

Prepared by, and after recording
return to:

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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 7th 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.
- 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 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
Orange County Mayor

Date: _____

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

BY: _____
Deputy Clerk

SP EAST LLC,
a Florida limited liability company

Print: _____

Print: _____

STATE OF WASHINGTON)
) ss:
COUNTY OF PIERCE)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

My Commission Expires:

Subordination Agreement

Regulatory Agreement Only – TEL (Forward)

LENDER:

WITNESSES:

**THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A.,**

a national banking association

Print: _____

By: _____

Name: Nathan Turner

Title: Vice President

Print: _____

STATE OF _____)

) ss:

COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence
or ☐ online notarization this _____ day of _____, 202__ by Nathan Turner, as 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 _____

Printed Name: _____

Notary Public, State of _____

My Commission Expires:

(NOTARY SEAL)

“SCHOOL BOARD”

Signed and sealed in the presence of:

**THE SCHOOL BOARD OF ORANGE COUNTY,
FLORIDA**, a body corporate and political subdivision
of the State of Florida

Print Name: _____

By: _____
Teresa Jacobs, Chair

Print Name: _____

Date: _____

STATE OF FLORIDA)
) s.s.:
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 20__ by Teresa Jacobs, Chair of The School Board of Orange County, Florida; a body corporate and political subdivision of the State of Florida, on behalf of The School Board, who ☐ is personally known to me or ☐ had produced _____ (type of identification) as identification.

NOTARY PUBLIC OF FLORIDA

Print Name: _____
Commission No: _____
Expires: _____

AFFIX NOTARY STAMP

(ADDITIONAL SIGNATURE PAGES TO FOLLOW)

**THE SCHOOL BOARD OF ORANGE COUNTY,
FLORIDA**, a body corporate and political subdivision
of the State of Florida

By: _____
Maria Vazquez, Ed.D., as its Superintendent

Date: _____

STATE OF FLORIDA)
) s.s.:
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me by means of [☐] physical presence or [☐] online notarization, this _____ day of _____, 20__ by Maria Vazquez, Ed.D. as Superintendent of The School Board of Orange County, Florida; a body corporate and political subdivision of the State of Florida, on behalf of The School Board, who [☐] is personally known to me or [☐] had produced _____ (type of identification) as identification.

Print Name: _____
Commission No: _____
Expires: _____

AFFIX NOTARY STAMP

Approved as to form and legality by legal counsel
to The School Board of Orange County, Florida,
exclusively for its use and reliance.

Jad M. Brewer, Esq.

Date: _____, 20____

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.