



REPORT TO CITY COUNCIL

Approved by:

Marcela Zuniga
Marcela Zuniga, Grant Administrator

Arnoldo Rodriguez
Arnoldo Rodriguez, City Manager

Council Meeting of: March 15, 2023

Agenda Number: D-5

SUBJECT:

Department of Housing and Community Development Affordable Housing and Sustainable Communities (HCD AHSC) Program subordination documents for Esperanza Village

RECOMMENDATION:

Adopt a Resolution authorizing execution of subordination documents in conformance with AHSC Regulatory Agreement between HCD and Downtown Madera Housing Associates, a California Limited Partnership relating to the Esperanza Village project.

SUMMARY:

HCD and Downtown Madera Housing Associates (“Borrower”) have previously entered various loan documents for the Esperanza Project affordable housing project. As further consideration, HCD requires that Borrower enter a Regulatory Agreement. Per the recitals of the Regulatory Agreement a “material purpose of this Agreement is to regulate and restrict the occupancy, rents, operation, ownership and management of the Development in compliance with the Program requirements.”

The HCD Regulatory Agreement is set to close March 1st. Part of HCD requirements include subordination of junior lienholders. A subordination agreement was recorded on July 28, 2020, regarding the City Grant in the amount of \$946,000 and the City Grant in the amount of \$539,151. The City and MORES also entered an option agreement as described in a Memorandum of Agreement recorded on November 27, 2018. To effectuate the Regulatory Agreement and HCD funding, HCD requires that new subordination agreements be executed by the City.

DISCUSSION:

Esperanza Village is an affordable housing project located at 121, 125, 200, and 204 North C Street. The City along with Madera Opportunities for Resident Enrichment and Services, INC

(MORES), partnered in collaborating with the Downtown Madera Housing Associates to fund the project. This has occurred through various agreements which the City agreed to subordinate to HCD and other lenders. The HCD Regulatory Agreement ensures that affordable housing requirements and operation and management standards are met by the developer.

Staff is requesting Council consent to execute AHSC subordination documents to permit closure of the HCD Regulatory Agreement.

FINANCIAL IMPACT:

There is no financial impact as a consequence of executing loan subordination documents.

ALTERNATIVES:

As an alternative, Council may:

1. Decline the recommendation and direct staff to obtain additional information.

ATTACHMENTS:

1. Attachment A – Resolution
2. Attachment B – AHSC Subordination Agreement - City of Madera Loan
3. Attachment C – AHSC Subordination Agreement – Grantee Agreement
4. Attachment D - AHSC Subordination Agreement – Purchase Options

RESOLUTION NO. 22-____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA,
CALIFORNIA, AUTHORIZING EXECUTION OF SUBORDINATION
AGREEMENTS IN CONFORMANCE WITH AFFORDABLE HOUSING AND
SUSTAINABILITY COMMUNITIES (AHSC) REGULATORY AGREEMENT
BETWEEN THE CALIFORNIA DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT AND DOWNTON MADERA HOUSING
ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP RELATING TO
ESPERANZA VILLAGE PROJECT**

WHEREAS, for the last few years, the City of Madera has collaborated with various entities working on Esperanza Village, an affordable housing project located at 121, 125, 200, and 204 North C Street; and

WHEREAS, this collaboration has occurred in different ways including through various agreements wherein the City agreed to subordinate its security interests; and

WHEREAS, a subordination agreement was recorded on July 28, 2020, regarding a City grant in the amount of \$946,000 and City grant in the amount of \$539,151; and

WHEREAS, the City and MORES entered an option agreement as described in a Memorandum of Agreement recorded on November 27, 2018; and

WHEREAS, the Department of Housing and Community Development Affordable Housing and Sustainable Communities (HCD AHSC) Program and the Downtown Madera Housing Associates, a limited Partnership entered into various loan documents for the Esperanza Village affordable housing project; and

WHEREAS, HCD requires that Downtown Madera Housing Associates, a limited Partnership enter and execute a Regulatory Agreement which is set to close on March 1, 2023; and

WHEREAS, a material purpose of the Regulatory Agreement is to regulate and restrict the occupancy, rents, operation, ownership and management of the project in compliance with the HCD requirements; and

WHEREAS, to effectuate the Regulatory Agreement and HCD funding, HCD requires new subordination agreements be executed by the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA HEREBY the City Council of the City of Madera finds, determines, resolves and orders as follows:

1. The above recitals are true and correct.
2. The City Council consents to execution of AHSC Subordination documents as required by HCD as set forth in Exhibits A, B, and C incorporated herein by reference.
3. The City Manager or designee is hereby authorized to execute all required documents.
4. This resolution is effective immediately upon adoption.

**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**
Affordable Housing and Sustainable
Communities (AHSC) Program
19-AHSC-12760

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 March 1, 2023, for reference purposes only, and is entered into by and among the City of Madera, a municipal corporation (the "Junior Lienholder"), and Downtown Madera Housing Associates, a California Limited Partnership, 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 in that real property described in Exhibit A attached hereto and made a part hereof (the "Property"). The Borrower has developed a 48-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 Five Hundred Thirty Nine Thousand One Hundred Fifty One and no/100 Dollars (\$539,151.00) (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 on July 28, 2020, as Instrument No. 2020-017388 in the

Official Records of Madera County, California (the "Official Records"). (The Junior Lienholder Deed of Trust, 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 Six Million Eight Hundred Eighteen Thousand Nine Hundred Eighty and no/100 Dollars (\$6,818,980.00) (the "AHSC 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 "AHSC Regulatory Agreement"), and (ii) other loan documents. The AHSC Loan will be evidenced by a promissory note (the "AHSC 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 "AHSC Deed of Trust") and by such other security as is identified in other loan documents. (The AHSC Regulatory Agreement, the AHSC Deed of Trust, the AHSC Note and all other documents evidencing or securing the AHSC Loan are collectively referred to herein as the "Senior Lender Documents.")

D. The Senior Lender is willing to make the AHSC Loan provided the AHSC Deed of Trust and the AHSC 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 AHSC Deed of Trust and the AHSC 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 AHSC Loan, it is hereby declared, understood and agreed as follows:

1. The AHSC Regulatory Agreement and the AHSC Deed of Trust securing the AHSC 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 AHSC Deed of Trust and the AHSC 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 AHSC Deed of Trust and the AHSC 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 AHSC Deed of Trust and the AHSC 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 AHSC Regulatory Agreement.

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

(a) The Junior Lienholder consents and approves (i) all provisions of the AHSC Note, the AHSC Deed of Trust and the AHSC Regulatory Agreement, and (ii) all agreements among the Junior Lienholder, Borrower and Senior Lender for the disbursement of the proceeds of the AHSC 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 AHSC Loan pursuant to the AHSC 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 AHSC Note, AHSC Deed of Trust, or AHSC 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 AHSC Deed of Trust and the AHSC Regulatory Agreement, and understands that in reliance upon, and in consideration of, this waiver, relinquishment, subjection, and subordination, the AHSC 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 AHSC 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. Remainder of this page is blank.]

JUNIOR LIENHOLDER:

City of Madera, a municipal corporation

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:

BY: _____

NAME: _____

ITS: _____

[Signatures must be acknowledged.]

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

BORROWER:

Downtown Madera Housing Associates,
a California Limited Partnership, a California
limited partnership

By: TPC Holdings VII, LLC,
an Idaho limited liability company
Its: Administrative General Partner

By: _____
Caleb Roope, Manager

By: Madera Opportunities for Resident Enrichment
and Services, Inc., a California nonprofit public
benefit corporation
Its: Managing General Partner

By: _____
Robert Poythree, Board Chair & President

[Signatures must be acknowledged.]

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

SENIOR LENDER:

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

By: _____
Eric Dauterive, Closings Manager

[Signatures must be acknowledged.]

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Madera, County of Fresno, State of California, described as follows:

PARCEL ONE [APN: 007-082-013 FORMERLY KNOWN AS APN'S: 007-082-004 AND 007-082-005]

ALL OF LOT NINE (9) AND A STRIP OF LAND FIVE (5) FEET IN WIDTH RUNNING ALONG THE EXTREME SOUTHERLY SIDE OF LOT TEN (10) IN BLOCK THIRTEEN (13) OF THE CITY OF MADERA, ACCORDING TO MAP ENTITLED "MAP OF THE TOWN OF MADERA" FILED AND RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF COUNTY OF FRESNO, STATE OF CALIFORNIA, OCTOBER 7, 1876 IN VOL. 3 OF MAPS, AT PAGE 41.

TOGETHER WITH:

LOT EIGHT (8) IN BLOCK THIRTEEN (13) OF THE CITY OF MADERA, ACCORDING TO MAP ENTITLED "MAP OF THE TOWN OF MADERA" FILED AND RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF COUNTY OF FRESNO, STATE OF CALIFORNIA, OCTOBER 7, 1876 IN VOL. 3 OF MAPS, AT PAGE 41.

THE ABOVE LEGAL IS MADE PURSUANT TO NOTICE OF MERGER RECORDED OCTOBER 23, 2019 AS INSTRUMENT NO. 2019-24729 OF OFFICIAL RECORDS, MADERA COUNTY.

PARCEL TWO: [APN: 007-112-018 FORMERLY KNOWN AS APN'S: 007-112-014 AND 007-112-015]

LOT 1 AND THE NORTHWESTERLY HALF OF LOT 2 IN BLOCK 41 OF THE TOWN, NOW CITY OF MADERA, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 3, PAGE 49 OF MAPS, FRESNO COUNTY RECORDS.

TOGETHER WITH

THE SOUTHEAST ONE-HALF OF LOT 2; AND LOT 3, ALL IN BLOCK 41 OF THE TOWN, NOW CITY OF MADERA, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 3, PAGE 49 OF MAPS, FRESNO COUNTY RECORDS.

THE ABOVE LEGAL DESCRIPTION IS PURSUANT TO THAT NOTICE OF MERGER RECORDED OCTOBER 23, 2019 AS INSTRUMENT NO. 2019-24730 OF OFFICIAL RECORDS.

**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**
Affordable Housing and Sustainable
Communities (AHSC) Program
19-AHSC-12760

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 March 1, 2023, for reference purposes only, and is entered into by and among the City of Madera as the Success Housing Agency to the former Madera Redevelopment Agency (the "Junior Lienholder"), Madera Opportunities for Resident Enrichment and Services, Inc., a California nonprofit public benefit corporation (the "Grantee") and Downtown Madera Housing Associates, a California Limited Partnership, 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 in that real property described in Exhibit A attached hereto and made a part hereof (the "Property"). The Borrower has developed a 48-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 and Grantee have entered into a Grantee Agreement affecting the use of the Development, recorded on August 10, 2020, as Instrument No. 2020-018636 in the Official Records of Madera County, California (the "Official Records") (the

"Junior Lienholder Grantee Agreement"). (The Junior Lienholder Grantee Agreement and all other documents evidencing or securing the Junior Lienholder Lien 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 Six Million Eight Hundred Eighteen Thousand Nine Hundred Eighty and no/100 Dollars (\$6,818,980.00) (the "AHSC 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 "AHSC Regulatory Agreement"), and (ii) other loan documents. The AHSC Loan will be evidenced by a promissory note (the "AHSC 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 "AHSC Deed of Trust") and by such other security as is identified in other loan documents. (The AHSC Regulatory Agreement, the AHSC Deed of Trust, the AHSC Note and all other documents evidencing or securing the AHSC Loan are collectively referred to herein as the "Senior Lender Documents.")

D. The Senior Lender is willing to make the AHSC Loan provided the AHSC Deed of Trust and the AHSC 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 AHSC Deed of Trust and the AHSC 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 AHSC Loan, it is hereby declared, understood and agreed as follows:

1. The AHSC Regulatory Agreement and the AHSC Deed of Trust securing the AHSC 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 AHSC Deed of Trust and the AHSC 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 AHSC Deed of Trust and the AHSC 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 AHSC Deed of Trust and the AHSC 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 AHSC Regulatory Agreement.

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

(a) The Junior Lienholder consents and approves (i) all provisions of the AHSC Note, the AHSC Deed of Trust and the AHSC Regulatory Agreement, and (ii) all agreements among the Junior Lienholder, Borrower and Senior Lender for the disbursement of the proceeds of the AHSC 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 AHSC Loan pursuant to the AHSC 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 AHSC Note, AHSC Deed of Trust, or AHSC 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 AHSC Deed of Trust and the AHSC Regulatory Agreement, and understands that in reliance upon, and in consideration of, this waiver, relinquishment, subjection, and subordination, the AHSC 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 AHSC 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. Remainder of this page is blank.]

JUNIOR LIENHOLDER:
**City of Madera as the Success Housing Agency
to the former Madera Redevelopment Agency**

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:

BY: _____

NAME: _____

ITS: _____

[Signatures must be acknowledged.]

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

GRANTEE:

**Madera Opportunities for Resident Enrichment
and Services, Inc.**, a California nonprofit public
benefit corporation

By: _____

Name: _____

Its: _____

[Signatures must be acknowledged.]

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

BORROWER:

**Downtown Madera Housing Associates,
a California Limited Partnership**, a California
limited partnership

By: TPC Holdings VII, LLC,
an Idaho limited liability company
Its: Administrative General Partner

By: _____
Caleb Roope, Manager

By: Madera Opportunities for Resident Enrichment
and Services, Inc., a California nonprofit public
benefit corporation
Its: Managing General Partner

By: _____
Robert Poythree, Board Chair & President

[Signatures must be acknowledged.]

[Signatures continue on page 9. Remainder of this page is blank.]

SENIOR LENDER:

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

By: _____
Eric Dauterive, Closings Manager

[Signatures must be acknowledged.]

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Madera, County of Fresno, State of California, described as follows:

PARCEL ONE [APN: 007-082-013 FORMERLY KNOWN AS APN'S: 007-082-004 AND 007-082-005]

ALL OF LOT NINE (9) AND A STRIP OF LAND FIVE (5) FEET IN WIDTH RUNNING ALONG THE EXTREME SOUTHERLY SIDE OF LOT TEN (10) IN BLOCK THIRTEEN (13) OF THE CITY OF MADERA, ACCORDING TO MAP ENTITLED "MAP OF THE TOWN OF MADERA" FILED AND RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF COUNTY OF FRESNO, STATE OF CALIFORNIA, OCTOBER 7, 1876 IN VOL. 3 OF MAPS, AT PAGE 41.

TOGETHER WITH:

LOT EIGHT (8) IN BLOCK THIRTEEN (13) OF THE CITY OF MADERA, ACCORDING TO MAP ENTITLED "MAP OF THE TOWN OF MADERA" FILED AND RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF COUNTY OF FRESNO, STATE OF CALIFORNIA, OCTOBER 7, 1876 IN VOL. 3 OF MAPS, AT PAGE 41.

THE ABOVE LEGAL IS MADE PURSUANT TO NOTICE OF MERGER RECORDED OCTOBER 23, 2019 AS INSTRUMENT NO. 2019-24729 OF OFFICIAL RECORDS, MADERA COUNTY.

PARCEL TWO: [APN: 007-112-018 FORMERLY KNOWN AS APN'S: 007-112-014 AND 007-112-015]

LOT 1 AND THE NORTHWESTERLY HALF OF LOT 2 IN BLOCK 41 OF THE TOWN, NOW CITY OF MADERA, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 3, PAGE 49 OF MAPS, FRESNO COUNTY RECORDS.

TOGETHER WITH

THE SOUTHEAST ONE-HALF OF LOT 2; AND LOT 3, ALL IN BLOCK 41 OF THE TOWN, NOW CITY OF MADERA, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 3, PAGE 49 OF MAPS, FRESNO COUNTY RECORDS.

THE ABOVE LEGAL DESCRIPTION IS PURSUANT TO THAT NOTICE OF MERGER RECORDED OCTOBER 23, 2019 AS INSTRUMENT NO. 2019-24730 OF OFFICIAL RECORDS.

**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**
Affordable Housing and Sustainable
Communities (AHSC) Program
19-AHSC-12760

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 March 1, 2023, for reference purposes only, and is entered into by City of Madera, a municipal corporation (the "City"), Madera Opportunities for Resident Enrichment and Services, Inc., a California nonprofit public benefit corporation, (the "Optionee") and Downtown Madera Housing Associates, a California Limited Partnership, a California limited partnership (the "Partnership"), and the Department of Housing and Community Development, a public agency of the State of California (the "Department").

RECITALS

A. Partnership is the owner of the fee simple interest in that real property described in Exhibit A attached hereto and made a part hereof (the "Property"). Partnership has developed a 48-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 City has granted to Optionee an option to purchase the Development, pursuant to those specified terms and conditions contained in the Memorandum of Option Agreement,

dated October 10, 2018, recorded on November 27, 2018, as Instrument No. 2018026446, in the Official Records of Madera County, California (the "Official Records"), (the "Purchase Option").

C. The Purchase Option, together with any exhibits, and all other documents which evidence, guaranty, secure, or otherwise pertain to the Purchase Option collectively constitute the "Subordinate Documents."

D. In order to finance the development of the Improvements, the Department has agreed to loan the Partnership a sum not to exceed Six Million Eight Hundred Eighteen Thousand Nine Hundred Eighty and no/100 Dollars (\$6,818,980.00) (the "AHSC 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 "AHSC Regulatory Agreement"), and (ii) other loan documents. The AHSC Loan will be evidenced by a promissory note (the "AHSC Note"), the repayment of which will be secured by, among other things, a deed of trust by Partnership as trustor, to Department as beneficiary recorded concurrently herewith as an encumbrance on the Property in the Official Records (the "AHSC Deed of Trust") and by such other security as is identified in other loan documents.

E. The Partnership and the Optionee desire the Department to make the AHSC Loan. The Department is willing to make the AHSC Loan provided the AHSC Deed of Trust and the AHSC Regulatory Agreement are liens, claims or charges upon the Development prior and superior to the Subordinate Documents, and provided that the Optionee specifically and unconditionally subordinates and subjects the Subordinate Documents to the liens, claims or charges of the AHSC Deed of Trust and the AHSC 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 Department to make its AHSC Loan, it is hereby declared, understood and agreed as follows:

1. The AHSC Regulatory Agreement and the AHSC Deed of Trust securing the AHSC Note in favor of the Department, 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 Subordinate Documents, and to all rights and privileges of the Optionee thereunder; and the Subordinate Documents, together with all rights and privileges of the Optionee thereunder are hereby irrevocably and unconditionally subject and made subordinate to the liens, claims or charges of the AHSC Deed of Trust and the AHSC Regulatory Agreement.

2. This Agreement shall be the whole and only agreement with regard to the subordination of the Subordinate Documents, together with all rights and privileges of the Optionee thereunder, to the liens, claims or charges of the AHSC Deed of Trust and the AHSC 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 Subordinate Documents to the AHSC Deed of Trust and the AHSC Regulatory Agreement including, but not limited to, those provisions, if any, contained in the Subordinate 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 AHSC Regulatory Agreement.

3. The Partnership and the Optionee declares, agrees and acknowledges that:

(a) The Optionee consents and approves (i) all provisions of the AHSC Note, the AHSC Deed of Trust and the AHSC Regulatory Agreement, and (ii) all agreements among the Optionee, Partnership, and Department for the disbursement of the proceeds of the AHSC Loan, including without limitation any loan escrow agreements which have been provided to the Optionee for review;

(b) The Department, in making disbursements of the AHSC Loan pursuant to the AHSC Note or any other agreement, is under no obligation or duty to, nor has the Department represented that it will, see to the application of such proceeds by the person or persons to whom the Department 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 AHSC Note, AHSC Deed of Trust, or AHSC Regulatory Agreement, or the performance of any provision, condition, covenant or other term thereof, will conflict with or result in a breach of the Subordinate Documents; and

(d) The Optionee intentionally and unconditionally waives, relinquishes, subjects and subordinates the claims, liens or charges upon the Development of the Subordinate Documents, all present and future indebtedness and obligations secured thereby, in favor of the claims, liens or charges upon the Development of the AHSC Deed of Trust and the AHSC Regulatory Agreement, and understands that in reliance upon, and in consideration of, this waiver, relinquishment, subjection, and subordination, the AHSC 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. The Department would not make the AHSC Loan without this Agreement.

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

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

7. 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.

8. 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 5 of this Subordination Agreement. Reminder of this page is blank.]

CITY:
City of Madera, a municipal corporation

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:

BY: _____

NAME: _____

ITS: _____

[Signatures follow on page 6 of this Subordination Agreement. Reminder of this page is blank.]

[All signatures must be acknowledged.]

OPTIONEE:

**Madera Opportunities for Resident Enrichment
and Services, Inc.**, a California nonprofit public
benefit corporation

By: _____

Name: _____

Its: _____

**[Signatures follow on page 7 of this Subordination Agreement. Reminder of this page is
blank.]**

[All signatures must be acknowledged.]

PARTNERSHIP:

**Downtown Madera Housing Associates,
a California Limited Partnership**, a California
limited partnership

By: TPC Holdings VII, LLC,
an Idaho limited liability company
Its: Administrative General Partner

By: _____
Caleb Roope, Manager

By: Madera Opportunities for Resident Enrichment
and Services, Inc., a California nonprofit public
benefit corporation
Its: Managing General Partner

By: _____
Robert Poythree, Board Chair & President

**[Signatures follow on page 7 of this Subordination Agreement. Reminder of this page
is blank.]**

[All signatures must be acknowledged.]

SENIOR LENDER:

The Department of Housing and Community

Development, a public agency of the State of California

By: _____
Eric Dauterive, Closings Manager

[All signatures must be acknowledged.]

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Madera, County of Fresno, State of California, described as follows:

PARCEL ONE [APN: 007-082-013 FORMERLY KNOWN AS APN'S: 007-082-004 AND 007-082-005]

ALL OF LOT NINE (9) AND A STRIP OF LAND FIVE (5) FEET IN WIDTH RUNNING ALONG THE EXTREME SOUTHERLY SIDE OF LOT TEN (10) IN BLOCK THIRTEEN (13) OF THE CITY OF MADERA, ACCORDING TO MAP ENTITLED "MAP OF THE TOWN OF MADERA" FILED AND RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF COUNTY OF FRESNO, STATE OF CALIFORNIA, OCTOBER 7, 1876 IN VOL. 3 OF MAPS, AT PAGE 41.

TOGETHER WITH:

LOT EIGHT (8) IN BLOCK THIRTEEN (13) OF THE CITY OF MADERA, ACCORDING TO MAP ENTITLED "MAP OF THE TOWN OF MADERA" FILED AND RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF COUNTY OF FRESNO, STATE OF CALIFORNIA, OCTOBER 7, 1876 IN VOL. 3 OF MAPS, AT PAGE 41.

THE ABOVE LEGAL IS MADE PURSUANT TO NOTICE OF MERGER RECORDED OCTOBER 23, 2019 AS INSTRUMENT NO. 2019-24729 OF OFFICIAL RECORDS, MADERA COUNTY.

PARCEL TWO: [APN: 007-112-018 FORMERLY KNOWN AS APN'S: 007-112-014 AND 007-112-015]

LOT 1 AND THE NORTHWESTERLY HALF OF LOT 2 IN BLOCK 41 OF THE TOWN, NOW CITY OF MADERA, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 3, PAGE 49 OF MAPS, FRESNO COUNTY RECORDS.

TOGETHER WITH

THE SOUTHEAST ONE-HALF OF LOT 2; AND LOT 3, ALL IN BLOCK 41 OF THE TOWN, NOW CITY OF MADERA, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 3, PAGE 49 OF MAPS, FRESNO COUNTY RECORDS.

THE ABOVE LEGAL DESCRIPTION IS PURSUANT TO THAT NOTICE OF MERGER RECORDED OCTOBER 23, 2019 AS INSTRUMENT NO. 2019-24730 OF OFFICIAL RECORDS.