



**M E M O R A N D U M**  
**COMMUNITY DEVELOPMENT RESOURCE AGENCY**  
**ADMINISTRATION**  
**County of Placer**

TO: Board of Supervisors DATE: March 9, 2021

FROM: Steve Pedretti, Agency Director

BY: Anne Marie Novotny, Housing Specialist

SUBJECT: Subordination Agreement of the Regulatory Agreement with Auburn Court Apartments, A California Limited Partnership

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**ACTIONS REQUESTED**

1. Approve Subordination Agreement of the Regulatory Agreement with Auburn Court Apartments, A California Limited Partnership; and
2. Authorize the Community Development Resource Agency Director to execute the Agreement on behalf of the County, and any subsequent necessary amendments thereto.

**BACKGROUND**

In February 2001, the County of Placer (“County”) and the Placer County Redevelopment Agency (“Agency”) entered into a Rent Limitation Agreement and Declaration of Restrictive Covenants (“Regulatory Agreement”) with Auburn Court Apartments, A California Limited Partnership (“Borrower”).

Under the Regulatory Agreement the Agency agreed to make a \$39,000 loan, and the County agreed to make a \$61,000 loan to the Borrower to provide financial assistance for the construction of a multifamily rental residential development. The Agency and County loans were paid in full in September 2019. For the same project, the Borrower also entered into a loan agreement for \$1,650,000 with the California Community Reinvestment Corporation (“CCRC”) which required a Subordination Agreement between Borrower, CCRC, Agency, and County. The CCRC loan was paid in full in 2019.

In December 2020, staff was contacted by Borrower notifying the County of its intent to refinance a new \$1,400,000 loan with Freddie Mac. To process the refinancing of the new loan, Freddie Mac is requiring the Borrower, Agency, and the County execute a revised Subordination Agreement of the Regulatory Agreement (“Revised Subordination Agreement”). The purpose of the Revised Subordination Agreement is to recognize the subordination of the Agency and County’s rights and obligations under the Regulatory Agreement executed in 2001. In consideration that both the Agency and County loans have been paid in full, the Borrower does not have any existing financial obligation or debt owed to the Agency or County. The revised Subordination Agreement entitled “Subordination Agreement – Regulatory Agreement Only, Government Entity (No Subordinate Debt) (Revised 1-29-2018)” (Attachment A) extinguishes and invalidates the original Subordination Agreement executed in 2001.

**ENVIRONMENTAL REVIEW**

The proposed action would not have any significant impact on the environment and is exempt pursuant to the California Environmental Quality Act Guidelines Section 15061(b)(3).

**FISCAL IMPACT**

There is no new net cost associated with this action.

**ATTACHMENT**

Attachment A: Subordination Agreement - Regulatory Agreement Only, Government Entity (No Subordinate Debt) (Revised 1-29-2018)

cc: Steve Pedretti – CDRA Director  
Shawna Purvines – CDRA Deputy Director  
Karin Schwab – County Counsel  
Clayton Cook – Deputy County Counsel

# ATTACHMENT A

Freddie Mac Loan Number: \_\_\_\_\_

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

## SUBORDINATION AGREEMENT - REGULATORY AGREEMENT ONLY

### GOVERNMENTAL ENTITY

### (NO SUBORDINATE DEBT)

(Revised 1-29-2018)

THIS SUBORDINATION AGREEMENT FOR REGULATORY AGREEMENT (“**Agreement**”) is effective as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ by **the County of Placer**, a Political Subdivision of the State of California (“**County**”), the Placer County Redevelopment Successor Agency, a Public Body, Corporate and Politic of the State of California responsible for assuming the responsibilities, rights and powers of the former Placer County Redevelopment Agency (“**Agency**”, together with County, collectively, the “**Governmental Entities**”), and **AUBURN COURT APARTMENTS, A CALIFORNIA LIMITED PARTNERSHIP**, a California limited partnership (“**Borrower**”), for the benefit of **BELLWETHER ENTERPRISE REAL ESTATE CAPITAL, LLC**, an Ohio limited liability company, its successors and assigns, (“**Lender**”).

### RECITALS

- A. Simultaneously herewith Borrower is refinancing a loan secured by certain improved real property located in the County of **Placer**, State of **California**, as more particularly described on Exhibit A attached hereto (“**Property**”).
- B. Borrower has assumed certain obligations under the **Rent Limitation Agreement and Declaration of Restrictive Covenants (Redevelopment Loan Program / CDBG Program Income Revolving Loan Program** dated February 14, 2001 (“**Regulatory Agreement**”) between Governmental Entities and Borrower and recorded on title to the Property on February 21, 2001 as Document No. 2001-0013891 in the **Placer** Official Records (“**Official Records**”), pursuant to which the Property was subjected to certain restrictions by Governmental Entities in connection with the prior development or rehabilitation of the Property.
- C. In connection with the Regulatory Agreement, Borrower also entered into the following: a loan agreement and promissory note for \$1,650,000.00, a deed of trust, an assignment of leases, a UCC-1 Local Financing Statement and a UCC-1 State Financing Statement with California Community Reinvestment Corporation (“**CCRC**”) (collectively the “**CCRC Encumbrances**”) in or around 2001, which also required a Subordination Agreement (“**Original Subordination Agreement**”) as between Borrower, CCRC and the Governmental Entities, recorded on title to the Property on November 7, 2001 as Document No. 2001-0117195 in the Official Records by Placer Title Company, for purposes of identifying the priority of security interests in the Property.

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Subordination Agreement – Regulatory Agreement Only

- D. In connection with the refinancing of the original loan secured by the Property by Borrower with CCRC, Lender is making a loan to Borrower in the original principal amount of **\$1,400,000.00** (“**Loan**”) pursuant to a Multifamily Loan and Security Agreement between Lender and Borrower (as supplemented or amended from time to time, the “**Loan Agreement**”) and evidenced by a Multifamily Note by Borrower to Lender (as supplemented or amended from time to time, the “**Note**”). The Loan is to be secured by a Multifamily Deed of Trust, Assignment of Rents and Security Agreement that will be recorded among the Official Records (as supplemented or amended from time to time, the “**Mortgage**”) (the Loan Agreement, the Note and the Mortgage, together with all other documents executed with respect to the Loan, are hereinafter collectively referred to as the “**Loan Documents**”).
- E. The Loan Documents collectively serve to refinance and extinguish the CCRC Encumbrances such that the Original Subordination Agreement as between Borrower, CCRC and the Governmental Entities is no longer necessary, and therefore is invalid, and that this Agreement shall be the only Subordination Agreement on the Property involving the Governmental Entities.
- F. As a condition to making the Loan, Lender requires that the Loan Documents be a lien on the Property superior to the lien of the Regulatory Agreement and that the rights of Lender under the Loan Documents be superior to the rights of Governmental Entities and Borrower under the Regulatory Agreement. Lender will not make the Loan unless Governmental Entities and Borrower agree to subordinate their rights and obligations under the Regulatory Agreement.
- G. Borrower and Governmental Entities hereby agree to subordinate the Regulatory Agreement on and subject to the terms, conditions and requirements set forth in this 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, the parties agree as follows:

1. **Recitals.** The foregoing Recitals are hereby incorporated into this Agreement as agreements among the parties.
2. **Subordination.** The Governmental Entities hereby covenant and agree that the Regulatory Agreement is and will at all times continue to be, subordinate, subject and inferior to the rights of Lender under the Loan Documents and that the liens, rights (including approval and consent rights), remedies, payment interests, priority interests, and security interests granted to Governmental Entities pursuant to or in connection with the Regulatory Agreement are hereby expressly acknowledged to be in all respects and at all times, subject, subordinate and inferior in all respects to the liens, rights (including

approval and consent rights), remedies, payment, priority and security interests granted to Lender pursuant to the Loan Documents and the terms, covenants, conditions, operations and effects thereof. Notwithstanding the above, Governmental Entities may exercise the remedies of specific performance or injunctive relief.

3. **Financing, Encumbrance and Transfer Approval.** Governmental Entities hereby approve the financing evidenced by the Mortgage. Governmental Entities further agree that any transfer of the Property in connection with foreclosure or deed in lieu thereof will not require Governmental Entities' consent.
4. **Extinguishment of Original Subordination Agreement.** Borrower hereby covenants and agrees that the Loan Documents fully extinguish the obligations placed on the Property by the CCRC Encumbrances, and that extinguishment of those obligations thereby invalidates the Original Subordination Agreement and makes this Agreement the only remaining Subordination Agreement on the Property as against the Governmental Entities.
5. **Lender Notice of Default.** In consideration of Governmental Entities' agreements contained in this Agreement, Lender agrees that in the event of any default by Borrower under the Loan Documents, Governmental Entities will be entitled to receive a copy of any notice of default given by Lender to Borrower under the Loan Documents. Neither the giving nor the failure to give a notice to Governmental Entities pursuant to this Section 5 will affect the validity of any notice given by Lender to the Borrower.
6. **Governmental Entities Notice of Default.** Governmental Entities must give Lender a concurrent copy of each material notice (including without limitation each notice of default) given by Governmental Entities under or with respect to the Regulatory Agreement, and agrees that Lender, at Lender's sole election, will have the right (but not the obligation) to cure any default by Borrower under the Regulatory Agreement on its and/or Borrower's behalf. Governmental Entities hereby represent and warrant that, to the best of their knowledge, there is no current default under the Regulatory Agreement.
7. **Governmental Entities' Rights.** Except as set forth in Sections 2 and 8 of this Agreement, nothing in this Agreement is intended to abridge or adversely affect any right or obligation of Borrower and/or Governmental Entities, respectively, under the Regulatory Agreement; provided that, (A) the Regulatory Agreement may not be modified, amended, changed or altered without the prior written consent of Lender so long as the Loan is secured by the Property and (B) for so long as the Loan is secured by the Property, notwithstanding the terms of the Regulatory Agreement to the contrary, neither Borrower nor Governmental Entities will, without Lender's prior written consent, exercise or seek any right or remedy under the Regulatory Agreement or available at law or in equity which will or could result in (i) a transfer of possession of the Property or the control, operations or management thereof, (ii) collection or possession of rents or revenues from or with respect to the Property by any party other than Borrower or Lender; (iii) appointment of a receiver for the Property; (iv) application of insurance or condemnation proceeds other than as approved by Lender pursuant to the Loan

Documents; (v) removal or replacement of the existing property manager of the Property; or (vi) a material adverse effect on Lender's security for the Loan.

**8. Foreclosure by Lender.** In the event of foreclosure, deed in lieu of foreclosure, or similar disposition of the Property by Lender, no consent will be required from Governmental Entities and Lender will have no indemnification obligations to Governmental Entities for any period during which Lender does not own or is not in possession of the Property.

**9. Refinancing.** Governmental Entities agrees that their agreement to subordinate hereunder will extend to any new mortgage debt which is for the purpose of refinancing all or any part of the indebtedness evidenced by the Loan Documents (including reasonable and necessary costs associated with the closing and/or the refinancing, and any reasonable increase in proceeds for rehabilitation in the context of a preservation transaction). All terms and covenants of this Agreement will inure to the benefit of any holder of any such refinanced debt, and all references to the Loan Documents and Lender will mean, respectively, the refinance loan documents and the holder of such refinanced debt.

**10. Miscellaneous Provisions.**

- (a) This Agreement represents the entire understanding and agreement between the four parties (Lender, Borrower, Count and Agency) with regard to the matters addressed herein, and will supersede and cancel any prior agreements with regard to such matters.
- (b) If there is any conflict or inconsistency between the terms of the Regulatory Agreement and the terms of this Agreement, then the terms of this Agreement will control.
- (c) This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties to this Agreement, which will include with regard to the Governmental Entities any permitted successor or assign of the Governmental Entities under or pursuant to the terms of the Regulatory Agreement and, with regard to Lender, any subsequent holder of the Note. No other party will be entitled to any benefits hereunder, whether as a third-party beneficiary or otherwise.
- (d) 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.
- (e) 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:

If to County:

County of Placer  
Community Development Resource Agency  
3091 County Center Drive  
Auburn, California 95603  
Attention: Housing Specialist  
Facsimile: 530-745-3120  
Telephone: 530-745-3000

If to Agency:

County of Placer  
Community Development Resource Agency  
3091 County Center Drive  
Auburn, California 95603  
Attention: Housing Specialist  
Facsimile: 530-745-3120  
Telephone: 530-745-3000

If to Lender:

**BELLWETHER ENTERPRISE REAL ESTATE CAPITAL, LLC**, an  
Ohio limited liability company  
1375 E. 9<sup>th</sup> Street, Suite 2400  
Cleveland, Ohio 44114  
Attention: Michael K. Meyer, Executive Vice President  
Facsimile: 410-715-9872  
Telephone: 614-902-3579

If to Borrower:

**AUBURN COURT APARTMENTS, A CALIFORNIA LIMITED  
PARTNERSHIP**, a California limited partnership  
531 Mill Road  
Auburn, California 95603  
Attention: Ronald D. Bettencourt

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.

- (f) Each of the parties will, whenever and as often as they are requested to do so by the other, execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, any and all such further instruments and documents as may be reasonably necessary to carry out the intent and purpose of this Agreement, and to do any and all further acts reasonably necessary to carry out the intent and purpose of this Agreement.
- (g) This Agreement will be governed by the laws of California, the State in which the Property is located.
- (h) Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations under this Agreement.
- (i) 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.
- (j) 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.
- (k) This Agreement may be assigned at any time by Lender to any subsequent holder of the Note.
- (l) This Agreement may be amended, changed, modified, altered or terminated only by a written instrument signed by the parties to this Agreement or their successors or assigns.
- (m) 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.
- (n) Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by Governmental Entities of their governmental powers (including police, regulatory and taxing powers) with respect to Borrower or the



Property to the same extent as if they were not parties to this Agreement or the transactions contemplated by this Agreement.

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN THE REGULATORY AGREEMENT BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF THE MORTGAGE.

**[SIGNATURE AND ACKNOWLEDGMENT PAGES FOLLOW]**

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year above written.

**COUNTY**

**COUNTY OF PLACER, a  
Political Subdivision of the State of California**

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

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

Title: \_\_\_\_\_

CERTIFICATE OF 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 )
)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 name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

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

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

My commission expires:  
\_\_\_\_\_

**AGENCY**

**Placer County Redevelopment Successor  
Agency, a Public Body, Corporate and Politic of  
the State of California**

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

CERTIFICATE OF 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 )
)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 name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

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

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

My commission expires:  
\_\_\_\_\_

**BORROWER**

**AUBURN COURT APARTMENTS, A  
CALIFORNIA LIMITED PARTNERSHIP, a  
California Limited Partnership**

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

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

Title: \_\_\_\_\_

CERTIFICATE OF 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 )
)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 name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

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

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

My commission expires:  
\_\_\_\_\_

**LENDER:**

**BELLWETHER ENTERPRISE REAL ESTATE CAPITAL, LLC**, an  
Ohio limited liability company

By: \_\_\_\_\_  
Name: Michael K. Meyer  
Title: Executive Vice President



CERTIFICATE OF 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 )
)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 name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

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

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

My commission expires:  
\_\_\_\_\_

## EXHIBIT A

### LEGAL DESCRIPTION

The land described herein is situated in the State of California, County of Placer, unincorporated area, described as follows:

Parcel One:

A portion of Section 33, Township 13 North, Range 8 East, M. D. B. & M., being more particularly described as follows:

Parcel 2 of Parcel Map No. 74726 as said Parcel is shown and delineated on that certain Parcel Map recorded September 21, 1989, in Book 25 of Parcel Maps at Page 30, Placer County Records.

Excepting therefrom that portion thereof described in the deed to CLAD, a California general partnership recorded March 12, 1990, in Book 3847, Page 321, as follows: Beginning at the Westerly most corner of the above described Parcel 2, a common corner with Parcel 1 as shown on said Parcel Map No. 74726; thence from the point of beginning South 24° 21' 06" East along the line between Parcel 2 and Parcel 1 for a distance of 252.48 feet to a point on the Gateway Court right of way; thence North 12° 12' 20" West for a distance of 274.72 feet to a point on the Northwesterly line of Parcel 2; thence South 50° 05' 39" West for a distance of 60.00 feet to the point of beginning.

Also excepting therefrom that portion thereof described in the deed to Patricia Basset, a married woman, as her sole and separate property, as to an undivided 1/2 interest and Alice T. Merenbach, an unmarried woman, as to an undivided 1/2 interest, recorded March 12, 1990, Book 3847, Page 311, as follows: Beginning at the Easterly most corner of the above described Parcel 2, an angle point on the Westerly line of the PG&E Wise Canal, thence South 63° 41' 00" West 113.56 feet, thence South 42° 04' 00" West 35.91 feet to the corner common to Parcel 2 and Parcel 4; thence North 39° 54' 21" West along the line between Parcel 2 and Parcel 4 for a distance of 237.70 feet to the Northerly most corner of Parcel 4; thence North 50° 05' 39" East 168.37 feet to a point on the Westerly line of the PG&E Wise Canal; thence along the Westerly line of the PG&E Wise Canal the following three (3) consecutive courses and distances (1) South 09° 05' 00" East 54.54 feet, (2) South 37° 52' 00" East 114.67 feet, and (3) South 45° 31' 00" East for a distance of 98.41 feet to the point of beginning.

Parcel Two:

An easement for public and private road and utility purposes over area "K" as shown on the above mentioned Map.

Excepting therefrom all that portion lying within Parcel One above.