

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

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Ballard Spahr LLP  
1909 K Street, NW, 12th Floor  
Washington, DC 20006-1157

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Freddie Mac Loan Number: \_\_\_\_\_  
Property Name: Positano Apartments

**SUBORDINATION AGREEMENT (CDBG Regulatory Agreement)**

**GOVERNMENTAL ENTITY**

(Direct Purchase of Tax-Exempt Loans)  
(Revised 9/1/2014)

THIS SUBORDINATION AGREEMENT (“**Agreement**”) is entered into this 1st day of April, 2016, by and among (i) **WILMINGTON TRUST, NATIONAL ASSOCIATION**, a national banking association (“**Senior Mortgagee**”), (ii) **COUNTY OF SANTA BARBARA (California)**, a public body corporate and politic, and (iii) **HOUSING AUTHORITY OF THE COUNTY OF SANTA BARBARA (California)**, a public body corporate and politic (collectively, the “**County**”).

**RECITALS**

- A. Positano Apartments, L.P., a California limited partnership organized under the laws of the State of California (“**Borrower**”) is the owner of certain land located in Santa Barbara County, California, described in Exhibit A (“**Land**”). The Land is improved with a multifamily rental housing project (“**Improvements**”).

- B. Housing Authority of the County of Santa Barbara, in its capacity as the governmental lender (“**Governmental Lender**”), the original holder of the Senior Note, has made a loan to Borrower in the original principal amount of \$[16,286,000.00] (“**Permanent Senior Loan**”) and a loan to Borrower in the original principal amount of \$[3,714,000.00] (the “**Gap Senior Loan**”, and together with the Permanent Senior Loan, collectively the “**Senior Loan**”) upon the terms and conditions of a Project Loan Agreement and Gap Project Loan Agreement, respectively, both dated as of April 1, 2016 (“**Senior Loan Agreement**”) among Governmental Lender, Senior Mortgagee (in its capacity as Fiscal Agent under the Funding Loan Agreement (defined below)) and Borrower in connection with the Mortgaged Property. The Senior Loan is secured by a Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of April 1, 2016 (“**Senior Mortgage**”) encumbering the Land, the Improvements and related personal and other property described and defined in the Senior Mortgage as the “**Mortgaged Property.**” The Senior Mortgage was recorded among the Official Records of Santa Barbara County, California (“**Official Records**”) prior to the recordation of this Agreement.
- C. The Senior Note (as defined herein) has been assigned by the Governmental Lender to Senior Mortgagee as security for (i) the loan made by the Funding Lender to the Governmental Lender (the “**Permanent Funding Loan**”) pursuant to the Permanent Funding Loan Agreement dated as of April 1, 2016 by and among Funding Lender, Governmental Lender and Senior Mortgagee that evidences the Permanent Funding Loan (the “**Permanent Funding Loan Agreement**”) and (ii) the loan made by the Funding Lender to the Governmental Lender (the “**Gap Funding Loan**”) pursuant to the Gap Funding Loan Agreement dated as of April 1, 2016 by and among Funding Lender, Governmental Lender and Senior Mortgagee that evidences the Gap Funding Loan (the “**Gap Funding Loan Agreement**”, and together with Permanent Funding Loan Agreement, collectively, the “**Funding Loan Agreement**”) (both the Permanent Funding Loan and the Gap Funding Loan may sometimes hereinafter be referred to collectively as the “**Funding Loan**”). The Senior Mortgage has been assigned by the Governmental Lender to Senior Mortgagee as security for the Funding Loan pursuant to an Assignment of Security Instrument dated as of the date hereof to be recorded in the Official Records contemporaneously herewith.
- D. Pursuant to Section 17.6 of the Senior Mortgage and Section 6.03 of the Funding Loan Agreement dated as of April 1, 2016 among Funding Lender, Governmental Lender and Senior Mortgagee (the “**Funding Loan Agreement**”), the Funding Lender has the right to direct all actions of the Senior Mortgagee with respect to the Senior Mortgage, the Mortgaged Property and the Senior Loan Agreement.
- E. Pursuant to a Regulatory Agreement (CDBG Funds) dated as of November 14, 1996 among the County, Hotel Land, Inc. and AMCAL Santa Barbara Fund XXXVI, a predecessor-in-interest to Borrower of the Mortgaged Property, and recorded as Instrument Number 96-075886 among the Official Records (“**Subordinate Regulatory Agreement**”), the Mortgaged Property was encumbered by certain covenants, conditions and restrictions in connection with the issuance of CDBG Loan funds.

F. The execution and delivery of this Agreement is a condition of Funding Lender's agreeing to fund the Funding Loan.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Definitions.** The following terms, when used in this Agreement (including, as appropriate, when used in the above recitals), will have the following meanings.
  - (a) **"Borrower"** means all persons or entities identified as "Borrower" in the first Recital of this Agreement, together with their successors and assigns, and any other person or entity who acquires title to the Mortgaged Property after the date of this Agreement; provided that the term "Borrower" will not include Senior Mortgagee or Funding Lender if Senior Mortgagee or Funding Lender acquires title to the Mortgaged Property.
  - (b) **"Continuing Covenant Agreement"** means that certain agreement dated April 1, 2016, between Berkeley Point Capital LLC and Borrower.
  - (c) **"Enforcement Action"** means any of the following actions taken by or at the direction of the County: the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Subordinate Regulatory Agreement, or the exercise of any other remedial action against Borrower, any other party liable for or obligated under the Subordinate Regulatory Agreement, or the Mortgaged Property.
  - (d) **"Enforcement Action Notice"** means a written Notice from the County to Funding Lender, given following one or more Subordinate Regulatory Agreement Default(s) and the expiration of any Notice or cure periods provided for such Subordinate Regulatory Agreement Default(s) in the Subordinate Regulatory Agreement, setting forth in reasonable detail the Subordinate Regulatory Agreement Default(s) and the Enforcement Actions proposed to be taken by the County.
  - (e) **"Funding Lender"** means Berkeley Point Capital LLC, and any successor holder of the Governmental Note.
  - (f) **"Governmental Note"** means the Multifamily Note delivered by the Governmental Lender evidencing the Funding Loan.
  - (g) **"Notice"** is defined in Section 5(d).
  - (h) **"Senior Indebtedness"** means the "Indebtedness" as defined in the Continuing Covenant Agreement.

- (i) **“Senior Loan Documents”** means the “Financing Documents” as defined in the Continuing Covenant Agreement.
- (j) **“Senior Mortgage Default”** means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of Notice or the passage of time, or both, would constitute, an “Event of Default” as defined in the Continuing Covenant Agreement.
- (k) **“Senior Mortgagee”** means Wilmington Trust, National Association, a national banking association. When any other person or entity becomes the legal holder of the Senior Note, such other person or entity automatically will become Senior Mortgagee.
- (l) **“Senior Note”** means the Project Note as defined in the Continuing Covenant Agreement.
- (m) **“Subordinate Regulatory Agreement”** is defined in the Recitals of this Agreement.
- (n) **“Subordinate Regulatory Agreement Default”** means any act, failure to act, event, condition, or occurrence which allows (but for any contrary provision of this Agreement), or which with the giving of Notice or the passage of time, or both, would allow (but for any contrary provision of this Agreement), the County to take an Enforcement Action.

## **2. Subordination of Subordinate Regulatory Agreement.**

- (a) The Subordinate Regulatory Agreement is, and will at all times remain, subject and subordinate in all respects to the liens, terms, covenants, conditions, operations, and effects of each of the Senior Loan Documents, including the Borrower’s obligation to make payments toward the Senior Indebtedness thereunder, which is and will at all times be senior to any payment obligations of the Borrower under the Subordinate Regulatory Agreement.
- (b) The subordination of the Subordinate Regulatory Agreement will apply and continue notwithstanding (i) the actual date and time of execution, delivery, recording, filing or perfection of each of the Senior Loan Documents, and (ii) the availability of any collateral to Senior Mortgagee or Funding Lender, including the availability of any collateral other than the Mortgaged Property.
- (c) By reason of, and without in any way limiting, the full subordination of the Subordinate Regulatory Agreement provided for in this Agreement, all rights and claims of the County under the Subordinate Regulatory Agreement to take possession of the Mortgaged Property or to appoint a receiver are expressly subject and subordinate in all respects to the rights and claims of Senior Mortgagee or Funding Lender under the Senior Loan Documents in or to the Mortgaged Property.

### **3. Additional Representations and Covenants.**

- (a) The County represents and warrants, based upon the information available to County as of the date of execution of this Agreement, that each of the following is true:
  - (i) The County is the beneficiary of the provisions of the Subordinate Regulatory Agreement.
  - (ii) The Subordinate Regulatory Agreement is now in full force and effect.
  - (iii) The Subordinate Regulatory Agreement has not been modified or amended.
  - (iv) No Subordinate Regulatory Agreement Default has occurred or is occurring under the Subordinate Regulatory Agreement.
  - (v) There is no outstanding indebtedness related to the Subordinate Regulatory Agreement.
  - (vi) None of the rights of the County under the Subordinate Regulatory Agreement are subject to the rights of any third parties, by way of subrogation, indemnification or otherwise.
- (b) Without the prior written consent of Funding Lender in each instance, the County will not do any of the following:
  - (i) Amend, modify, waive, extend, renew, or replace any provision of the Subordinate Regulatory Agreement.
  - (ii) Pledge, assign, transfer, convey, or sell any interest in and to the Subordinate Regulatory Agreement.
  - (iii) Take any action concerning environmental matters affecting the Mortgaged Property.
- (c) The County will deliver to Funding Lender a copy of each Notice received or delivered by the County pursuant to the Subordinate Regulatory Agreement, simultaneously with the County's delivery or receipt of such Notice.
- (d) Whenever the Subordinate Regulatory Agreement gives the County approval or consent rights with respect to any matter, and a right of approval or consent with regard to the same or substantially the same matter is also granted to Senior Mortgagee or Funding Lender pursuant to the Senior Loan Documents or otherwise, Funding Lender's approval or consent or failure to approve or consent, as the case may be, will be binding on the County. None of the other provisions of this Section 3 are intended to be in any way in limitation of the provisions of this Section 3(d).

- (e) Senior Mortgagee or Funding Lender may amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provision of any of the Senior Loan Documents without the necessity of obtaining the consent of or providing Notice to the County, and without affecting any of the provisions of this Agreement; provided, however, the County written consent shall be required with respect to an increase in the principal amount of the Senior Indebtedness (subject to the Senior Mortgagee's and/or Funding Lender's right to make protective advances or cure defaults) or any change to reduce the term of the Senior Indebtedness.

#### **4. Default Under Subordinate Regulatory Agreement.**

- (a) For a period of 90 days following delivery to Funding Lender of an Enforcement Action Notice, Funding Lender will have the right, but not the obligation, to cure any Subordinate Regulatory Agreement Default, provided that if such Subordinate Regulatory Agreement Default is a non-monetary default and is not capable of being cured within such 90-day period and Funding Lender has commenced and is diligently pursuing such cure to completion, Funding Lender will have such additional period of time as may be required to cure such Subordinate Regulatory Agreement Default or until such time, if ever, as Funding Lender (i) discontinues its pursuit of any cure and/or (ii) delivers to the County Funding Lender's written consent to the Enforcement Action described in the Enforcement Action Notice. Neither Senior Mortgagee nor Funding Lender will be subrogated to the rights of the County under the Subordinate Regulatory Agreement by reason of Funding Lender having cured any Subordinate Regulatory Agreement Default. However, the County acknowledges that all amounts advanced or expended by Funding Lender in accordance with the Senior Loan Documents or to cure a Subordinate Regulatory Agreement Default will be added to and become a part of the Senior Indebtedness and will be secured by the lien of the Senior Mortgage.
- (b) In the event of a Subordinate Regulatory Agreement Default, the County will not commence any Enforcement Action until 90 days after the County has delivered to Funding Lender an Enforcement Action Notice with respect to such Enforcement Action, provided that during such 90-day period or such longer period as provided in Section 4(a), the County will be entitled to seek specific performance to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in the Subordinate Regulatory Agreement, subject to Funding Lender's right to cure a Subordinate Regulatory Agreement Default set forth in Section 4(a). The County may not commence any other Enforcement Action, until the earlier of (i) the expiration of such 90-day period or such longer period as provided in Section 4(a), or (ii) the delivery by Funding Lender to the County of Funding Lender's written consent to such Enforcement Action by the County. The County acknowledges that Funding Lender may grant or refuse consent to the County's Enforcement Action in Funding Lender's sole and absolute discretion. At the expiration of such 90-day period or such longer period as provided in Section 4(a) and, subject to Funding Lender's right to cure set forth in Section 4(a), the County may commence any

Enforcement Action. Any Enforcement Action on the part of the County will be subject to the provisions of this Agreement. The County acknowledges that the provisions of this Section 4(b) are fair and reasonable under the circumstances.

- (c) Senior Mortgagee or Funding Lender may pursue all rights and remedies available to it under the Senior Loan Documents, at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action by the County. No action or failure to act on the part of Senior Mortgagee or Funding Lender in the event of a Subordinate Regulatory Agreement Default or commencement of an Enforcement Action will constitute a waiver on the part of Senior Mortgagee or Funding Lender of any provision of the Senior Loan Documents or this Agreement.
- (d) If the Enforcement Action taken by the County is the appointment of a receiver for any of the Mortgaged Property, all of the Rents, issues, profits and proceeds collected by the receiver will be paid and applied by the receiver solely to and for the benefit of Senior Mortgagee or Funding Lender until the Senior Indebtedness will have been paid in full.
- (e) If any party other than Borrower (including Senior Mortgagee or Funding Lender) acquires title to any of the Mortgaged Property pursuant to a foreclosure of, or trustee's sale or other exercise of any power of sale under, the Senior Mortgage conducted in accordance with applicable law, the lien, operation, and effect of the Subordinate Regulatory Agreement automatically will terminate with respect to such Mortgaged Property.

## **5. Miscellaneous Provisions.**

- (a) If there is any conflict or inconsistency between the terms of the Subordinate Regulatory Agreement and the terms of this Agreement, then the terms of this Agreement will control.
- (b) This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties hereto. No other party will be entitled to any benefits hereunder, whether as a third-party beneficiary or otherwise.
- (c) This Agreement does not constitute an approval by Senior Mortgagee or Funding Lender of the terms of the Subordinate Regulatory Agreement.
- (d) Each Notice, request, demand, consent, approval or other communication (collectively, "**Notices**," and singly, a "**Notice**") which is required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery (any Notice so delivered will be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery (any Notice so delivered will be deemed to

have been received on the next Business Day following receipt by the courier), or (iii) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any Notice so sent will be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

- (i) Notices intended for Senior Mortgagee will be addressed to:

Wilmington Trust, National Association  
650 Town Center Drive, Suite 600  
Costa Mesa, California 92626  
Attention: Brian Buchanan  
Email: bbuchanan@wilmingtontrust.com  
Telephone: (714) 384-4152

- (ii) Notices intended for the County will be addressed to:

County of Santa Barbara  
Housing and Community Development  
123 E. Anapamu Street  
Santa Barbara, CA 93101  
Attention: Deputy Director

and

Housing Authority of the County of Santa Barbara  
815 West Ocean Avenue  
Lompoc, California 93436  
Attention: Executive Director

- (iii) Notices intended for Funding Lender will be addressed to:

Berkeley Point Capital LLC  
4550 Montgomery Avenue, Suite 1100  
Bethesda, Maryland 20814  
Attention: Loan Servicing

Any party, by Notice given pursuant to this Section, may change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its Notices, but Notice of a change of address will only be effective upon receipt. Neither party will refuse or reject delivery of any Notice given in accordance with this Section.

- (e) Nothing in this Agreement or in any of the Senior Loan Documents or in the Subordinate Regulatory Agreement will be deemed to constitute Senior Mortgagee or Funding Lender as a joint venturer or partner of the County.



- (f) Upon Notice from Funding Lender, the County will execute and deliver such additional instruments and documents, and will take such actions, as are required by Funding Lender in order to further evidence or implement the provisions and intent of this Agreement.
- (g) This Agreement will be governed by the laws of the State in which the Land is located.
- (h) If any one or more of the provisions contained in this Agreement, or any application of any such provisions, is invalid, illegal, or unenforceable in any respect, the validity, legality, enforceability, and application of the remaining provisions contained in this Agreement will not in any way be affected or impaired.
- (i) The term of this Agreement will commence on the date of this Agreement and will continue until the earliest to occur of the following events: (i) the payment of all of the Senior Indebtedness; provided that this Agreement will be reinstated in the event any payment on account of the Senior Indebtedness is avoided, set aside, rescinded or repaid by Senior Mortgagee or Funding Lender, (ii) the termination of the Subordinate Regulatory Agreement, or (iii) the acquisition by Senior Mortgagee or Funding Lender or by a third party purchaser of title to the Mortgaged Property pursuant to a foreclosure of, deed in lieu of foreclosure, or trustee's sale or other exercise of a power of sale or similar disposition under the Senior Mortgage.
- (j) No failure or delay on the part of any party to this Agreement in exercising any right, power, or remedy under this Agreement will operate as a waiver of such right, power, or remedy, nor will any single or partial exercise of any such right, power or remedy preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power or remedy under this Agreement.
- (k) Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.
- (l) Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by the County of its governmental powers (including police, regulatory and taxing powers) with respect to Borrower or the Mortgaged Property to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.
- (m) This Agreement shall inure to the benefit of any subsequent holder of the Senior Indebtedness.

- (n) This Agreement may be amended, changed, modified, altered or terminated only by a written instrument or written instruments signed by the parties to this Agreement.
- (o) This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.
- (p) Notwithstanding anything herein to the contrary, pursuant to Section 17(c) of the Senior Mortgage and Section 6.03 of the Funding Loan Agreement, all acts, consents, approvals and undertakings of Senior Mortgagee hereunder shall be solely at the written direction of the Funding Lender. The parties acknowledge and agree that Funding Lender is a third party beneficiary of this Agreement, with full rights as such.

**[Signature and acknowledgment pages follow]**



**COUNTY:**

**COUNTY OF SANTA BARBARA  
(CALIFORNIA)**, a public body corporate  
and politic

By: \_\_\_\_\_  
Name: Peter L. Adam  
Title: Chair, Board of Supervisors

**ACKNOWLEDGMENT**

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 CALIFORNIA )  
 ) ss.  
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 names(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

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

**HOUSING AUTHORITY OF THE  
COUNTY OF SANTA BARBARA, a  
public body corporate and politic**

By: \_\_\_\_\_  
Name: Robert P. Havlicek Jr.  
Title: Executive Director

**ACKNOWLEDGMENT**

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 CALIFORNIA )  
 ) ss.  
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 names(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

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

**CONSENT OF BORROWER**

Borrower acknowledges receipt of a copy of this Subordination Agreement, dated April 1, 2016, by and among WILMINGTON TRUST, NATIONAL ASSOCIATION, HOUSING AUTHORITY OF THE COUNTY OF SANTA BARBARA (California) and COUNTY OF SANTA BARBARA (California) and consents to the agreement of the parties set forth in this Agreement.

**BORROWER:**

**POSITANO APARTMENTS, L.P.,**  
a California limited partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

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 CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,

personally appeared Anne B. Wilson, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(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

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC

**EXHIBIT A**

**LEGAL DESCRIPTION**

Real property in the unincorporated area of the County of Santa Barbara, State of California, described as follows:

LOT 1 OF TRACT 11321, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON MAP FILED IN BOOK 79, PAGES 30, 31 AND 32 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 065-472-07