

WHEN RECORDED MAIL TO:

Davis Wright Tremaine LLP  
865 S. Figueroa Street  
Suite 2400  
Los Angeles, California 90017  
Attention: Mark L. Nelson, Esq.

(SPACE ABOVE FOR RECORDER'S USE)

## SUBORDINATION AGREEMENT

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

THIS SUBORDINATION AGREEMENT ("**Agreement**") is made as of \_\_\_\_\_, 2014, by and among \_\_\_\_\_, a California limited partnership ("**Borrower**"), COUNTY OF SANTA BARBARA, a political subdivision of the State of California ("**Junior Lienholder**"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association ("**U.S. Bank**"), in its capacity as agent (in such capacity, "**Agent**") for the HOUSING AUTHORITY OF THE COUNTY OF SANTA BARBARA, a political subdivision of the State of California ("**Issuer**"), under and pursuant to the Master Agency Agreement dated as of \_\_\_\_\_, 2014, between the Issuer and Agent ("**Agency Agreement**") (Issuer and its successors in interest in and to this Agreement acting through Agent during the term of Agent's agency and acting on their own behalf or through other agents thereafter, are referred to herein as "**Senior Lienholder**").

### RECITALS

A. Borrower owns (i) certain real estate more particularly described on Exhibit A, and all improvements now or hereafter located thereon (collectively, the "**Real Property**"), and (ii) that certain personal property more particularly described in the Senior Loan Documents (the "**Personal Property**"; together with the Real Property, the "**Property**").

B. Each of the documents listed on Exhibit B together with all other documents and materials entered into with Junior Lienholder with respect to the Property shall be referred to collectively as the "**Junior Obligation Documents**".

C. As used herein, the term "**Junior Obligations**" means any and all indebtedness, claims, debts, liabilities or other obligations from Borrower to Junior Lienholder under the Junior Obligation Documents, together with all costs and expenses, including attorneys' fees, of collection thereof, whether the same accrues or is incurred before or after the commencement of any bankruptcy case by or against Borrower.

D. Issuer has issued, or will issue, its Multifamily Housing Revenue Bonds (\_\_\_\_\_ Apartments) Series \_\_\_\_, in the aggregate principal amount of //[\$7,378,917]// (the "**Bonds**"). Issuer desires to make a loan ("**Senior Loan**") to Borrower in a maximum principal amount equal to the maximum principal amount of //[\$7,378,917]//. The Bonds are being issued pursuant to that certain Master Pledge and Assignment dated as of \_\_\_\_\_, 2014, by and among Issuer, Agent, and U.S. Bank National Association, in its capacity as holder of the Bonds

(in such capacity, “**Holder**”). The Senior Loan is evidenced by (i) a Construction Loan Agreement (“**Senior Loan Agreement**”) dated as of \_\_\_\_\_, 2014 by and between Borrower and Senior Lienholder, and (ii) a promissory note (the “**Senior Note**”) dated as of \_\_\_\_\_, 2014, made by Borrower in favor of Senior Lienholder, in the maximum aggregate principal sum of the Senior Loan. The Senior Note is secured by, among other things, a Construction and Permanent Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (“**Senior Deed of Trust**”) dated as of \_\_\_\_\_, 2014, made by Borrower, as trustor, for the benefit of Senior Lienholder, as beneficiary, to be recorded substantially concurrently herewith in the Official Records of the County of Santa Barbara (the “**Official Records**”). The Senior Loan Agreement, the Senior Note, the Senior Deed of Trust and the other “Loan Documents” (as defined in the Senior Loan Agreement) are hereinafter sometimes collectively referred to as the “**Senior Loan Documents**”. The Senior Loan Agreement, Senior Note, Senior Deed of Trust and the other Senior Loan Documents are, substantially concurrently herewith, being assigned by Senior Lienholder to U.S. Bank National Association, a national banking association, in its capacity as the Holder of the Bonds.

E. As used herein, the term “**Senior Lienholder Indebtedness**” means any and all indebtedness, claims, debts, liabilities or other obligations from Borrower to Senior Lienholder under the Senior Loan Documents, together with all interest accruing thereon and all costs and expenses, including attorneys’ fees, of collection thereof, whether the same accrues or is incurred before or after the commencement of any bankruptcy case by or against Borrower.

F. Upon the timely satisfaction of the “Conversion Conditions” set forth in that certain Bond Purchase Agreement (the “**Loan Purchase Agreement**”) dated as of even date herewith by and among Borrower, U.S. Bank and California Community Reinvestment Corporation, a California nonprofit public benefit corporation (“**CCRC**”), CCRC has agreed to purchase the Bonds from U.S. Bank for a purchase price in the maximum amount of ///[\$2,780,000]///. Upon CCRC’s purchase of the Bonds, the Senior Loan Agreement shall be amended and restated in its entirety by that certain Permanent Loan Agreement dated as of \_\_\_\_\_, 2014 (the “**Permanent Loan Agreement**”) by and between Borrower and CCRC. Effective as of the Conversion Date (as defined in the Loan Purchase Agreement) and CCRC’s purchase of the Bonds, any reference herein to “Agent” or “U.S. Bank” shall mean CCRC and any reference to the Loan Agreement shall mean the Permanent Loan Agreement.

G. Pursuant to the Senior Deed of Trust and the other Senior Loan Documents, Borrower is not entitled to further encumber the Property without the prior written consent of Senior Lienholder, which consent may be withheld in Senior Lienholder’s sole discretion.

H. It is a condition precedent to Senior Lienholder to entering into the Senior Loan Documents that the Senior Deed of Trust and the other Senior Loan Documents be and remain at all times a lien or charge upon the Property, prior and superior to the liens or charges of the Junior Obligation Documents.

I. Senior Lienholder is willing to enter into the Senior Loan Documents provided that, among other things, (1) the Senior Deed of Trust and the other Senior Loan Documents are a lien or charge upon the Property prior and superior to the liens or charges of the Junior Obligation Documents, and (2) Junior Lienholder will specifically subordinate the liens or charges of the Junior Obligation Documents to the lien or charge of the Senior Deed of Trust and the other Senior Loan Documents.

J. Junior Lienholder is willing that the Senior Deed of Trust shall constitute a lien or charge upon the Property which is prior and superior to the liens or charges of the Junior Obligation Documents. The parties hereto enter into this Agreement for the purposes set forth in these Recitals.

K. Capitalized terms used herein and not otherwise defined shall have the meanings set forth for them in the Senior Loan 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 consideration is hereby acknowledged, and in order to induce Senior Lienholder to make the "Loan" described in the Loan Agreement, it is hereby declared, understood, and agreed as follows:

1. Subordination. The Senior Deed of Trust in favor of Senior Lienholder, and all amendments, modifications, extensions and renewals thereof shall unconditionally be and remain at all times a lien or charge on the Property prior and superior to the lien or charge of the Junior Obligation Documents. Junior Lienholder intentionally and unconditionally subordinates the lien or charge of the Junior Obligation Documents in favor of the lien or charge upon said land of the Senior Deed of Trust and all amendments, modifications, extensions and renewals thereof, and understands that in reliance upon and in consideration of this subordination, specific loans and advances 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 subordination.

2. Only Agreement Regarding Subordination. Senior Lienholder would not enter into the Senior Loan Documents without this Agreement. This Agreement shall be the whole and only agreement with regard to the subordination of the lien or charge of the Junior Obligation Documents to the lien or charge of the Senior Deed of Trust and shall supersede and cancel, but only insofar as would affect the priority between said deeds of trust and said covenants, conditions and restrictions, any prior agreements as to such subordination, including, but not limited to, those provisions, if any, contained in the Junior Obligation Documents which provide for the subordination of the lien or charge thereof to another deed or deeds of trust or to another mortgage or mortgages.

3. Loan Disbursements. In making disbursements pursuant to any of the Senior Loan Documents, Senior Lienholder is under no obligation or duty to, nor has Senior Lienholder represented that it will, see to the application of such proceeds by the person or persons to whom Senior Lienholder disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such Senior Loan Document(s) shall not defeat the subordination herein made in whole or in part.

4. Consent and Approval. Junior Lienholder has received and consents to and approves the Senior Loan Documents, including but not limited to any extension, modification and/or amendment of said agreements, between Borrower and Senior Lienholder. No decision by Junior Lienholder to review or not review the Senior Loan Documents, including but not limited to the disbursement provisions contained therein, shall impair or otherwise limit the enforceability of this Agreement.

5. Other Agreements. Junior Lienholder and Borrower declare, agree, and acknowledge that:

5.1 Subordination of Indebtedness. Any and all Junior Obligations are hereby subordinated and subject to any and all Senior Lienholder Indebtedness, as set forth herein.

5.2 Permitted Payments. Borrower may make payments under the Junior Obligation Documents, if required, as long as all payments under the Senior Deed of Trust and the other Senior Loan Documents are current and not delinquent or in arrears, and only so long as at the time of such payment:

(i) no default exists under the Senior Lienholder Indebtedness and no event exists which, with the lapse of time or the giving of notice or both, would be such a default under the Senior Lienholder Indebtedness of which Junior Lienholder has received notice; and (ii) such payment would not result in a violation of any of Borrower's financial covenants set forth in any of the documents evidencing the Senior Lienholder Indebtedness ("**Permitted Payments**").

5.3 Payment Subordination. Except for any Permitted Payments, (a) all of the Senior Lienholder Indebtedness now or hereafter existing shall be first paid in full by Borrower before any payment shall be made by Borrower on the Junior Obligations, and (b) this priority of payment shall apply at all times until all of the Senior Lienholder Indebtedness has been repaid in full. In the event of any assignment by Borrower for the benefit of Borrower's creditors, or any bankruptcy proceedings instituted by or against Borrower, or the appointment of any receiver for Borrower or Borrower's business or assets, or of any dissolution or other winding up of the affairs of Borrower or of Borrower's business, and in all such cases respectively, Borrower's officers and any assignee, trustee in bankruptcy, receiver and other person or persons in charge are hereby directed to pay to Senior Lienholder the full amount of the Senior Lienholder Indebtedness before making any payments to Junior Lienholder due under the Junior Obligations.

5.4 Return of Prohibited Payments. Except as otherwise expressly agreed to herein, if Junior Lienholder shall receive any payments or other rights in any property of Borrower in connection with the Junior Obligations in violation of this Agreement, such payment or property shall immediately be delivered and transferred to Senior Lienholder after notice to Junior Lienholder.

5.5 Repayment of Senior Lienholder Indebtedness. This Agreement shall remain in full force and effect until all Senior Lienholder Indebtedness is fully repaid in accordance with its terms and all of the terms of this Agreement have been complied with.

5.6 Standstill. Junior Lienholder agrees that, without the Senior Lienholder's prior written consent, it will not accelerate the Junior Obligations, commence foreclosure proceedings with respect to the Property, collect rents, appoint (or seek the appointment of) a receiver or institute any other collection or enforcement action.

5.7 Refinance. The Junior Lienholder additionally consents to the refinancing of the Senior Loan at its maturity, provided that such refinancing is made on terms substantially similar to those set forth in the Permanent Loan Agreement.

6. Senior Lienholder Agreements. Senior Lienholder agrees that it shall not complete a foreclosure sale of the Property or record a deed-in-lieu of foreclosure with respect to the Property (each, a "**Foreclosure Remedy**") unless Junior Lienholder has first been given ninety (90) days written notice of the Event(s) of Default giving Senior Lienholder the right to complete such Foreclosure Remedy, and unless Junior Lienholder has failed, within such ninety (90)-day period, to cure such Event(s) of Default; provided, however, that Senior Lienholder shall be entitled during such ninety (90)-day period to continue to pursue all of its rights and remedies under the Senior Loan Documents, including, but not limited to, acceleration of the Senior Loan (subject to any de-acceleration provisions specifically set forth in the Senior Loan Documents), commencement and pursuit of a judicial or non-judicial foreclosure (but not completion of the foreclosure sale), appointment of a receiver, enforcement of any guaranty (subject to any notice and cure provisions contained therein), and/or enforcement of any other Senior Loan Document. In the event Senior Lienholder has accelerated the Senior Loan and Junior Lienholder cures all Events of Default giving rise to such acceleration within the ninety (90)-day cure period described above, such cure shall have the effect of de-accelerating the Senior Loan; provided, however, that such de-acceleration shall not waive or limit any of Senior Lienholder's rights to accelerate the Senior Loan or

exercise any other remedies under the Senior Loan Documents as to any future or continuing Events of Default. It is the express intent of the parties hereunder that Senior Lienholder shall have the right to pursue all rights and remedies, except completion of a Foreclosure Remedy, without liability to Junior Lienholder for failure to provide timely notice to Junior Lienholder required hereunder, and that Senior Lienholder's liability hereunder shall be expressly limited to actual and consequential damages to Junior Lienholder directly caused by Senior Lienholder's completion of a Foreclosure Remedy without Junior Lienholder receiving the notice and opportunity to cure described above, including, if applicable, any amount which Junior Lienholder may be required to pay to the U.S. Department of Housing and Urban Development pursuant to the HOME Investment Partnership Program, codified in 42 U.S.C. Section 12701, *et seq.* and 24 C.F.R. Part 92, on account of any HOME loan previously made by Junior Lienholder on account of the Property. Senior Lienholder shall give Junior Lienholder notice at the address set forth below or such other address as Junior Lienholder may instruct Senior Lienholder in writing from time to time:

County of Santa Barbara  
123 East Anapamu Street  
2<sup>nd</sup> Floor  
Santa Barbara, California 93101  
Attention: Housing Finance Program Manager

7. Conversion. Junior Lienholder hereby consents to the Senior Loan, the terms and provisions of the Senior Loan Documents and the execution and delivery by Borrower to Senior Lienholder of the Senior Loan Documents. Junior Lienholder specifically acknowledges that subject to completion of certain improvements on the Property and the satisfaction by Borrower of certain other conditions within the time set forth in the Loan Purchase Agreement, CCRC shall purchase the Bonds from U.S. Bank. If such purchase occurs, then upon such purchase, the Senior Loan will become nonrecourse with certain exceptions and will automatically convert from an interest only construction loan into an amortizing term loan, all as more particularly set forth in the Senior Note. Junior Lienholder acknowledges that upon the purchase of the Bonds by CCRC, the following Senior Loan Documents shall terminate:

7.1 ///[Assignment of Development Services Agreement and Developer Fee Subordination Agreement;

7.2 Repayment and Completion Guaranty;

7.3 Assignment of Partnership Interests, Capital Contributions and Credits; and

7.4 Collateral Assignment of Contract Rights.]///

Junior Lienholder acknowledges that if CCRC should become the owner and holder of the Bonds, the Senior Loan and the Senior Note, then CCRC shall become the "Senior Lienholder" hereunder and this Agreement shall continue to inure to the benefit of CCRC and its successors and assigns.

8. Bankruptcy Provisions. To the extent any payment under any Senior Loan Document (whether by or on behalf of Borrower, as proceeds of security or enforcement of any right of set-off, or otherwise) is declared to be fraudulent or preferential, set aside or required to be paid to a trustee, receiver or other similar party under the Bankruptcy Code or any federal or state bankruptcy, insolvency, receivership or similar law, then if such payment is recovered by, or paid over to, such trustee, receiver or

other similar party, the Senior Indebtedness or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding as if such payment had not occurred.

9. Casualty Insurance Proceeds; Condemnation Proceeds. In the event Senior Lienholder shall release, for the purposes of restoration of all or any part of the improvements, its right, title and interest in and to the proceeds under policies of insurance thereon, and/or its right, title and interest in and to any awards, or its right, title and interest in and to other compensation made for any damages, losses or compensation for other rights by reason of a taking in eminent domain, Junior Lienholder shall simultaneously release (and hereby agrees that it shall be irrevocably and unconditionally deemed to have agreed to release) for such purpose all of Junior Lienholder's right, title and interest, if any, in and to all such insurance proceeds, awards or compensation. Junior Lienholder agrees that the balance of such proceeds remaining after such restoration, or all of such proceeds in the event Senior Lienholder elects, in accordance with California law, not to release any such proceeds for any such restoration, shall be applied to the payment of amounts due under the Senior Loan Documents until all such amounts have been paid in full, prior to being applied to the payment of any amounts due under the Junior Obligation Documents. If Senior Lienholder holds such proceeds, awards or compensation and/or monitors the disbursement thereof, Junior Lienholder agrees that Senior Lienholder may also elect, in its sole and absolute discretion, to hold and monitor the disbursement of such proceeds, awards and compensation to which Junior Lienholder is or may be entitled. Nothing contained in this Agreement shall be deemed to require Senior Lienholder, in any way whatsoever, to act for or on behalf of Junior Lienholder or to hold or monitor any proceeds, awards or compensation in trust for or on behalf of Junior Lienholder, and all or any of such sums so held or monitored may be commingled with any funds of Senior Lienholder.

10. Effect of Other Agreements. The relationship between Borrower and Senior Lienholder under the Senior Loan Documents is, and shall at all times remain, solely that of borrower and lender. Based thereon, Junior Lienholder acknowledges and agrees that Senior Lienholder neither undertakes nor assumes any fiduciary responsibility or other responsibility or duty to Borrower or Junior Lienholder to guarantee or assist in Borrower's or Junior Lienholder's performance under any of the agreements between those parties and other third parties, including without limitation the Junior Obligation Documents.

11. Miscellaneous. This Agreement may be executed in multiple counterparts and the signature page(s) and acknowledgment(s) assembled into one original document for recordation, and the validity hereof shall not be impaired by reason of such execution in multiple counterparts. This Agreement is to be governed according to the laws of the State of California. In the event of action, suit, proceeding or arbitration to enforce any term of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party, as determined by the court or arbitrator, all of the prevailing party's costs and expenses, including without limitation attorneys' fees and expert witness fees, incurred by the prevailing party in connection therewith. If Junior Lienholder or any affiliate of Junior Lienholder shall acquire, by indemnification, subrogation or otherwise, any lien, estate, right or other interest in the Property, that lien, estate, right or other interest shall be subordinate to the Senior Deed of Trust and the other Senior Loan Documents as provided herein, and Junior Lienholder hereby waives, on behalf of itself and such affiliate, until all amounts owed under the Senior Loan Documents have been indefeasibly paid in full and all Senior Lienholder's obligations to extend credit under the Senior Loan Documents have terminated, the right to exercise any and all such rights it may acquire by indemnification, subrogation or otherwise. The Agreement shall inure to the benefit of, and the binding upon, the parties hereto and the respective successors and assigns.

*[Signature pages follow]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

**ATTEST:**

MONA MIYASATO  
Clerk of the Board

By: \_\_\_\_\_  
Deputy Clerk of the Board

**JUNIOR LIENHOLDER:**

County of Santa Barbara,  
a political subdivision of the State of California

By: \_\_\_\_\_  
Steve Lavagnino, Chair  
Board of Supervisors

**APPROVED AS TO FORM**

Michael C. Ghizzoni  
COUNTY COUNSEL

By: \_\_\_\_\_  
Deputy County Counsel

BORROWER:

LELAND GROSSMAN SANDPIPER, L.P.  
a California limited partnership

By: SURF DEVELOPMENT COMPANY,  
a California nonprofit public benefit corporation,  
its managing general partner

By: \_\_\_\_\_  
Alfred Holzheu, President

By: HOUSING AUTHORITY OF THE COUNTY OF  
SANTA BARBARA,  
a public body, corporate and politic,  
its administrative general partner

By: \_\_\_\_\_  
Frederick C. Lamont, Executive Director



SENIOR LIENHOLDER:

U.S. BANK NATIONAL ASSOCIATION,  
a national banking association, as Agent,  
pursuant to that certain Master Agency Agreement  
dated \_\_\_\_\_, 2014 by and between  
Agent and Lender

By: \_\_\_\_\_  
Waheed Karim  
Vice President

ACKNOWLEDGEMENT

STATE OF CALIFORNIA

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

On \_\_\_\_\_, 2014, before me \_\_\_\_\_,  
a 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.

Signature \_\_\_\_\_

(Seal)

ACKNOWLEDGEMENT

STATE OF CALIFORNIA

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

On \_\_\_\_\_, 2014, before me \_\_\_\_\_,  
a 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.

Signature \_\_\_\_\_

(Seal)

ACKNOWLEDGEMENT

STATE OF CALIFORNIA

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

On \_\_\_\_\_, 2014, before me \_\_\_\_\_,  
a 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.

Signature \_\_\_\_\_

(Seal)

**EXHIBIT A**

Legal Description

Real property in the City of Goleta, County of Santa Barbara, State of California, described as follows:

## **EXHIBIT B**

### **Junior Obligation Documents**

1. Regulatory Agreement and Declaration of Restrictive Covenants dated as of November 21, 2000, executed by the Housing Authority of the County of Santa Barbara, predecessor-in-interest to Borrower (the “**Housing Authority**”), in favor of Junior Lienholder, which was recorded in the Official Records on December 19, 2000 as Instrument No. 2000-0080081.

2. Agreement to Grant Mitigation Funds to the Housing Authority, dated as of August 5, 1985, between the Housing Authority and Junior Lienholder, which was recorded in the Official Records on August 9, 1985 as Instrument No. 1985-041702.