

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



**FROM:** Supervisor Benoit

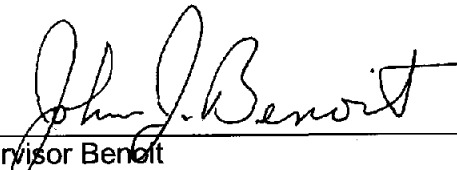
**SUBMITTAL DATE:**  
January 27, 2011

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

**RECOMMENDED MOTION:** 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 \$8,597,728, 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)

  
\_\_\_\_\_  
Supervisor Benoit

**3.48**

**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 48<sup>th</sup> 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 \$8,597,728. 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 \$44,766,163.

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

**FINANCIAL DATA:**

Not applicable.

**Attachments:**

Subordination Agreement

RF:DM:ER:TF:JG 10635

S:\Housing\HOME\2007 HOME-Tom FWolff Waters Place aka La Quinta Dune Palms\Form 11\F11 - HCD Sub Agmt - Wolff Waters Place rev.doc

**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  
05-MHP-239

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**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 January 31, 2011, for reference purposes only, and is entered into by and among the County of Riverside, a public agency, organized and existing under the laws of the State of California (the "Junior Lienholder"), La Quinta Housing Associates, 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 in that real property described in Exhibit A attached hereto and made a part hereof (the "Property"). The Borrower has acquired and developed a 218 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 One Million and no/100 Dollars (\$1,000,000.00) (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 December 20, 2007, as instrument No. 2007-0758156, in the Official Records of Riverside

County, California (the "Official Records"). The Junior Lienholder and the Borrower have entered into a document entitled "Loan Agreement for the Use of Home Funds" (the "Junior Lienholder Loan Agreement for the Use of Home Funds"), recorded in the Official Records on December 20, 2007, as Instrument No. 2007-0758155. (The Junior Lienholder Deed of Trust, the Junior Lienholder Agreement for the Use of Home Funds, 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 Eight Million Five Hundred Ninety Seven Thousand Seven Hundred Twenty-eight and no/100 Dollars (\$8,597,728.00) (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. (The MHP Loan, MHP Regulatory Agreement, MHP Note and MHP Deed of Trust are collectively referred to herein as the "Senior Lender 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 to (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, if any;

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 the 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. Senior Lender hereby agrees, but only as a separate and independent covenant of the Senior Lender and not as a condition to the continued effectiveness of the covenants and agreements of the Borrower as set forth herein, as follows:

a. Following a notice from the Senior Lender to the Borrower that a default or breach exists under the terms of the Senior Lender Documents and each of them, the Senior Lender shall use its best efforts to provide the Junior Lienholder with a copy of such notice, and the Junior Lienholder shall have the right, but not the obligation, to cure the default as follows:

(i) If the default is reasonably capable of being cured within thirty (30) days, as determined by the Senior Lender in its reasonable discretion, the Junior Lienholder shall have such period to effect a cure prior to exercise of remedies by Senior Lender under the Senior Lender Documents, or such longer period of time as may be specified in the Senior Lender Documents.

(ii) If the default is such that it is not reasonably capable of being cured within thirty (30) days, as determined by the Senior Lender in its reasonable discretion, or such longer period if so specified, and if the Junior Lienholder (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then the Junior Lienholder shall have such additional time as is determined by the Senior Lender, in its reasonable discretion, to be reasonably necessary to cure the default prior to exercise of any remedies by Senior Lender.

In no event shall Senior Lender be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within ninety (90) days after the first notice of default is given, or such longer period of time as may be specified in the Senior Lender Documents.

Nothing in this subparagraph a. is intended to modify any covenant, term or condition contained in the Senior Lender Documents, including, without limitation, the covenant against creating or recording any liens or encumbrances against the Property without the prior written approval of the Senior Lender.

b. The provisions of this paragraph 4 are intended to supplement, and not to limit, waive, modify or replace, those provisions of law pertaining to notice and cure rights of junior lenders including, without limitation, those set forth in California Civil Code sections 2924b and 2924c.

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

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

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

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:**

**County of Riverside**, a public agency, organized and existing under the laws of the State of California

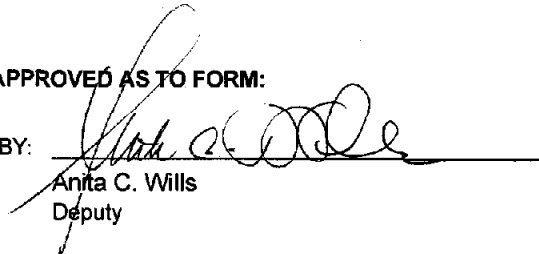
By: \_\_\_\_\_  
Robert Field  
Assistant County Executive  
Officer/EDA

**BORROWER:**

**La Quinta Housing Associates, L.P.**, a California limited partnership

By: The Coachella Valley Housing Corporation, a California nonprofit public benefit corporation  
Its: General Partner

**APPROVED AS TO FORM:**

BY:   
Anita C. Wills  
Deputy

By: \_\_\_\_\_  
John F. Mealey  
Executive Director

**SENIOR LENDER:**

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

By: \_\_\_\_\_  
Regi Fletcher, Manager  
Multifamily Housing Program

***[Signatures must be acknowledged.]***

## EXHIBIT A

### Legal Description of the Property

The land referred to is situated in the State of California, County of Riverside and is described as follows:

PARCEL 4 OF PARCEL MAP NO. 33588, IN THE CITY OF LA QUINTA, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 214, AT PAGES 24 THROUGH 27, INCLUSIVE, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THAT PORTION OF SAID PARCEL 4 DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 29, SAID POINT ALSO BEING THE CENTERLINE INTERSECTION OF AVENUE 48 AND DUNE PALMS ROAD AS SHOWN ON SAID PARCEL MAP NO. 33588;

THENCE NORTH  $00^{\circ} 13' 56''$  WEST ALONG SAID CENTERLINE OF DUNE PALMS ROAD A DISTANCE OF 1,126.96 FEET TO THE EASTERLY PROLONGATION OF THE NORTHERLY LINE OF SAID PARCEL 4 OF PARCEL MAP NO. 33588;

THENCE SOUTH  $90^{\circ} 00' 00''$  WEST ALONG SAID EASTERLY PROLONGATION A DISTANCE OF 55.00 FEET TO THE NORTHEAST CORNER OF SAID PARCEL 4 AND THE TRUE POINT OF BEGINNING.

THENCE LEAVING SAID EASTERLY PROLONGATION SOUTH  $00^{\circ} 13' 56''$  EAST ALONG THE EASTERLY LINE OF SAID PARCEL 4, ALSO BEING THE WESTERLY RIGHT-OF-WAY LINE OF SAID DUNE PALMS ROAD, A DISTANCE OF 194.71 FEET;

THENCE LEAVING SAID EASTERLY LINE OF PARCEL 4 SOUTH  $89^{\circ} 46' 04''$  WEST A DISTANCE OF 38.03 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY, HAVING A RADIUS OF 42.67 FEET;

THENCE WESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF  $19^{\circ} 29' 03''$ , AN ARC DISTANCE OF 14.51 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 89.67 FEET, A RADIAL LINE PASSING THROUGH SAID POINT BEARS SOUTH  $19^{\circ} 15' 07''$  WEST;

THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF  $57^{\circ} 41' 21''$ , AN ARC DISTANCE OF 90.28 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 465.33 FEET, A RADIAL LINE PASSING THROUGH SAID POINT BEARS NORTH  $76^{\circ} 56' 28''$  EAST;

THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF  $17^{\circ} 01' 14''$ , AN ARC DISTANCE OF 138.23 FEET TO A POINT ON SAID NORTHERLY LINE OF PARCEL 4 OF PARCEL MAP NO. 33588;

THENCE NORTH  $90^{\circ} 00' 00''$  EAST ALONG SAID NORTHERLY LINE A DISTANCE OF 159.89 FEET TO THE TRUE POINT OF BEGINNING.

APN: 600-020-041-5