

**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**
____-VHHP-____

SUBORDINATION AGREEMENT

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

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

RECITALS

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

B. The Junior Lienholder has made a loan to the Borrower in the principal sum of _____ Dollars (\$_____,000.00) (the "Junior Lienholder Loan"). The Junior Lienholder Loan is evidenced by a certain promissory note (the "Junior Lienholder Note"), secured by a certain deed of trust (the "Junior Lienholder Deed of Trust") recorded [*concurrently herewith OR on _____, 20____, as Instrument No. _____*] in the Official Records of _____ County, California (the "Official Records"). The Junior Lienholder and Borrower have also entered into a regulatory

agreement affecting the use of the Development, recorded on _____, 20__, as Instrument No. _____ in the Official Records (the "Junior Lienholder Regulatory Agreement"). (The Junior Lienholder Deed of Trust, the Junior Lienholder Regulatory Agreement and all other documents evidencing or securing the Junior Lienholder Loan are collectively referred to herein as the "Junior Lienholder Documents.")

C. In order to finance the development of the Improvements, the Senior Lender has agreed to loan the Borrower a sum not to exceed _____ Dollars (\$_____,000,000.00) (the "VHHP 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 "VHHP Regulatory Agreement"), and (ii) other loan documents. The VHHP Loan will be evidenced by a promissory note (the "VHHP 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 "VHHP Deed of Trust") and by such other security as is identified in other loan documents.

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

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

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

(a) The Junior Lienholder consents and approves (i) all provisions of the VHHP Note, the VHHP Deed of Trust and the VHHP Regulatory Agreement, and (ii) all agreements among the Junior Lienholder, Borrower and Senior Lender for the disbursement of the proceeds of the VHHP 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 VHHP Loan pursuant to the VHHP 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 VHHP Note, VHHP Deed of Trust, or VHHP 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 VHHP Deed of Trust and the VHHP Regulatory Agreement, and understands that in reliance upon, and in consideration of, this waiver, relinquishment, subjection, and subordination, the VHHP 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 VHHP Loan without this Agreement.

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

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

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

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

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

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

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

JUNIOR LIENHOLDER:

BORROWER:

APPROVED AS TO FORM:

BY: _____

NAME: _____

ITS: _____

SENIOR LENDER:

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

By: _____
, Closings Manager

[Signatures must be acknowledged.]

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

SAMPLE