

53. Approve a Priority and Subordination Agreement with the Department of Social Services for the Permanent Local Housing Allocation Grant Nos 20-PLHA-15205 and 21-PLHACOM-17070 associated with the Neighborhood Village project. Authorize the Chair to sign the Priority and Subordination Agreement, including any non-substantive revisions thereto subject to review and approval as to form by County Counsel. Approve a subordination agreement template with the Department of Housing and Community Development Multifamily Housing Program for Permanent Local Housing Allocation Program Grant Nos. 20-PLHA-15205 and 21-PLHACOM-17070. Authorize the Chair to sign any subordination agreements with the Department of Housing and Community Development related to the Neighborhood Village project and consistent with the template subject to review and approval as to form by County Counsel. Authorize the Chair to sign any other future subordination agreements pertaining to the County's liens consistent with the intent of the Neighborhood Village project after review and approval as to form by County Counsel. Direct the Resource Management Agency to return to the Board of Supervisors to accept all signed subordination agreements and amendments that have been signed by the Chair for the Neighborhood Village project on a quarterly basis.



# Resource Management Agency

## COUNTY OF TULARE AGENDA ITEM

### BOARD OF SUPERVISORS

LARRY MICARI  
District One

PETE VANDER POEL  
District Two

AMY SHUKLIAN  
District Three

EDDIE VALERO  
District Four

DENNIS TOWNSEND  
District Five

**AGENDA DATE:** December 3, 2024 – REVISED

Public Hearing Required	N/A
Scheduled Public Hearing w/Clerk	N/A
Published Notice Required	N/A
Advertised Published Notice	N/A
Meet & Confer Required	N/A
Budget Transfer (Aud 308) attached	N/A
Personnel Resolution attached	N/A
Agreement(s) attached	Yes

CONTACT PERSON: Celeste Perez PHONE: (559) 624-7010

**SUBJECT:** Approve Subordination Agreement and a Priority and Subordination Agreement for Permanent Local Housing Allocation Program Grant Nos. 20-PLHA-15205 and 21-PLHACOM-17070

### **REQUEST(S):**

That the Board of Supervisors:

1. Approve a Priority and Subordination Agreement with the Department of Social Services for the Permanent Local Housing Allocation Grant Nos 20-PLHA-15205 and 21-PLHACOM-17070 associated with the Neighborhood Village project.
2. Authorize the Chair to sign the Priority and Subordination Agreement, including any non-substantive revisions thereto subject to review and approval as to form by County Counsel.
3. Approve a subordination agreement template with the Department of Housing and Community Development Multifamily Housing Program for Permanent Local Housing Allocation Program Grant Nos. 20-PLHA-15205 and 21-PLHACOM-17070.
4. Authorize the Chair to sign any subordination agreements with the Department of Housing and Community Development related to the Neighborhood Village project and consistent with the template subject to review and approval as to form by County Counsel.
5. Authorize the Chair to sign any other future subordination agreements pertaining to the County's liens consistent with the intent of the Neighborhood Village project after review and approval as to form by County Counsel.
6. Direct the Resource Management Agency to return to the Board of Supervisors to accept all signed subordination agreements and amendments that have been signed by the Chair for the Neighborhood Village project on a quarterly basis.

**SUBJECT:** Approve Subordination Agreement and a Priority and Subordination Agreement for Permanent Local Housing Allocation Program Grant Nos. 20-PLHA-15205 and 21-PLHACOM-17070

**DATE:** December 3, 2024

**SUMMARY:**

The Neighborhood Village project is a 52-unit affordable rental community in Goshen and is located at the southeast corner of Avenue 310 and Road 76. The project is comprised of 31 one-bedroom units, 22 two-bedroom units, a community building (Unity Hall), and a laundry facility. Three units are designated for use by the on-site manager and/or missional residents. Neighborhood Village serves general occupancy households with incomes at thirty (30%) to fifty (50%) percent of area median income (AMI) and also provides rental assistance and vouchers. All units are reserved for households experiencing homelessness. On-site amenities include a community center with an industrial kitchen, and a large open area that can be used for social services and gatherings. There is an outside common area that includes tables, benches and an open play area. Amenities in the units include washer and dryers. Space is available in the community center for service meetings with partner agencies. The project was developed by SHE in partnership with Salt + Light.

Neighborhood Village provides much needed housing in Tulare County, including Permanent Supportive Housing (PSH) for individuals experiencing homelessness. PLHA funds have helped make this a viable project and a strong contender for Multifamily Housing Program (MHP) funding.

PLHA funds from grant nos. 20-PLHA-15205 and 21-PLHACOM-17070 were utilized as construction financing for the project. The funds were provided to SHE during construction based on a construction draw from the licensed general contractor and leveraged a conventional construction loan. The PLHA funds were provided to SHE to fund site work, including underground utility connections, grading, and paving and other project construction expenses.

For the construction of Neighborhood Village, SHE secured multiple loans for the development as outlined below:

- \$2,684,326 from the Competitive PLHA Program for construction financing
- \$1,223,171 from the non-competitive PLHA Program for construction financing
- \$2,817,796 from REAP 2.0 for construction financing
- \$4,051,471 from the California Department of Social Services – Community Care Expansion (CCE) for construction funding which will be drawn during this subordination process
- \$9,162,527 from the Department of Housing and Community Development – Multifamily Housing Program (MPH) for permanent funding

SHE is now in the process of refinancing the construction loans to permanent loans with lower interest rates. As part of this refinancing process, certain loans require primary lien positions. Thus, staff is requesting Board approval of the above outlined documents once they become available, subject to review and approval as to form by County Counsel.

SHE is currently working with the Multifamily Housing Program (MHP) and the Department of Social Services to finalize loan and subordination documents. Due to

**SUBJECT:** Approve Subordination Agreement and a Priority and Subordination Agreement for Permanent Local Housing Allocation Program Grant Nos. 20-PLHA-15205 and 21-PLHACOM-17070  
**DATE:** December 3, 2024

processing time by both departments, the loan documents, including the subordination documents, will not be available until early to mid-December. The loans need to close by mid-December not to create additional costs to SHE for the interest on the construction loans.

The subordination agreements with CCE and MHP are necessary because these loans totaling \$13,214,998 will be interest bearing performing loans, whereas the County's PLHA loans are deferred for 55 years. Subordination is also requested because the CCE and MHP loans are higher amounts than the County's loan.

As the exact terms of the subordination agreement with are not available at this time, a template for the subordination agreements with the Department of Housing and Community Development has been attached for approval.

The Priority and Subordination Agreement contains the following deviation from the County contracting protocols:

- (1) County signs first.

The Department of Housing and Community Development subordination agreement template contains the following deviation from the County contracting protocols:

- (1) County may sign first as this agreement may be executed in counterparts.
- (2) The template contains an attorney's fees provision.

Staff will work with the Department of Housing and Community Development to ensure that the provisions of the final subordination agreements are consistent with the project including the Priority and Subordination Agreement and the grant agreements.

Future subordination agreements may contain similar provisions to the templates.

**FISCAL IMPACT/FINANCING:**

There is no net County cost to the General Fund.

**LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:**

The proposed grant activities will continue to provide Quality of Life by providing decent, safe, and affordable housing within the County of Tulare.

**ADMINISTRATIVE SIGN-OFF:**

/s/ Reed Schenke

---

Reed Schenke  
Director

Cc: County Administrative Office

**SUBJECT:** Approve Subordination Agreement and a Priority and Subordination Agreement for Permanent Local Housing Allocation Program Grant Nos. 20-PLHA-15205 and 21-PLHACOM-17070

**DATE:** December 3, 2024

Attachments: Priority and Subordination Agreement  
Subordination Agreement Template with HCD

# BEFORE THE BOARD OF SUPERVISORS COUNTY OF TULARE, STATE OF CALIFORNIA

IN THE MATTER OF Approve )  
Subordination Agreement and a Priority ) Resolution No. 2024-1129  
and Subordination Agreement for ) Agreement No. 32006  
Permanent Local Housing Allocation )  
Program Grant Nos. 20-PLHA-15205 and )  
21-PLHACOM-17070 )

UPON MOTION OF SUPERVISOR SHUKLIAN, SECONDED BY SUPERVISOR VALERO, THE FOLLOWING WAS ADOPTED BY THE BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD DECEMBER 3, 2024, BY THE FOLLOWING VOTE:

AYES: SUPERVISORS MICARI, VANDER POEL, SHUKLIAN AND VALERO  
NOES: NONE  
ABSTAIN: NONE  
ABSENT: SUPERVISOR TOWNSEND



ATTEST: JASON T. BRITT  
COUNTY ADMINISTRATIVE OFFICER/  
CLERK, BOARD OF SUPERVISORS

BY:   
Deputy Clerk

\* \* \* \* \*

1. Approved a Priority and Subordination Agreement with the Department of Social Services for the Permanent Local Housing Allocation Grant Nos 20-PLHA-15205 and 21-PLHACOM-17070 associated with the Neighborhood Village project.
2. Authorized the Chair to sign the Priority and Subordination Agreement, including any non-substantive revisions thereto subject to review and approval as to form by County Counsel.
3. Approved a subordination agreement template with the Department of Housing and Community Development Multifamily Housing Program for Permanent Local Housing Allocation Program Grant Nos. 20-PLHA-15205 and 21-PLHACOM-17070.
4. Authorized the Chair to sign any subordination agreements with the Department of Housing and Community Development related to the Neighborhood Village project and consistent with the template subject to review and approval as to form by County Counsel.

5. Authorized the Chair to sign any other future subordination agreements pertaining to the County's liens consistent with the intent of the Neighborhood Village project after review and approval as to form by County Counsel.
6. Directed the Resource Management Agency to return to the Board of Supervisors to accept all signed subordination agreements and amendments that have been signed by the Chair for the Neighborhood Village project on a quarterly basis.

RMA  
12.3.2024  
KB

RECORDING REQUESTED BY  
AND WHEN RECORDED  
MAIL TO:

California Dept. of Social Services  
c/o Horne LLP  
661 Sunnybrook Rd., Suite 100  
Ridgeland, MS 39157

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

APN: \_\_\_\_\_

### **PRIORITY AND SUBORDINATION AGREEMENT**

This Priority and Subordination Agreement (this "Agreement") is made as of \_\_\_\_\_, 2024 (the "Effective Date"), by and among **Neighborhood Village, L.P.**, a California limited partnership ("Trustor"), the **Department of Social Services**, a public agency of the State of California ("CDSS-CCE"), **HORNE LLP**, a Delaware limited liability partnership, with offices located at 661 Sunnybrook Rd., Suite 100, Ridgeland, MS 39157 ("Horne"), **County of Tulare**, a political subdivision of the State of California (the "County"), the **Department of Housing and Community Development**, a public agency of the State of California ("HCD"), and **Self-Help Enterprises**, a California nonprofit public benefit corporation ("SHE"). Together, the Trustor, CDSS-CCE, Horne, County, HCD, and SHE are the "Parties." CDSS-CCE, Horne, County, HCD, and SHE are the "Lender Parties."

### RECITALS

A. Trustor owns a fee title interest in that certain real property commonly known as 7571 Florence Avenue, located in the unincorporated community of Goshen, County of Tulare, State of California, and the improvements thereon (the "Property"), as more particularly described and shown on **Exhibit A** attached hereto and incorporated herein by this reference.

B. **Self-Help Enterprises**, a California nonprofit public benefit corporation (the "SHE"), an affiliate of Trustor, and Horne, as contractor to CDSS-CCE, entered into that certain Program Funding Agreement dated as of May 13, 2024 ("CDSS-CCE Agreement"), pursuant to which Trustor was allocated funds pursuant to the Community Care Expansion Program ("Program Funds") for the purposes of developing the project ("Project") on the Property.

C. Trustor, for the benefit of CDSS-CCE, entered into that certain Declaration of Restrictions (the "CDSS-CCE Declaration of Restrictions") dated \_\_\_\_\_, and recorded as Instrument No. \_\_\_\_\_ in the Official Records of Tulare County, limiting the use of the Project to certain restricted uses, as specified in the CDSS-CCE Declaration of Restrictions.



D. Trustor entered into that certain Performance Deed of Trust, Security Agreement and Fixture Filing (the “CDSS-CCE Performance Deed of Trust”) dated \_\_\_\_\_, and recorded as Instrument No. \_\_\_\_\_ in the Official Records of Tulare County, with Old Republic Title Company, as trustee, as security for the performance of all obligations of Trustor under the CDSS-CCE Agreement and CDSS-CCE Declaration of Restrictions.

E. The CDSS-CCE Agreement, CDSS-CCE Declaration of Restrictions, and the CDSS-CCE Performance Deed of Trust are sometimes referred to in this Agreement as the “CDSS-CCE Documents.”

F. Trustor entered into that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the “First County Deed of Trust”) dated March 14, 2023, and recorded as Instrument No. 2023-0012742 in the Official Records of Tulare County, for the benefit of the County, as security for a promissory note in the amount of **\$2,684,326** and other obligations of Trustor described in the First County Deed of Trust.

G. Trustor also entered into that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the “Second County Deed of Trust”) dated August 15, 2023, and recorded as Instrument No. 2023-0037584 in the Official Records of Tulare County, for the benefit of the County, as security for a promissory note in the amount of **\$1,223,170.70** and other obligations of Trustor described in the Second County Deed of Trust.

H. Trustor and the County also entered into (i) that certain Amended and Restated Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants dated June 25, 2024, and recorded as Instrument No. Instrument No 2024-0028106 in the Official Records of Tulare County, and (ii) that certain Amended and Restated Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants dated June 25, 2024, and recorded as Instrument No. 2024-0028107 in the Official Records of Tulare County (collectively, the “County Affordability Declarations”), each encumbering the Project.

I. The First County Deed of Trust, Second County Deed of Trust, and the County Affordability Declarations are sometimes referred to in this Agreement as the “County Documents.”

J. Trustor, for the benefit of HCD, entered into that certain deed of trust (the “HCD DOT”) dated \_\_\_\_\_, and recorded on \_\_\_\_\_ as Document No. \_\_\_\_\_ in the Official Records of Tulare County.

K. Trustor and HCD entered into that certain regulatory agreement (the “HCD Regulatory Agreement”) dated \_\_\_\_\_, and recorded on \_\_\_\_\_ as Document No. \_\_\_\_\_ in the Official Records of Tulare County.

L. The HCD DOT and the HCD Regulatory Agreement are sometimes referred to in this Agreement as the “HCD Documents.”

M. Trustor and SHE entered into that certain Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (the “SHE Regulatory Agreement”) dated \_\_\_\_\_

\_\_\_\_\_, and recorded on \_\_\_\_\_ as Document No. \_\_\_\_\_ in the Official Records of Tulare County.

N. Trustor and SHE entered into that certain Deed of Trust (the “SHE DOT”) dated \_\_\_\_\_, and recorded on \_\_\_\_\_ as Document No. \_\_\_\_\_ in the Official Records of Tulare County.

O. The SHE Regulatory Agreement and the SHE DOT are sometimes referred to in this Agreement as the “SHE Documents.”

P. By this Agreement, the Parties desire to establish a certain order of priority of the various CDSS-CCE Documents, County Documents, HCD Documents, and the SHE Documents notwithstanding their original recording order.

**NOW, THEREFORE**, in consideration of good and valuable consideration, the parties to this Agreement agree as follows:

1. **LIEN PRIORITY.** Each party agrees to the following priority of the various CDSS-CCE Documents, HCD Documents, County Documents, and SHE Documents, and any and all the liens and encumbrances created thereby:

<b>Loan Documents and/or Liens and Encumbrances</b>	<b>Party to the Loan Documents and/or Holder of Liens and Encumbrances</b>	<b>Order of Priority</b>
CDSS-CCE Declaration of Restrictions	CDSS-CCE	First
HCD Regulatory Agreement	HCD	Second
CDSS-CCE Performance Deed of Trust	CDSS-CCE	Third
HCD DOT	HCD	Fourth
County Affordability Declarations	County	Fifth
First County Deed of Trust	County	Sixth
Second County Deed of Trust	County	Seventh
SHE Regulatory Agreement	SHE	Eighth
SHE DOT	SHE	Ninth

2. **SUBORDINATION.** In furtherance of the foregoing: (i) SHE subordinates any and all liens and encumbrances created by SHE Documents to those created by the County Documents, the HCD Documents, and the CDSS-CCE Documents; (ii) the County subordinates any and all liens and encumbrances created by the County Documents to the HCD Documents and CDSS-CCE Documents; (iii) HCD subordinates any and all liens and encumbrances created by the HCD DOT to the CDSS-CCE Documents; (iv) CDSS-CCE subordinates any and all liens and encumbrances created by the CDSS-CCE Performance Deed of Trust to the HCD Regulatory Agreement; (v) HCD subordinates any and all liens and encumbrances created by the HCD Regulatory agreement to the CDSS-CCE Declaration of Restrictions.

3. **LENDER CHALLENGES.** The Lender Parties further agree that they shall not directly or indirectly take any action to contest or challenge the validity, legality, enforceability,

perfection or priority of any of the liens and documents listed in Section 2 of this Agreement, or the reasonableness of any action or failure to act by a Lender Party to enforce its own documents or documents that benefit such Lender Party.

4. **AGREEMENT CONTROLS.** In the event that any provisions of this Agreement, the CDSS-CCE Documents, HCD Documents, County Documents, or SHE Documents conflict, the terms of this Agreement shall control.

5. **MISCELLANEOUS.**

(a) Any Lender Party to this Agreement shall, within thirty (30) business days following a request from another Lender Party, provide the requesting Lender Party with a written statement setting forth the then current outstanding financial obligations due from the Trustor to the other Lender Party, the aggregate accrued and unpaid interest under any loan to the Trustor for that Lender Party, and stating whether, to the knowledge of that Lender Party, any default or event of default exists under that Lender Party's existing agreements with the Trustor, and containing such other information with respect to the indebtedness as the requesting party may reasonably require.

(b) This Agreement shall bind and inure to the benefit of all successors and assigns of the Parties.

(c) This Agreement may be executed in counterpart originals, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same instrument.

(d) IN ALL RESPECTS, INCLUDING, WITHOUT LIMITATION, MATTERS OF CONSTRUCTION AND PERFORMANCE OF THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER, THIS AGREEMENT HAS BEEN ENTERED INTO AND DELIVERED IN, AND SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY, THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED, WITHOUT GIVING EFFECT TO ANY PRINCIPLES OF CONFLICTS OF LAW.

(e) Time is of the essence in the performance of every covenant and agreement contained in this Agreement.

(f) If any provision or remedy set forth in this Agreement for any reason shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or remedy of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provision or remedy had never been set forth herein, but only to the extent of such invalidity, illegality or unenforceability.

(g) Each Party hereto hereby represents and warrants that this Agreement has been duly authorized, executed and delivered by it and constitutes a legal, valid and binding agreement enforceable in all material respects in accordance with its terms.

(h) No amendment, supplement, modification, waiver or termination of this Agreement shall be effective against any Party unless such amendment, supplement, modification, waiver or termination is contained in a writing signed by such Party.

(i) Nothing herein shall be deemed to constitute a joint venture or creation of a partnership among any of the Parties.

IN WITNESS WHEREOF, Trustor has executed this Priority and Subordination Agreement as of the Effective Date.

**TRUSTOR:**

**Neighborhood Village, L.P.,**  
a California limited partnership

By: Neighborhood SHE LLC,  
a California limited liability company,  
its managing general partner

By: Self-Help Enterprises,  
a California nonprofit public benefit corporation,  
its sole member/manager

By: \_\_\_\_\_  
Thomas J. Collishaw, President and CEO

*[Signature must be notarized]*

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.
--

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

\_\_\_\_\_ )

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

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

IN WITNESS WHEREOF, CDSS-CCE has executed this Priority and Subordination Agreement as of the Effective Date.

**CDSS-CCE:**

**Department of Social Services,**  
a public agency of the State of California

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

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

Its: \_\_\_\_\_

*[Signature must be notarized]*

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.
--

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

)

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

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

IN WITNESS WHEREOF, the County has executed this Priority and Subordination Agreement as of the Effective Date.

**COUNTY:**

**County of Tulare,**  
a political subdivision of the State of California

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

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

Its: \_\_\_\_\_

*[Signature must be notarized]*

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.
--

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

)

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

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

---

Notary Public



IN WITNESS WHEREOF, HCD has executed this Priority and Subordination Agreement as of the Effective Date.

**HCD:**

**Department of Housing and Community  
Development,**  
a public agency of the State of California

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

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

Its: \_\_\_\_\_

*[Signature must be notarized]*

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.
--

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

\_\_\_\_\_ )

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

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

---

Notary Public

**EXHIBIT A**  
**Legal Description of the Properties**

[to be inserted by title company]

APN: \_\_\_\_\_

**FREE RECORDING IN ACCORDANCE  
WITH CALIFORNIA GOVERNMENT  
CODE SECTION 27383 and 27388.1.**

RECORDING REQUESTED BY, AND  
WHEN RECORDED, MAIL TO:

State of California  
Department of Housing and  
Community Development  
P. O. Box 952052  
Sacramento, CA 94252-2052  
Attn: **Legal Affairs Division**  
**Multifamily Housing Program**  
**19-MHP-\_\_\_\_\_**

---

**SUBORDINATION AGREEMENT**

**NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.**

**THIS SUBORDINATION AGREEMENT** (the "Agreement") is dated as of \_\_\_\_\_, 20\_\_\_\_, for reference purposes only, and is entered into by and among \_\_\_\_\_, (the "Junior Lienholder") ***[If this is a successor agency to an RDA, identify party as "as successor agency to \_\_\_\_\_ RDA"]*** and \_\_\_\_\_ L.P., a California limited partnership (the "Borrower"), and the Department of Housing and Community Development, a public agency of the State of California (the "Senior Lender").

**RECITALS**

A. Borrower is the owner of the ***[fee simple interest or a leasehold estate]*** in that real property described in Exhibit A attached hereto and made a part hereof (the "Property"). The Borrower has acquired and is rehabilitating a \_\_\_\_-unit multifamily residential rental development on the Property (the "Improvements"). The Property and the Improvements are sometimes referred to collectively as the "Development."

B. The Junior Lienholder has made a loan to the Borrower in the principal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_,000.00) (the "Junior Lienholder Loan"). The Junior Lienholder Loan is evidenced by a certain promissory note (the "Junior Lienholder Note"), secured by a certain deed of trust (the "Junior Lienholder Deed of Trust") recorded

**[concurrently herewith OR on \_\_\_\_\_, 20\_\_\_\_, as Instrument No. \_\_\_\_\_]** in the Official Records of \_\_\_\_\_ County, California (the "Official Records"). The Junior Lienholder and Borrower have also entered into a regulatory agreement affecting the use of the Development, recorded on \_\_\_\_\_, 20\_\_\_\_, as Instrument No. \_\_\_\_\_ in the Official Records (the "Junior Lienholder Regulatory Agreement"). (The Junior Lienholder Deed of Trust, the Junior Lienholder Regulatory Agreement and all other documents evidencing or securing the Junior Lienholder Loan are collectively referred to herein as the "Junior Lienholder Documents.")

C. In order to finance the development of the Improvements, the Senior Lender has agreed to loan the Borrower a sum not to exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_,000,000.00) (the "MHP Loan"), subject to the terms and conditions of: (i) a regulatory agreement restricting the use and occupancy of the Development and the income derived therefrom which shall be dated as of even date herewith and recorded concurrently herewith as an encumbrance on the Property in the Official Records (the "MHP Regulatory Agreement"), and (ii) other loan documents. The MHP Loan will be evidenced by a promissory note (the "MHP Note"), the repayment of which will be secured by, among other things, a deed of trust by Borrower as trustor, to Senior Lender as beneficiary recorded concurrently herewith as an encumbrance on the Property in the Official Records (the "MHP Deed of Trust") and by such other security as is identified in other loan documents. (The MHP Regulatory Agreement, the MHP Deed of Trust, the MHP Note and all other documents evidencing or securing the MHP Loan are collectively referred to herein as the "Senior Lender Documents.")

D. The Senior Lender is willing to make the MHP Loan provided the MHP Deed of Trust and the MHP Regulatory Agreement are liens, claims or charges upon the Development prior and superior to the Junior Lienholder Documents, and provided that the Junior Lienholder specifically and unconditionally subordinates and subjects the Junior Lienholder Documents to the liens, claims or charges of the MHP Deed of Trust and the MHP Regulatory Agreement.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to induce the Senior Lender to make its MHP Loan, it is hereby declared, understood and agreed as follows:

1. The MHP Regulatory Agreement and the MHP Deed of Trust securing the MHP Note in favor of the Senior Lender, and any and all renewals, modifications, extensions or advances thereunder or secured thereby (including interest thereon) shall unconditionally be and remain at all times liens, claims, or charges on the Development prior and superior to the Junior Lienholder Documents, and to all rights and privileges of the Junior Lienholder thereunder; and the Junior Lienholder Documents, together with all rights and privileges of the Junior Lienholder thereunder are hereby irrevocably and unconditionally subject and made

subordinate to the liens, claims or charges of the MHP Deed of Trust and the MHP Regulatory Agreement.

2. This Agreement shall be the whole and only agreement with regard to the subordination of the Junior Lienholder Documents, together with all rights and privileges of the Junior Lienholder thereunder, to the liens, claims or charges of the MHP Deed of Trust and the MHP Regulatory Agreement, and this Agreement shall supersede and cancel any prior agreements to subordinate the claims, liens or charges of, but only insofar as would affect the priority between the claims, liens or charges of the Junior Lienholder Documents to the MHP Deed of Trust and the MHP Regulatory Agreement including, but not limited to, those provisions, if any, contained in the Junior Lienholder Documents, which provide for the subordination of the lien or charge thereof to another lien or charge on the Property or the Improvements. This agreement shall not limit, waive, modify or replace the requirement that the Senior Lienholder comply with IRC Section 42(h)(6)(E)(ii) as stated in the MHP Regulatory Agreement.

3. The Junior Lienholder declares, agrees and acknowledges that:

(a) The Junior Lienholder consents and approves (i) all provisions of the MHP Note, the MHP Deed of Trust and the MHP Regulatory Agreement, and (ii) all agreements among the Junior Lienholder, Borrower and Senior Lender for the disbursement of the proceeds of the MHP Loan, including without limitation any loan escrow agreements which have been provided to the Junior Lienholder for review;

(b) The Senior Lender, in making disbursements of the MHP Loan pursuant to the MHP Note or any other agreement, is under no obligation or duty to, nor has the Senior Lender represented that it will, see to the application of such proceeds by the person or persons to whom the Senior Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat the subordination herein made in whole or in part;

(c) That none of the execution, delivery or recordation of any of the MHP Note, MHP Deed of Trust, or MHP Regulatory Agreement, or the performance of any provision, condition, covenant or other term thereof, will conflict with or result in a breach of the Junior Lienholder Documents or the Junior Lienholder Note; and

(d) The Junior Lienholder intentionally and unconditionally waives, relinquishes, subjects and subordinates the claims, liens or charges upon the Development of the Junior Lienholder Documents, all present and future indebtedness and obligations secured thereby, in favor of the claims, liens or charges upon the Development of the MHP Deed of Trust and the MHP Regulatory Agreement, and understands that in reliance upon, and in consideration of, this waiver, relinquishment, subjection, and

subordination, the MHP Loan and advances thereof are being and will be made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment, subjection and subordination.

4. Senior Lender hereby agrees, but only as a separate and independent covenant of the Senior Lender and not as a condition to the continued effectiveness of the covenants and agreements of the Borrower and the Junior Lienholder as set forth herein, as follows:

(a) Following a notice from the Senior Lender to the Borrower that a default or breach exists under the terms of the Senior Lender Documents and each of them, the Senior Lender shall promptly (but in no event later than the following business day) send a copy of such notice to the Junior Lienholder and the Junior Lienholder shall have the right, but not the obligation, to cure the default as follows:

- (i) If the default is reasonably capable of being cured within thirty (30) days, as determined by the Senior Lender in its sole discretion, the Junior Lienholder shall have such period to effect a cure prior to exercise of remedies by Senior Lender under the Senior Lender Documents, or such longer period of time as may be specified in the Senior Lender Documents.
- (ii) If the default is such that it is not reasonably capable of being cured within thirty (30) days, as determined by the Senior Lender in its sole discretion, or such longer period if so specified, and if the Junior Lienholder (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then the Junior Lienholder shall have such additional time as is determined by the Senior Lender, in its sole discretion, to be reasonably necessary to cure the default prior to exercise of any remedies by Senior Lender.

In no event shall Senior Lender be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the first notice of default is given, or such longer period of time as may be specified in the Senior Lender Documents.

Nothing in this subparagraph (a) is intended to modify any covenant, term or condition contained in the Senior Lender Documents, including, without limitation, the covenant against creating or recording any liens or encumbrances against the Property without the prior written approval of the Senior Lender.

(b) The provisions of this paragraph 4 are intended to supplement, and not to

limit, waive, modify or replace, those provisions of law pertaining to notice and cure rights of junior lenders including, without limitation, those set forth in California Civil Code sections 2924b and 2924c.

5. The Senior Lender would not make the MHP Loan without this Agreement.

6. This Agreement shall be binding on and inure to the benefit of the legal representatives, heirs, successors and assigns of the parties.

7. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

8. In the event that any party to this Agreement brings an action to interpret or enforce its rights under this Agreement, the prevailing party in such action shall be entitled to recover its costs and reasonable attorneys' fees as awarded by the court in such action.

9. This Agreement may be signed by different parties hereto in counterparts with the same effect as if the signatures to each counterpart were upon a single instrument. All counterparts shall be deemed an original of this Agreement.

**NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON (OR ENTITY) OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.**

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first set forth above and agree to be bound hereby:

**[Signatures follow on page 6 of this Subordination Agreement. The remainder of this page is blank.]**



**JUNIOR LIENHOLDER:**

**APPROVED AS TO FORM:**

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

NAME: \_\_\_\_\_

ITS: \_\_\_\_\_

**[Signatures must be acknowledged.]**

**[Signatures continue on page 7. Remainder of this page is blank.]**

**BORROWER:**

**[Signatures must be acknowledged.]**

**[Signatures continue on page 8. Remainder of this page is blank.]**

**The Department of Housing and Community Development**, a public agency of the State of California

**[Signatures must be acknowledged.]**

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**