

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

166



**FROM:** Economic Development Agency

**SUBMITTAL DATE:**  
September 4, 2009

**SUBJECT:** Subordination Agreement for Rancho Dorado North Apartment Project in the City of Moreno Valley

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the attached Subordination Agreement between the County of Riverside and MV Rancho Dorado II, L.P., a California limited partnership;
2. Authorize the Chairman of the Board to sign the attached Subordination Agreement; and
3. Authorize the Assistant County Executive Officer/EDA or designee to take all necessary steps to implement the Agreements including, but not limited to, signing subsequent essential and relevant documents.

**BACKGROUND:** (Commences on Page 2)

Robert Field  
Assistant County Executive Officer/EDA

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2009/2010

**COMPANION ITEM ON BOARD OF DIRECTORS AGENDA:** No

<b>SOURCE OF FUNDS:</b> HOME Investment Partnerships Act Grant Funds	<b>Positions To Be Deleted Per A-30</b>	<input type="checkbox"/>
	<b>Requires 4/5 Vote</b>	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:** APPROVE

BY:   
Jennifer L. Sargent

**County Executive Office Signature**

FORM APPROVED COUNTY COUNSEL  
DATE 7/1/09  
BY MICHELLE CLACK  
Departmental Concurrence

Dep't Recomm.:  Consent  Policy  
Per Exec. Ofc.:  Consent  Policy

2009-09-08 11:58

**Prev. Agn. Ref.:** 3.35-6/2/09; 3.19-3/17/09; 3.14-11/25/08; 3.17-3/11/08; 3.24-2/26/08; 3.17-2/5/08  
**District:** 5<sup>th</sup>  
**Agenda Number:**

ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD

3.18  
EDA-001a-F11  
Form 11 (Rev 05/2003)

**BACKGROUND:**

On June 2, 2009, the Board of Supervisors approved a Loan Agreement for the Use of HOME Funds with MV Rancho Dorado II Limited Partnership ("Owner") in the amount of \$650,000 (the "HOME Loan") for the development and construction of an 71-unit, multi-family apartment complex, Rancho Dorado North Apartments, in the City of Moreno Valley (the "Project").

The Owner is securing construction financing to pay for the construction of the Project and has requested that the County HOME Loan be subordinate to the construction loan provided by Farmers and Merchants Bank of Long Beach. The County's financial position in the Project will not be altered by such request.

County Counsel has reviewed and approved to form the attached Subordination Agreement. Staff recommends that the Board approve the attached documents.

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Goldfarb & Lipman LLP  
1300 Clay Street, 9<sup>th</sup> Floor  
Oakland, CA 94612  
Attn: Robert C. Mills, Esq.

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**SUBORDINATION AGREEMENT**  
**(County of Riverside – HOME Funds)**

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

THIS SUBORDINATION AGREEMENT ("Agreement") is made August \_\_\_\_, 2009, by MV Rancho Dorado II Limited Partnership, a California limited partnership, owner of the real property hereinafter described ("Owner") and the County of Riverside, a political subdivision of the State of California, holder of the deed of trust described below ("County"), in favor of Farmers & Merchants Bank of Long Beach, a California corporation ("Lender").

**RECITALS**

- A. In furtherance of the objectives of the HOME Program enacted under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, for which the County has qualified as an "Urban County" for purposes of receiving such funds, the County has made or will make a loan to Owner in the principal amount of Six Hundred Fifty Thousand and 00/100 Dollars (\$650,000.00) from funds available to it through the HOME Program (the "County Loan"). The County Loan is evidenced by, among other things, that certain Loan Agreement for the Use of HOME Funds dated March 17, 2009, (the "County Loan Agreement"), and recorded against the Property in the Official Records of the County of Riverside (the "Official Records") on April 8, 2009 as Instrument No. 2009-0172224, and that certain Promissory Note dated February 26, 2009 (the "County Note") and secured by that certain Deed of Trust with Assignment of Rents (the "County Deed of Trust") dated March 17, 2009, and recorded against the Property in the Official Records on April 8, 2009 as Instrument No. 2009-0172225.
- B. The County Loan Agreement, the County Note and the County Deed of Trust, including any amendments to said documents, and any other documents executed by Owner and/or County in connection with the County Loan, are hereinafter collectively referred to as the "County Documents".
- C. Owner has executed a deed of trust with absolute assignment of leases and rents, security agreement and fixture filing ("Lender's Deed of Trust") securing, among other things, a promissory note ("Lender's Note") in the principal sum of Ten Million Two Hundred

For scanning

Thousand and 00/100 Dollars (\$10,200,000.00) dated July 28, 2009, in favor of Lender ("Lender's Loan"). Lender's Deed of Trust was recorded in the Official Records on August 7, 2009 as Instrument No. 2009-0414302. The Lender's Deed of Trust, Lender's Note and any other loan documents executed in connection with Lender's Loan, including, but not limited to, the building loan agreement, shall be referred to herein collectively as the "Lender Loan Documents".

- D. As a condition to Lender making Lender's Loan secured by Lender's Deed of Trust, Lender requires that Lender's Deed of Trust be unconditionally and at all times remain a lien or charge upon the Property, prior and superior to all the rights of County secured by the County Deed of Trust, the repayment of the County Loan and the County's rights under the County Documents, and that County specifically and unconditionally subordinates the County Deed of Trust, the repayment of the County Loan and the County's rights under the any of the County Documents, including any affordability restrictions contained therein, to the lien or charge of Lender's Deed of Trust, the repayment of Lender's Loan and the other Lender Loan Documents.
- E. County and Owner agree to the subordination in favor of Lender.

THEREFORE, for valuable consideration and to induce Lender to make Lender's Loan, Owner and County hereby agree for the benefit of Lender as follows:

- 1.1 Lender's Deed of Trust securing Lender's Note in favor of Lender, and any modifications, renewals or extensions thereof, together with Lender's right to repayment of Lender's Loan and Lender's rights under any other Lender Loan Documents, shall unconditionally be and at all times remain a lien or charge on the Property prior and superior to the County Deed of Trust, the repayment of the County Loan or under any other County Documents, including any affordability restrictions contained therein, subject to the terms of this Agreement.
- 1.2 This Agreement shall be the whole agreement with regard to the subordination of the County Deed of Trust, the repayment of the County Loan and any of the other County Documents, including any affordability restrictions contained therein, to the lien or charge of Lender's Deed of Trust together with Lender's right to repayment of Lender's Loan and Lender's rights under any other Lender Loan Documents and shall supersede and cancel, but only insofar as would affect the priority of Lender's Deed of Trust, any prior agreements as to such subordination, including, without limitation, those provisions, if any, contained in the County Documents which provide for the subordination of the County Deed of Trust or any other County Document to a deed or deeds of trust or to a mortgage or mortgages.

County further declares, agrees and acknowledges for the benefit of Lender, that:

- 1.3 Lender, in making disbursements pursuant to any such agreement, is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom Lender disburses such

proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat the subordination herein made in whole or in part; and

- 1.4 County intentionally and unconditionally waives, relinquishes and subordinates all of County's right, title and interest in and to the Property to the lien or charge of Lender's Deed of Trust upon the Property and understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination, specific loans and advances are being and will be made by Lender and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument.

Exhibit A is attached hereto and incorporated herein by this reference.

**NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.**

**IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT HERETO.**

**"OWNER"**

MV RANCHO DORADO II LIMITED PARTNERSHIP,  
a California limited partnership

By: PALM DESERT DEVELOPMENT COMPANY, a  
California corporation, its Administrative General  
Partner

By: \_\_\_\_\_  
Danavon L. Horn, President

By: HOUSING CORPORATION OF AMERICA, a Utah  
nonprofit corporation, its Managing General Partner

By: \_\_\_\_\_  
Ronald H. Olson, President

**"COUNTY"**

COUNTY OF RIVERSIDE, a political subdivision of the  
State of California


By: \_\_\_\_\_  
Jeff Stone  
Chairman, Board of Supervisors

ATTEST:

KECIA HARPER-IHEM, Clerk of the Board

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

APPROVED AS TO FORM:  
PAMELA J. WALLS  
County Counsel

By:  9/1/08  
Deputy Michelle Clark

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

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

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

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

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
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\_\_\_\_\_  
Notary Public

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

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\_\_\_\_\_  
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

PARCEL 1 AS SHOWN BY PARCEL MAP NO. 36075, ON FILE IN BOOK 228, PAGES 58 THROUGH 62, INCLUSIVE, OF PARCELS MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

APN: 486-070-007 (portion)