

WHEN RECORDED MAIL TO:

Office of Economic Development
Attention: Haley Jordahl
201 W. Colfax Ave., Dept. 204
Denver, CO 80202

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

AMENDMENT AND MODIFICATION AGREEMENT

THIS AMENDMENT AND MODIFICATION AGREEMENT (this "Amendment") is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado ("City"), and **SABLE RIDGE APARTMENTS, LLC**, a Colorado limited liability company, whose address is 2800 Monaco Parkway, Denver, Colorado 80207 ("Borrower") (together, the "Parties").

WITNESSETH:

WHEREAS, the Parties entered into that certain Loan Agreement dated November 17, 2016, relating to a loan of \$3,500,000 to develop an affordable housing project known as Sable Ridge Apartments (the "Loan Agreement"); and

WHEREAS, Borrower executed that certain deed of trust (the "Deed of Trust") for the benefit of the City, dated May 1, 2017, and recorded on May 11, 2017 at Reception No. 2017062534 of the records of City and County of Denver, State of Colorado, and that certain Rental and Occupancy Covenant (the "Covenant") dated May 1, 2017, and recorded on May 11, 2017 at Reception No. 2017062533 of the records of the City and County of Denver, State of Colorado, each encumbering the following described property:

Parcel One:

Lot 6, Sable Ridge Development, Filing No. 1, City and County of Denver, State of Colorado.

Parcel Two:

Non-exclusive easement for the purpose of pedestrian and vehicular ingress and egress, as set forth and subject to the Declaration of Covenants, Conditions and Restrictions for Sable Ridge Plaza recorded February 2, 2002 at Reception No. 2002040406, City and County of Denver, State of Colorado.

also known and numbered as 4210 North Fraser Way, Denver Colorado (formerly 4203 Chambers Road, Denver, Colorado); and

WHEREAS, the Deed of Trust and the Covenant secure the repayment of the indebtedness evidenced by that certain Promissory Note dated May 1, 2017 (the "Note"); and

WHEREAS, the Parties wish to modify the terms and conditions of the Loan Agreement, Note, Covenant, Deed of Trust, and any other documents evidencing or securing the City's loan (together, the "Loan Documents"), to modify the terms of the subordination agreement contained therein;

NOW, THEREFORE, in consideration of the premises herein contained and other good and valuable consideration, the adequacy of which is acknowledged, the Parties hereby modify the Loan Documents as follows:

1. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Loan Agreement.

2. The Loan Agreement hereby amended as follows:

a. Section 1 of Exhibit D of the Loan Agreement is amended to insert the following:

“(v) “**Surplus Cash**” means, with respect to any period, any revenues of Borrower remaining after paying, or setting aside funds for paying, all of the following:

(i) All sums due or currently required to be paid under the Senior Loan Documents, including any amounts required by the Senior Lender to be escrowed for the purposes of payment of insurance premiums, taxes or payments in lieu of taxes, water and sewer charges, ground rents, or other assessments or charges that could result in a lien on the Mortgaged Property.

(ii) All deposits to any replacement reserve, completion/repair reserve or other reserve or escrow required by the Senior Loan Documents that are due or currently payable.

(iii) All reasonable operating expenses of the Mortgaged Property, including real estate taxes, insurance premiums, utilities, building maintenance, painting and repairs, management fees, payroll, administrative expenses, legal expenses and audit expenses (excluding any developer fees payable with respect to the Mortgaged Property).”

b. The first sentence of Section 2.b. of Exhibit D of the Loan Agreement is amended as follows:

“Until the occurrence of a Senior Mortgage Default, Subordinate Mortgagee will be entitled to retain for its own account all payments made on account of the principal of and interest on the Subordinate Indebtedness in accordance with the requirements of the Subordinate Loan Documents; provided no such payment exceeds 75% of then available Surplus Cash.”

c. Section 2.f. of Exhibit D of the Loan Agreement is amended as follows:

“In addition to the limitations set forth above, Subordinate Mortgagee agrees that the Subordinate Indebtedness will be payable solely from not more than 75% of Surplus Cash while the Senior Indebtedness remains outstanding.”

3. A new **Exhibit D-1** reflecting the amendments set forth in Section 2 of this Amendment is attached hereto. All references to “**Exhibit D**” in the Loan Agreement shall be amended to read “**Exhibit D-1**”.

4. For the avoidance of doubt, the Executive Director of the of OED or permitted designee, is authorized to execute the Amended and Restated Subordination Agreement attached hereto as **Exhibit D-1** so long as the conditions set forth in Section 3 of the Loan Agreement are satisfied.

5. The Loan Documents are amended to reflect the amended terms of the Loan Agreement.

6. Borrower consents to the use of electronic signatures by the City. The Amendment, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Amendment solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Amendment in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

7. Except as modified herein, the Loan Documents remain unmodified.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



SABLE RIDGE APARTMENTS, LLC, a
Colorado limited liability company
IRS No. 81-1628157

By: X *Kenneth A. Walker*

Title: Managing Member

“BORROWER”

STATE OF COLORADO)
) ss.
CITY & COUNTY OF DENVER)

Acknowledged before me this 17th day of May, 2017, by *Kenneth A. Walker* as *managing member* of Sable Ridge Apartments, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: *3/10/21*

Lori Meredith Gabow
Notary Public

LORI MEREDITH GABOW
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20094007209
COMMISSION EXPIRES MARCH 10, 2021



Contract Control Number: OEDEV-201629086-01

Contractor Name: SABLE RIDGE APARTMENTS LLC

By: Kenneth A. Walker

Name: Kenneth A Walker
(please print)

Title: Managing Member
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



EXHIBIT D-1
FORM OF AMENDED AND RESTATED SUBORDINATION AGREEMENT

Freddie Mac Loan Number: _____

Property Name: _____

SUBORDINATION AGREEMENT

GOVERNMENTAL ENTITY

(Direct Purchase of Tax-Exempt Loans)

(Revised 9/1/2014)

THIS SUBORDINATION AGREEMENT (“**Agreement**”) is entered into this 1st day of July, 2016, by and between WILMINGTON TRUST, NATIONAL ASSOCIATION, a national banking association (“**Senior Mortgagee**”), and the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado (“**Subordinate Mortgagee**”).

RECITALS

- A. SABLE RIDGE APARTMENTS, LLC, a limited liability company organized under the laws of the State of Colorado (“**Borrower**”) is the owner of certain land located in the City and County of Denver, Colorado, described in Exhibit A (“**Land**”). The Land is to be improved with a multifamily rental housing project (“**Improvements**”).
- B. COLORADO HOUSING AND FINANCE AUTHORITY, a body corporate and political subdivision of the State of Colorado (“**Governmental Lender**”), the original holder of the Senior Note, has made a loan to Borrower in the original principal amount of [\$ _____] (“**Senior Loan**”) upon the terms and conditions of a Project Loan Agreement dated as of _____ 1, 2016 (“**Senior Loan Agreement**”) among Governmental Lender, Senior Mortgagee (in its capacity as Fiscal Agent under the Funding Loan Agreement (defined below)) and Borrower in connection with the Mortgaged Property. The Senior Loan is secured by a Construction Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of _____ 1, 2016 (“**Senior Mortgage**”) encumbering the Land, the Improvements and related personal and other property described and defined in the Senior Mortgage as the “**Mortgaged Property.**”
- C. Pursuant to a Loan Agreement dated _____, 2016, between Subordinate Mortgagee and Borrower (“**Subordinate Loan Agreement**”), Subordinate Mortgagee has made or is making a loan to Borrower in the original principal amount of \$1,000,000 (“**Subordinate Loan**”). The Subordinate Loan is or will be secured by a Deed of Trust dated _____, 2016 (“**Subordinate Deed of Trust**”) encumbering all or a portion of the Mortgaged Property.

- D. The Senior Mortgage will be recorded in the Official Records of the City and County of Denver Clerk and Recorder (“**Recording Office**”) prior to recordation of this Agreement. The Subordinate Deed of Trust will be recorded in the Recording Office following the recording of the Senior Mortgage.
- E. The Senior Note was assigned by the Governmental Lender to Senior Mortgagee as security for the loan made by the Initial Funding Lender (as defined below) to the Governmental Lender pursuant to the Funding Loan Agreement (the “**Funding Loan**”). The Senior Mortgage was assigned by the Governmental Lender to Senior Mortgagee as security for the Funding Loan pursuant to an Assignment of Deed of Trust and Related Documents dated of even date herewith to be recorded contemporaneously herewith.
- F. Subject to the terms and conditions of that certain Construction Phase Financing Agreement (the “**Construction Phase Financing Agreement**”) dated as of ____ 1, 2016, between Borrower, Bank of the West, a California banking corporation (“**Initial Funding Lender**”), Federal Home Loan Mortgage Corporation and Greystone Servicing Corporation, a Delaware corporation (“**Permanent Funding Lender**”), Initial Funding Lender shall subsequently assign (without recourse) and deliver the documents comprising the Funding Loan to the Permanent Funding Lender and, in connection therewith, the Senior Note (as defined herein) and the Senior Mortgage will be amended and restated, and thereafter assigned to the Fiscal Agent (“**Conversion**”).
- G. Pursuant to Section 8.17 of the Senior Mortgage and Section 6.03 of the Funding Loan Agreement dated as of _____ 1, 2016, among Initial Funding Lender, Governmental Lender and Senior Mortgagee (the “**Funding Loan Agreement**”), the Funding Lender has the right to direct all actions of the Senior Mortgagee with respect to the Senior Mortgage, the Mortgaged Property and the Senior Loan Agreement and, upon Conversion, shall have the right to amend and restate the Senior Note and the Senior Mortgage, as well as the right to amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provision of any of the Senior Loan Documents (as defined herein), without notice to or the consent or joinder of the Subordinate Mortgagee.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Definitions.** The following terms, when used in this Agreement (including, as appropriate, when used in the above recitals), will have the following meanings.
 - (a) The terms “**Condemnation**,” “**Imposition Reserve Deposits**,” “**Impositions**,” “**Leases**,” “**Rents**” and “**Restoration**,” as well as any term used in this Agreement and not otherwise defined in this Agreement, will have the meanings given to those terms in the Continuing Covenant Agreement attached as Exhibit J to the Construction Phase Financing Agreement (“**Continuing Covenant Agreement**”).
 - (b) “**Bankruptcy Proceeding**” means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law

with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.

- (c) **“Borrower”** means all persons or entities identified as “Borrower” in the first Recital of this Agreement, together with their successors and assigns, and any other person or entity who acquires title to the Mortgaged Property after the date of this Agreement; provided that the term “Borrower” will not include Senior Mortgagee or Funding Lender if Senior Mortgagee or Funding Lender acquires title to the Mortgaged Property.
- (d) **“Casualty”** means the occurrence of damage to or loss of all or any portion of the Mortgaged Property by fire or other casualty.
- (e) **“Enforcement Action”** means any of the following actions taken by or at the direction of Subordinate Mortgagee solely pursuant to the Subordinate Mortgagee's rights under the Subordinate Loan Agreement: the acceleration of all or any part of the Subordinate Indebtedness, the advertising of or commencement of any foreclosure or trustee's sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of Rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Subordinate Note or any other of the Subordinate Loan Documents, the exercising of any rights of set-off or recoupment or the exercise of any other remedial action against Borrower.
- (f) **“Enforcement Action Notice”** means a written Notice from Subordinate Mortgagee to Funding Lender, given following one or more Subordinate Deed of Trust Default(s) and the expiration of any Notice or cure periods provided for such Subordinate Deed of Trust Default(s) in the Subordinate Loan Documents, setting forth in reasonable detail the Subordinate Deed of Trust Default(s) and the Enforcement Actions proposed to be taken by Subordinate Mortgagee.
- (g) **“Funding Lender”** shall mean Initial Funding Lender prior to Conversion and Permanent Funding Lender from and after Conversion, together with their respective successors and assigns.
- (h) **“Governmental Note”** means the Multifamily Note delivered by the Governmental Lender evidencing the Funding Loan.
- (i) **“Loss Proceeds”** means all monies received or to be received under any insurance policy, from any condemning authority, or from any other source, as a result of any Condemnation or Casualty.
- (j) **“Notice”** is defined in Section 6(d).
- (k) **“Rental and Occupancy Covenant”** means that certain Rental and Occupancy Covenant dated as of _____, 2016, made by Borrower for the benefit of the Subordinate

Mortgagee, as the same may from time to time be extended, consolidated, substituted for, modified, amended or supplemented.

- (l) “**Senior Indebtedness**” means the “Indebtedness” of Borrower as evidenced by the Senior Loan Documents.
- (m) “**Senior Loan Documents**” means the “Project Loan Documents” as defined in the Funding Loan Agreement.
- (n) “**Senior Mortgage Default**” means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of Notice or the passage of time, or both, would constitute, an “Event of Default” as defined in the Senior Loan Documents.
- (o) “**Senior Mortgagee**” means the person or entity name as such in the first paragraph of this Agreement. When any other person or entity becomes the legal holder of the Senior Note, such other person or entity automatically will become Senior Mortgagee.
- (p) “**Senior Note**” means the Project Note as defined in the Funding Loan Agreement.
- (q) “**Subordinate Indebtedness**” means all indebtedness of any kind at any time evidenced or secured by, or arising under, the Subordinate Loan Documents, whether incurred, arising or accruing before or after the filing of any Bankruptcy Proceeding.
- (r) “**Subordinate Loan Documents**” means the Subordinate Deed of Trust, the Subordinate Note, the Subordinate Loan Agreement, the Rental and Occupancy Covenant and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness, as the same may be amended.
- (s) “**Subordinate Deed of Trust Default**” means any act, failure to act, event, condition, or occurrence which allows (but for any contrary provision of this Agreement), or which with the giving of Notice or the passage of time, or both, would allow (but for any contrary provision of this Agreement), Subordinate Mortgagee to take an Enforcement Action.
- (t) “**Subordinate Mortgagee**” means the entity named as such in the first paragraph of this Agreement and any other person or entity who becomes the legal holder of the Subordinate Note after the date of this Agreement.
- (u) “**Subordinate Note**” means the promissory note or other evidence of the Subordinate Indebtedness referred to in the Subordinate Deed of Trust and any replacement of the Subordinate Note.
- (v) “**Surplus Cash**” means, with respect to any period, any revenues of Borrower remaining after paying, or setting aside funds for paying, all of the following:
 - (i) All sums due or currently required to be paid under the Senior Loan Documents, including any amounts required by the Senior Lender to be escrowed for the purposes of payment of insurance premiums, taxes or payments in lieu of taxes,

water and sewer charges, ground rents, or other assessments or charges that could result in a lien on the Mortgaged Property.

- (ii) All deposits to any replacement reserve, completion/repair reserve or other reserve or escrow required by the Senior Loan Documents that are due or currently payable.
- (iii) All reasonable operating expenses of the Mortgaged Property, including real estate taxes, insurance premiums, utilities, building maintenance, painting and repairs, management fees, payroll, administrative expenses, legal expenses and audit expenses (excluding any developer fees payable with respect to the Mortgaged Property).

2. Subordination of Subordinate Indebtedness.

- (a) The Subordinate Indebtedness is and will at all times continue to be subject and subordinate in right of payment to the prior payment in full of the Senior Indebtedness.
- (b) Until the occurrence of a Senior Mortgage Default, Subordinate Mortgagee will be entitled to retain for its own account all payments made on account of the principal of and interest on the Subordinate Indebtedness in accordance with the requirements of the Subordinate Loan Documents; provided no such payment exceeds 75% of then available Surplus Cash. Subordinate Mortgagee acknowledges that a Subordinate Deed of Trust Default constitutes a Senior Mortgage Default. Accordingly, upon the occurrence of a Subordinate Deed of Trust Default, Subordinate Mortgagee will be deemed to have actual knowledge of a Senior Mortgage Default.
- (c) Reserved.
- (d) Reserved.
- (e) The subordination of the Subordinate Indebtedness will continue if any payment under the Senior Loan Documents (whether by or on behalf of Borrower, as proceeds of security or enforcement of any right of set-off or otherwise) is for any reason repaid or returned to Borrower or its insolvent estate, or avoided, set aside or required to be paid to Borrower, a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law.
- (f) In addition to the limitations set forth above, Subordinate Mortgagee agrees that the Subordinate Indebtedness will be payable solely from not more than 75% of Surplus Cash while the Senior Indebtedness remains outstanding.

3. Subordination of Subordinate Loan Documents.

- (a) Each of the Subordinate Loan Documents is, and will at all times remain, subject and subordinate in all respects to the liens, terms, covenants, conditions, operations, and effects of each of the Senior Loan Documents.
- (b) The subordination of the Subordinate Loan Documents and of the Subordinate Indebtedness will apply and continue notwithstanding (i) the actual date and time of

execution, delivery, recording, filing or perfection of each of the Senior Loan Documents and of each of the Subordinate Loan Documents, (ii) the availability of any collateral to Senior Mortgagee or Funding Lender, including the availability of any collateral other than the Mortgaged Property and (iii) the amendment and restatement of the Senior Note and the Senior Mortgage at Conversion, so long as such amounts do not exceed \$12,000,000.

- (c) By reason of, and without in any way limiting, the full subordination of the Subordinate Indebtedness and the Subordinate Loan Documents provided for in this Agreement, all rights and claims of Subordinate Mortgagee arising under the Subordinate Loan Documents in or to all or any portion of the Mortgaged Property are expressly subject and subordinate in all respects to the rights and claims of Senior Mortgagee or Funding Lender under the Senior Loan Documents in or to the Mortgaged Property.
- (d) If Subordinate Mortgagee, by indemnification, subrogation or otherwise exercising its rights arising solely under the Subordinate Loan Documents, acquires any lien, estate, right or other interest in any of the Mortgaged Property, then that lien, estate, right or other interest will be fully subject and subordinate to the receipt by Senior Mortgagee or Funding Lender of payment in full of the Senior Indebtedness, and to the Senior Loan Documents, to the same extent as the Subordinate Indebtedness and the Subordinate Loan Documents are subordinate pursuant to this Agreement.
- (e) Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by Subordinate Mortgagee of its governmental powers (including police, regulatory and taxing powers) with respect to Borrower or the Mortgaged Property to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.

4. Additional Representations and Covenants.

- (a) Subordinate Mortgagee represents and warrants that each of the following is true:
 - i. Subordinate Mortgagee is now the owner and holder of the Subordinate Loan Documents.
 - ii. The Subordinate Loan Documents are now in full force and effect.
 - iii. The Subordinate Loan Documents have not been modified or amended.
 - iv. No Subordinate Deed of Trust Default has occurred.
 - v. The current unpaid principal balance of the Subordinate Indebtedness is \$1,000,000.
 - vi. No scheduled annual payments under the Subordinate Note have been prepaid.

- vii. None of the rights of Subordinate Mortgagee under any of the Subordinate Loan Documents are subject to the rights of any third parties, by way of subrogation, indemnification or otherwise.
- (b) Without the prior written consent of Funding Lender in each instance, Borrower will not do any of the following:
 - i. Amend, modify, waive, extend, renew, or replace any provision of any of the Subordinate Loan Documents to the extent such modification would have a material adverse affect on Senior Lender or the Senior Indebtedness.
 - ii. Request that the Subordinate Mortgagee take any action which has the effect of increasing the Subordinate Indebtedness.
 - iii. Take any action concerning environmental matters affecting the Mortgaged Property.
- (c) Subordinate Mortgagee will deliver to Funding Lender a copy of each Notice received or delivered by Subordinate Mortgagee pursuant to the Subordinate Loan Documents or in connection with the Subordinate Indebtedness, simultaneously with Subordinate Mortgagee's delivery or receipt of such Notice. Funding Lender will deliver to Subordinate Mortgagee in the manner required in Section 5(b) a copy of each Notice of a Senior Mortgage Default delivered to Borrower by Funding Lender. Neither giving nor failing to give a Notice to Funding Lender or Subordinate Mortgagee pursuant to this Section 4(c) will affect the validity of any Notice given by Funding Lender or Subordinate Mortgagee to Borrower, as between Borrower and such of Funding Lender or Subordinate Mortgagee as provided the Notice to Borrower.
- (d) Without the prior written consent of Funding Lender in each instance, Subordinate Mortgagee will not commence, or join with any other creditor in commencing, any Bankruptcy Proceeding.
- (e) Reserved.
- (f) All original policies of insurance required pursuant to the Senior Loan Documents will be held by Funding Lender. Nothing in this Section 4(f) will preclude Subordinate Mortgagee from requiring that (a) it be named as a mortgagee and loss payee, as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to the Mortgaged Property, provided such action does not affect the priority of payment of Loss Proceeds, or (b) that Subordinate Mortgagee be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property.
- (g) In the event of a Condemnation or a Casualty, all of the following provisions will apply:
 - i. The rights of Subordinate Mortgagee (solely under the Subordinate Loan Documents) to participate in any proceeding or action relating to a

Condemnation or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation or a Casualty, will be and remain subordinate in all respects to Senior Mortgagee's and Funding Lender's rights under the Senior Loan Documents with respect thereto.

- ii. All Loss Proceeds will be applied either to payment of the costs and expenses of Restoration or to payment on account of the Senior Indebtedness, as and in the manner determined by Funding Lender in its sole discretion, up to the amount of the outstanding Senior Indebtedness. Subordinate Mortgagee may apply remaining Loss Proceeds in the manner determined by Subordinate Mortgagee, in its sole discretion.
- iii. If Funding Lender applies or releases Loss Proceeds for the purposes of Restoration of the Mortgaged Property, then Subordinate Mortgagee will release for such purpose all of its right, title and interest, if any, in and to such Loss Proceeds. If Funding Lender holds Loss Proceeds, or monitors the disbursement thereof, Subordinate Mortgagee will not do so. Nothing contained in this Agreement will be deemed to require Funding Lender to act for or on behalf of Subordinate Mortgagee in connection with any Restoration or to hold or monitor any Loss Proceeds in trust for or otherwise on behalf of Subordinate Mortgagee, and all or any Loss Proceeds up to the total amount of the outstanding Senior Indebtedness may be commingled with any funds of Funding Lender.
- iv. If Funding Lender elects to apply Loss Proceeds to payment on account of the Senior Indebtedness, and if the application of such Loss Proceeds results in the payment in full of the entire Senior Indebtedness, any remaining Loss Proceeds held by Funding Lender will be paid to Subordinate Mortgagee unless another party has asserted a claim to the remaining Loss Proceeds.

(h) Reserved.

- (i) Except as provided in this Section 4(i), and regardless of any contrary provision in the Subordinate Loan Documents, Subordinate Mortgagee will not collect payments for the purpose of escrowing for any cost or expense related to the Mortgaged Property or for any portion of the Subordinate Indebtedness solely as may be secured by, or arising under the Subordinate Loan Documents. However, if Funding Lender is not collecting escrow payments for one or more Impositions, Subordinate Mortgagee may collect escrow payments for such Impositions; provided that all payments so collected by Subordinate Mortgagee will be held in trust by Subordinate Mortgagee to be applied only to the payment of such Impositions.
- (j) Within 10 days after request by Funding Lender, Subordinate Mortgagee will furnish Funding Lender with a statement, duly acknowledged and certified setting forth the then-current amount and terms of the Subordinate Indebtedness, confirming that there exists

no default under the Subordinate Loan Documents (or describing any default that does exist), and certifying to such other information with respect to the Subordinate Indebtedness as Funding Lender may request.

- (k) Senior Mortgagee or Funding Lender may amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provision of any of the Senior Loan Documents without the necessity of obtaining the consent of or providing Notice to Subordinate Mortgagee, and without affecting any of the provisions of this Agreement. Notwithstanding the foregoing, neither Senior Mortgagee nor Funding Lender may modify any provision of the Senior Loan Documents that increases the Senior Indebtedness, except for increases in the Senior Indebtedness that result from advances made by Senior Mortgagee or Funding Lender to protect the security or lien priority of Senior Mortgagee or Funding Lender under the Senior Loan Documents or to cure defaults under the Subordinate Loan Documents so long as such amounts do not exceed \$12,000,000.

5. Default Under Loan Documents.

- (a) For a period of 90 days following delivery to Funding Lender of an Enforcement Action Notice, Funding Lender will have the right, but not the obligation, to cure any Subordinate Deed of Trust Default, provided that if such Subordinate Deed of Trust Default is a non-monetary default and is not capable of being cured within such 90-day period and Funding Lender has commenced and is diligently pursuing such cure to completion, Funding Lender will have such additional period of time as may be requested in writing and consented to by the Subordinate Mortgagee. Neither Senior Mortgagee nor Funding Lender will be subrogated to the rights of Subordinate Mortgagee under the Subordinate Loan Documents by reason of Funding Lender having cured any Subordinate Deed of Trust Default. However, Subordinate Mortgagee acknowledges that all amounts advanced or expended by Funding Lender in accordance with the Senior Loan Documents or to cure a Subordinate Deed of Trust Default will be added to and become a part of the Senior Indebtedness and will be secured by the lien of the Senior Mortgage, so long as such amounts do not exceed \$12,000,000.
- (b) Funding Lender will deliver to Subordinate Mortgagee a copy of any Notice sent by Funding Lender to Borrower of a Senior Mortgage Default within 5 Business Days of sending such Notice to Borrower. Failure of Funding Lender to send Notice to Subordinate Mortgagee will not prevent the exercise of Funding Lender's rights and remedies under the Senior Loan Documents. Subordinate Mortgagee will have the right, but not the obligation, to cure any monetary Senior Mortgage Default within 30 days following the date of such Notice; provided, however, that Funding Lender will be entitled during such 30-day period to continue to pursue its remedies under the Senior Loan Documents.

Subordinate Mortgagee may, within 90 days after the date of the Notice, cure a non-monetary Senior Mortgage Default if during such 90-day period, Subordinate Mortgagee keeps current all payments required by the Senior Loan Documents. If such a non-monetary Senior Mortgage Default creates an unacceptable level of risk relative to

the Mortgaged Property, or Senior Mortgagee's or Funding Lender's secured position relative to the Mortgaged Property, as determined by Funding Lender in its sole discretion, then during such 90-day period Funding Lender may exercise all available rights and remedies to protect and preserve the Mortgaged Property and the Rents, revenues and other proceeds from the Mortgaged Property. Subordinate Mortgagee will not be subrogated to the rights of Senior Mortgagee or Funding Lender under the Senior Loan Documents by reason of Subordinate Mortgagee having cured any Senior Mortgage Default. However, Senior Mortgagee and Funding Lender acknowledge that all amounts paid by Subordinate Mortgagee to Senior Mortgagee or Funding Lender to cure a Senior Mortgage Default will be deemed to have been advanced by Subordinate Mortgagee pursuant to, and will be secured by the lien of, the Subordinate Deed of Trust. Notwithstanding anything in this Section 5(b) to the contrary, Subordinate Mortgagee's right to cure any Senior Mortgage Default will terminate immediately upon the occurrence of any Bankruptcy Proceeding.

- (c) In the event of a Subordinate Deed of Trust Default, Subordinate Mortgagee will not commence any Enforcement Action until 90 days after Subordinate Mortgagee has delivered to Funding Lender an Enforcement Action Notice with respect to such Enforcement Action, provided that during such 90-day period or such longer period as provided in Section 5(a), Subordinate Mortgagee will be entitled to seek specific performance to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in the Rental and Occupancy Covenant, subject to Funding Lender's right to cure a Subordinate Deed of Trust Default set forth in Section 5(a). Subordinate Mortgagee may not commence any other Enforcement Action, including any foreclosure action under the Subordinate Loan Documents, until the earlier of (i) the expiration of such 90-day period or such longer period as provided in Section 5(a), or (ii) the delivery by Funding Lender to Subordinate Mortgagee of Funding Lender's written consent to such Enforcement Action by Subordinate Mortgagee. Subordinate Mortgagee acknowledges that Funding Lender may grant or refuse consent to Subordinate Mortgagee's Enforcement Action in Funding Lender's sole and absolute discretion. At the expiration of such 90-day period or such longer period as provided in Section 5(a) and, subject to Funding Lender's right to cure set forth in Section 5(a), Subordinate Mortgagee may commence any Enforcement Action. Any Enforcement Action on the part of Subordinate Mortgagee will be subject to the provisions of this Agreement.
- (d) Senior Mortgagee or Funding Lender may pursue all rights and remedies available to it under the Senior Loan Documents, at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action by Subordinate Mortgagee. No action or failure to act on the part of Senior Mortgagee or Funding Lender in the event of a Subordinate Deed of Trust Default or commencement of an Enforcement Action will constitute a waiver on the part of Senior Mortgagee or Funding Lender of any provision of the Senior Loan Documents or this Agreement.
- (e) If the Enforcement Action taken by Subordinate Mortgagee is the appointment of a receiver for any of the Mortgaged Property, all of the Rents, issues, profits and proceeds collected by the receiver will be paid and applied by the receiver solely to and for the

benefit of Senior Mortgagee or Funding Lender until the Senior Indebtedness will have been paid in full.

(f) Subordinate Mortgagee consents to and authorizes the release by Senior Mortgagee or Funding Lender of all or any portion of the Mortgaged Property from the lien, operation, and effect of the Senior Loan Documents. Subordinate Mortgagee acknowledges that without Notice to Subordinate Mortgagee and without affecting any of the provisions of this Agreement, and so long as the prior encumbrances on the Mortgaged Property do not exceed \$12,000,000, Senior Mortgagee or Funding Lender may (i) extend the time for or waive any payment or performance under the Senior Loan Documents; (ii) modify or amend in any respect any provision of the Senior Loan Documents; and (iii) modify, exchange, surrender, release, and otherwise deal with any additional collateral for the Senior Indebtedness.

(g) Reserved.

6. Miscellaneous Provisions.

(a) If there is any conflict or inconsistency between the terms of the Subordinate Loan Documents and the terms of this Agreement, then the terms of this Agreement will control.

(b) This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties hereto. No other party will be entitled to any benefits hereunder, whether as a third-party beneficiary or otherwise.

(c) This Agreement does not constitute an approval by Senior Mortgagee or Funding Lender of the terms of the Subordinate Loan Documents.

(d) 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:

i. Notices intended for Senior Mortgagee will be addressed to:

Colorado Housing and Finance Authority
1981 Blake Street
Denver, Colorado 80202
Attention: Director of Community Development

Email: momar@chfainfo.com
Telephone: (303) 297-7363

With a copy to:

Colorado Housing and Finance Authority
1981 Blake Street
Denver, Colorado 80202
Attention: General Counsel
Email: cknight@chfainfo.com
Telephone: (303) 297-7314

- ii. Notices intended for Subordinate Mortgagee will be addressed to:

Executive Director of the Office of Economic Development or Designee
City and County of Denver
201 West Colfax Avenue, Dept. 204
Denver, Colorado 80202

With a copy of any such notice to:

Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

- iii. Notices intended for Funding Lender will be addressed to:

(Prior to Conversion)

Bank of the West
NC-B07-3E-I
2527 Camino Ramon 3D-D
San Ramon, California 94583
Attention: Maria Fernandez
Email: maria.fernandez@bankofthewest.com
Telephone: (925) 843-4676

(From Conversion)

Federal Home Loan Mortgage Corporation
8100 Jones Branch Drive, MS B4P
McLean, Virginia 22102
Attention: Multifamily Operations - Loan Accounting
Email: mfla@freddiemac.com
Telephone: (703) 714-4177

With a copy to:

Federal Home Loan Mortgage Corporation
8200 Jones Branch Drive, MS 210
McLean, Virginia 22102
Attention: Managing Associate General Counsel –
Multifamily Legal Division
Email: joshua_schonfeld@freddiemac.com
Telephone: (703) 903-2000

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.

- (e) Nothing in this Agreement or in any of the Senior Loan Documents or Subordinate Loan Documents will be deemed to constitute Senior Mortgagee or Funding Lender as a joint venturer or partner of Subordinate Mortgagee.
- (f) This Agreement will be governed by the laws of the State in which the Land is located.
- (g) 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.
- (h) The term of this Agreement will commence on the date of this Agreement and will continue until the earliest to occur of the following events: (i) the payment of all of the Senior Indebtedness; provided that this Agreement will be reinstated in the event any payment on account of the Senior Indebtedness is avoided, set aside, rescinded or repaid by Senior Mortgagee or Funding Lender as described in Section 2(e) of this Agreement, (ii) the payment of all of the Subordinate Indebtedness, (iii) the acquisition by Senior Mortgagee or Funding Lender or by a third party purchaser of title to the Mortgaged Property pursuant to a foreclosure of, deed in lieu of foreclosure, or trustee's sale or other exercise of a power of sale or similar disposition under the Senior Mortgage; or (iv) without limiting the provisions of Section 5(d), the acquisition by Subordinate Mortgagee of title to the Mortgaged Property subject to the Senior Mortgage pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale under) the Subordinate Deed of Trust.
- (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 shall inure to the benefit of any subsequent holder of the Senior Indebtedness.
- (l) This Agreement may be amended, changed, modified, altered or terminated only by a written instrument or written instruments signed by the parties to this Agreement.
- (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) Notwithstanding anything herein to the contrary, pursuant to Section 17(c) of the Senior Mortgage and Section 6.03 of the Funding Loan Agreement, all acts, consents, approvals and undertakings of Senior Mortgagee hereunder shall be solely at the written direction of the Funding Lender. The parties acknowledge and agree that Funding Lender is a third party beneficiary of this Agreement, with full rights as such.

[Signature and acknowledgment pages follow]

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

SENIOR MORTGAGEE:

WILMINGTON TRUST, NATIONAL ASSOCIATION, a national banking association

By:
Name:
Title:

[Notary Block for recordation]

SUBORDINATE MORTGAGEE:

CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado

By:
Name:
Title: _____, Office of Economic Development

State of Colorado)
) ss.
City and County of Denver)

The foregoing instrument was subscribed to and acknowledged before me this ____ day of ____, 20____, by _____ as _____ of Office of Economic Development for the City and County of Denver, a municipal corporation of the State of Colorado, for and on behalf of the City.

Witness my hand and official seal.
My commission expires: _____.

Notary Public

CONSENT OF BORROWER

Borrower acknowledges receipt of a copy of this Subordination Agreement, dated _____, 2016, by and between Wilmington Trust, National Association and City and County of Denver and consents to the agreement of the parties set forth in this Agreement.

Sable Ridge Apartments, LLC,
a Colorado limited liability company

By: Sable Ridge Development, LLC,
a Colorado limited liability company,
Its: Member and Manager

By: _____
Kenneth A. Walker
Its: Sole Member and Manager

NOTARY ACKNOWLEDGMENT

State of Colorado

County of _____

This ___ day of _____, 2016, by Kenneth A. Walker, Sole Member and Manager of Sable Ridge Development, LLC, which is the managing member of Sable Ridge Apartments, LLC.

(Notary's official signature)

(Commission Expiration)

EXHIBIT A

LEGAL DESCRIPTION

The land situated in the County of Denver, State of Colorado and described as follows:

Lot 6, Sable Ridge Development, Filing No. 1, City and County of Denver, State of Colorado.