

PREPARED BY AND AFTER
RECORDING RETURN TO:
Nikole D. Garcia, Esquire
Trenam, Kemker, Scharf, Barkin,
Frye, O'Neill & Mullis, P.A.
200 Central Avenue, Suite 1600
St. Petersburg, FL 33701

_____[Space Above This Line for Recording Data]_____

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this “**Agreement**”) is made and entered into as of _____, 2023 (the “**Effective Date**”), by and among **PINELLAS COUNTY**, a political subdivision of the State of Florida (the “**County**”), having an address of c/o Housing and Community Development, 310 Court Street, Clearwater, Florida 33756, Attn: Mark Van Lue, and **CIBC BANK USA**, an Illinois state chartered bank, and its successors and assigns (in such capacity “**Agent**”), as administrative agent for the “**Lenders**” as such term is defined in that certain Construction Loan and Security Agreement dated as of _____, 2023 (as further modified, amended or restated from time to time, the “**Loan Agreement**”), among Agent, the Lenders, and Borrower, having an address of 120 S. LaSalle Street, Chicago, Illinois 60603.

RECITALS:

A. **SD ST PETE 454, LLC**, a Florida limited liability company (“**Borrower**”) is the owner of certain real property located in Pinellas County, Florida, as more particularly described in **Exhibit A** attached hereto (the “**Land**”).

B. Borrower intends to develop a residential rental project on the Land (the Land, together with any improvements now or hereafter located thereon, is herein called the “**Project**”).

C. The County provides funding for affordable housing for eligible persons as defined by the Penny for Pinellas Affordable Housing Program (the “**Program**”) in accordance with Section 212.055(2)(d)3, Florida Statutes.

D. Borrower has applied to the County for funding under the Program as part of the financing needed for the construction of the Project.

E. The County has determined that the Project satisfies the eligibility requirements of the Program and subject to the terms of the following documents (collectively, the “**County Documents**”), the County has agreed to fund under the Program the sum of Four Million and 00/100 Dollars (\$4,000,000) (the “**County Loan**”) to Borrower in connection with the construction of the Project:

(1) Land Use Restriction Agreement Penny for Pinellas Affordable Housing Program (the “**LURA**”) between Borrower and the County recorded as Instrument No. 2022051922 of the Public Records of Pinellas County, Florida (the “**Records**”);

(2) the Affordable Housing Development Program Agency Agreement between Borrower and the County dated February 3, 2022 (the “**Agency Agreement**”);

(3) the Promissory Note dated December 1, 2021, made by Borrower to the County (the “**County Note**”); and

(4) the Mortgage from Borrower to the County dated December 1, 2021 and recorded as Instrument No. 2022051921 of the Records (the “**County Mortgage**”). The County Note and the County Mortgage are collectively called the “**County Loan Documents**” herein. The County Loan and all indebtedness and obligations of Borrower to the County in connection with the County Loan, and all renewals, extensions and modifications thereof, together with all other sums due thereon and all costs of collecting the same (including, without limitation, reasonable attorneys’ fees) are collectively called the “**County Debt**” herein.

F. Pursuant to the County Documents, the County is the owner and holder of (i) certain rights to restrict 125 units in the Project for affordable workforce housing (the “**Affordable Housing Restrictions**”), and (ii) certain lien rights (the “**Lien Rights**”) encumbering the Project.

G. Pursuant to the Loan Agreement, Lenders are making a loan to Borrower in the aggregate principal amount of \$87,500,000.00 (the “**Senior Loan**”) for the acquisition, development and construction of the Project, and in connection therewith:

(1) Borrower has executed and delivered to Lenders dated on or about the Effective Date, certain promissory notes in the aggregate principal amount of the Senior Loan (such notes, as the same may be renewed, extended, modified, replaced, increased or supplemented from time to time, being hereinafter called the “**Senior Notes**”); and

(2) Borrower has executed a Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing in favor of Agent for the benefit of Lenders, dated on or about the Effective Date, which (i) encumbers the Property, (ii) secures payment of the Senior Notes, and (iii) is being recorded in the Public Records of Pinellas County, Florida, contemporaneously with the recordation of this Agreement (as modified or amended from time to time, the “**Senior Mortgage**”). The Senior Loan and all indebtedness and obligations of Borrower to Agent and Lenders in connection with the Senior Loan, and all renewals, extensions and modifications thereof, together with all other sums due thereon and all costs of collecting the same (including, without limitation, reasonable attorneys’ fees) are collectively called the “**Senior Debt**” herein.

H. Lenders have no obligation to make the Senior Loan unless the County Debt is subordinate to the Senior Debt, and the lien, operation and effect of the County Mortgage is subordinate to the lien, operation and effect of the Senior Mortgage.

I. Agent has required that this Agreement be executed and delivered by the County as a condition precedent and material inducement to its agreement to provide Borrower with the Senior Loan.

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

1. Recitals. The above recitals are true and correct and are incorporated herein by reference.
2. Representations and Warranties. The County represents to Agent that:

(a) The County has delivered to Agent true and complete copies of the County Documents, and no other documents evidencing the Lien Rights or the Affordable Housing Restrictions exist.

(b) The County Loan Documents are the only documents evidencing and/or securing the County Debt, the Property is the only collateral for the County Debt, and the County Loan is due, payable and forgivable according to the terms of the County Note.

(c) Neither the County nor Borrower is in default under any of the County Documents. The County has no knowledge of any event which, but for the passage of time, the giving of notice or both, would constitute an event of default under the County Documents by the County or Borrower.

(d) There is no defense, offset, claim or counterclaim by or in favor of the County against Borrower under any of the County Documents or against the obligations of the County under the County Documents.

3. Subordination. The County hereby subordinates (i) all of its Lien Rights to the lien, operation and effect of the Senior Mortgage and the rights and interests of Agent and Lenders with respect to the Senior Debt, (ii) the County Debt and all right, title and interest of the County in and to the County Debt to the Senior Debt and all right, title and interest of the Agent and Lenders in and to the Senior Debt, and (iii) the lien, operation and effect of the County Mortgage to the lien, operation and effect of the Senior Mortgage; **provided, however**, that Agent hereby consents to and subordinates the lien of the Senior Mortgage to the Affordable Housing Restrictions and agrees that the Affordable Housing Restrictions shall survive any foreclosure, deed in lieu of foreclosure and/or exercise of any remedy by Agent pursuant to the Senior Mortgage. Without limiting the foregoing, the County hereby acknowledges that Agent has and shall hereafter have a first priority lien on and security interest in and to the Land the Project. Nothing contained herein is intended or shall be construed to limit the right of Agent and Borrower to cause the Senior Mortgage to secure payment of the entire Senior Debt.

4. Enforcement.

(a) Until such time as the Senior Debt and all other obligations of Borrower to Agent and Lenders under the Loan Agreement, the Senior Mortgage and the other documents evidencing and/or securing the Senior Debt have been paid in full, the County shall not : (i) sell, assign, transfer, encumber or subordinate (other than pursuant to this Agreement) all or any portion of the County Debt; (ii) commence or join in the prosecution of any judicial or non-judicial action or proceeding against Borrower (including without limitation a foreclosure of the County Mortgage or any *in rem* action relating to the Project); and/or (iii) demand or accept any payment (whether in cash or property, and whether received directly, indirectly or by set-off, counterclaim or otherwise) in respect of any indebtedness from Borrower to the County without Agent's prior written consent, which may be withheld by Agent in the exercise of its sole and absolute discretion and if any such payments are received by the County, then such payments shall be kept separate from other funds, shall be held for the benefit of Agent and Lenders, and shall be paid to Agent immediately upon demand by Agent.

(b) The provisions of this Agreement shall be applicable both before and after the commencement, whether voluntary or involuntary, of any case, proceeding or other action by or against Borrower or any member or manager thereof under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors (a

“**Proceeding**”). Furthermore, this Agreement and the subordinations contained herein shall apply notwithstanding the fact that all or any part of the Senior Debt or any claim for or with respect to the Senior Debt is subordinated, avoided or disallowed, in whole or in part, in any Proceeding or other applicable federal, state or foreign law. Without limiting the foregoing, the County expressly covenants and agrees that this Agreement is enforceable under applicable bankruptcy law and should be enforced under Section 510(a) of the United States Bankruptcy Code. Until such time as the Senior Debt has been paid in full, the County shall not, and shall not solicit any person or entity to, direct or cause Borrower or any of the persons or entities that control Borrower (the “**Borrower Group**”) to: (i) commence any Proceeding; (ii) institute proceedings to have Borrower or any manager or member thereof adjudicated a bankrupt or insolvent; (iii) consent to the institution of bankruptcy or insolvency proceedings against Borrower or any member or manager thereof; (iv) file a petition or consent to the filing of a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief by or on behalf of Borrower or any manager or member thereof; (v) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for Borrower or any manager or member thereof, or any collateral securing the Senior Debt (or any portion thereof); (vi) make an assignment for the benefit of any creditor of Borrower or manager or member thereof; (vii) seek to consolidate any assets of Borrower or any manager or member thereof with the assets of the any member of the Borrower Group in any proceeding relating to bankruptcy, insolvency, reorganization or relief of debtors; or (viii) take any action in furtherance of any of the foregoing.

(c) The County shall not initiate or join in the filing of an involuntary petition under the Bankruptcy Code or the commencement of any other Proceeding against Borrower or any manager or member thereof. The County hereby agrees that it shall not make any election, give any consent, commence any action or file any motion, claim, obligation, notice or application or take any other action in any Proceeding (including, without limitation, any action under Section 105 of the Bankruptcy Code) with respect to the County Debt or the County Loan Documents in any case by or by or against Borrower or its property without the prior written consent of Agent, which may be granted or withheld in Agent’s sole and absolute discretion.

(d) In the event of the commencement of any Proceeding by or against Borrower or any manager or member thereof, (i) Agent may vote in such Proceeding any and all claims of the County, and (ii) the County shall not challenge the validity or amount of any claim submitted in such Proceeding by Agent in good faith or any valuations of the Senior Debt collateral submitted by Agent in good faith, in such Proceeding or take any other action in such Proceeding, which is adverse to Agent’s enforcement of its claim or receipt of adequate protection (as that term is defined in the Bankruptcy Code). In furtherance of the foregoing, the County hereby assigns to Agent the right to vote all of the County’s claims, including the right to approve or object to any plan of reorganization, in any Proceeding with respect to Borrower (or any general partner or managing member thereof), the County Debt or the County Loan Documents. In the event that such assignment shall be held invalid or unenforceable, then the provisions hereof prohibiting the right of the County to make any election, vote on any plan of reorganization, give any consent, commence any action or file any motion, claim, obligation, notice or application or take any other action in any proceeding without the prior written consent of Agent shall not be affected thereby. Agent shall be free to exercise such voting rights as Agent shall determine in its sole and absolute discretion, and Agent shall have no duty or obligation to file, prosecute, pursue or protect any such claim and shall otherwise have no duties, liabilities or obligations to the County with respect thereto. Without in any way limiting the generality of the subordinations set forth in this Agreement, the County agrees that, upon the request of Agent, the County shall do, execute,

acknowledge and deliver to Agent each and every such further act, deed, conveyance and instrument as Agent may request for more fully effectuating the foregoing appointment and grant and assignment of such voting rights.

5. Other Agreements.

(a) The County agrees that (i) Agent and the Lenders are and shall be third party beneficiaries of the County's covenants and agreements under the County Documents with respect to the Property, and (ii) notwithstanding anything to the contrary contained in the County Documents, such covenants and agreements by the County shall not be conditioned on the absence of a default (or of any event that with notice or the passage of time, or both, would constitute an default) under the County Documents.

(b) In the case of any default by Borrower under the County Loan Documents (a "**County Loan Default**"), the County agrees to deliver a default notice to Agent. Agent shall have the right, but not the obligation, to cure any County Loan Default within ninety (90) days from the date on which it receives the default notice from the County; provided, however, if such default may not reasonably be cured within such 90-day period, Agent shall have a longer period so long as Agent shall diligently and continuously endeavor to cure the same. All amounts advanced or expended by Agent and/or Lenders to cure a County Loan Default shall be deemed to have been advanced by Agent and/or Lenders pursuant to, and shall be secured by the lien of, the Senior Mortgage. However, no payment to Agent and/or Lenders pursuant to the provisions of this Agreement shall entitle the County to exercise any rights of subrogation in respect thereof until all Senior Debt is finally and unavoidably paid in full. For purposes of clarity, "finally and unavoidably paid in full" under this Agreement shall be deemed to have occurred if, within ninety (90) days after either the Senior Debt is paid in full or Agent accepts payment of less than the full amount of the Senior Debt as payment in full, no voluntary or involuntary petition has been filed by or against Borrower under any chapter of the Bankruptcy Code, Title 11, U.S.C.A. or any local, state, federal or other insolvency laws or laws providing for relief of debtors, seeking relief, protection, reorganization, liquidation, dissolution, assignment for the benefit of creditors or similar relief.

(c) The County agrees to provide estoppel certificates confirming the status of the County Loan within thirty (30) days of Agent's request.

6. Modifications. Agent may, without notice to the County, extend, renew, modify or increase the Senior Debt and may substitute, exchange or release collateral, guarantees, or letters of credit securing payment of the Senior Debt, or any part thereof, and may add or release any debtor or any guarantor of or surety on the Senior Debt. Without the prior written consent of Agent, the County shall not extend, renew, modify or increase the County Debt, or permit Borrower to incur additional debt to the County in connection with the Project.

7. Notice. All notices which are required or permitted hereunder must be in writing and shall be deemed to have been given, delivered or made, as the case may be (notwithstanding lack of actual receipt by the addressee) (i) three (3) days after having been deposited in the United States mail, certified or registered, return receipt requested, sufficient postage affixed and prepaid, or (ii) one (1) day after having been deposited with an expedited, overnight courier service (such as Federal Express), addressed to the party to whom notice is intended to be given at the address set forth in the preamble to this Agreement. Any party shall have the right to change such party's address for notice hereunder to any other location within

the continental United States by giving of fifteen (15) days' notice to all other parties in the manner set forth herein.

8. Termination. This Agreement and the subordination granted herein shall terminate when the Senior Debt is finally and unavoidably paid and discharged. The Senior Debt shall be deemed not to be paid in full, for purposes of this Agreement, so long as Agent and the Lenders have any obligation or option with respect to any of the Senior Debt, to make further advances to Borrower or to protect the collateral for any of the Senior Debt. This Agreement and the subordination granted herein shall continue to be effective or be reinstated if any payment of the Senior Debt is rescinded, avoided, or for any reason returned by Agent or Lenders because of any adverse claim or threatened action as though such payment had not been made.

9. Remedies. Upon violation of this Agreement by the County, Agent and Lenders may accelerate the maturity of the Senior Debt so that all Senior Debt is immediately due and payable. The County shall pay to Agent all sums received by the County paid in violation of this Agreement. Agent is entitled to specific performance of this Agreement, and the County waives any defense based upon adequacy of a remedy at law which may be asserted as a bar to the remedy of specific performance. No failure on the part of Agent to exercise or delay in exercising any right or remedy hereunder shall operate as a waiver thereof nor shall any partial exercise of any rights or remedies hereunder preclude any other or further exercise of such or additional rights or remedies. The remedies provided herein are cumulative of any other remedies provided by law or otherwise available to Agent and Lenders.

10. Assignment of and Participations in Senior Debt. The County acknowledges that Agent and Lenders have the right to sell, assign, transfer, negotiate or grant participations or any interest in, any or all of the Senior Debt and any related obligations, including, without limitation, this Agreement. In connection with the above, but without limiting its ability to make other disclosures to the full extent allowable, Agent and Lenders may disclose all documents and information which Agent and Lenders now or later have or acquire relating to the County and this Agreement, however obtained. The County further agrees that Agent and Lenders may provide information relating to this Agreement or relating to the County to any parent, affiliates, subsidiaries and service providers of Agent and Lenders.

11. Waiver or Modification of Rights. No waiver of any rights under this Agreement shall be effective unless the waiver is in writing and signed by the party waiving such rights. No modification of this Agreement shall be effective unless signed by all parties to this Agreement. Each waiver or modification shall be a waiver or modification only with respect to the specific matter to which the waiver or modification relates and shall in no way impair the rights or the obligations of the parties hereto in any other respect.

12. Binding Effect; Governing Law. This Agreement shall bind and be for the benefit of the parties hereto, and their respective successors and assigns, and shall be construed according to the laws of the State of Florida, without regard to conflict of laws principles.

13. Entire Agreement, Etc. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof. No purported modification or waiver by the parties of any provision of this Agreement, and no purported consent by either party to any departure by the other party from strict compliance herewith, shall be effective in any event unless the same is in writing and signed by the parties hereto, and then such modification, waiver or consent shall be effective only in the specific instance and for the specific purpose given. This Agreement may be not changed or terminated orally. No act or omission of any kind by Agent under or in connection with the Senior Loan shall impair or otherwise affect this Agreement.

14. Attorneys' Fees. In the event of any legal or equitable action hereunder or related hereto (including appellate review), the prevailing party shall be entitled to recover its reasonable attorneys' and legal assistants' fees and costs.

15. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect any of the remaining provisions.

16. Counterparts. This Agreement may be executed in any number of counterparts and all such counterparts shall collectively constitute a single document.

17. WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HERETO KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO AGENT TO ACCEPT THIS AGREEMENT.

[Remainder of page left intentionally blank –
Signature and acknowledgement pages follow.]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement to be effective for all purposes as of the Effective Date.

AGENT:

CIBC BANK USA,
an Illinois state chartered bank, as Agent

By: _____
Jeffrey Shulman, Managing Director

STATE OF FLORIDA)
COUNTY OF _____)

THE FOREGOING INSTRUMENT was acknowledged before me by means of ___ physical presence or ___ online notarization, on this ___ day of _____, 2023, by Jeffrey Shulman, as Managing Director of **CIBC BANK USA**, an Illinois state chartered bank, on behalf of the bank. He *[please check as applicable]* ___ is personally known to me, or ___ presented his Florida driver's license as identification.

(NOTARIAL SEAL)

Print Name: _____
Notary Public, State of Florida
My Commission Expires: _____

THE COUNTY:

PINELLAS COUNTY, political subdivision of the State of Florida, by and through its Board of County Commissioners

By: _____

Name: Barry A. Burton

Title: County Administrator – Pinellas County

STATE OF FLORIDA)
COUNTY OF PINELLAS)

The foregoing instrument was acknowledged before me by means of ____ physical presence or __ online notarization this ____ day of _____, 2023, by _____ as County Administrator of PINELLAS COUNTY, a political subdivision of the State of Florida, by and through its Board of County Commissioners, on behalf of the same. He *[please check as applicable]* ____ is personally known to me, or ____ presented his driver’s license as identification.

(NOTARIAL SEAL)

Print Name: _____

Notary Public, State of Florida

My Commission Expires: _____

EXHIBIT A

LAND

BEGIN at the Southwest corner of Tract "A", NORTH ST. PETERSBURG SCOTT PARTIAL REPLAT, according to plat thereof, recorded in Plat Book 63, Page 93, of the Public Records of Pinellas County, Florida; thence, along the West line of said Tract "A", N00°08'11"E, a distance of 256.36 feet to a point being the Northwest corner of said Tract "A"; thence along the northerly line of said Tract "A", S74°36'49"E, a distance of 28.73 feet to a point on the westerly line of the lands described in O.R. 6854, Page 913; thence along the westerly and northerly lines of said lands, the following three (3) courses; (1) N00°08'11"E, a distance of 10.36 feet; (2) S74°36'49"E, a distance of 62.19 feet; (3) N00°08'11"E, a distance of 51.80 feet, to a point on the easterly line of NORTH ST. PETERSBURG BARNARDS PARTIAL REPLAT, according to the plat thereof, recorded in Plat Book 100, Page 1, of the Public Records of Pinellas County, Florida; thence along the easterly and northerly lines of said plat, the following three (3) courses; (1) along the easterly line of said plat, N63°34'31"E, a distance of 47.45 feet; (2) N07°30'01"E, a distance of 237.23 feet; (3) along the northerly line of said plat, N85°18'59"W, a distance of 161.07 feet to a point on the West line of Lot 2, NORTH ST. PETERSBURG RICHARDSON PARTIAL REPLAT, according to the plat thereof recorded in Plat Book 57, Page 81, of the Public Records of Pinellas County, Florida; thence along the westerly, northerly and easterly lines of said plat, the following four (4) courses; (1) along the westerly line of Lot 2 of said plat, N00°08'11"E, a distance of 298.40 feet to the point on a curve to the right; (2) thence along said curve, having a radius of 50.00 feet, a distance of 72.49 feet along the arc of said curve through a central angle of 83°03'49" with a chord bearing N41°40'06"E, and chord distance of 66.30 feet to a point of a reverse curve to the left; (3) thence along said reverse curve and the northerly line of Lots 2 and 3, of said plat, having a radius of 1693.00 feet, a distance of 445.47 feet along the arc of said curve through a central angle of 15°04'33" with a chord bearing N75°39'44"E, and a chord distance of 444.19 feet; (4) thence along the easterly line of Lots 3, 4, and 5 of said plat, S22°57'14"E, a distance of 300.82 feet to a point being on the northerly line of Lot 1, Block 1, NORTH ST. PETERSBURG SCOTT 2ND PARTIAL REPLAT, according to plat thereof, recorded in Plat Book 77, Page 67, of the Public Records of Pinellas County, Florida; thence along the northerly and easterly lines of Lot 1, Block 1 of said plat, the following six (6) courses; (1) along the northerly line of Lot 1, Block 1 of said plat, S22°07'34"E, a distance of 59.21 feet to a point on a curve to the left; (2) thence along said curve, having a radius of 50.00 feet, a distance of 86.23 feet along the arc of said curve through a central angle of 98°48'49" with a chord bearing S71°31'59"E, and chord distance of 75.93 feet; (3) N59°03'37"E, a distance of 87.80 feet; (4) N54°41'46"E, a distance of 154.45 feet; (5) N61°24'46"E, a distance of 68.36 feet to a point on the easterly line of Lot 1, Block 1 of said plat; (6) along said easterly line, S00°08'51"W, a distance of 272.46 feet to a point on the northerly line of aforementioned Tract "A", NORTH ST. PETERSBURG SCOTT PARTIAL REPLAT; thence along the northerly, easterly and southerly lines of said Tract "A", the following four (4) courses; (1) along the northerly line of said Tract "A", S89°47'34"E, a distance of 159.74 feet to a point on the easterly line of said Tract "A"; (2) along said easterly line, S00°04'10"W, a distance of 530.09 feet to a point on a curve to the right; (3) thence along said curve, having a radius of 30.00 feet, a distance of 47.09 feet along the arc of said curve through a central angle of 89°56'07" with a chord bearing S45°02'14"W, and chord distance of 42.40 feet to a point on the southerly line of said Tract "A"; (4) along said southerly line, N89°59'43"W, a distance of 1077.90 feet to the POINT OF BEGINNING.

City of St. Petersburg, Pinellas County, Florida.

AND

Tract B, North St. Petersburg Scott Partial Replat, according to plat thereof recorded in Plat Book 63, Page 93, of the Public Records of Pinellas County, Florida.