/0!	Max. eq. loan after using ex. res. for eq.	#DIV/0!	Amount above or (below) comparable rent
#DIV/0!	New debt service (DS) for equity loan	INCREASED ROI WHEN AN EQUITY LOAN CANNOT BE OFFERED	
#DIV/0!	Debt service for existing RHS loan	\$ -	Appraised value prior to prepayment
#DIV/0!	New total debt service	\$ -	(Current balance)
#DIV/0!	Difference between new and current DS	\$ -	Current equity position
#DIV/0!	Monthly/per unit increase to DS	\$ -	ROI w/o equity loan at 8%
#DIV/0!	New equity position	\$ -	ROI w/o equity loan at Treasury rate +2
#DIV/0!	New ROI	\$ -	Original ROI
\$ -	Original ROI	\$ -	TOTAL INCENTIVE: NEW ROI
#DIV/0!	Difference betw'n new and current ROI	\$ -	Difference betw'n new and current ROI
#DIV/0!	Monthly/per unit increase to ROI	#DIV/0!	Monthly/per unit increase to ROI
#DIV/0!	TOTAL INCENTIVE (EQ. LOAN + INCR. ROI + EX. RES.)	#DIV/0!	Average current rent
#DIV/0!	Average current rent	#DIV/0!	Average rent with new ROI
#DIV/0!	Average rent with new ROI and DS	#DIV/0!	Plus any additional reserve requirement
#DIV/0!	Plus any additional reserve requirement	#DIV/0!	Average comparable rent
#DIV/0!	Average comparable rent	#DIV/0!	Amount above or (below) comparable rent
#DIV/0!	Amount above or (below) comparable rent	RHS EQUITY LOANS IN CONJUNCTION WITH TRANSFERS AND SALES	
INCREASED ROI WHEN AN EQUITY LOAN COULD BE OFFERED, BUT IS NOT		#DIV/0!	Max. eq. loan in transfer to ltd. Profit with tax credits (<=95%), less ex. res.
#DIV/0!	TOTAL INCENTIVE (EQ. LOAN + EX. RESERVES)	#DIV/0!	TOTAL INCENTIVE (EQ. LOAN + EX. RESERVES)
\$ -	RHS Debt Service	#DIV/0!	New basic rent after equity loan
\$ -	Decrease in current monthly debt service, if any	#DIV/0!	Amount (below) comparable rent
#DIV/0!	Monthly per-unit decrease to debt service, if any	#DIV/0!	Max. eq. loan in transfer to ltd. Profit, no tax credits (<=97%), less ex. res.
\$ -	Appraised value (msub. conv. housing)	#DIV/0!	TOTAL INCENTIVE (EQ. LOAN + EX. RESERVES)
\$ -	(Current debt)	#DIV/0!	New basic rent after equity loan
\$ -	Max. new equity position with ROI only	#DIV/0!	Amount (below) comparable rent
\$ -	TOTAL INCENTIVE: NEW ROI	#DIV/0!	Max. eq. loan in transfer or sale to nonprofit (<=100%), less ex. res.
\$ -	Original ROI	#DIV/0!	TOTAL INCENTIVE (EQ. LOAN + EX. RESERVES)
\$ -	ROI increase with new equity position	#DIV/0!	New basic rent after equity loan
#DIV/0!	Monthly/per unit increase to ROI	#DIV/0!	Amount above or (below) comparable rent
#DIV/0!	Average current rent	COMMENTS:	
#DIV/0!	Average rent with new ROI and DS		
#DIV/0!	Plus any additional reserve requirement		
#DIV/0!	Average comparable rent		
#DIV/0!	Amount above or (below) comparable rent		

## **INSTRUCTIONS FOR RHS INCENTIVE CALCULATION WORKSHEET**

- 1. GO TO PROJECT LIST SCREEN**
  - 2. CLICK ON QUERY**
  - 3. TYPE IN “OR”**
  - 4. CLICK ON QUERY AGAIN - this will give you a listing of every application in the State of Oregon.**
  - 5. ONCE YOU HAVE THE PROJECT NAME AND BORROWER NAME FROM THE PROJECT LISTING - CLICK ON SCREENS; THEN CLICK ON “BORROWER”**
  - 6. WHEN YOU GET TO THE BORROWER SCREEN, CLICK ON QUERY, TYPE IN OR IN THE STATE FIELD, CLICK ON QUERY AGAIN.**
  - 7. THE FIRST BORROWER WILL APPEAR FOR THE STATE OF OREGON**
  - 8. CLICK ON THE “DOWN” BUTTON UNTIL YOU SEE THE BORROWER YOU ARE LOOKING FOR.**
  - 9. PRINT THAT PAGE; THEN CLICK ON THE GREEN RECTANGULAR BUTTON THAT SAYS “PROJECT” AND PRINT THAT SCREEN**
  - 10. THEN CLICK ON THE “EXT” BUTTON (NOTE: You'll see a dialogue box that asks if you want to continue working with this borrower/application) CLICK YES**
  - 11. THIS WILL TAKE YOU BACK TO THE PROJECT LIST; CLICK ON TIMELINE FOR THAT APPLICATION**
  - 12. CLICK ON THE GREEN BUTTON THAT SAYS “TIMELINE TREE”**
  - 13. CLICK ON “TIMELINE TREE”**
  - 14. CLICK ON “TIMELINE RPT”**
  - 15. THE TIMELINE REPORT WILL APPEAR IN A SEPARATE ACROBAT WINDOW; CLICK ON THE “PRINTER” ICON**
  - 16. ONCE THE REPORT HAS PRINTED, CLOSE THE ACROBAT WINDOW.**
-

- 17. CLICK ON “TIMELINE” AND ONCE BACK TO THE TIMELINE SCREEN  
CLICK ON THE GREEN “NEXT” BUTTON (this will take you to the Application  
Checklist Screen)**
- 18. PRINT PAGE 1 OF THE CHECKLIST SCREEN**
- 19. CLICK ON THE GREEN RECTANGULAR “PROJECT NEEDED” BUTTON**
- 20. PRINT PAGE 2 OF THE CHECKLIST SCREEN**
- 21. CLICK ON THE GREEN “NEXT” BUTTON (this will take you to the Prepayment  
Information Screen)**
- 22. PRINT PAGE 1 OF THE PREPAYMENT INFORMATION SCREEN**
- 23. CLICK ON THE GREEN RECTANGULAR “PREPAY, PAGE 2” BUTTON**
- 24. PRINT PAGE 2 OF THE PREPAYMENT INFORMATION SCREEN**
- 25. CLICK ON THE GREEN “NEXT” BUTTON (this will take you to the Incentive  
Calculation Worksheet)**
- 26. PRINT ALL 11 PAGES OF THE INCENTIVE CALCULATION  
WORKSHEET THAT'S IT.**

**PLEASE PRINT THE SCREEN EVEN IF IT IS BLANK.**

**NOTE: CHECK THE TIMELINE SCREEN TO SEE IF ANY OF THE PROJECTS  
HAVE REHAB/REPAIR/DEFERRED MAINTENANCE; IF SO, PRINT THOSE 2  
SCREENS AS WELL.**

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## **RESTRICTIVE-USE COVENANTS (RUC) MATRIX**

<b>SITUATION</b>	<b>RUC TO USE</b>
<b>When Borrower Rejects Incentives</b>	<b>15-E-1</b>
<b>To Protect Existing Tenants</b>	<b>15-E-2</b>
<b>Transfers</b>	<b>15-E-3</b>
<b>Currently Restricted Loans</b>	<b>15-E-4</b>
<b>If Restrictions are not in Place</b>	<b>15-E-5</b>
<b>All Other Cases (i.e. incentives)</b>	<b>15-E-6</b>

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**RESTRICTIVE-USE COVENANT - 10-YEAR**  
**Use After Borrower Rejection of the Incentive Offer (7 CFR 3560.662(b)(1))**

**WHEREAS**, \_\_\_\_\_ [insert borrower's name and address] "Owner", or a predecessor in interest, received a loan from the United States of America, acting through the Rural Housing Service in Rural Development (Agency), U.S. Department of Agriculture which was evidenced by a promissory note or assumption agreement dated \_\_\_\_\_, in the original amount of \_\_\_\_\_ and secured by a certain Deed of Trust or Mortgage dated \_\_\_\_\_, and recorded in the land records for the City or County of \_\_\_\_\_ for the purpose of providing housing in accordance with Section 42 U.S.C. 1484 (Section 514) or 1485 (Section 515), whichever is applicable, and Title V of the Housing Act of 1949, as amended "Program"; and

**NOW, THEREFORE**, in consideration of the restrictions on the property as further described in Exhibit A, the sum of Ten Dollars (\$10) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, for themselves and for their respective successors and assigns, hereby covenant and agree as follows:

**(1) Term.** The period of the restriction will be 10 years from the date this covenant is signed, unless sooner terminated under paragraph 7.

**(2) Use Requirement. The owner, and any successors of interest, agree to use the property in compliance with 42 U.S.C. § 1484 or § 1485, whichever is applicable, and 7 CFR part 3560, and any other available regulations and amendments, for the purpose of housing program eligible very low-, low- or moderate-income tenants.** In accordance with 7 CFR 3560.658(a)(1) or (a)(2), the undersigned agrees that at the end of the expiration of the period described in paragraph 1 of this agreement, the property will be offered for sale to a qualified non-profit organization or public body, in accordance with previously cited statutes and regulations.

**(3) Enforcement.** The Agency and program eligible tenants or applicants may enforce these restrictions as long as the Agency has not terminated the Restrictive Use Agreement pursuant to paragraph 7 below.

**(4) Displacement Prohibition.** The Owner agrees not to refuse to lease a dwelling unit offered for rent, or otherwise discriminate in the terms of tenancy, solely because any tenant or prospective tenant is the recipient of housing assistance from the Agency or any other Federal agency.

**(5) Owner's Responsibilities.** The Owners agrees to: set rents, other charges, and conditions of occupancy in a manner to meet the restrictions required in this restrictive use covenant, post an Agency approved notice of these restrictions for the tenants of the property; to adhere to applicable local, State, and Federal laws; and to obtain Agency concurrence for any rental procedures that deviate from those approved at the time of prepayment, prior to implementation.

**(6) Civil Rights Requirements.** The Owner will comply with the provisions of any applicable Federal, State or local law prohibiting discrimination in housing on the basis of race, color, religion, sex, national origin, handicap or familial status, including but not limited to: Title VI of the Civil Rights Act of 1964 (Public Law 90-284, 82 Stat. 73), the Fair Housing Act, Executive Order 11063, and all requirements imposed by or pursuant to the Agency regulations implementing these authorities, including, but not limited to, 7 CFR 3560.104.

**(7) Release of Obligation.** The Owner will be released from the obligations under this Restrictive Use Covenant before the termination of the period in paragraph 1 only when the Agency determines that there is a no longer a need for the housing or that HUD Section 8 vouchers provided the residents of the housing will no longer be provided due to no fault, action

or lack of action on the part of the Owner.

**(8) Violations; the Agency's Remedies.** The parties further agree that upon any default under this covenant, the Agency may apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against violation of this covenant or for such other equitable relief as may be appropriate, since the injury to the Agency arising from a violation under any of the terms of this covenant would be irreparable and the amount of damage would be difficult to ascertain.

**(9) Covenants to Run with Land.** The Owner hereby subjects the property to the covenants, reservations and restrictions set forth in this covenant. The Owner hereby declares its express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land to the extent permitted by law and shall pass to and be binding upon the successors in title to the property throughout the term. Each and every contract, deed, mortgage or other instrument hereafter executed covering or conveying the property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. The Agency hereby agrees that, upon the request of the Owner made after the Term of this covenant, the Agency shall execute a recordable instrument approved by the Agency for purposes of releasing this covenant of record. All costs and expenses relating to the preparation and recording of such release shall be paid by the Owner.

**(10) Superiority.** The document hereto constitutes a restrictive covenant that is filed of record, with all other Deeds of Trusts or Mortgages, and that, notwithstanding a foreclosure or transfer of title pursuant to any other instrument or agreement, the restrictive covenants and provisions hereunder shall remain in full force and effect.

**(11) Subsequent Modifications and Statutory Amendments.** The Agency may implement modifications necessitated by any subsequent statutory amendment without the consent of any other party, including those having the right of enforcement, to require that any third-party obtained prior to Agency approval for any enforcement action concerning preexisting or future violations of this covenant.

**(12) Other Agreements.** The Owner represents and warrants that it has not and will not execute any other agreements with provisions contradictory or in opposition to the provisions of this covenant and that, in any event, the provisions of this covenant are paramount and controlling as to the rights and obligations set forth herein and supersede any other conflicting requirements.

**(13) Binding Effect.** Upon conveyance of the property during the term, the Owner shall require its successor or assignee to assume its obligations under this covenant. In any event, this covenant shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and/or assigns.

**(14) Amendment.** This covenant may not be modified except by an instrument in writing executed by each of the parties that are signatories hereto.

**(15) Severability.** Notwithstanding anything herein contained, if any one or more of the provisions of this covenant shall for any reason whatsoever be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision of this covenant, but this covenant shall be construed as if such illegal, invalid or unenforceable provision had never been contained herein.

**(16) Headings.** The headings and titles to the sections of this covenant are inserted for convenience only and shall not be deemed a part hereof nor affect the construction or interpretation of any provisions hereof.

**(17) Governing Law.** This covenant shall be governed by all applicable Federal laws.

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IN WITNESS WHEREOF, the parties hereto have caused this Restrictive Use Covenant to be executed and made effective as of the date first above written.

OWNER: \_\_\_\_\_,

a \_\_\_\_\_

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

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

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

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

WITNESS/ATTEST: \_\_\_\_\_

[[insert appropriate acknowledgment form]]

EXHIBIT A  
LEGAL DESCRIPTION

[attached]

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**RESTRICTIVE USE COVENANT - THE LAST EXISTING TENANT**  
**Use if No Impact on Minorities but There is Not an Adequate Supply of Housing**  
**(7 CFR 3560.662(b)(2))**

**WHEREAS**, \_\_\_\_\_ [insert borrower's name and address] "Owner", or a predecessor in interest, received a loan from the United States of America, acting through the Rural Housing Service in Rural Development (Agency), U.S. Department of Agriculture which was evidenced by a promissory note or assumption agreement dated \_\_\_\_\_, in the original amount of \_\_\_\_\_ and secured by a certain Deed of Trust or Mortgage dated \_\_\_\_\_, and recorded in the land records for the City or County of \_\_\_\_\_ for the purpose of providing housing in accordance with Section 42 U.S.C. 1484 (Section 514) or 1485 (Section 515), whichever is applicable, and Title V of the Housing Act of 1949, as amended "Program"; and

**NOW, THEREFORE**, in consideration of the restrictions on the Property as further described in Exhibit A, the sum of Ten Dollars (\$10) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, for themselves and for their respective successors and assigns, hereby covenant and agree as follows:

**(1) Use Requirement.** The Owner, and any successors in interest, agree to use the Property in compliance with 42 U.S.C. § 1484 or § 1485, whichever is applicable, and 7 CFR part 3560, and any other applicable regulations and amendments, for the purpose of housing program eligible very low-, low-, or moderate-income tenants.

**(2) Enforcement.** The Agency and program eligible tenants or applicants may enforce these restrictions as long as the Agency has not terminated the Restrictive Use Agreement pursuant to paragraph 7 below.

**(3) Displacement Prohibition.** The Owner agrees not to refuse to lease a dwelling unit offered for rent, or otherwise discriminate in the terms of tenancy, solely because any tenant or prospective tenant is the recipient of housing assistance from the Agency or any other Federal agency.

**(4) Owner's Responsibilities.** The Owners agrees to: set rents, other charges, and conditions of occupancy in a manner to meet the restrictions required by this Restrictive Use Covenant; post an Agency approved notice of these restriction for the tenants of the property; to adhere to applicable local, State, and Federal laws; and to obtain Agency concurrence for any rental procedures that deviate from those approved at the time of prepayment, prior to implementation.

**(5) Civil Rights Requirements.** The Owner will comply with the provisions of any applicable Federal, State or local law prohibiting discrimination in housing on the basis of race, color, religion, sex, national origin, handicap or familial status, including but not limited to: Title VI of the Civil Rights Act of 1964 (Public Law 90-284, 82 Stat. 73), the Fair Housing Act, Executive Order 11063, and all requirements imposed by or pursuant to the Agency regulations implementing these authorities, including, but not limited to, 7 CFR 3560.104.

**(6) Release of Obligation.** The Owner will be released from the obligation under this Restrictive Use Covenant when the Agency has determined that the last existing tenant at the date of prepayment has left or when the Agency determines that there is a no longer a need for the housing or that HUD Section 8 vouchers provided the residents of the housing will no longer be provided due to no fault, action or lack of action on the part of the Owner.

**(7) Violations; the Agency's Remedies.** The parties further agree that upon any default under this covenant, the Agency may apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against violation of this covenant or for such other equitable relief as may be appropriate, since the injury to the Agency arising from a violation under any of

the terms of this covenant would be irreparable and the amount of damage would be difficult to ascertain.

**(8) Covenants to Run with Land.** The Owner hereby subjects the Property to the covenants, reservations and restrictions set forth in this covenant. The Owner hereby declares its express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land to the extent permitted by law and shall pass to and be binding upon the successors in title to the Property. Each and every contract, deed, mortgage or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. The Agency hereby agrees that, upon the request of the Owner made after the release of obligations established in paragraph 7 of this covenant, the Agency shall execute a recordable instrument approved by the Agency for purposes of releasing this covenant of record. All costs and expenses relating to the preparation and recording of such release shall be paid by the Owner.

**(9) Superiority.** The document hereto constitutes a restrictive covenant that is filed of record, with all other Deeds of Trusts or Mortgages, and that, notwithstanding a foreclosure or transfer of title pursuant to any other instrument or agreement, the restrictive covenants and provisions hereunder shall remain in full force and effect.

**(10) Subsequent Modifications and Statutory Amendments.** The Agency may implement modifications necessitated by any subsequent statutory amendment without the consent of any other party, including those having the right of enforcement, to require that any third-party obtain prior Agency approval for any enforcement action concerning preexisting or future violations of this covenant.

**(11) Other Agreements.** The Owner represents and warrants that it has not and will not execute any other agreements with provisions contradictory or in opposition to the provisions of this covenant and that, in any event, the provisions of this covenant are paramount and controlling as to the rights and obligations set forth herein and supersede any other conflicting requirements.

**(12) Binding Effect.** Upon conveyance of the Property during the term, the Owner shall require its successor or assignee to assume its obligations under this covenant. In any event, this covenant shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and/or assigns.

**(13) Amendment.** This covenant may not be modified except by an instrument in writing executed by each of the parties that are signatories hereto.

**(14) Severability.** Notwithstanding anything herein contained, if any one or more of the provisions of this covenant shall for any reason whatsoever be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision of this covenant, but this covenant shall be construed as if such illegal, invalid or unenforceable provision had never been contained herein.

**(15) Headings.** The headings and titles to the sections of this covenant are inserted for convenience only and shall not be deemed a part hereof nor affect the construction or interpretation of any provisions hereof.

**(16) Governing Law.** This covenant shall be governed by all applicable Federal laws.

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IN WITNESS WHEREOF, the parties hereto have caused this Restrictive Use Covenant to be executed and made effective as of the date first above written.

OWNER: \_\_\_\_\_,

a \_\_\_\_\_

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

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

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

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

WITNESS/ATTEST:

\_\_\_\_\_

[[insert appropriate acknowledgment form]]

EXHIBIT A  
LEGAL DESCRIPTION

[attached]

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**RESTRICTIVE-USE COVENANT - TRANSFEREES ASSUMING AGENCY LOANS**  
**(Including loans approved prior to December 21, 1979) (§3560.662(b)(3))**

**WHEREAS,** \_\_\_\_\_ [insert borrower's name and address] "Owner", or a predecessor in interest, received a loan from the United States of America, acting through the Rural Housing Service in Rural Development (Agency), U.S. Department of Agriculture which was evidenced by a promissory note or assumption agreement dated \_\_\_\_\_, in the original amount of \_\_\_\_\_ and secured by a certain Deed of Trust or Mortgage dated \_\_\_\_\_, and recorded in the land records for the City or County of \_\_\_\_\_ for the purpose of providing housing in accordance with Section 42 U.S.C. 1484 (Section 514) or 1485 (Section 515), whichever is applicable, and Title V of the Housing Act of 1949, as amended "Program"; and

**NOW, THEREFORE,** in consideration of the restrictions on the Property as further described in Exhibit A, the sum of Ten Dollars (\$10) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, for themselves and for their respective successors and assigns, hereby covenant and agree as follows:

- (1) Term.** The period of the restriction will be until [date]. [The date used should be the date agreed to in approving the transfer pursuant to 7 CFR 3560.406, which when an equity loan is being provided, must be 30 years in the future.]
- (2) Use Requirement.** The Owner, and any successors in interest, agree to use the Property in compliance with 42 U.S.C. § 1484 or § 1485, whichever is applicable, and 7 CFR part 3560, and any other applicable regulations and amendments, for the purpose of housing program eligible very low-, low-, or moderate-income tenants.
- (3) Enforcement.** The Agency and Program eligible tenants or applicants may enforce these restrictions as long as the Agency has not terminated the Restrictive Use Agreement pursuant to paragraph 7 below.
- (4) Displacement Prohibition.** The Owner agrees not to refuse to lease a dwelling unit offered for rent, or otherwise discriminate in the terms of tenancy, solely because any tenant or prospective tenant is the recipient of housing assistance from the Agency or any other Federal agency.
- (5) Owner's Responsibilities.** The Owners agrees to: set rents, other charges, and conditions of occupancy in a manner to meet the restrictions required by this Restrictive Use Covenant; post an Agency approved notice of these restrictions for the tenants of the property; to adhere to applicable local, State, and Federal laws; and to obtain Agency concurrence for any rental procedures that deviate from those approved at the time of prepayment, prior to implementation.
- (6) Civil Rights Requirements.** The Owner will comply with the provisions of any applicable Federal, State or local law prohibiting discrimination in housing on the basis of race, color, religion, sex, national origin, handicap or familial status, including but not limited to: Title VI of the Civil Rights Act of 1964 (Public Law 90-284, 82 Stat. 73), the Fair Housing Act, Executive Order 11063, and all requirements imposed by or pursuant to Agency regulations implementing these authorities, including, but not limited to, 7 CFR 3560.104.
- (7) Release of Obligation.** The Owner will be released from the obligations under this Restrictive Use covenant before the termination period set in paragraph 1 only when the Agency determines that there is a no longer a need for the housing or that HUD Section 8 vouchers provided the residents of the housing will no longer be provided due to no fault, action or lack of action on the part of the Owner.

**(8) Violations; the Agency's Remedies.** The parties further agree that upon any default under this covenant, the Agency may apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against violation of this covenant or for such other equitable relief as may be appropriate, since the injury to the Agency arising from a violation under any of the terms of this covenant would be irreparable and the amount of damage would be difficult to ascertain.

**(9) Covenants to Run with Land.** The Owner hereby subjects the Property to the covenants, reservations and restrictions set forth in this covenant. The Owner hereby declares its express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land to the extent permitted by law and shall pass to and be binding upon the successors in title to the Property throughout the Term. Each and every contract, deed, mortgage or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. The Agency hereby agrees that, upon the request of the Owner made after the term of this covenant, the Agency shall execute a recordable instrument approved by the Agency for purposes of releasing this covenant of record. All costs and expenses relating to the preparation and recording of such release shall be paid by the Owner.

**(10) Superiority.** The document hereto constitutes a restrictive covenant that is filed of record, with all other Deeds of Trusts or Mortgages, and that, notwithstanding a foreclosure or transfer of title pursuant to any other instrument or agreement, the restrictive covenants and provisions hereunder shall remain in full force and effect.

**(11) Subsequent Modifications and Statutory Amendments.** The Agency may implement modifications necessitated by any subsequent statutory amendment without the consent of any other party, including those having the right of enforcement, to require that any third-party obtain prior Agency approval for any enforcement action concerning preexisting or future violations of this covenant.

**(12) Other Agreements.** The Owner represents and warrants that it has not and will not execute any other agreements with provisions contradictory or in opposition to the provisions of this covenant and that, in any event, the provisions of this covenant are paramount and controlling as to the rights and obligations set forth herein and supersede any other conflicting requirements.

**(13) Binding Effect.** Upon conveyance of the Property during the term, the Owner shall require its successor or assignee to assume its obligations under this covenant. In any event, this covenant shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and/or assigns.

**(14) Amendment.** This covenant may not be modified except by an instrument in writing executed by each of the parties that are signatories hereto.

**(15) Severability.** Notwithstanding anything herein contained, if any one or more of the provisions of this covenant shall for any reason whatsoever be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision of this covenant, but this covenant shall be construed as if such illegal, invalid or unenforceable provision had never been contained herein.

**(16) Headings.** The headings and titles to the sections of this covenant are inserted for convenience only and shall not be deemed a part hereof nor affect the construction or interpretation of any provisions hereof.

**(17) Governing Law.** This covenant shall be governed by all applicable Federal laws.

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IN WITNESS WHEREOF, the parties hereto have caused this Restrictive Use Covenant to be executed and made effective as of the date first above written.

OWNER: \_\_\_\_\_,

a \_\_\_\_\_

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

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

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

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

WITNESS/ATTEST:

\_\_\_\_\_

[[insert appropriate acknowledgment form]]

EXHIBIT A  
LEGAL DESCRIPTION

[attached]

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**RESTRICTIVE USE COVENANT - AGENCY REQUESTED EXTENSION**  
**Use of Housing is Currently Restricted (7 CFR 3560.662(b)(4))**

**WHEREAS**, \_\_\_\_\_ [insert borrower's name and address] "Owner", or a predecessor in interest, received a loan from the United States of America, acting through the Rural Housing Service in Rural Development (Agency), U.S. Department of Agriculture which was evidenced by a promissory note or assumption agreement dated \_\_\_\_\_, in the original amount of \_\_\_\_\_ and secured by a certain Deed of Trust or Mortgage dated \_\_\_\_\_, and recorded in the land records for the City or County of \_\_\_\_\_ for the purpose of providing housing in accordance with Section 42 U.S.C. 1484 (Section 514) or 1485 (Section 515), whichever is applicable, and Title V of the Housing Act of 1949, as amended "Program"; and

**NOW, THEREFORE**, in consideration of the restrictions on the Property as further described in Exhibit A, the sum of Ten Dollars (\$10) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, for themselves and for their respective successors and assigns, hereby covenant and agree as follows:

- (1) Term.** The period of the restriction will be until [date]. [The date that is inserted is calculated by taking the date the current restrictions expire and adding to that date any agreed upon extension. For instance, if the restrictions expire a year from now [July 1, 2007] and borrower agrees to a 10-year extension, you would insert [July 1, 2017].
- (2) Use Requirement.** The Owner, and any successors in interest, agree to use the Property in compliance with 42 U.S.C. § 1484 or § 1485, whichever is applicable, and 7 CFR part 3560, and any other applicable regulations and amendments, for the purpose of housing program eligible very low-, low-, or moderate-income tenants.
- (3) Enforcement.** The Agency and program eligible tenants or applicants may enforce these restrictions as long as the Agency has not terminated the Restrictive Use Agreement pursuant to paragraph 7 below.
- (4) Displacement Prohibition.** The Owner agrees not to refuse to lease a dwelling unit offered for rent, or otherwise discriminate in the terms of tenancy, solely because any tenant or prospective tenant is the recipient of housing assistance from the Agency or any other Federal agency.
- (5) Owner's Responsibilities.** The Owners agrees to: set rents, other charges, and conditions of occupancy in a manner to meet the restrictions required in this Restrictive Use Covenant; post an Agency approved notice of these restrictions for the tenants of the property; to adhere to applicable local, State, and Federal laws; and to obtain Agency concurrence for any rental procedures that deviate from those approved at the time of prepayment, prior to implementation.
- (6) Civil Rights Requirements.** The Owner will comply with the provisions of any applicable Federal, State or local law prohibiting discrimination in housing on the basis of race, color, religion, sex, national origin, handicap or familial status, including but not limited to: Title VI of the Civil Rights Act of 1964 (Public Law 90-284, 82 Stat. 73), the Fair Housing Act, Executive Order 11063, and all requirements imposed by or pursuant to Agency regulations implementing these authorities, including, but not limited to, 7 CFR 3560.104.
- (7) Release of Obligation.** The Owner will be released from these obligations under the Restrictive Use Covenant before the termination of the period in paragraph 1 only when the Agency determines that there is no longer a need for the housing or HUD Section 8 vouchers provided the residents of the housing will no longer be provided due to no fault, action or lack of action on the part of the Owner.

**(8) Violations; the Agency's Remedies.** The parties further agree that upon any default under this covenant, the Agency may apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against violation of this covenant or for such other equitable relief as may be appropriate, since the injury to the Agency arising from a violation under any of the terms of this covenant would be irreparable and the amount of damage would be difficult to ascertain.

**(9) Covenants to Run with Land.** The Owner hereby subjects the Property to the covenants, reservations and restrictions set forth in this covenant. The Owner hereby declares its express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land to the extent permitted by law and shall pass to and be binding upon the successors in title to the Property throughout the Term. Each and every contract, deed, mortgage or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. The Agency hereby agrees that, upon the request of the Owner made after the Term of this covenant, the Agency shall execute a recordable instrument approved by the Agency for purposes of releasing this covenant of record. All costs and expenses relating to the preparation and recording of such release shall be paid by the Owner.

**(10) Superiority.** The document hereto constitutes a restrictive covenant that is filed of record, with all other Deeds of Trusts or Mortgages, and that, notwithstanding a foreclosure or transfer of title pursuant to any other instrument or agreement, the restrictive covenants and provisions hereunder shall remain in full force and effect.

**(11) Subsequent Modifications and Statutory Amendments.** The Agency may implement modifications necessitated by any subsequent statutory amendment without the consent of any other party, including those having the right of enforcement, to require that any third-party obtain prior Agency approval for any enforcement action concerning preexisting or future violations of this covenant.

**(12) Other Agreements.** The Owner represents and warrants that it has not and will not execute any other agreements with provisions contradictory or in opposition to the provisions of this covenant and that, in any event, the provisions of this covenant are paramount and controlling as to the rights and obligations set forth herein and supersede any other conflicting requirements.

**(13) Binding Effect.** Upon conveyance of the Property during the term, the Owner shall require its successor or assignee to assume its obligations under this covenant. In any event, this covenant shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and/or assigns.

**(14) Amendment.** This covenant may not be modified except by an instrument in writing executed by each of the parties that are signatories hereto.

**(15) Severability.** Notwithstanding anything herein contained, if any one or more of the provisions of this covenant shall for any reason whatsoever be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision of this covenant, but this covenant shall be construed as if such illegal, invalid or unenforceable provision had never been contained herein.

**(16) Headings.** The headings and titles to the sections of this covenant are inserted for convenience only and shall not be deemed a part hereof nor affect the construction or interpretation of any provisions hereof.

**(17) Governing Law.** This covenant shall be governed by all applicable Federal laws.

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IN WITNESS WHEREOF, the parties hereto have caused this Restrictive Use Covenant to be executed and made effective as of the date first above written.

OWNER: \_\_\_\_\_,

a \_\_\_\_\_

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

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

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

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

WITNESS/ATTEST:

\_\_\_\_\_

[[insert appropriate acknowledgment form]]

EXHIBIT A  
LEGAL DESCRIPTION

[attached]

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**RESTRICTIVE USE COVENANT - THE REMAINING USEFUL LIFE**  
**Use if Restrictions are not in Place (7 CFR 3560.662(b)(5))**

**WHEREAS**, \_\_\_\_\_ [insert borrower's name and address] "Owner", or a predecessor in interest, received a loan from the United States of America, acting through the Rural Housing Service in Rural Development (Agency), U.S. Department of Agriculture which was evidenced by a promissory note or assumption agreement dated \_\_\_\_\_, in the original amount of \_\_\_\_\_ and secured by a certain Deed of Trust or Mortgage dated \_\_\_\_\_, and recorded in the land records for the City or County of \_\_\_\_\_

\_\_\_\_\_ for the purpose of providing housing in accordance with Section 42 U.S.C. 1484 (Section 514) or 1485 (Section 515), whichever is applicable, and Title V of the Housing Act of 1949, as amended "Program"; and

**NOW, THEREFORE**, in consideration of the restrictions on the Property as further described in Exhibit A, the sum of Ten Dollars (\$10) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, for themselves and for their respective successors and assigns, hereby covenant and agree as follows:

**(1) Use Requirement.** The Owner, and any successors in interest, agree to use the Property in compliance with 42 U.S.C §1484 or §1485, whichever is applicable, and 7 CFR 3560, and any other applicable regulations and amendments, for the purpose of housing program eligible very low-, low-, or moderate-income tenants.

**(2) Enforcement.** The Agency and program eligible tenants or applicants may enforce these restrictions as long as the Agency has not terminated the Restrictive Use Agreement pursuant to paragraph 7 below.

**(3) Displacement Prohibition.** The Owner agrees not to refuse to lease a dwelling unit offered for rent, or otherwise discriminate in the terms of tenancy, solely because any tenant or prospective tenant is the recipient of housing assistance from the Agency or any other Federal agency.

**(4) Owner's Responsibilities.** The Owners agrees to: set rents, other charges, and conditions of occupancy in a manner to meet the restrictions required in this Restrictive Use Covenant; post an Agency approved notice of these restrictions for the tenants of the property; to adhere to applicable local, State, and Federal laws; and to obtain Agency concurrence for any rental procedures that deviate from those approved at the time of prepayment, prior to implementation.

**(5) Civil Rights Requirements.** The Owner will comply with the provisions of any applicable Federal, State or local law prohibiting discrimination in housing on the basis of race, color, religion, sex, national origin, handicap or familial status, including but not limited to: Title VI of the Civil Rights Act of 1964 (Public Law 90-284, 82 Stat. 73), the Fair Housing Act, Executive Order 11063, and all requirements imposed by or pursuant to Agency regulations implementing these authorities, including, but not limited to, 7 CFR 3560.104.

**(6) Release of Obligation.** The Owner will be released from these obligations only when the Agency determines that the useful life of the housing and related facilities has passed, there is no longer a need for the housing, or that HUD Section 8 vouchers provided the residents of the housing will no longer be provided due to no fault, action or lack of action on the part of the Owner. If the Agency determines the useful life of the housing and related facilities has passed, in accordance with 7 CFR § 3560.658(a)(1) or (a)(2), the undersign agrees that the Property will be offered for sale to a qualified non-profit organization or public body, in accordance with previously cited statutes and regulations.

**(7) Violations; the Agency's Remedies.** The parties further agree that upon any default under this covenant, the Agency may apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against violation of this covenant or for such other equitable relief as may be appropriate, since the injury to the Agency arising from a violation under any of the terms of this covenant would be irreparable and the amount of damage would be difficult to ascertain.

**(8) Covenants to Run with Land.** The Owner hereby subjects the Property to the covenants, reservations and restrictions set forth in this covenant. The Owner hereby declares its express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land to the extent permitted by law and shall pass to and be binding upon the successors in title to the Property. Each and every contract, deed, mortgage or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. The Agency hereby agrees that, upon the request of the Owner made after the release of obligations established in paragraph 7 of this covenant, the Agency shall execute a recordable instrument approved by the Agency for purposes of releasing this covenant of record. All costs and expenses relating to the preparation and recording of such release shall be paid by the Owner.

**(9) Superiority.** The document hereto constitutes a restrictive covenant that is filed of record, with all other Deeds of Trusts or Mortgages, and that, notwithstanding a foreclosure or transfer of title pursuant to any other instrument or agreement, the restrictive covenants and provisions hereunder shall remain in full force and effect.

**(10) Subsequent Modifications and Statutory Amendments.** The Agency may implement modifications necessitated by any subsequent statutory amendment without the consent of any other party, including those having the right of enforcement, to require that any third-party obtain prior Agency approval for any enforcement action concerning preexisting or future violations of this covenant.

**(11) Other Agreements.** The Owner represents and warrants that it has not and will not execute any other agreements with provisions contradictory or in opposition to the provisions of this covenant and that, in any event, the provisions of this covenant are paramount and controlling as to the rights and obligations set forth herein and supersede any other conflicting requirements.

**(12) Binding Effect.** Upon conveyance of the Property during the Term, the Owner shall require its successor or assignee to assume its obligations under this covenant. In any event, this covenant shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and/or assigns.

**(13) Amendment.** This covenant may not be modified except by an instrument in writing executed by each of the parties that are signatories hereto.

**(14) Severability.** Notwithstanding anything herein contained, if any one or more of the provisions of this covenant shall for any reason whatsoever be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision of this covenant, but this covenant shall be construed as if such illegal, invalid or unenforceable provision had never been contained herein.

**(15) Headings.** The headings and titles to the sections of this covenant are inserted for convenience only and shall not be deemed a part hereof nor affect the construction or interpretation of any provisions hereof.

**(16) Governing Law.** This covenant shall be governed by all applicable Federal laws.

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IN WITNESS WHEREOF, the parties hereto have caused this Restrictive Use Covenant to be executed and made effective as of the date first above written.

OWNER: \_\_\_\_\_,

a \_\_\_\_\_

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

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

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

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

WITNESS/ATTEST: \_\_\_\_\_

[[insert appropriate acknowledgment form]]

EXHIBIT A  
LEGAL DESCRIPTION

[attached]

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**RESTRICTIVE USE COVENANT - 20-YEAR**  
**Use in all Other Cases (7 CFR 3560.662(b)(6))**

**WHEREAS**, \_\_\_\_\_ [insert borrower's name and address] "Owner", or a predecessor in interest, received a loan from the United States of America, acting through the Rural Housing Service in Rural Development (Agency), U.S. Department of Agriculture which was evidenced by a promissory note or assumption agreement dated \_\_\_\_\_, in the original amount of \_\_\_\_\_ and secured by a certain Deed of Trust or Mortgage dated \_\_\_\_\_, and recorded in the land records for the City or County of \_\_\_\_\_ for the purpose of providing housing in accordance with Section 42 U.S.C. 1484 (Section 514) or 1485 (Section 515), whichever is applicable, and Title V of the Housing Act of 1949, as amended "Program"; and

**NOW, THEREFORE**, in consideration of the restrictions on the Property as further described in Exhibit A, the sum of Ten Dollars (\$10) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, for themselves and for their respective successors and assigns, hereby covenant and agree as follows:

- (1) **Term.** The period of the restriction will be for 20 years, from the date this Restrictive Use Covenant was signed.
- (2) **Use Requirement.** The Owner, and any successors in interest, agree to use the Property in compliance with 42 U.S.C. § 1484 or § 1485, whichever is applicable, and 7 CFR part 3560, and any other applicable regulations and amendments, for the purpose of housing program eligible very low-, low-, or moderate-income tenants.
- (3) **Enforcement.** The Agency and program eligible tenants or applicants may enforce these restrictions as long as the Agency has not terminated the Restrictive Use Agreement pursuant to paragraph 7 below.
- (4) **Displacement Prohibition.** The Owner agrees not to refuse to lease a dwelling unit offered for rent, or otherwise discriminate in the terms of tenancy, solely because any tenant or prospective tenant is the recipient of housing assistance from the Agency or any other Federal agency.
- (5) **Owner's Responsibilities.** The Owners agrees to: set rents, other charges, and conditions of occupancy in a manner to meet the restrictions required in this Restrictive Use Covenant; post an Agency approved notice of these restrictions for the tenants of the property; to adhere to applicable local, State, and Federal laws; and to obtain Agency concurrence for any rental procedures that deviate from those approved at the time of prepayment, prior to implementation.
- (6) **Civil Rights Requirements.** The Owner will comply with the provisions of any applicable Federal, State or local law prohibiting discrimination in housing on the basis of race, color, religion, sex, national origin, handicap or familial status, including but not limited to: Title VI of the Civil Rights Act of 1964 (Public Law 90-284, 82 Stat. 73), the Fair Housing Act, Executive Order 11063, and all requirements imposed by or pursuant to Agency regulations implementing these authorities, including, but not limited to, 7 CFR 3560.10.4.
- (7) **Release of Obligation.** The Owner will be released from these obligations before the termination period set in paragraph 1 only when the Agency determines that there is a no longer a need for the housing or that HUD Section 8 vouchers provided the residents of the housing will no longer be provided due to no fault, action or lack of action on the part of the Owner.
- (8) **Violations; the Agency's Remedies.** The parties further agree that upon any default under this covenant, the Agency may apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against violation of this covenant or for such other equitable relief as may be appropriate, since the injury to the Agency arising from a violation under any of

the terms of this covenant would be irreparable and the amount of damage would be difficult to ascertain.

**(9) Covenants to Run with Land.** The Owner hereby subjects the Property to the covenants, reservations and restrictions set forth in this covenant. The Owner hereby declares its express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land to the extent permitted by law and shall pass to and be binding upon the successors in title to the Property throughout the term. Each and every contract, deed, mortgage or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. The Agency hereby agrees that, upon the request of the Owner made on or after the term of this covenant, the Agency shall execute a recordable instrument approved by the Agency for purposes of releasing this covenant of record. All costs and expenses relating to the preparation and recording of such release shall be paid by the Owner.

**(10) Superiority.** The document hereto constitutes a restrictive covenant that is filed of record, with all other Deeds of Trusts or Mortgages, and that, notwithstanding a foreclosure or transfer of title pursuant to any other instrument or agreement, the restrictive covenants and provisions hereunder shall remain in full force and effect.

**(11) Subsequent Modifications and Statutory Amendments.** The Agency may implement modifications necessitated by any subsequent statutory amendment without the consent of any other party, including those having the right of enforcement, to require that any third-party obtain prior Agency approval for any enforcement action concerning preexisting or future violations of this covenant.

**(12) Other Agreements.** The Owner represents and warrants that it has not and will not execute any other agreements with provisions contradictory or in opposition to the provisions of this covenant and that, in any event, the provisions of this covenant are paramount and controlling as to the rights and obligations set forth herein and supersede any other conflicting requirements.

**(13) Binding Effect.** Upon conveyance of the Property during the term, the Owner shall require its successor or assignee to assume its obligations under this covenant. In any event, this covenant shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and/or assigns.

**(14) Amendment.** This covenant may not be modified except by an instrument in writing executed by each of the parties that are signatories hereto.

**(15) Severability.** Notwithstanding anything herein contained, if any one or more of the provisions of this covenant shall for any reason whatsoever be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision of this covenant, but this covenant shall be construed as if such illegal, invalid or unenforceable provision had never been contained herein.

**(16) Headings.** The headings and titles to the sections of this covenant are inserted for convenience only and shall not be deemed a part hereof nor affect the construction or interpretation of any provisions hereof.

**(17) Governing Law.** This covenant shall be governed by all applicable Federal laws.

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IN WITNESS WHEREOF, the parties hereto have caused this Restrictive Use Covenant to be executed and made effective as of the date first above written.

OWNER: \_\_\_\_\_,

a \_\_\_\_\_

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

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

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

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

WITNESS/ATTEST:

\_\_\_\_\_

[[insert appropriate acknowledgment form]]

EXHIBIT A  
LEGAL DESCRIPTION

[attached]

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### **BORROWER PREPAYMENT APPLICATION CHECKLIST**

**Borrowers seeking to prepay an Agency loan must submit a written prepayment request to the Agency at least 180 days in advance of the anticipated prepayment date and must obtain Agency approval before the Agency will accept prepayment.**

**Prior to submitting a prepayment request, borrowers must take whatever actions necessary to provide the following items.**

**Name of Borrower \_\_\_\_\_**

**Name of Project \_\_\_\_\_**

**Case and Project Number \_\_\_\_\_**

- 1. A clear description of the loan to be prepaid, the housing project covered by the loan being prepaid, and the requested date of prepayment.**
- 2. A statement documenting the borrower's ability to prepay under the terms specified. If applicable, a refinancing letter from a financial institution detailing proposed rates and terms, sales agreement, or financial statement.**
- 3. A certification that the borrower will comply with any Federal, State, or local laws or regulations that may relate to the prepayment request and a statement of actions needed to assure such compliance.**
- 4. A copy of lease language to be used during the period between the submission date and the final resolution of the prepayment request notifying tenant applicants that the owner of the housing project has submitted a prepayment request to the Agency and explaining the potential affect of the request on the lease.**
- 5. Borrowers are required to submit a signed release of information consent letter along with the prepayment request. The Agency will notify non-profit organizations and public bodies involved in providing affordable housing or financial assistance to tenants of the receipt of a borrower's request to prepay their MFH loan(s). Additionally, the Agency is to notify non-profit organizations and public bodies whenever a borrower, who has requested prepayment, is required or elects to offer their property for sale to a non-profit or public body.**
- 6. A certification that the borrower has notified all Governmental entities involved in providing affordable housing or financial assistance to tenants in the project and a statement specifying how long financial assistance from such parties will be provided to tenant after prepayment.**
- 7. A statement affirming that units in the property applying for prepayment will continue to be available for rent by eligible residents during the prepayment process.**

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## LEASE ADDENDUM

**1. Properties that have had their application to prepay accepted by the Agency.** The following language needs to be added or attached to the lease of any tenants coming into the property between the initial submission of the prepayment application and the final resolution of the prepayment application:

**a. Properties with no existing RUP:**

“The mortgage on this project may be repaid to the Federal Government on or after \_\_\_\_\_. At that time, your rent may be raised to comparable market rate rents in the area, or you may be asked to move from the project.”

**b. Properties with an existing RUP not yet expired:**

“Although prepayment of the loan to the U.S. Department of Agriculture, Rural Development, may occur on or after \_\_\_\_\_, you are protected under 42 U.S.C. 1485. Rents, other charges, and conditions of occupancy will not differ from what would have been had the project remained in the Rural Development program. This protection continues until you voluntarily vacate your apartment or the expiration of the exiting restriction which will occur on \_\_\_\_\_ (expiration of existing RUP), which ever occurs first.”

**2. Properties that prepay with new RUPs (Attachment 15-E-2).** the following language will be attached to the lease of each tenant in occupancy at the time of prepayment as an addendum:

“Although prepayment of the loan to the U.S. Department of Agriculture, Rural Development, occurred on \_\_\_\_\_, you are protected under 42 U.S.C. 1485. Rents, other charges, and conditions of occupancy will not differ from what would have been had the project remained in the Rural Development program. This protection continues until you voluntarily vacate your apartment.”

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## **PREPAYMENT AND DISPLACEMENT PREVENTION GRANT AGREEMENT**

THIS GRANT AGREEMENT (Agreement) dated \_\_\_\_\_, 20\_\_\_\_, between **[Insert Borrower Name]** which is organized and doing business [insert State] as **[Insert Legal Entity Name]** “Grantee”, and the United States of America, acting through the Rural Development, U.S. Department of Agriculture, “Grantor”, WITNESSETH:

WHEREAS:

Grantee has determined to undertake acquisition of a multi-family housing project financed by the Grantor to house rural residents located at \_\_\_\_\_ and more specifically described in Exhibit A and duly authorized the undertaking of such a project.

Grantee wishes to obtain grant funds to assist in the costs of acquisition of such property in accordance with Section 502(c) (5)( C) (i) of the Housing Act of 1949, as amended, and 7 CFR 3560.659(h).

Grantor has agreed to grant the Grantee a sum not to exceed \$ \_\_\_\_\_ subject to the terms and conditions established in this Agreement. Provided, however; that any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in parts, at anytime, if it is determined that the Grantee has failed to comply with the conditions of the grant or 7 CFR parts 3015, 3016, and 3019, as applicable.

NOW, THEREFORE, in consideration of this grant, to be made pursuant to Section 502 of the Housing Act of 1949, to cover any direct costs (other than the purchase price) incurred by the Grantee in purchasing and assuming responsibility for the housing and related facilities involved as explained in 7 CFR 3560.659. Such costs may include, among other things, written estimates for legal, architectural, engineering fees, and closing costs.

### I. GRANTEE AGREES THAT GRANTEE WILL:

- A. Acquire said project in accordance with the Grantor’s regulations. If said property is not acquired within 60 days from the date of this Agreement, the money shall be returned by Grantee to Grantor.
- B. Contract, manage, operate, and maintain the project continuously in an efficient and economic manner.
- C. Make services of said project available to all eligible rural residents in compliance with Executive Order 12898, the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973.
- D. Provide Grantor with such periodic reports as it may require in accordance with 7 CFR 3015 and 3016, and permit periodic inspections of its operations by a representative of the Grantor.

E. To execute the following:

- Form Rural Development 400-1, “*U.S. Department of Agriculture Equal Opportunity Agreement*,”
- Form Rural Development 400-4, “*Assurance Agreement*,” and
- To execute any other agreements required by the Grantor which the Grantee is legally authorized to execute.

F. Upon any violation of Grantee’s agreements set forth in this instrument, Grantor may seek enforcement of the Grant pursuant to 7 CFR parts 3015, subparts N, 7 CFR 3016.43 and 7 CFR 3019.62, as applicable, as may be deemed necessary by the Grantor to assure compliance with the provisions of this grant Agreement and the laws and regulations under which this grant is made.

G. Return immediately to the Grantor, as required, by the regulations of the Grantor, any grant funds advanced and not needed by the Grantee for approved purposes.

H. Provide Financial Management Systems, as more specifically provided in 7 CFR parts 3015.61, 3016.20 and 3019.21, which will include:

- Accurate, current and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.
- Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.
- Effective control over and accountability for all funds. Grantee shall adequately safeguard all such funds and shall assure that they are used solely for authorized purposes.
- Accounting records supported by source documentation.

I. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after grant closing except that the records shall be retained beyond the 3-year period if audit findings have not been resolved. Microfilm copies or other electronic media (i.e., Compact Disks) may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts.

J. Provide an audit report pursuant to 7 CFR parts 3016.26, 3019.26 and 3052, as applicable, prepared in sufficient detail to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

K. Account for and return to the Grantor interest earned on grant funds pending their disbursements for program purposes when the Grantee is a unit of local Government. States and agencies or instrumentalities of States shall not be held accountable for interest earned on grant funds pending their disbursement.

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- L. Except as specifically provided in this Agreement, comply with the applicable provisions of USDA's general grant regulations set out in 7 CFR 3015, 3016, 3019, and 3052, as applicable.
- M. Comply with the requirements of 7 CFR part 3021, relating to drug-free workplace requirements, and 7 CFR part 3018 relating to restrictions on lobbying.

II. GRANTOR AGREES THAT IT WILL:

- A. Make available to Grantee for the purpose of this Agreement not to exceed \$ \_\_\_\_\_ which it will advance to the Grantee in accordance with the actual needs of the Grantee as determined by the Grantor.
- B. At its sole discretion and at any time may give consent to defer, release, satisfy, or terminate any or all of the Grantee's grant obligations, with or without available consideration, upon such terms and conditions as the Grantor may determine to be (1) advisable to further the purpose of the grant or to protect the Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

III. TERMINATION OF THIS AGREEMENT:

This Agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph 1 of the Agreement or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the grant will not produce beneficial results commensurate with the further expenditure of funds.

IN WITNESS WHEREOF: Grantee on the date first above written has caused this Agreement to be executed:

ATTEST:

\_\_\_\_\_

BY: \_\_\_\_\_

BY: \_\_\_\_\_

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

UNITED STATES OF AMERICA  
RURAL HOUSING SERVICE  
RURAL DEVELOPMENT

BY: \_\_\_\_\_

\_\_\_\_\_  
Title

## SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ by and among \_\_\_\_\_ (insert Lender Name), (“Senior Lender”), Rural Development, acting through the Rural Housing Service, U. S. Department of Agriculture, United States of America or successor Agency, \_\_\_\_\_ (Insert Borrower Name).

### Recitals

- A. Rural Development previously made a loan to, or permitted the assumption of a loan by, the Borrower in the original principal amount of \$ \_\_\_\_\_ (the “Rural Development Loan”) which loan is currently secured by a mortgage (the “Rural Development Mortgage”) on a multifamily housing project located in (Insert City or County and State)(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 \$ \_\_\_\_\_. 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 \_\_\_\_\_, \_\_\_\_\_ (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 \$ \_\_\_\_\_ (“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

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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

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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;

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- 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:

(LENDER NAME)

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

Attention: \_\_\_\_\_

With a copy to:

SENIOR LENDER

Insert Name of Senior Lender

RURAL DEVELOPMENT:

UNITED STATES OF AMERICA, acting through the

RURAL DEVELOPMENT

RURAL HOUSING SERVICE,

U. S. DEPARTMENT OF AGRICULTURE

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

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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.

**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

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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:

(LENDER NAME)

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

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

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

RURAL DEVELOPMENT:

UNITED STATES OF AMERICA, acting through the

RURAL DEVELOPMENT

RURAL HOUSING SERVICE,

U. S. DEPARTMENT OF AGRICULTURE

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

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

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

BORROWER:

(BORROWER NAME)

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

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

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

[Jurats to be added]

**EXHIBIT A**

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