

WHEN RECORDED MAIL TO:

U.S. Bank National Association  
345 California Street, 6th Floor  
San Francisco, CA 94104  
Attention: Loan Administration

(SPACE ABOVE FOR RECORDER'S USE)

## SUBORDINATION AGREEMENT

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

THIS SUBORDINATION AGREEMENT ("**Agreement**") is made as of \_\_\_\_\_, 2014, by and among **WESTGATE COMMUNITY ASSOCIATES, L.P.**, a California limited partnership ("**Borrower**"), the **CITY OF STOCKTON**, a municipal corporation ("**Junior Lienholder**"), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association ("**Bank**").

### RECITALS

A. Borrower owns and intends to rehabilitate a 40-unit affordable housing apartment project at 6119 Danny Drive, Stockton, California (the "**Project**"), located on the land legally described on Exhibit A attached hereto and incorporated herein.

B. Borrower has applied to Bank for two loans (the "**Loans**") in the aggregate maximum principal amount of [\$4,715,142.00], for the purpose of financing a portion of the costs of the acquisition and rehabilitation of the Project, which consists of a construction loan in the original principal amount of [\$4,077,542.00] and a convertible term loan in the original principal amount of [\$637,600.00].

C. Borrower and Bank have entered into that Construction and Convertible Term Loan Agreement dated as of the date hereof (as the same from time to time be amended, modified, extended, renewed or restated, the "**Loan Agreement**").

D. Borrower's obligations to repay the Loans are further evidenced by two Promissory Notes dated as of even date herewith, executed by Borrower in the original principal amount of [\$637,600.00] (the "**Term Note**") and [\$4,077,542.00] (the "**Construction Note**") and payable to Bank (collectively, the "**Notes**").

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

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

G. Borrower's obligations to Bank under the Notes are secured by, among other things, (i) that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing ("**Senior Deed of Trust**"), dated as of even date herewith, made by Borrower for the benefit of Bank and (ii) the Loan Documents described in the Loan Agreement. The Senior Deed of Trust is being recorded substantially concurrently herewith in the Office of the County of San Joaquin, State of California ("**Official Records**"). The Senior Deed of Trust, the Notes and the other Loan Documents (as defined in the Loan Agreement) are hereinafter collectively referred to as the "**Senior Loan Documents**".

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

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

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

K. Bank is willing to permit the recordation of the recordable Junior Obligation Documents, provided that (1) the Senior Deed of Trust and the other Senior Loan Documents are a lien or charge upon the Property prior and superior to the liens or charges of the Junior Obligation Documents, and (2) Junior Lienholder will specifically subordinate the liens or charges of the Junior Obligation Documents to the lien or charge of the Senior Loan Documents.

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

M. Capitalized terms used herein and not otherwise defined shall have the meanings set forth for them in the Loan Agreement.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, and in order to induce Bank to make the "**Loan**" described in the Notes, it is hereby declared, understood, and agreed as follows:

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

obligations are being and will be entered into which would not be made or entered into but for said reliance upon this subordination.

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

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

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

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

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

5.2 Permitted Payments. Borrower may make payments under the Junior Obligation Documents, if required, as long as all payments under the Senior Deed of Trust and the other Senior Loan Documents are current and not delinquent or in arrears, and only so long as at the time of such payment: (i) no Event of Default exists under the Loan Agreement and no event exists which, with the lapse of time or the giving of notice or both, would be an Event of Default under the Bank Indebtedness of which Junior Lienholder has received notice; and (ii) the payment would not result in a violation of any of Borrower's financial covenants set forth in any of the documents evidencing the Bank Loans ("**Permitted Payments**").

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

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

5.5 Repayment of Bank Indebtedness. This Agreement shall remain in full force and effect until all all amounts due under the Notes and the Loan Agreement is fully repaid in accordance with its terms and all of the terms of this Agreement have been complied with.

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

## 6. Bank Agreements.

6.1 Bank agrees that it shall not complete a foreclosure sale of the Property or record a deed-in-lieu of foreclosure with respect to the Property (each, a "**Foreclosure Remedy**") unless Junior Lienholder has first been given thirty (30) days written notice of the Event(s) of Default giving Bank the right to complete such Foreclosure Remedy, and unless Junior Lienholder has failed, within such thirty (30) day period, to cure such Event(s) of Default; provided, however, that Bank shall be entitled during such thirty (30) day period to continue to pursue all of its rights and remedies under the Loan Documents, including, but not limited to, acceleration of the Loans (subject to any de-acceleration provisions specifically set forth in the Senior Loan Documents), commencement and pursuit of a judicial or non-judicial foreclosure (but not completion of the foreclosure sale), appointment of a receiver, enforcement of any guaranty (subject to any notice and cure provisions contained therein), and/or enforcement of any other Senior Loan Document. In the event Bank has accelerated the Senior Loan and Junior Lienholder cures all Events of Default giving rise to such acceleration within the thirty (30) day cure period described above, such cure shall have the effect of de-accelerating the Loans; provided, however, that such de-acceleration shall not waive or limit any of Bank's rights to accelerate the Loans or exercise any other remedies under the Senior Loan Documents as to any future or continuing Events of Default. It is the express intent of the parties hereunder that Bank shall have the right to pursue all rights and remedies except completion of a Foreclosure Remedy without liability to Junior Lienholder for failure to provide timely notice to Junior Lienholder required hereunder, and that Bank's liability hereunder shall be expressly limited to actual and consequential damages to Junior Lienholder directly caused by Bank's completion of a Foreclosure Remedy without Junior Lienholder receiving the notice and opportunity to cure described above. Bank shall give Junior Lienholder notice at the address set forth below or such other address as Junior Lienholder may instruct Bank in writing from time to time:

City of Stockton  
Economic Development Department  
425 North El Dorado Street, Third Floor  
Stockton, CA 95202  
Attention: Director

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

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

8. Casualty Insurance Proceeds; Condemnation Proceeds. In the event Bank shall release, for the purposes of restoration of all or any part of the improvements, its right, title and interest in and to the proceeds under policies of insurance thereon, and/or its right, title and interest in and to any awards, or its right, title and interest in and to other compensation made for any damages, losses or compensation for other rights by reason of a taking in eminent domain, Junior Lienholder shall simultaneously release (and hereby agrees that it shall be irrevocably and unconditionally deemed to have agreed to release) for such purpose all of Junior Lienholder's right, title and interest, if any, in and to all such insurance proceeds, awards or compensation. Junior Lienholder agrees that the balance of such proceeds remaining after such restoration, or all of such proceeds in the event Bank elects, in accordance with <4> law, not to release any such proceeds for any such restoration, shall be applied to the payment of amounts due under the Senior Loan Documents until all such amounts have been paid in full, prior to being applied to the payment of any amounts due under the Junior Obligation Documents. If Bank holds such proceeds, awards or compensation and/or monitors the disbursement thereof, Junior Lienholder agrees that Bank may also elect, in its sole and absolute discretion, to hold and monitor the disbursement of such proceeds, awards and compensation to which Junior Lienholder is or may be entitled. Nothing contained in this Agreement shall be deemed to require Bank, in any way whatsoever, to act for or on behalf of Junior Lienholder or to hold or monitor any proceeds, awards or compensation in trust for or on behalf of Junior Lienholder, and all or any of such sums so held or monitored may be commingled with any funds of Bank.

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

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

*[Signature Pages Follow]*

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

**JUNIOR LIENHOLDER:**

CITY OF STOCKTON, a municipal corporation

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

Name: Kurt O. Wilson

Title: City Manager

ATTEST:

\_\_\_\_\_  
Bonnie Page, City Clerk of the City of Stockton

APPROVED AS TO FORM:

JOHN M. LUEBBERKE, CITY ATTORNEY

\_\_\_\_\_

**BORROWER:**

WESTGATE COMMUNITY ASSOCIATES, L.P.,  
a California limited partnership

By: Westgate Community Associates LLC,  
a California limited liability company  
Its: General Partner

By: Visionary Home Builders of  
California, Inc., a California nonprofit  
public benefit corporation  
Its: Sole Member

By: \_\_\_\_\_  
Name: Carol J. Ornelas  
Title: Chief Executive Officer

**BANK:**

U.S. BANK NATIONAL ASSOCIATION, a  
national banking association

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

Name: Andre P. Massey

Title: Vice President

STATE OF CALIFORNIA                     )  
                                                           )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, (insert name and title of the officer) \_\_\_\_\_, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

My commission expires \_\_\_\_\_.

STATE OF CALIFORNIA                    )  
                                                          )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, (insert name and title of the officer) \_\_\_\_\_, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

My commission expires \_\_\_\_\_.

STATE OF CALIFORNIA                    )  
                                                          )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, (insert name and title of the officer) \_\_\_\_\_, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

My commission expires \_\_\_\_\_.

**EXHIBIT A**  
**LEGAL DESCRIPTION**

**EXHIBIT B**

**JUNIOR OBLIGATION DOCUMENTS**

1. Loan Agreement dated as of July 25, 1994 by and among Junior Lienholder, Westgate Townhomes Associates, a California Limited Partnership, as Borrower's predecessor-in-interest.
2. Deed of Trust and Security Agreement dated as of July 25, 1994 executed by Westgate Townhomes Associates, a California Limited Partnership, as Borrower's predecessor-in-interest, in favor of Junior Lienholder, recorded October 31, 1994 in the Official Records as Instrument No. 94119661.
3. Promissory Note Secured by Deed of Trust (HOME Loan) dated as of September 29, 1994 executed by Westgate Townhomes Associates, a California Limited Partnership, as Borrower's predecessor-in-interest, in favor of Junior Lienholder, in the face principal amount of \$1,055,000.00.
4. Promissory Note Secured by Deed of Trust (CDBG Loan) dated as of September 29, 1994 executed by Westgate Townhomes Associates, a California Limited Partnership, as Borrower's predecessor-in-interest, in favor of Junior Lienholder, in the face principal amount of \$500,000.00.
5. Regulatory Agreement and Declaration of Restrictive Covenants dated as of July 25, 1994 by and among Westgate Townhomes Associates, a California Limited Partnership, as Borrower's predecessor-in-interest, and Junior Lienholder, recorded October 31, 1994 in the Official Records as Instrument No. 94119662.
6. Assignment and Assumption Agreement dated on or about the date hereof, by and among Westgate Townhomes Associates, a California Limited Partnership, Borrower and Junior Lienholder, to be recorded in the Official Records concurrently herewith.