



# Orange County Government

Orange County  
Administration Center  
201 S Rosalind Ave.  
Orlando, FL 32802-1393

## Legislation Text

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**File #:** 24-942, **Version:** 1

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### Interoffice Memorandum

**DATE:** June 17, 2024

**TO:** Mayor Jerry L. Demings and County Commissioners

**THROUGH:** N/A

**FROM:** Tanya Wilson, AICP, Director, Planning, Environmental, and Development Services Department

**CONTACT:** Mitchell Glasser, Manager

**PHONE:** 407-836-5190

**DIVISION:** Housing and Community Development Division

**ACTION REQUESTED:**

Approval and execution of 1) Subordination Agreement - Regulatory Agreement Only Governmental Entity - TEL (Forward) (No Subordinate Debt) (Revised 6-27-2023) by Orange County, Florida and SP East LLC for the benefit of The Bank Of New York Mellon Trust Company, N.A., relating to Local Government Contribution of State Housing Initiatives Program funds and 2) Subordination Agreement - Regulatory Agreement Only Governmental Entity - TEL (Forward) (No Subordinate Debt) (Revised 6-27-2023) by Orange County, Florida, The School Board of Orange County, Florida, and SP East LLC for the benefit of The Bank Of New York Mellon Trust Company, N.A., relating to Impact Fee Exemption. District 6. (Housing and Community Development Division)

**PROJECT:** Whispering Oaks Subordination Agreements

**PURPOSE:** SP East LLC is the owner of Whispering Oaks, a 180-unit affordable senior rental community located at 6041 Whispering Woods Loop, Orlando, Florida. SP East LLC is financing the project with The Bank Of New York Mellon Trust Company, N.A for a loan amount of \$30,000,000, and they are requesting Orange County make two Developer's Agreements subordinate to its loan documents. Project construction began in December 2023 and is projected to be completed in July 2025.

The first Subordination Agreement is a Multi-Family Affordable Housing Developer's Agreement for a Local Government Contribution of State Housing Initiatives Program funds in the amount of \$75,000.

The second Subordination Agreement is Multi-Family Affordable Housing Developer's Agreement between Orange County and The School Board of Orange County for an Impact Fee Exemption in the total amount of \$2,517,586.56, of which \$1,296,192 is for school impact fees. These two Subordination Agreements provide for the loan documents to have priority over the two County Agreements, dated January 9, 2024. The financing of the mortgage will not alter the affordable housing restrictions originally placed on the property, which are in effect for 15 years and 20 years, respectively, from the date of issuance of the first certificate of occupancy for the Project Affordability Period.

The County Attorney's Office has reviewed the subordination agreements as to form.

**BUDGET: N/A**

APPROVED BY ORANGE  
COUNTY BOARD OF COUNTY  
COMMISSIONERS

BCC Mtg. Date: July 9, 2024

Prepared by, and after recording  
return to:

Nicholas A. Pirulli, Esq.  
Robinson & Cole LLP  
7910 Woodmont Avenue, Suite 750  
Bethesda, MD 20814

**SUBORDINATION AGREEMENT – REGULATORY AGREEMENT ONLY**

**GOVERNMENTAL ENTITY – TEL (Forward)**

**(Revised 6-27-2023)**

Freddie Mac Loan Number: 511328311  
Property Name: Whispering Oaks

## **SUBORDINATION AGREEMENT - REGULATORY AGREEMENT ONLY**

### **GOVERNMENTAL ENTITY – TEL (Forward)**

#### **(NO SUBORDINATE DEBT)**

**(Revised 6-27-2023)**

THIS SUBORDINATION AGREEMENT FOR REGULATORY AGREEMENT ONLY (“**Agreement**”) is effective as of the 7<sup>th</sup> day of December, 2023 by **ORANGE COUNTY, FLORIDA**, a charter county and political subdivision of the State of Florida (“**Governmental Entity**”), and **SP EAST LLC**, a limited liability company (“**Borrower**”), for the benefit of **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, a national banking association (“**Lender**”).

#### **RECITALS**

- A. Simultaneously herewith Borrower is acquiring certain improved real property located in the County of Orange, State of Florida, as more particularly described on Exhibit A attached hereto (“**Property**”).
- B. Borrower is bound by certain obligations under the Multi-Family Affordable Housing Developer’s Agreement dated December 7, 2023 (“**Regulatory Agreement**”) between Governmental Entity and Borrower, and is being recorded in the Public Records of Orange County, Florida (“**Official Records**”) concurrently herewith, pursuant to which the Property is subjected to certain restrictions by Governmental Entity in connection with the prior development or rehabilitation of the Property.
- C. **FLORIDA HOUSING FINANCE CORPORATION**, a public corporation and a public body corporate and politic duly created and existing under the laws of the State of Florida (“**Governmental Lender**”) has made a loan to Borrower in the original principal amount of \$30,000,000 (“**Project Loan**”) upon the terms and conditions of a Project Loan Agreement dated as of September 1, 2023 (“**Project Loan Agreement**”) among Governmental Lender, Lender (in its capacity as Fiscal Agent under the Funding Loan Agreement (defined below)) and Borrower in connection with the Property. The Project Loan is evidenced by that certain Project Note dated as of September 28, 2023, from Borrower to Governmental Lender (the “**Project Note**”). The Project Loan is secured by a Construction Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated as of September 1, 2023 (“**Mortgage**”) encumbering the Land, the Improvements and related personal and other property described and defined in the Mortgage as the “**Mortgaged Property**.”
- D. The Mortgage is being recorded in the Recording Office contemporaneously herewith.

- E. The Project Note was assigned by Governmental Lender to Lender as security for the loan made by **FIFTH THIRD COMMERCIAL FUNDING, INC.**, a Nevada corporation (“**Initial Funding Lender**”) to the Governmental Lender (the “**Funding Loan**”) and together with the Project Loan, the “**Loans**”) pursuant to a Funding Loan Agreement dated as of September 1, 2023 among Initial Funding Lender, Governmental Lender and Lender (the “**Funding Loan Agreement**”). The Governmental Lender also assigned the Mortgage to Lender as security for the Funding Loan pursuant to an Assignment of Mortgage and Related Documents to be recorded in the Recording Office contemporaneously herewith.
- F. Subject to the terms and conditions of that certain Construction Phase Financing Agreement (the “**Construction Phase Financing Agreement**”) dated as of September 28, 2023 between Borrower, Initial Funding Lender, Federal Home Loan Mortgage Corporation and **CAPITAL ONE, NATIONAL ASSOCIATION**, a national banking association (“**Permanent Funding Lender**”, and together with the Initial Funding Lender, the “**Funding Lender**”), Initial Funding Lender will subsequently assign and deliver the documents comprising the Funding Loan to the Permanent Funding Lender and, in connection therewith, the Project Note and the Mortgage will be amended and restated (“**Conversion**”). “**Loan Documents**” collectively means the “Project Loan Documents” as defined in the Funding Loan Agreement, as such documents may be amended.
- G. Upon Conversion, the Funding Lender will have the right to amend and restate the Project Note and the Mortgage, and the right to amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provision of any of the Loan Documents, without notice to or the consent or joinder of the Governmental Entity.
- H. As a condition to making of the Funding Loan by the Initial Funding Lender and the subsequent purchase thereof by the Permanent Funding Lender, each requires that the Loan Documents be a lien on the Property superior to the lien of the Regulatory Agreement and that the rights of Lender under the Loan Documents be superior to the rights of Governmental Entity and Borrower under the Regulatory Agreement. Initial Funding Lender will not make, and Permanent Funding Lender will not purchase, the Funding Loan unless Governmental Entity and Borrower agree to subordinate their rights and obligations under the Regulatory Agreement.
- I. Borrower and Governmental Entity hereby agree to subordinate the Regulatory Agreement on and subject to the terms, conditions and requirements set forth in this Agreement.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Recitals.** The foregoing Recitals are hereby incorporated into this Agreement as agreements among the parties.
2. **Subordination.** The Governmental Entity hereby covenants and agrees that the Regulatory Agreement is and will at all times continue to be, subordinate, subject and inferior to the rights of Lender and Funding Lender under the Loan Documents and that the liens, rights (including approval and consent rights), remedies, payment interests, priority interests, and security interests granted to Governmental Entity pursuant to or in connection with the Regulatory Agreement are hereby expressly acknowledged to be in all respects and at all times, subject, subordinate and inferior in all respects to the liens, rights (including approval and consent rights), remedies, payment, priority and security interests granted to Lender and Funding Lender pursuant to the Loan Documents and the terms, covenants, conditions, operations and effects thereof. Notwithstanding the above, Governmental Entity may exercise the remedies of specific performance or injunctive relief.
3. **Financing, Encumbrance and Transfer Approval.** Governmental Entity hereby approves the financing evidenced by the Project Note and secured by the Mortgage. Governmental Entity further agrees that any transfer of the Property in connection with foreclosure or deed in lieu thereof will not require Governmental Entity's consent.
4. **Reserved**
5. **Lender Notice of Default.** In consideration of Governmental Entity's agreements contained in this Agreement, Lender agrees that in the event of any default by Borrower under the Loan Documents, Governmental Entity will be entitled to receive a copy of any notice of default given by Lender or Funding Lender to Borrower under the Loan Documents. Neither the giving nor the failure to give a notice to Governmental Entity pursuant to this Section 5 will affect the validity of any notice given by Lender or Funding Lender to the Borrower.
6. **Governmental Entity Notice of Default.** Governmental Entity must give Lender and Funding Lender a concurrent copy of each material notice (including without limitation each notice of default) given by Governmental Entity under or with respect to the Regulatory Agreement, and agrees that Lender or Funding Lender, at Lender's and Funding Lender's sole election, will have the right (but not the obligation) to cure any default by Borrower under the Regulatory Agreement on its and/or Borrower's behalf. Governmental Entity hereby represents and warrants that, to the best of its knowledge, there is no current default under the Regulatory Agreement.
7. **Governmental Entity's Rights.** Except as set forth in Sections 2 and 8 of this Agreement, nothing in this Agreement is intended to abridge or adversely affect any right or obligation of Borrower and/or Governmental Entity, respectively, under the Regulatory Agreement; provided that, (A) the Regulatory Agreement may not be modified, amended, changed or altered without the prior written consent of Funding

Lender so long as the Loans are secured by the Property and (B) for so long as the Loans are secured by the Property, notwithstanding the terms of the Regulatory Agreement to the contrary, neither Borrower nor Governmental Entity will, without Funding Lender's prior written consent, exercise or seek any right or remedy under the Regulatory Agreement or available at law or in equity which will or could result in (i) a transfer of possession of the Property or the control, operations or management thereof, (ii) collection or possession of rents or revenues from or with respect to the Property by any party other than Borrower or Funding Lender; (iii) appointment of a receiver for the Property; (iv) application of insurance or condemnation proceeds other than as approved by Funding Lender pursuant to the Loan Documents; (v) removal or replacement of the existing property manager of the Property; or (vi) a material adverse effect on Lender's or Funding Lender's security for the Loans.

8. **Foreclosure by Lender.** In the event of foreclosure, deed in lieu of foreclosure, or similar disposition of the Property by Lender, the Lender or subsequent mortgagee shall, at its option, have the right to foreclose with the restrictive covenant contained in Section (5) of the Regulatory Agreement in place or, in the alternative, pay the County the principle amount of Seventy-Five Thousand Dollars (\$75,000.00) in order to obtain from the County a release of the restrictive covenant provision contained therein. ~~(a) no consent will be required from Governmental Entity, and (b) the Regulatory Agreement will automatically terminate.~~
9. **Refinancing.** Governmental Entity agrees that its agreement to subordinate hereunder will extend to any new mortgage debt which is for the purpose of refinancing all or any part of the indebtedness evidenced by the Loan Documents (including reasonable and necessary costs associated with the closing and/or the refinancing, and any reasonable increase in proceeds for rehabilitation in the context of a preservation transaction). All terms and covenants of this Agreement will inure to the benefit of any holder of any such refinanced debt, and all references to the Loan Documents and Lender will mean, respectively, the refinance loan documents and the holder of such refinanced debt.
10. **Miscellaneous Provisions.**
- (a) This Agreement represents the entire understanding and agreement between the parties with regard to the matters addressed herein, and will supersede and cancel any prior agreements with regard to such matters.
  - (b) If there is any conflict or inconsistency between the terms of the Regulatory Agreement and the terms of this Agreement, then the terms of this Agreement will control.
  - (c) This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties to this Agreement, which will include with regard to the Governmental Entity any permitted successor or assign of the Governmental Entity under or pursuant to the terms of the Regulatory Agreement and, with regard to Lender, any subsequent holder of

the Project Note. Except for Funding Lender, no other party will be entitled to any benefits hereunder, whether as a third-party beneficiary or otherwise.

- (d) If any one or more of the provisions contained in this Agreement, or any application of any such provisions, is invalid, illegal, or unenforceable in any respect, the validity, legality, enforceability, and application of the remaining provisions contained in this Agreement will not in any way be affected or impaired.
- (e) Each notice, request, demand, consent, approval or other communication (collectively, “**Notices**,” and singly, a “**Notice**”) which is required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery (any Notice so delivered will be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery (any Notice so delivered will be deemed to have been received on the next Business Day following receipt by the courier), or (iii) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any Notice so sent will be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

If to Governmental Entity:

Orange County  
Housing and Community Development Division  
525 E South Street  
Orlando, FL 32801  
Attention: Manager

If to Lender:

The Bank of New York Mellon Trust Company, N.A.  
4655 Salisbury Road, Suite 300  
Jacksonville, FL 32256  
Attention: Mirnesa Velic  
Email: mirnesa.velic@bnymellon.com

Notices intended for Funding Lender will be addressed to:

Prior to Conversion:

Fifth Third Commercial Funding, Inc.  
National Tax Credit Lending  
38 Fountain Square Plaza, MD 1090AG



Cincinnati, OH 45263  
Attention: Steven Quasny, Vice President  
E-mail: steven.quasny@53.com

On and after Conversion:

Capital One, National Association  
2 Bethesda Metro Center, 10th Floor  
Bethesda, MD 20814  
Attention: Asset Management  
Email: AssetManagement@capitalone.com

If to Borrower:

SP East LLC  
c/o Southport Financial Services, Inc.  
5403 West Gray Street  
Tampa, FL 33609  
Attention: J. David Page  
Email: jdpage@sphome.com

with a copy to:

Jameson Pepple Cantu PLLC  
2430 Estancia Boulevard, Suite 114  
Clearwater, FL 33761  
Attention: Dave Cantu, Esq.  
Email: dcantu@JPCLaw.com

Any party, by Notice given pursuant to this Section, may change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its Notices, but Notice of a change of address will only be effective upon receipt. Neither party will refuse or reject delivery of any Notice given in accordance with this Section.

- (f) Each of the parties will, whenever and as often as they are requested to do so by the other, execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, any and all such further instruments and documents as may be reasonably necessary to carry out the intent and purpose of this Agreement, and to do any and all further acts reasonably necessary to carry out the intent and purpose of this Agreement.
- (g) This Agreement will be governed by the laws of the State in which the Property is located.

- (h) Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations under this Agreement.
- (i) No failure or delay on the part of any party to this Agreement in exercising any right, power, or remedy under this Agreement will operate as a waiver of such right, power, or remedy, nor will any single or partial exercise of any such right, power or remedy preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power or remedy under this Agreement.
- (j) Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.
- (k) This Agreement may be assigned at any time by Lender to any subsequent holder of the Project Note.
- (l) This Agreement may be amended, changed, modified, altered or terminated only by a written instrument signed by the parties to this Agreement or their successors or assigns.
- (m) This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.
- (n) Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by Governmental Entity of its governmental powers (including police, regulatory and taxing powers) with respect to Borrower or the Property to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.
- (o) Funding Lender's Rights to Control. Notwithstanding anything herein to the contrary, pursuant to the Senior Mortgage and Section 6.03 of the Funding Loan Agreement, all acts, consents, approvals and undertakings of the Lender hereunder will be solely at the written direction of the Funding Lender. The parties hereto acknowledge and agree that the Funding Lender is a third-party beneficiary of this Agreement, with full rights as such.

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

**[SIGNATURE AND ACKNOWLEDGMENT PAGES FOLLOW]**

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

**GOVERNMENTAL ENTITY:**

**ORANGE COUNTY, FLORIDA**

By: Orange County Board of County Commissioners



BY: *Jerry L. Demings*  
for Jerry L. Demings  
Orange County Mayor

Date: July 9, 2024

ATTEST: Phil Diamond, County Comptroller  
As Clerk of the Board of County Commissioners

BY: *Jennifer Jan-Kinety*  
Deputy Clerk



WITNESSES:

*me j*

Print Name: Michael C. Jenkins

Address:  
4655 Salisbury Rd, Suite 300  
Jacksonville, Florida 32256

*J.R. Gillis*

Print Name: Jennifer Gillis

Address:  
4655 Salisbury Rd, Suite 300  
Jacksonville, Florida 32256

LENDER:

**THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A.,**  
a national banking association

By: *Nathan Turner*  
Name: Nathan Turner  
Title: Vice President

STATE OF FLORIDA     )  
                                  ) ss:  
COUNTY OF DUVAL     )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this 1<sup>st</sup> ay of May, 2024, by Nathan Turner, as a vice president of The Bank of New York Mellon Trust Company, N.A., a national banking association, on behalf of said association.

Personally Known  OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_



*Stephanie Greene-Matthews*  
Printed Name: \_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My Commission Expires:

(NOTARY SEAL)

[SHIP Subsidy]

## EXHIBIT A

### LEGAL DESCRIPTION

BEGINNING AT THE SOUTHWEST CORNER OF LAND CONVEYED BY SPECIAL WARRANTY DEED TO ALTA WESTGATE, LLC, A GEORGIA LIMITED LIABILITY COMPANY IN OFFICIAL RECORDS BOOK 8171, PAGE 1962, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, SAID POINT BEING ON THE EASTERLY RIGHT OF WAY LINE OF HIAWASSEE ROAD; THENCE RUN S 00°07'30" E ALONG SAID RIGHT OF WAY LINE, 231.41 FEET; THENCE DEPARTING SAID RIGHT OF WAY LINE, RUN N 88°51'31" E ALONG THE SOUTH LINE OF THE N 1/4 OF THE NW 1/4, OF THE SW 1/4 OF SECTION 13-22-28, 1279.44 FEET; THENCE RUN N 00°01'57" W, ALONG THE EAST LINE OF SAID NW 1/4, 334.68 FEET TO THE SE CORNER OF LOT 52, WILLIS R. MUNGER'S SUBDIVISION, AS RECORDED IN PLAT BOOK 3, PAGE 23, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN N 00°08'30" W, 20.70 FEET TO SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 8171, PAGE 1962; THENCE RUN THE FOLLOWING SEVEN (7) COURSES AND DISTANCES ALONG THE SOUTH LINE OF SAID LANDS: N 86°26'36" W, 278.60 FEET; THENCE N 67°26'09" W 265.00 FEET; THENCE S 89°33'51" W, 132.83 FEET; THENCE S 00°00'00" W, 91.38 FEET; THENCE S 89°33'51" W, 154.22 FEET; THENCE S 00°00'58" E, 164.08 FEET; THENCE S 88°42'29" W, 468.92 FEET TO THE POINT OF BEGINNING.

BCC Mtg. Date: July 9, 2024

Prepared by, and after recording  
return to:

Nicholas A. Pirulli, Esq.  
Robinson & Cole LLP  
7910 Woodmont Avenue, Suite 750  
Bethesda, MD 20814

**SUBORDINATION AGREEMENT – REGULATORY AGREEMENT ONLY**

**GOVERNMENTAL ENTITY – TEL (Forward)**

**(Revised 6-27-2023)**



Freddie Mac Loan Number: 511328311  
Property Name: Whispering Oaks

**SUBORDINATION AGREEMENT - REGULATORY AGREEMENT ONLY**

**GOVERNMENTAL ENTITY – TEL (Forward)**

**(NO SUBORDINATE DEBT)**

**(Revised 6-27-2023)**

THIS SUBORDINATION AGREEMENT FOR REGULATORY AGREEMENT ONLY (“**Agreement**”) is effective as of the 7<sup>th</sup> day of December, 2023 by **ORANGE COUNTY, FLORIDA**, a charter county and political subdivision of the State of Florida (“**County**”), **THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA**, a body corporate and political subdivision of the State of Florida (“**School Board**” and together with the County, the “**Governmental Entity**”), and **SP EAST LLC**, a limited liability company (“**Borrower**”), for the benefit of **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, a national banking association (“**Lender**”).

**RECITALS**

- A. Simultaneously herewith Borrower is acquiring certain improved real property located in the County of Orange, State of Florida, as more particularly described on Exhibit A attached hereto (“**Property**”).
- B. Borrower is bound by certain obligations under the Multi-Family Affordable Housing Developer’s Agreement for Impact Fee Exemption dated December 7, 2023 (“**Regulatory Agreement**”) among the County, the Borrower, and the School Board, and is being recorded in the Public Records of Orange County, Florida (“**Official Records**”) concurrently herewith, pursuant to which the Property is subjected to certain restrictions by Governmental Entity in connection with the prior development or rehabilitation of the Property.
- C. **FLORIDA HOUSING FINANCE CORPORATION**, a public corporation and a public body corporate and politic duly created and existing under the laws of the State of Florida (“**Governmental Lender**”) has made a loan to Borrower in the original principal amount of \$30,000,000 (“**Project Loan**”) upon the terms and conditions of a Project Loan Agreement dated as of September 1, 2023 (“**Project Loan Agreement**”) among Governmental Lender, Lender (in its capacity as Fiscal Agent under the Funding Loan Agreement (defined below)) and Borrower in connection with the Property. The Project Loan is evidenced by that certain Project Note dated as of September 28, 2023, from Borrower to Governmental Lender (the “**Project Note**”). The Project Loan is secured by a Construction Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated as of September 1, 2023 (“**Mortgage**”) encumbering the Land, the

Improvements and related personal and other property described and defined in the Mortgage as the “**Mortgaged Property.**”

- D. The Mortgage is being recorded in the Recording Office contemporaneously herewith.
- E. The Project Note was assigned by Governmental Lender to Lender as security for the loan made by **FIFTH THIRD COMMERCIAL FUNDING, INC.**, a Nevada corporation (“**Initial Funding Lender**”) to the Governmental Lender (the “**Funding Loan**” and together with the Project Loan, the “**Loans**”) pursuant to a Funding Loan Agreement dated as of September 1, 2023 among Initial Funding Lender, Governmental Lender and Lender (the “**Funding Loan Agreement**”). The Governmental Lender also assigned the Mortgage to Lender as security for the Funding Loan pursuant to an Assignment of Mortgage and Related Documents to be recorded in the Recording Office contemporaneously herewith.
- F. Subject to the terms and conditions of that certain Construction Phase Financing Agreement (the “**Construction Phase Financing Agreement**”) dated as of September 28, 2023 between Borrower, Initial Funding Lender, Federal Home Loan Mortgage Corporation and **CAPITAL ONE, NATIONAL ASSOCIATION**, a national banking association (“**Permanent Funding Lender**”, and together with the Initial Funding Lender, the “**Funding Lender**”), Initial Funding Lender will subsequently assign and deliver the documents comprising the Funding Loan to the Permanent Funding Lender and, in connection therewith, the Project Note and the Mortgage will be amended and restated (“**Conversion**”). “**Loan Documents**” collectively means the “Project Loan Documents” as defined in the Funding Loan Agreement, as such documents may be amended.
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- H. As a condition to making of the Funding Loan by the Initial Funding Lender and the subsequent purchase thereof by the Permanent Funding Lender, each requires that the Loan Documents be a lien on the Property superior to the lien of the Regulatory Agreement and that the rights of Lender under the Loan Documents be superior to the rights of Governmental Entity and Borrower under the Regulatory Agreement. Initial Funding Lender will not make, and Permanent Funding Lender will not purchase, the Funding Loan unless Governmental Entity and Borrower agree to subordinate their rights and obligations under the Regulatory Agreement.
- I. Borrower and Governmental Entity hereby agree to subordinate the Regulatory Agreement on and subject to the terms, conditions and requirements set forth in this Agreement.

## **AGREEMENT**

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1. **Recitals.** The foregoing Recitals are hereby incorporated into this Agreement as agreements among the parties.
2. **Subordination.** The Governmental Entity hereby covenants and agrees that the Regulatory Agreement is and will at all times continue to be, subordinate, subject and inferior to the rights of Lender and Funding Lender under the Loan Documents and that the liens, rights (including approval and consent rights), remedies, payment interests, priority interests, and security interests granted to Governmental Entity pursuant to or in connection with the Regulatory Agreement are hereby expressly acknowledged to be in all respects and at all times, subject, subordinate and inferior in all respects to the liens, rights (including approval and consent rights), remedies, payment, priority and security interests granted to Lender and Funding Lender pursuant to the Loan Documents and the terms, covenants, conditions, operations and effects thereof. Notwithstanding the above, Governmental Entity may exercise the remedies of specific performance or injunctive relief.
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7. **Governmental Entity's Rights.** Except as set forth in Sections 2 and 8 of this Agreement, nothing in this Agreement is intended to abridge or adversely affect any right or obligation of Borrower and/or Governmental Entity, respectively, under the Regulatory Agreement; provided that, (A) the Regulatory Agreement may not be modified, amended, changed or altered without the prior written consent of Funding Lender so long as the Loans are secured by the Property and (B) for so long as the Loans are secured by the Property, notwithstanding the terms of the Regulatory Agreement to the contrary, neither Borrower nor Governmental Entity will, without Funding Lender's prior written consent, exercise or seek any right or remedy under the Regulatory Agreement or available at law or in equity which will or could result in (i) a transfer of possession of the Property or the control, operations or management thereof, (ii) collection or possession of rents or revenues from or with respect to the Property by any party other than Borrower or Funding Lender; (iii) appointment of a receiver for the Property; (iv) application of insurance or condemnation proceeds other than as approved by Funding Lender pursuant to the Loan Documents; (v) removal or replacement of the existing property manager of the Property; or (vi) a material adverse effect on Lender's or Funding Lender's security for the Loans.
8. **Foreclosure by Lender.** In the event of foreclosure, deed in lieu of foreclosure, or similar disposition of the Property by Lender, **the Lender or subsequent mortgagee shall, at its option, have the right to foreclose with the restrictive covenant contained in Section (5) of the Regulatory Agreement in place or, in the alternative, pay the County the principle amount of Two Million Five Hundred Seventeen Thousand and Five Hundred Eighty-Six Dollars and Fifty-Six Cents (\$2,517,586.56) in order to obtain from the County a release of the restrictive covenant provision contained therein.** ~~(a) no consent will be required from Governmental Entity, and (b) the Regulatory Agreement will automatically terminate.~~
9. **Refinancing.** Governmental Entity agrees that its agreement to subordinate hereunder will extend to any new mortgage debt which is for the purpose of refinancing all or any part of the indebtedness evidenced by the Loan Documents (including reasonable and necessary costs associated with the closing and/or the refinancing, and any reasonable increase in proceeds for rehabilitation in the context of a preservation transaction). All terms and covenants of this Agreement will inure to the benefit of any holder of any such refinanced debt, and all references to the Loan Documents and Lender will mean, respectively, the refinance loan documents and the holder of such refinanced debt.
10. **Miscellaneous Provisions.**
- (a) This Agreement represents the entire understanding and agreement between the parties with regard to the matters addressed herein, and will supersede and cancel any prior agreements with regard to such matters.
- (b) If there is any conflict or inconsistency between the terms of the Regulatory Agreement and the terms of this Agreement, then the terms of this Agreement will control.

- (c) This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties to this Agreement, which will include with regard to the Governmental Entity any permitted successor or assign of the Governmental Entity under or pursuant to the terms of the Regulatory Agreement and, with regard to Lender, any subsequent holder of the Project Note. Except for Funding Lender, no other party will be entitled to any benefits hereunder, whether as a third-party beneficiary or otherwise.
- (d) If any one or more of the provisions contained in this Agreement, or any application of any such provisions, is invalid, illegal, or unenforceable in any respect, the validity, legality, enforceability, and application of the remaining provisions contained in this Agreement will not in any way be affected or impaired.
- (e) Each notice, request, demand, consent, approval or other communication (collectively, “**Notices**,” and singly, a “**Notice**”) which is required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery (any Notice so delivered will be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery (any Notice so delivered will be deemed to have been received on the next Business Day following receipt by the courier), or (iii) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any Notice so sent will be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

If to Governmental Entity:

Orange County  
Housing and Community Development Division  
525 E South Street  
Orlando, FL 32801  
Attention: Manager

with a copy to:

School Board of Orange County, Florida  
Attn: Superintendent  
445 West Amelia Street  
Orlando, Florida 32801

If to Lender:

The Bank of New York Mellon Trust Company, N.A.  
4655 Salisbury Road, Suite 300  
Jacksonville, FL 32256  
Attention: Mirnesa Velic  
Email: mirnesa.velic@bnymellon.com

Notices intended for Funding Lender will be addressed to:

Prior to Conversion:

Fifth Third Commercial Funding, Inc.  
National Tax Credit Lending  
38 Fountain Square Plaza, MD 1090AG  
Cincinnati, OH 45263  
Attention: Steven Quasny, Vice President  
E-mail: steven.quasny@53.com

On and after Conversion:

Capital One, National Association  
2 Bethesda Metro Center, 10th Floor  
Bethesda, MD 20814  
Attention: Asset Management  
Email: AssetManagement@capitalone.com

If to Borrower:

SP East LLC  
c/o Southport Financial Services, Inc.  
5403 West Gray Street  
Tampa, FL 33609  
Attention: J. David Page  
Email: jdpage@sphome.com

with a copy to:

Jameson Pepple Cantu PLLC  
2430 Estancia Boulevard, Suite 114  
Clearwater, FL 33761  
Attention: Dave Cantu, Esq.  
Email: dcantu@JPCLaw.com

Any party, by Notice given pursuant to this Section, may change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its Notices, but Notice of a change of

address will only be effective upon receipt. Neither party will refuse or reject delivery of any Notice given in accordance with this Section.

- (f) Each of the parties will, whenever and as often as they are requested to do so by the other, execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, any and all such further instruments and documents as may be reasonably necessary to carry out the intent and purpose of this Agreement, and to do any and all further acts reasonably necessary to carry out the intent and purpose of this Agreement.
- (g) This Agreement will be governed by the laws of the State in which the Property is located.
- (h) Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations under this Agreement.
- (i) No failure or delay on the part of any party to this Agreement in exercising any right, power, or remedy under this Agreement will operate as a waiver of such right, power, or remedy, nor will any single or partial exercise of any such right, power or remedy preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power or remedy under this Agreement.
- (j) Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.
- (k) This Agreement may be assigned at any time by Lender to any subsequent holder of the Project Note.
- (l) This Agreement may be amended, changed, modified, altered or terminated only by a written instrument signed by the parties to this Agreement or their successors or assigns.
- (m) This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.
- (n) Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by Governmental Entity of its governmental powers (including police, regulatory and taxing powers) with respect to Borrower or the Property to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.

- (o) Funding Lender's Rights to Control. Notwithstanding anything herein to the contrary, pursuant to the Senior Mortgage and Section 6.03 of the Funding Loan Agreement, all acts, consents, approvals and undertakings of the Lender hereunder will be solely at the written direction of the Funding Lender. The parties hereto acknowledge and agree that the Funding Lender is a third-party beneficiary of this Agreement, with full rights as such.

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

**[SIGNATURE AND ACKNOWLEDGMENT PAGES FOLLOW]**



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



**GOVERNMENTAL ENTITY:**

**ORANGE COUNTY, FLORIDA**

By: Orange County Board of County Commissioners

BY: *Jerry L. Demings*  
for Jerry L. Demings  
Orange County Mayor

Date: July 9, 2024

ATTEST: Phil Diamond, County Comptroller  
As Clerk of the Board of County Commissioners

BY: *Jennifer Ann - Kinety*  
Deputy Clerk



WITNESSES:

*me*

Print Name: Michael C. Jenkins

Address:  
4655 Salisbury Rd, Suite 300  
Jacksonville, Florida 32256

*J.P. Gillis*

Print Name: Jennifer Gillis

Address:  
4655 Salisbury Rd, Suite 300  
Jacksonville, Florida 32256

LENDER:

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A.,  
a national banking association

By: *Nathan Turner*  
Name: Nathan Turner  
Title: Vice President

STATE OF FLORIDA     )  
  ) ss:  
COUNTY OF DUVAL     )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this 1<sup>st</sup> day of May, 2024 by Nathan Turner, as a vice president of The Bank of New York Mellon Trust Company, N.A., a national banking association, on behalf of said association.

Personally Known  OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_



*Stephanie Greene-Matthews*  
Printed Name: \_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My Commission Expires:

(NOTARY SEAL)

[Impact Fees Exemption]

Subordination Agreement  
Regulatory Agreement Only – TEL (Forward)





## EXHIBIT A

### LEGAL DESCRIPTION

BEGINNING AT THE SOUTHWEST CORNER OF LAND CONVEYED BY SPECIAL WARRANTY DEED TO ALTA WESTGATE, LLC, A GEORGIA LIMITED LIABILITY COMPANY IN OFFICIAL RECORDS BOOK 8171, PAGE 1962, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, SAID POINT BEING ON THE EASTERLY RIGHT OF WAY LINE OF HIAWASSEE ROAD; THENCE RUN S 00°07'30" E ALONG SAID RIGHT OF WAY LINE, 231.41 FEET; THENCE DEPARTING SAID RIGHT OF WAY LINE, RUN N 88°51'31" E ALONG THE SOUTH LINE OF THE N 1/4 OF THE NW 1/4, OF THE SW 1/4 OF SECTION 13-22-28, 1279.44 FEET; THENCE RUN N 00°01'57" W, ALONG THE EAST LINE OF SAID NW 1/4, 334.68 FEET TO THE SE CORNER OF LOT 52, WILLIS R. MUNGER'S SUBDIVISION, AS RECORDED IN PLAT BOOK 3, PAGE 23, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN N 00°08'30" W, 20.70 FEET TO SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 8171, PAGE 1962; THENCE RUN THE FOLLOWING SEVEN (7) COURSES AND DISTANCES ALONG THE SOUTH LINE OF SAID LANDS: N 86°26'36" W, 278.60 FEET; THENCE N 67°26'09" W 265.00 FEET; THENCE S 89°33'51" W, 132.83 FEET; THENCE S 00°00'00" W, 91.38 FEET; THENCE S 89°33'51" W, 154.22 FEET; THENCE S 00°00'58" E, 164.08 FEET; THENCE S 88°42'29" W, 468.92 FEET TO THE POINT OF BEGINNING.