



MEMORANDUM

TO: CITY COUNCIL/BOARD OF DIRECTORS TO THE SUCCESSOR AGENCY TO THE DISSOLVED REDEVELOPMENT AGENCY OF THE CITY OF ARROYO GRANDE

FROM: DEBBIE MALICOAT, DIRECTOR OF ADMINISTRATIVE SERVICES

SUBJECT: CONSIDERATION OF SUBORDINATION AGREEMENT BETWEEN THE CITY AND COURTLAND-ARROYO GRANDE, L.P.

DATE: OCTOBER 24, 2017

SUMMARY OF ACTION:

Agreeing to allow the City's financial interests to be a lower priority than the lender's deed of trust will allow the project owners to refinance their loan at lower interest costs.

IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:

No financial impact is projected. The City's ultimate interest position in the property is unchanged; the City has previously entered into a subordination agreement with the original lender. Minimal future staff time is projected to accomplish this action.

RECOMMENDATION:

It is recommended the City Council/Board: Approve and authorize the City Manager/Executive Director to execute a Subordination Agreement between the City and Courtland-Arroyo Grande, L.P. to facilitate refinancing of the project by the owners.

BACKGROUND:

Courtland-Arroyo Grande, L.P. developed and owns the property near Courtland and Grand where the Cortina D'Arroyo affordable housing project was built. The development was constructed through the use of affordable housing loans and credits, in addition to conventional financing. In 2004, the City agreed to subordinate a loan that was made to the developer as well as other regulatory or affordability covenants (Attachment 1). This means that the City agreed to allow the conventional financing, which was through Wells Fargo Bank at the time, to have a higher priority for repayment than the City's loan. The City's loan was subsequently sold to Meta Housing, and no

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longer exists, however the affordability covenants on the project are still enforceable and recorded on the property title.

The City received notification from the Courtland-Arroyo Grande, L.P. ("Partnership") that they wanted to refinance their loan and requested the City's participation in continuing to subordinate the affordability covenants under the new loan.

ANALYSIS OF ISSUES:

The Partnership is looking to refinance the subject property with a new permanent loan using a Housing and Urban Development (HUD) insured mortgage. The lender will be RED Capital. HUD has a requirement that all other financing and regulatory agreements be subordinate to their First Trust Deed. The document (Attachment 2) provides for the same subordinate position with the new loan. The City's overall position and priority remains unchanged from where it is today.

The current loan is due in a few years, at which time the Partnership would be obligated to refinance and work with the City on a subordination agreement at that time. However, given the current low interest rate environment, the Partnership has elected to accelerate the refinancing, which accounts for the current request. The refinancing will not affect any tax credits or operations in any way.

The Community Development and Administrative Services Departments are supportive of this request as it provides for the continuation of affordable housing in the community and ensures that the City's interests are maintained as they are today.

ALTERNATIVES:

The following alternatives are provided for the Council's consideration:

1. Approve the attached Subordination Agreement and authorize the City Manager/Executive Director to execute the document
2. Do not approve the Subordination Agreement
3. Provide further direction to staff

ADVANTAGES:

The attached subordination agreement will allow the project owners to refinance their project at a lower interest cost, while maintaining the City's interests in the property as they currently exist.

DISADVANTAGES:

No disadvantages are identified.

ENVIRONMENTAL REVIEW:

This item is exempt from CEQA per CEQA Guidelines Section 15061(b)(3).

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PUBLIC NOTIFICATION AND COMMENTS:

The Agenda was posted at City Hall and on the City's website in accordance with Government Code Section 54954.2.

Attachment:

1. Subordination Agreement recorded November 9, 2004

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Subordination Agreement, the provision contained in this Subordination Agreement shall govern and be controlling in all respects as set forth more fully herein.

(b) The following terms shall have the following definitions:

"Code" means the Internal Revenue Code of 1986, as amended.

"HUD" means the United States Department of Housing and Urban Development.

"HUD Regulatory Agreement" means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

"Lender" means Red Mortgage Capital, LLC, a Delaware limited liability company, its successors and assigns.

"Mortgage Loan" means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

"Mortgage Loan Documents" means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

"National Housing Act" means the National Housing Act of 1934, as amended.

"Program Obligations" has the meaning set forth in the Security Instrument.

"Residual Receipts" has the meaning specified in the HUD Regulatory Agreement.

"Security Instrument" means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

"Surplus Cash" has the meaning specified in the HUD Regulatory Agreement.

(c) Notwithstanding anything in the Restrictive Covenants to the contrary, except the requirements in 26 U.S.C. 42(h)(6)(E)(ii), to the extent applicable, the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the "HUD Requirements"). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Agency's or City's ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of

Borrower's knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.

(d) In accordance with 26 U.S.C. 42(h)(6)(E)(i)(1), in the event of foreclosure (or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate, with the exception of the Post-Foreclosure Restrictions described in Section (e) below and the requirements in 26 U.S.C. 42(h)(6)(E)(ii), or as otherwise approved by HUD.

(e) Notwithstanding paragraph (d), in the event of a foreclosure of Lender's interest under the Security Instrument or delivery by the Borrower of a deed in lieu, the restrictions requiring the use of the Improvements as senior housing set forth in Section 5.2.7 of the AHA and Article II, Section 2 of the Regulatory Agreement ("Senior Covenants") shall continue to apply to the Project. The Senior Covenants shall remain superior to the Mortgage Loan Documents.

(e) Borrower, City and the Agency acknowledge that Borrower's failure to comply with the covenants provided in the Restrictive Covenants does not and shall not serve as a basis for default under the HUD Requirements, unless a default also arises under the HUD Requirements.

(f) In enforcing the Restrictive Covenants, neither the Agency nor the City will file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

- i. Available surplus cash, if the Borrower is a for-profit entity;
- ii. Available distributions of surplus cash and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or
- iii. Available residual receipts authorized by HUD, if the Borrower is a non-profit entity.

(g) For so long as the Mortgage Loan is outstanding, Borrower, City and Agency shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD's prior written consent.

(h) Subject to the HUD Regulatory Agreement, the Agency and the City may require the Borrower to indemnify and hold the Agency and the City harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Agency relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold the Agency and the City harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.

(i) Notwithstanding anything to the contrary contained herein, it is not the intent of any of the parties hereto to cause a recapture of the Low Income Housing Tax Credits or any portion thereof related to any potential conflicts between the HUD Requirements and the Restrictive Covenants. Borrower represents and warrants that to the best of Borrower's

knowledge the HUD Requirements impose no requirements which may be inconsistent with full compliance with the Restrictive Covenants. The acknowledged purpose of the HUD Requirements is to articulate requirements imposed by HUD, consistent with its governing statutes, and the acknowledged purpose of the Restrictive Covenants is to articulate requirements imposed by Section 42 of the Code. In the event an apparent conflict between the HUD Requirements and the Restrictive Covenant arises, the parties and HUD will work in good faith to determine which federally imposed requirement is controlling. It is the primary responsibility of the Borrower, with advice of counsel, to determine that it will be able to comply with the HUD Requirements and its obligations under the Restrictive Covenants.

[SIGNATURES FOLLOW ON THE NEXT PAGE]

BORROWER:

COURTLAND-ARROYO GRANDE, L.P.
a California limited partnership

By: Foundation for Affordable Housing, Inc.
a California corporation
its General Partner

By: _____
Thomas E. Willard
President

By: MFPA, Inc.
a California corporation
its General Partner

By: _____
Sean Clark
Vice-President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of San Luis Obispo)

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 Signature)

(Seal)

AGENCY:

SUCCESSOR AGENCY TO THE DISSOLVED
ARROYO GRANDE REDEVELOPMENT AGENCY

By: _____
James A. Bergman
Executive Director

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of San Luis Obispo)

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 Signature) (Seal)

CITY:

CITY OF ARROYO GRANDE,
a municipal corporation

By: _____
James A. Bergman
City Manager

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Luis Obispo)

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 Signature) (Seal)

Exhibit A

Legal Description

Real property in the City of Arroyo Grande, County of San Luis Obispo, State of California, described as follows:

PARCEL 1:

PARCEL 1 AS SHOWN ON CERTIFICATE OF COMPLIANCE FOR LOT LINE ADJUSTMENT, AS EVIDENCED BY DOCUMENT RECORDED NOVEMBER 27, 2002 AS INSTRUMENT NO. [2002-104331](#) OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS :

ALL OF THAT REAL PROPERTY DESCRIBED IN THE DEED FROM PHILLIPS-SMITH INVESTMENT COMPANY TO ROBERT H. NEWDOLL AND MERILEE PECK NEWDOLL RECORDED APRIL 5, 1990 IN [VOLUME 3484 OF OFFICIAL RECORDS AT PAGE 59](#) IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THE SOUTHERLY 231.84 FEET, AS MEASURED ALONG THE EASTERLY AND WESTERLY SIDELINES OF THE PROPERTY DESCRIBED AS PARCEL 2 IN SAID DEED.

PARCEL 2:

EASEMENTS FOR SEWER, WATER LINES, STORM DRAINS, UTILITY MAINTENANCE, RETAINING WALL AND CONSTRUCTION AS SET FORTH IN THAT CERTAIN DECLARATION OF DEVELOPMENT COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS RECORDED DECEMBER 8, 2002 AS INSTRUMENT NO. [2002-107107](#), AS AMENDED BY FIRST AMENDMENT THERETO RECORDED FEBRUARY 2, 2003 AS INSTRUMENT NO. [2003-016695](#), BOTH OF OFFICIAL RECORDS.

APN: 077-071-029

RECORDING REQUESTED BY:
FIRST AMERICAN TITLE COMPANY

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

WELLS FARGO BANK,
NATIONAL ASSOCIATION
Real Estate Group, AU # 07652
Real Estate Group, MAC E2818-181
707 Wilshire Boulevard, 18th Floor
Los Angeles, CA 90017
Attn: Loan Administration Manager
Loan No. 101201

JULIE RODEWALD
San Luis Obispo County – Clerk/Recorder
Recorded at the request of
First American Title Company

LO
11/09/2004
8:00 AM

DOC#: 2004098504



Titles: 1	Pages: 15
Fees	49.00
Taxes	0.00
Others	0.00
PAID	\$49.00

1626053/MP

SUBORDINATION AGREEMENT (Deed of Trust and Restrictions to Deed of Trust)

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF LENDER'S DEED OF TRUST (DEFINED BELOW).

THIS SUBORDINATION AGREEMENT (Deed of Trust and Restrictions to Deed of Trust) ("Agreement") is dated as of November 5, 2004, by and among **COURTLAND-ARROYO GRANDE, L.P.**, a California limited partnership, hereinafter referred to as "Borrower," and **ARROYO GRANDE REDEVELOPMENT AGENCY**, a public body, corporate and politic, hereinafter referred to as "Agency," in favor of **WELLS FARGO BANK, NATIONAL ASSOCIATION**, ("WFB") and any successors or assigns and hereinafter referred to as "Lender."

RECITALS

A. Borrower is owner of all the real property described on **Exhibit A** ("Property"). Borrower intends to construct one hundred eight (108) rental units on the Property ("Improvements").

B. Borrower and Agency entered into that certain Second Amended and Restated Affordable Housing Agreement dated September 14, 2004 ("Agency Agreement"). Borrower and Agency will enter into a Construction Deed of Trust, With Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Agency Deed of Trust") in favor of Agency and a Regulatory Agreement ("Regulatory Agreement"), which Agency Deed of Trust and Regulatory Agreement will be recorded in the Official Records of the County of San Luis Obispo, to secure a promissory note (the "Agency Note") made by Borrower in the amount of up to \$412,847 (the "Agency Loan"). The Agency Agreement, the Agency Note, the Agency Deed of Trust, the Regulatory Agreement and the other loan documents executed in connection with the Agency Loan as the same may be amended from time to time are referred to herein collectively as the "Agency Loan Documents."

C. The Agreement and the Regulatory Agreement impose certain restrictions and obligations on Borrower, including, without limitation, restrictions on the use of the Improvements as senior housing and restricts the tenant incomes and monthly rents for the Improvements. The restrictions on the use of the Improvements as senior housing are hereinafter referred to as the "Senior Covenants." The restrictions on the tenant incomes and monthly rents in the Agreement and the Regulatory Agreement or in any of the other Agency Loan Documents (as defined above) are hereinafter referred to as the "Affordability Covenants."

D. Borrower and Lender have executed a Building Loan Agreement ("Lender Loan Agreement") dated as of November 5, 2004, wherein Lender has agreed to make a loan ("Lender Loan") in the original principal amount of EIGHT MILLION NINE HUNDRED SEVENTY-TWO THOUSAND AND NO/100THS DOLLARS (\$9,100,000.00). Borrower has executed, among other things, a Promissory Note Secured by Deed of Trust in favor of Lender dated as of November 5, 2004, in the principal amount of the Loan ("Lender Note"), which Note is secured by that certain Construction and Permanent Deed of Trust With Assignment of Leases and Rents, Security Agreement and Fixture Filing and Rider dated as of November 5, 2004, encumbering Borrower's interest in the Property and Improvements, which is to be recorded concurrently herewith in the Official Records of the County of San Luis Obispo (the "Lender Deed of Trust").

E. The Lender Loan Agreement, the Lender Note, the Lender Deed of Trust, and all other documents executed by Borrower in connection with the Lender Loan are hereafter referred to collectively herein as the "Lender Loan Documents."

F. As a condition precedent to Lender making the Lender Loan, Lender requires that the Lender Deed of Trust, the repayment of the Lender Loan, and the other Lender Loan Documents unconditionally and at all times remain a lien or charge upon the Property and Improvements, prior and superior to all the rights of Agency under the Agency Deed of Trust and the Affordability Covenants (but not the Senior Covenants), and that Agency specifically and unconditionally subordinates the Agency Deed of Trust and the and the Affordability Covenants to the lien or charge of the Lender Deed of Trust, and the repayment of the Lender Loan and the other Lender Loan Documents pursuant to the terms and conditions of this Agreement. The Agency specifically does not subordinate the Senior Covenants.

G. As an additional condition precedent to Lender making the Lender Loan, Lender requires that the rights and obligations of Lender in connection with the Agency Agreement be clarified by this Agreement.

H. It is to the mutual benefit of the parties hereto that Lender makes the Lender Loan to Borrower.

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 Lender to make the Lender Loan, it is hereby declared, understood and agreed as follows:

1. The Lender Deed of Trust securing the Lender Note, and any modifications, renewals or extensions thereof and any advances (including interest thereon) thereunder or secured thereby and Lender's rights under any other Lender Loan Documents shall unconditionally be and at all times remain a lien or charge on the Property and Improvements, leases, rents and profits prior and superior to the Agency Deed of Trust and the Affordability Covenants) and all obligations secured thereby. The Senior Covenants shall remain superior to the Lender Deed of Trust. Notwithstanding anything to the contrary in the Agency Loan Documents, Agency also unconditionally subordinates the obligations and right to payment under the Agency Loan Documents to the obligations and right to prior payment in full of the Lender Loan under the Lender Loan Documents.

2. Lender would not make the Lender Loan without this subordination agreement.

3. This Agreement shall be the whole and only agreement with regard to the subordination of the Agency Deed of Trust and the Affordability Covenants and Agency's rights under the Agency Deed of Trust and the and the Affordability Covenants with respect to the lien or charge of the Lender's Deed of Trust together with Lender's right to repayment of the Lender Loan and Lender's rights under any other Lender Loan Documents and shall supersede and cancel, but only insofar as would affect the priority of Lender's Deed of Trust or other Lender Loan Documents, any prior agreements as to such subordination, including, without limitation, those provisions, if any, contained in the Agency Deed of Trust and the Affordability Covenants which provide for the subordination of the Agency Deed of Trust

and the Affordability Covenants. The Senior Covenants shall remain superior to the Lender Deed of Trust.

4. Agency declares, agrees and acknowledges for the benefit of Lender, that:

(a) In accordance with Section 4.15.2 of the Agency Agreement, Agency consents to the Lender Loan.

(b) Lender, in making disbursements pursuant to the terms of the Lender Loan Agreement, is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom 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) Agency intentionally and unconditionally subordinates the priority of the Agency Deed of Trust and the Affordability Covenants and, except for the Senior Covenants, which shall remain superior to the Lender Loan Documents, subordinates all of Agency's right, title and interest in and to the Property and Improvements to the lien or charge of the Lender Deed of Trust upon the Property and Improvements, and subordinates all loans, grants, and advances of money pursuant thereto, together with all rights and privileges thereunder in favor of the Lender Loan Documents, including, without limitation, Agency's right to repayment of the Agency Loan to the prior right of Lender to repayment of the Lender Loan;

(d) Agency understands that in reliance upon, and in consideration of, the waiver, relinquishment and subordination, specific loans and advances are being and will be made by Lender 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;

(e) Agency agrees not to commence or join any other creditor of Borrower in commencing any bankruptcy, reorganization, or insolvency proceedings against Borrower;

(f) Until such time as the Lender Loan has been paid in full, Agency waives and releases any and all rights of subrogation for payment which it may have against the Property, which subrogation would result in Agency obtaining a monetary priority equal or superior to the priority of the Lender Loan Documents for any funds which Agency may advance either to cure defaults under the Lender Loan Documents or pay liens encumbering the Property or otherwise protect the lien of the Agency Loan Documents or any of them; and

(g) The provisions of this Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Lender Loan is rescinded or must otherwise be returned by Lender or any other recipient thereof, as the case may be, upon the insolvency, bankruptcy or reorganization of Borrower or otherwise, all as though such payment had not been made, and, if prior thereto, this Agreement shall have been canceled or surrendered (or if any lien or other collateral shall have been released or terminated, in connection with such cancellation or surrender), this Agreement (and such lien and collateral) shall be reinstated in full force and effect, and such prior cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the relative obligations of the parties to this Agreement.

5. Agency represents and warrants as of the date of this Agreement that: (i) the Agency Deed of Trust and the Agency Loan Documents are in full force and effect and have not been transferred or assigned; (ii) Agency has approved the plans and specifications for the Improvements; and (iii) to the actual knowledge of the Executive Director of the Agency, there are no defaults (or conditions or events which, with notice or the passage of time or both, would constitute a default) by Borrower under the Agency Deed of Trust or the other Agency Loan Documents;

6. Lender may, without affecting the subordination provided herein: (a) release or compromise any obligation of any nature with respect to the Lender Loan Documents; (b) release its security interest in, or surrender, release or permit any substitution or exchange of all or any part of any properties securing the Lender Note; or (c) retain or obtain a security interest in any property to secure payment of the Lender Note.

7. Borrower and/or Agency, as applicable, hereby confirms to and agrees with Lender as to the following:

(a) Agency has delivered to Lender true and complete copies of the Agency Loan Documents, and such documents have not been amended, modified or supplemented in any way, except as disclosed therein.

(b) Agency hereby consents to the Lender Loan and the execution and delivery by Borrower to Lender of the Lender Loan Documents and the Lender Loan Documents are a "Permitted Senior Lien" under the Agency Agreement. Agency and Borrower specifically acknowledge that, subject to completion of certain improvements on the Property and the satisfaction by Borrower of certain other conditions set forth in that certain Loan Purchase Agreement dated November 5, 2004, by and between WFB and California Community Reinvestment Corporation, a California nonprofit public benefit corporation ("CCRC"), CCRC shall purchase the Lender Loan from WFB. In connection with the transfer Borrower and CCRC will enter or have entered into the Loan Agreement and the Replacement Reserve Agreement. Agency hereby consents to the execution of those agreements. Upon such purchase, the Lender Loan will become non-recourse with certain exceptions and will automatically convert from an interest only construction loan into an amortizing term loan, with an interest rate as set forth in the Lender Note. Agency and Borrower acknowledge that upon the purchase of Lender Note by CCRC, the following Lender Loan Documents shall terminate:

- (i) Building Loan Agreement (except for Sections 8(d) and 12.1);
- (ii) All Completion Guaranties;
- (iii) All Repayment Guaranties;
- (iv) Security Agreement (Tax Credits);
- (v) UCC-1 (Tax Credits); and
- (vi) Security Agreement (Rights to Payment).

Other additional loan documents will be executed by Borrower in favor of CCRC upon CCRC's purchase off the Lender Loan Documents. Agency and Borrower consent to any transfer of the Lender Loan to CCRC and acknowledge that if CCRC should become the owner and holder of the Lender Loan and the Lender Note, then this Agreement shall continue to inure to the benefit of CCRC and its successors and assigns, who shall thereafter be deemed the "Lender" hereunder.

(c) Agency shall not without the prior consent of Lender (i) amend or modify the Agency Deed of Trust or the other Agency Loan Documents, or (ii) transfer or assign all or any part of the Agency Loan Documents. Such consent of Lender shall not be unreasonably withheld, delayed or conditioned.

(d) Agency agrees that in the event of a casualty to the buildings or improvements constructed on the Property or a condemnation or taking under a power of eminent domain of all or any portion of the Property, the buildings or improvements thereon, or a threat of such a condemnation or taking, all adjustments of insurance claims, condemnation claims and settlements in anticipation of such a condemnation or taking shall be prosecuted, at Lender's election, by Lender, and all payments and settlements of insurance claims or condemnation awards or payments in anticipation of condemnation or a taking shall be paid to Lender or at Lender's direction for use and application pursuant to the terms and provisions of the Lender Loan Documents; provided that if amounts are received by Lender in excess of the amounts owed to Lender, such excess amounts shall be paid to Agency until the Agency Loan is paid in full. Agency further agrees that if Lender releases to Borrower any insurance proceeds or condemnation awards for the purpose of restoration of the Property, such release shall not

be deemed an additional advance under the Lender Loan nor otherwise be deemed in violation of the Agency Loan Documents.

8. Lender agrees, but only as a separate and independent covenant of Lender and not as a condition to the continued effectiveness of the subordination and other covenants of Agency as set forth herein, that:

(a) Upon the delivery to Borrower of any written notice (a "Default Notice") of any default under the Lender Note or the Lender Deed of Trust, Lender shall concurrently send a copy of the Default Notice to Agency. It shall be the obligation of Agency to provide and update its addresses for notice purposes hereunder and Lender shall have no duty to verify the accuracy or completeness of such information. The rights of Agency to cure provided herein will not affect or delay the right of Lender to initiate the foreclosure process, including, without limitation, the filing of a notice of default or obtain a receiver and such cure period shall run concurrently with any time period provided by statute for foreclosure.

(b) Agency shall have sixty (60) days after the cure period as is available to Borrower pursuant to the Lender Loan Documents to cure the default described in the Default Notice. All amounts paid by Agency to Lender to cure a default or delinquency shall be deemed to have been advanced by Agency pursuant to, and shall be secured by the lien of, the Agency Agreement, the Agency Note and the Agency Deed of Trust executed pursuant thereto.

(c) Lender agrees that if Agency cures the default of Borrower within the time periods set forth in Section 9(b) and pays for all costs to rescind any Default Notice or dismiss the receiver (including, without limitation, Lender's attorney's fees and court costs), Lender will not exercise any right it may have to accelerate the obligations evidenced by the Lender Note or secured by the Lender Deed of Trust by reason of the defaults so cured by Agency. This Section 9(c) shall not be deemed to prohibit Lender from accelerating the obligations secured by the Lender Deed of Trust by reason of a later or other uncured default.

(d) The provisions of this Section 9 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.

(e) The property shall remain subject to all land use approvals affecting the Property, including without limitation the conditional use permit affecting the Property.

9. Agency (limited to the actual knowledge of its Executive Director as to item (iii) below) and Borrower each hereby represents and warrants as follows:

(a) Neither Agency nor Borrower has assigned or transferred, or agreed to assign or transfer, its interest in the Agency Agreement in whole or in part, except as set forth in Recital C hereof. A true, complete and correct copy of the Agency Agreement has been delivered to Lender.

(b) As of the date this Agreement is recorded, (i) the Agency Agreement is in full force and effect, (ii) the Agency Agreement is not void, voidable or terminable (except by its express terms in the event of a default) at the option of any party thereto or of any other person or entity claiming an interest in or to the Property, and (iii) there has been no default thereunder on the part of Borrower, nor has any event occurred which, with the giving of notice or the passage of time, or both, would be an event of default thereunder. Agency has not been informed of and has not otherwise received notice from Borrower or from any other person or entity concerning any alleged default on the part of the Agency under the Agency Agreement. There exist no defenses or offsets to enforcement of the Agency Agreement by Borrower.

(c) All terms and conditions of the Agency Agreement are set forth in the Agency Agreement delivered to Lender and represented by Borrower to be the Agency Agreement, and there have been no supplements, amendments, modifications, extensions or waivers thereof, except as provided in this Agreement.

(d) A breach or termination under the Agency Agreement shall not defeat or render invalid the lien of the Lender Deed of Trust.

10. Agency understands and agrees that in the event of a foreclosure under the Deed of Trust, or transfer of the Property and Improvements by an assignment or deed in lieu of foreclosure, or otherwise to Lender or any transferee in connection with a default by Borrower or any subsequent transfer (all of which are deemed Permitted Transfers under the Agency Agreement), that, except as set forth below, Lender or such transferee shall take title to the Property free and clear of the Affordability Covenants and the Agency Deed of Trust, and the Agency's rights thereunder, and Lender or such transferee may complete construction of the Improvements and transfer such Improvements free and clear of the (i) Agency Deed and rights to repayment of the Agency Note and the Agency Loan, and (ii) the Affordability Covenants. Borrower, Lender and Agency agree that the only restriction of the Agency Agreement and Regulatory Agreement on the use of the Property or Improvements after a foreclosure or a transfer by an assignment or deed in lieu of foreclosure by Lender will be the restriction that any Improvements constructed on the Property be used solely for a senior housing project, without being subject to the Affordability Covenants. Accordingly, after a foreclosure by Lender or a transfer to Lender by an assignment or deed in lieu of foreclosure, the Property shall be developed, used and maintained solely as senior housing. Agency, Lender and Borrower agree that upon a foreclosure, to execute any documents or quitclaim as may be required by a title company to insure title to the Property and Improvements free and clear of the Affordability Covenants and the Agency Deed of Trust and such rights to payment (but the Property shall continue to be subject to any covenants that it be developed, used and maintained solely as senior housing.) Agency further agrees that such transfer of the Property shall not be a default under the Agency Agreement or the Regulatory Agreement so long as the Property shall be developed, used and maintained solely as senior housing.

11. Agency agrees for the benefit of Lender that:

(a) Lender may enforce the provisions of the Agency Agreement that are included as lender protection provisions.

(b) Upon delivery of any written notice to Borrower of any default under the Agency Agreement, Agency shall concurrently send a copy of the default notice to Lender. It shall be the obligation of Lender to provide and update its addresses for notice purposes hereunder, and Agency shall have no duty to verify the accuracy or completeness of such information.

(c) Lender shall have the time provided in the Agency Agreement to cure such default described in the default notice. All amounts paid by Lender to Agency to cure a default or delinquency shall be deemed to have been advanced by Lender pursuant to, and shall be secured by the lien of, the Lender Deed of Trust. In the event Lender cannot in the exercise of reasonable diligence cure the breach or default within the time provided in the Agency Agreement, Lender shall have such additional time as necessary to cure such breach provided that acts to cure the breach or default are commenced within that time period after service of notice of default on Lender by Agency and thereafter are diligently continued by Lender.

12. All notices or other communications required or permitted to be given pursuant to the provisions hereof shall be deemed served upon delivery or, if mailed, upon the first to occur of receipt or the expiration of three (3) days after deposit in United States Postal Service, certified mail, postage prepaid and addressed to the address of Agency, Borrower or Lender appearing below:

Agency: ARROYO GRANDE REDEVELOPMENT AGENCY
214 East Branch Street
Arroyo Grande, CA 993421
Attn: Executive Director

Borrower: ARROYO-GRANDE , L.P.
30950 Rancho Viejo Road, Suite 100
San Juan Capistrano, CA 92675
Attn:

Lender: WELLS FARGO BANK, N.A.
Real Estate Group, MAC E2818-181
707 Wilshire Boulevard, 18th Floor
Los Angeles, CA 90017
Attn: Loan Administration
Loan No. 101201

provided, however, any party shall have the right to change its address for notice hereunder by the giving of written notice thereof the other parties in the manner set forth in this Agreement.

13. The covenants, agreements, rights and options contained in this Agreement may be specifically enforced.

14. No waiver shall be deemed to be made by any party of any of its rights hereunder unless it is in writing signed by such party. Each such waiver shall be a waiver only with respect to the specific instances involved and shall in no way impair the rights of such party or the obligations of such party to the other party in any other respect at any other time. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

15. Each party represents and warrants that (i) the individual or individuals executing this Agreement on behalf of such party have been duly and validly authorized to do so on behalf of such party with the full right and authority to execute this Agreement and to bind such party with respect to all of its obligations hereunder, (ii) this Agreement is a valid, binding and enforceable obligation of such party, and (iii) no consent of a third party is required to enter into this Agreement.

16. If any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed from this Agreement and the remaining parts shall remain in full force as though the invalid, illegal, or unenforceable portion had never been part of this Agreement.

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

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

19. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument.

20. Each of the parties hereto will, whenever and as often as they shall be requested to do so by the other, execute, acknowledge and deliver, or cause to be executed, acknowledged and 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.

21. In the event any legal action is commenced by any party hereto concerning this Agreement or the rights and duties hereunder of any party hereto, whether such action be an action for damages, equitable or declaratory relief, the prevailing party in such litigation shall be entitled to, in addition to all other relief as may be granted by the court, reasonable sums as and for attorneys' fees in an amount set by the court.

22. This Agreement is solely for the benefit of Lender and Agency and their respective successors and assigns, and neither Borrower nor any other persons or entities are intended to be third party beneficiaries hereunder or to have any right, benefit, priority, or interest under, or because of the existence of, or shall have any right to enforce, this Agreement.

23. This Agreement contains the entire understanding of the parties with respect to its subject matter and may not be modified or amended except by a writing signed by all parties.

24. This Agreement is one of the "Loan Documents" as that term is defined in the Lender Loan Agreement.

Exhibit A is attached hereto and incorporated herein by this reference.

[Remainder of Page Intentionally Left Blank]

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

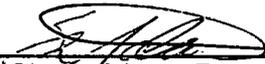
IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT HERETO.

AGENCY:

BANK:

ARROYO GRANDE REDEVELOPMENT AGENCY

**WELLS FARGO BANK,
NATIONAL ASSOCIATION**

By:  11/4/04
Steven Adams, Executive Director

By: 
Tonyal Brown
Its: Senior Vice President

Attest: 
Agency Secretary

"BORROWER"

COURTLAND-ARROYO GRANDE, L.P.,
a California limited partnership

By: FOUNDATION FOR AFFORDABLE
HOUSING II, INC., a California non-profit
public benefit corporation

Its: Managing General Partner

By: 
Thomas E. Willard, President

By: MFPA, INC., a California corporation

Its: Administrative General Partner

By: 
Sean Clark, Vice President

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

STATE OF CALIFORNIA)
COUNTY OF SAN LUIS OBISPO) ss.

On 11-4, 2004, before me, KELLY WETMORE, NOTARY PUBLIC
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

Personally appeared STEVEN ADAMS
Name of Signer(s)

personally known to me - OR -



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.

WITNESS my hand and official seal.

Kelly Wetmore
Signature of Notary Public

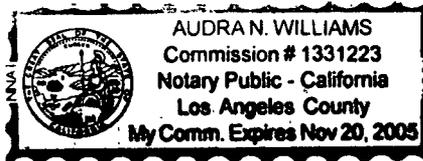
STATE OF CALIFORNIA)
COUNTY OF Los Angeles) ss.

On November 5, 2004, 2004, before me, Audra N. Williams
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

Personally appeared Thomas F. Willard
Name of Signer(s)

personally known to me - OR -

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.



WITNESS my hand and official seal.

Audra N. Williams
Signature of Notary Public

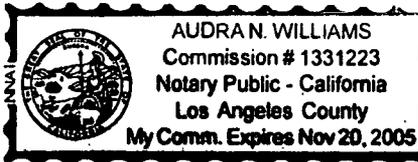
STATE OF CALIFORNIA)
COUNTY OF Los Angeles) ss.

On November 5, 2004, 2004, before me, Audra N. Williams
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

Personally appeared Sean Clark
Name of Signer(s)

personally known to me – OR –

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.



WITNESS my hand and official seal.

Audra N. Williams
Signature of Notary Public

STATE OF CALIFORNIA)
COUNTY OF Los Angeles) ss.

On November 5, 2004, before me, CHERYL CIZEK, Notary Public
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

Personally appeared TONYA BROWN
Name of Signer(s)

personally known to me - OR -

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.



WITNESS my hand and official seal.

Cheryl Cizek
Signature of Notary Public

CLARITY STATEMENT

I CERTIFY UNDER THE PENALTY OF PERJURY THAT THE WORDS
OBSURED BY THE NOTARY SEAL READS AS FOLLOWS:

Instrument
Executed
And
Person(s)
Acted
Witness

DATE: 11/08/04

LOCATION: SAN LUIS OBISPO, CALIFORNIA

FIRST AMERICAN TITLE INSURANCE CO.



Signature of Person Making Verification.

DESCRIPTION OF PROPERTY

Exhibit A to the SUBORDINATION AGREEMENT (Deed of Trust and Restrictions to Deed of Trust) ("Agreement"), by and among **COURTLAND-ARROYO GRANDE, L.P.**, a California limited partnership, hereinafter referred to as "Borrower," and **ARROYO GRANDE REDEVELOPMENT AGENCY**, a public body, corporate and politic, hereinafter referred to as "Agency," in favor of **WELLS FARGO BANK, NATIONAL ASSOCIATION**, ("WFB") and any successors or assigns and hereinafter referred to as "Lender," dated as of November 5, 2004.

All the certain real property located in the City of Arroyo Grande, County of San Luis Obispo, State of California, described as follows:

Parcel 1:

All of that real property described in the deed from Phillips-Smith Investment Company to Robert H. Newdoll and Merilee Peck Newdoll recorded April 5, 1990 in Book 3484 at Page 59 of Official Records.

EXCEPTING THEREFROM the southerly 231.84 feet, as measured along the easterly and westerly sidelines of the property described as Parcel 2 in said deed.

Said property is described in the Certificate of Compliance recorded November 27, 2002 as Document No. 2002104331 of Official Records.

Parcel 2:

Easements for sewer, water lines, storm drains, utility maintenance, retaining wall and construction as set forth in that certain Declaration of Development Covenants, Conditions and Restrictions and Grant of Easements recorded December 8, 2002 as Instrument No. 2002-107107, as amended by First Amendment thereto recorded February 2, 2003 as Instrument No. 2003-016695, both of Official Records.

A.P.N.: 077-071-24