

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

126



FROM: Economic Development Agency

SUBMITTAL DATE:
September 1, 2010

SUBJECT: Subordination Agreement for Wolff Waters Apartments in the City of La Quinta

RECOMMENDED MOTION: It is recommended that the Board of Supervisors:

1. Authorize the Assistant County Executive Officer/EDA, or designee, to execute a Subordination Agreement with the California Department of Housing and Community Development ("HCD") in connection with the Multi-Family Housing Program Loan in amount up to \$8,500,000, subject to approval by County Counsel; and
2. Authorize the Assistant County Executive Officer/EDA, or designee, to take all necessary steps to implement the Subordination Agreement with HCD to include signing subsequent essential and relevant documents.

BACKGROUND: (Commences on Page 2)

Robert Field

Robert Field
Assistant County Executive Officer/EDA

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2010/2011

COMPANION ITEM ON BOARD OF DIRECTORS AGENDA: No

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

C.E.O. RECOMMENDATION:

APPROVE

BY: *Jennifer L. Sargent*
Jennifer L. Sargent

County Executive Office Signature

- Dept't Recomm.: Consent Policy
- Per Exec. Ofc.: Consent Policy

FORM APPROVED COUNTY COUNSEL

AUG 26 2010
By *Michelle C. [Signature]*

Departmental Concurrence

BACKGROUND:

On December 11, 2007, the Board of Supervisors approved a HOME Loan in the amount of \$1,000,000, for the use of HOME funds with La Quinta Housing Associates, L.P., a California Limited Partnership ("Partnership"), for the development and construction of an 218-unit rental housing complex for families in the City of La Quinta. The project is also known as Wolff Waters Apartments. The project has a mix of 22 one-bedroom; 68 two-bedroom; 102 three-bedroom; and 24 four-bedroom units. Two three-bedroom units are set aside for on-site managers. The project site, approximately 14.81 acres, is located on Assessor's Parcel number 600-020-030, at the northwest corner of 48th Avenue and Dune Palms Road in the City of La Quinta. The project includes a community building of approximately 3,204 square feet with a computer room to be used as a computer learning center, kitchen, laundry room, and free Wi-Fi internet access to its residents. 108 units are designated as Low HOME units which are limited to very low-income households whose incomes do not exceed 50% of the Riverside County Median Income for a period of at least 55 years.

The County's HOME Loan is currently in third position behind a construction and permanent loan made to the Partnership by Citibank and a loan made by La Quinta Redevelopment Agency. The total amount of these senior loans is approximately \$80,600,000. The County's HOME Loan is senior to a loan made by the Federal Home Loan Affordable Housing Program (AHP). The project was completed in December 2009.

The Partnership is replacing a portion of the construction loan provided by Citibank with a loan from the State of California Department of Housing and Community Development ("HCD") Multi-Family Housing Program ("MHP") in the amount not-to-exceed \$8,500,000. HCD is requiring the County, Agency and AHP to subordinate to its MHP loan. As a result of this Subordination Agreement, the County's HOME loan will be in the fourth position behind the permanent loan made to the Partnership by Citibank, the MHP loan, and the Agency Loan. After the subordination to the MHP loan, the total amount of senior loans will not exceed \$44,668,435.

Staff recommends that the Board approve the subordination of the HOME Loan Agreement to the HCD MHP loan.

**Free recording in accordance
with California Government
Code section 27383**

RECORDING REQUESTED BY, AND
WHEN RECORDED, MAIL TO:

State of California
Department of Housing and
Community Development
P. O. Box 952052
Sacramento, CA 94252-2052
Attn: Multifamily Housing Program
Documents Coordinator
__-MHP-__

SUBORDINATION AGREEMENT AND ESTOPPEL CERTIFICATE

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 AND ESTOPPEL CERTIFICATE (the "Agreement") is dated as of _____, 200___, for reference purposes only, and is entered into by and among _____, (the "Junior Lienholder") and _____ L.P., a California limited partnership (the "Borrower"), and the Department of Housing and Community Development, a public agency of the State of California (the "Senior Lender").

RECITALS

A. Borrower is the owner of the fee simple interest or a leasehold estate in that real property described in Exhibit A attached hereto and made a part hereof (the "Property"). The Borrower has acquired and is rehabilitating a _____-unit multifamily residential rental development on the Property (the "Improvements"). The Property and the Improvements are sometimes referred to collectively as the "Development."

B. The Junior Lienholder has made a loan to the Borrower in the principal sum of _____ Dollars (\$_____,000.00) (the "Junior Lienholder Loan"). The Junior Lienholder Loan is evidenced by a certain promissory note (the "Junior Lienholder Note"),

secured by a certain deed of trust (the "Junior Lienholder Deed of Trust") recorded concurrently herewith, in the Official Records of _____ County, California (the "Official Records"), on _____, 2006, as Instrument No. _____. The Junior Lienholder and Borrower have also entered into a regulatory agreement affecting the use of the Development, recorded on _____, as Instrument No. _____ in the Official Records (the "Junior Lienholder Regulatory Agreement"). (The Junior Lienholder Deed of Trust, the Junior Lienholder Regulatory Agreement and all other documents evidencing or securing the Junior Lienholder Loan are collectively referred to herein as the "Junior Lienholder Documents.")

C. In order to finance the development of the Improvements, the Senior Lender has agreed to loan the Borrower a sum not to exceed _____ Dollars (\$_____,000,000.00) (the "MHP Loan"), subject to the terms and conditions of: (i) a regulatory agreement restricting the use and occupancy of the Development and the income derived therefrom which shall be dated as of even date herewith and recorded as an encumbrance on the Property in the Official Records (the "MHP Regulatory Agreement"), and (ii) other loan documents. The MHP Loan will be evidenced by a promissory note (the "MHP Note"), the repayment of which will be secured by, among other things, a deed of trust by Borrower as trustor, to Senior Lender as beneficiary recorded as an encumbrance on the Property in the Official Records (the "MHP Deed of Trust") and by such other security as is identified in other loan documents.

D. The Senior Lender is willing to make the MHP Loan provided the MHP Deed of Trust and the MHP Regulatory Agreement are liens, claims or charges upon the Development prior and superior to the Junior Lienholder Documents, and provided that the Junior Lienholder specifically and unconditionally subordinates and subjects the Junior Lienholder Documents to the liens, claims or charges of the MHP Deed of Trust and the MHP Regulatory 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, and in order to induce the Senior Lender to make its MHP Loan, it is hereby declared, understood and agreed as follows:

1. The MHP Regulatory Agreement and the MHP Deed of Trust securing the MHP Note in favor of the Senior Lender, and any and all renewals, modifications, extensions or advances thereunder or secured thereby (including interest thereon) shall unconditionally be and remain at all times liens, claims, or charges on the Development prior and superior to the Junior Lienholder Documents, and to all rights and privileges of the Junior Lienholder thereunder; and the Junior Lienholder Documents, together with all rights and privileges of the Junior Lienholder thereunder are hereby irrevocably and unconditionally subject and made subordinate to the liens, claims or charges of the MHP Deed of Trust and the MHP Regulatory Agreement.

2. This Agreement shall be the whole and only agreement with regard to the subordination of the Junior Lienholder Documents, together with all rights and privileges of the Junior Lienholder thereunder, to the liens, claims or charges of the MHP Deed of Trust and the MHP Regulatory Agreement, and this Agreement shall supersede and cancel any prior agreements to subordinate the claims, liens or charges of, but only insofar as would affect the priority between the claims, liens or charges of the Junior Lienholder Documents to the MHP Deed of Trust and the MHP Regulatory Agreement including, but not limited to, those provisions, if any, contained in the Junior Lienholder Documents, which provide for the subordination of the lien or charge thereof to another lien or charge on the Property or the Improvements.

3. The Junior Lienholder declares, agrees and acknowledges that:

(a) The Junior Lienholder consents and approves (i) all provisions of the MHP Note, the MHP Deed of Trust and the MHP Regulatory Agreement, and (ii) all agreements among the Junior Lienholder, Borrower and Senior Lender for the disbursement of the proceeds of the MHP Loan, including without limitation any loan escrow agreements which have been provided to the Junior Lienholder for review;

(b) The Senior Lender, in making disbursements of the MHP Loan pursuant to the MHP Note or any other agreement, is under no obligation or duty to, nor has the Senior Lender represented that it will, see to the application of such proceeds by the person or persons to whom the Senior 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;

(c) That none of the execution, delivery or recordation of any of the MHP Note, MHP Deed of Trust, or MHP Regulatory Agreement, or the performance of any provision, condition, covenant or other term thereof, will conflict with or result in a breach of the Junior Lienholder Documents or the Junior Lienholder Note; and

(d) The Junior Lienholder intentionally and unconditionally waives, relinquishes, subjects and subordinates the claims, liens or charges upon the Development of the Junior Lienholder Documents, all present and future indebtedness and obligations secured thereby, in favor of the claims, liens or charges upon the Development of the MHP Deed of Trust and the MHP Regulatory Agreement, and understands that in reliance upon, and in consideration of, this waiver, relinquishment, subjection, and subordination, the MHP Loan and advances thereof are being and will be made 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, subjection and subordination.

4. The Senior Lender would not make the MHP Loan without this Agreement.

5. This Agreement shall be binding on and inure to the benefit of the legal representatives, heirs, successors and assigns of the parties.

6. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

7. In the event that any party to this Agreement brings an action to interpret or enforce its rights under this Agreement, the prevailing party in such action shall be entitled to recover its costs and reasonable attorneys' fees as awarded by the court in such action.

8. This Agreement may be signed by different parties hereto in counterparts with the same effect as if the signatures to each counterpart were upon a single instrument. All counterparts shall be deemed an original of this Agreement.

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON (OR ENTITY) 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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above and agree to be bound hereby:

JUNIOR LIENHOLDER:

BORROWER:

Approved as to form:

By: _____

Name: _____

Its: _____

SENIOR LENDER:

**The Department of Housing and
Community Development, a public
agency of the State of California**

By: _____

, Manager
Multifamily Housing Program

[Signatures must be acknowledged]

EXHIBIT A

Legal Description of the Property

EXHIBIT A