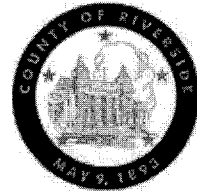


**SUBMITTAL TO THE BOARD OF COMMISSIONERS
HOUSING AUTHORITY
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM
10.1
(ID # 9567)

MEETING DATE:
Tuesday, May 21, 2019

FROM : HOUSING AUTHORITY:

SUBJECT: HOUSING AUTHORITY: Approve Subordination Agreement between Mecca III LP and the Housing Authority of the County of Riverside, Subordinating Affordability Covenants in connection with Mecca III Apartments Located in the Community of Mecca, County of Riverside; District 4, [\$0]

RECOMMENDED MOTION: That the Board of Commissioners:

1. Approve the attached form of Subordination Agreement between Mecca III LP, a California limited partnership (Mecca) and the Housing Authority of the County of Riverside (Housing Authority) subordinating the lien of that certain Covenant Agreement dated December 13, 2005 and the lien of that certain Loan Agreement dated December 12, 2005, each executed by the predecessor in interest of Mecca, Mecca Apartments III, for the benefit of the Housing Authority, to the lien of a Deed of Trust securing a loan in the not to exceed amount of \$3,900,000 from senior lender, Orix Real Estate Capital, LLC, a Delaware limited liability company, to Mecca to capitalize and make necessary repairs to the Mecca III Apartments;
2. Authorize the Executive Director, or designee, to execute a Subordination Agreement substantially conforming in form and substance to the attached form of Subordination Agreement, subject to approval by County Counsel; and
3. Authorize the Executive Director, or designee, to take all necessary steps to implement the Subordination Agreement, including, but not limited to, signing subsequent necessary and relevant documents, subject to approval by County Counsel.


ACTION:Policy

Robert Field, Assistant County Executive Officer/ECD 4/22/2019

MINUTES OF THE BOARD OF COMMISSIONERS

On motion of Commissioner Perez, seconded by Commissioner Jeffries and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None
Date: May 21, 2019
xc: Housing Authority

Kecia Harper
Clerk of the Board
By: 
Deputy

**SUBMITTAL TO THE BOARD OF COMMISSIONERS HOUSING AUTHORITY
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 0	\$ 0	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: N/A			Budget Adjustment:	No
			For Fiscal Year:	2019/20

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

Mecca III LP, a California limited partnership (New Owner) is the owner and operator of Mecca III Apartments located at 91-900 66th Avenue in the unincorporated community of Mecca, County of Riverside, also identified as Assessor's Parcel Number 727-220-006 (Property).

On December 12, 2005, the former Redevelopment Agency for the County of Riverside (Agency) and Mecca Apartments III, a California limited partnership and New Owner's predecessor in interest (Original Owner), entered into that certain Loan Agreement by and between Redevelopment Agency for the County of Riverside and Sam Jack and Associates (Loan Agreement) wherein the Agency provided a loan to Original Owner in the amount of \$70,000 derived from former Agency's Low and Moderate Income Housing Fund, relating to, among other things, the construction and operation upon the Property of a 58-unit affordable housing complex (Project).

Pursuant to the Loan Agreement, Predecessor executed that certain Covenant Agreement by and between Predecessor and Agency dated December 13, 2005 and recorded on January 11, 2006 as Instrument No. 2006-0026277 (Covenant Agreement), restricting the use and occupancy of all rental units within the Project to very low and low-income households, as specified therein, for a period of 55 years commencing on December 13, 2005.

Subsequent to the Loan Agreement, Assembly Bill No. x1 26, as modified by Assembly Bill No. 1484 (the "Dissolution Act"), added Parts 1.8 and 1.85 to Division 24 of the California Community Redevelopment Law (Health and Safety Code sections 33000 et seq.), the Agency was dissolved on February 1, 2012 such that the Agency is deemed a former redevelopment agency under Health and Safety Code section 34173.

Pursuant to Health and Safety Code Section 34176 (a), all housing functions previously performed by the former Agency, including related rights, powers, duties, obligations, and housing assets, were transferred to the Housing Authority of the County of Riverside (Housing Authority). As such, the Housing Authority is the successor in interest to the former Agency under the Loan Agreement and the Covenant Agreement.

**SUBMITTAL TO THE BOARD OF COMMISSIONERS HOUSING AUTHORITY
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

On September 19, 2018, Original Owner and New Owner entered into that certain Assignment and Assumption Agreement (Loan Agreement and Covenant Agreement for Mecca Apartments III) wherein Original Owner assigned all of its rights and obligations and delegated all of its duties under the Covenant Agreement and Loan Agreement and any and all related agreements and documents to New Owner.

The loan issued to the Original Owner pursuant to the Loan Agreement was repaid, however the Covenant Agreement and certain provisions within the Loan Agreement remain in full force and effect until their expiration on December 13, 2060.

New Owner desires to capitalize the Project and make necessary repairs to the Property to sustain safe affordable housing for the 58 very low and low-income households by refinancing the existing mortgage with a U.S. Department of Housing and Urban Development (HUD) Federal Housing Administration (FHA) insured loan issued by Orix Real Estate Capital, LLC, a Delaware limited liability company (Senior Lender). Senior Lender has required the Housing Authority subordinate the lien of the Covenant Agreement and the Loan Agreement to the lien of the Senior Lender loan in the not to exceed amount of \$3,900,000 as a condition precedent to funding such Senior Lender loan. California Health and Safety Code Section 33334.14, which is the applicable state law governing the Housing Authority's Covenant Agreement, permits the Housing Authority to subordinate the requirements contained in Covenant Agreement in certain circumstances, one of which is in the event such subordination is "[t]o a lien, encumbrance, or regulatory agreement under a federal or state program when a federal or state agency is providing financing, refinancing, or other assistance to the housing units or parcels, if the federal or state agency refuses to consent to the seniority of the agency's covenant or restriction on the basis that it is required to maintain its lien, encumbrance, or regulatory agreement or restrictions due to statutory or regulatory requirements, adopted or approved policies, or other guidelines pertaining to the financing, refinancing, or other assistance of the housing units or parcels." Here, HUD is requiring subordination of the Covenant Agreement and Loan Agreement to the FHA insured loan from the Senior Lender pursuant to 24 Code of Federal Regulations (CFR) § 200.71 and 24 CFR § 200.85, satisfying the subordination requirements set forth in California Health and Safety Code Section 33334.14. A copy of the proposed Subordination Agreement to be entered into between New Owner and the Housing Authority is attached.

Staff recommends approval of the subordination request since it will result in New Owner obtaining the necessary financing to construct much needed improvements to the Property and sustain safe affordable housing for the low and moderate income households residing in the Property.

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

Impact on Residents and Businesses

Approving this item will have a positive impact on residents and businesses which will allow New Owner to refinance and obtain financing to construct necessary improvements to the

**SUBMITTAL TO THE BOARD OF COMMISSIONERS HOUSING AUTHORITY
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

Property, create jobs and sustain safe affordable housing for 58 very low and low-income households at the Mecca III Apartments.

SUPPLEMENTAL:

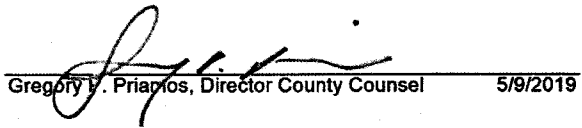
Additional Fiscal Information

No impact upon the County's General Fund; the Housing Authority's contribution to the project was repaid.

ATTACHMENTS:

- Form of Subordination Agreement


Nehini Maaka, Principal Management Analyst 5/13/2019


Gregory V. Priamos, Director County Counsel 5/9/2019

CLERK'S COPY

to Riverside County Clerk of the Board, Stop 1010
Post Office Box 1147, Riverside, Ca 92502-1147
Thank you

Recording Requested by and
when Recorded Return to:)
)
R. Andrew Lien, Esq.)
Krooth & Altman LLP)
1850 M Street NW
Suite 400
Washington, DC 20036

(Space above for Recorder's Use.)

SUBORDINATION AGREEMENT

This **SUBORDINATION AGREEMENT** (this "Agreement") is made as of _____
1, 2019, by **MECCA III LP**, a California limited partnership ("Borrower"), and **THE
HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE**, a public body, corporate
and politic, in its capacity as successor to the former Redevelopment Agency for the County of
Riverside ("Housing Authority").

WHEREAS, Borrower has obtained financing from **ORIX REAL ESTATE CAPITAL,
LLC**, a Delaware limited liability company ("Lender") for the benefit of the project known as
Mecca III Apartments ("Project"), which loan is secured by a Multifamily Deed of Trust,
Assignment of Rents and Security Agreement ("Security Instrument") dated as of _____ 1,
2019, and recorded in the Recorder's Office of Riverside County, California ("Records") on
_____ as Instrument Number _____, and is insured by the United States
Department of Housing and Urban Development ("HUD");

WHEREAS, Borrower's predecessor-in-interest, Mecca Apartments III, a California
Limited Partnership ("Prior Owner") received approval for the Project from the now-dissolved
Redevelopment Agency for the County of Riverside ("Agency") which Agency required certain
restrictions be recorded against the Project;

WHEREAS, Prior Owner entered into (a) that certain Development Agreement (the
"Development Agreement") with the Agency and (b) that certain Covenant Agreement dated
December 13, 2005, recorded in Records on January 11, 2006 as Instrument No. 2006-0026277
(the "Covenant Agreement"), with respect to the Project, as more particularly described in
Exhibit A attached hereto. The Development Agreement and Covenant Agreement are
collectively referred to herein as the "Restrictive Covenants");

WHEREAS, HUD requires as a condition of its insuring Lender's financing to the
Project, that the lien and covenants of the Restrictive Covenants be subordinated to the lien,
covenants, and enforcement of the Security Instrument; and

WHEREAS, the Housing Authority, as the successor-in-interest to the Agency, have
agreed to subordinate the Restrictive Covenants to the lien of the Mortgage Loan in accordance
with the terms of this Subordination Agreement.

MAY 21 2019

10.1

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

(a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Subordination Agreement, the provision contained in this Subordination Agreement shall govern and be controlling in all respects as set forth more fully herein.

(b) The following terms shall have the following definitions:

"Code" means the Internal Revenue Code of 1986, as amended.

"HUD" means the United States Department of Housing and Urban Development.

"HUD Regulatory Agreement" means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

"Lender" means ORIX Real Estate Capital, LLC, a Delaware limited liability company, its successors and assigns.

"Mortgage Loan" means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

"Mortgage Loan Documents" means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

"National Housing Act" means the National Housing Act of 1934, as amended.

"Program Obligations" has the meaning set forth in the Security Instrument.

"Residual Receipts" has the meaning specified in the HUD Regulatory Agreement.

"Security Instrument" means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

"Surplus Cash" has the meaning specified in the HUD Regulatory Agreement.

(c) Notwithstanding anything in the Restrictive Covenants to the contrary, the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the "HUD Requirements"). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Housing Authority's ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower's knowledge the Restrictive Covenants

impose no terms or requirements that conflict with the National Housing Act and related regulations.

(d) In the event of foreclosure (or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate.

(e) Borrower and Housing Authority acknowledge that Borrower's failure to comply with the covenants provided in the Restrictive Covenants does not and shall not serve as a basis for default under the HUD Requirements, unless a default also arises under the HUD Requirements.

(f) In enforcing the Restrictive Covenants, the Housing Authority will file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

- i. Available surplus cash, if the Borrower is a for-profit entity;
- ii. Available distributions of surplus cash and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or
- iii. Available residual receipts authorized by HUD, if the Borrower is a non-profit entity.

(g) For so long as the Mortgage Loan is outstanding, Borrower and Housing Authority shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD's prior written consent.

(h) Subject to the HUD Regulatory Agreement, the Housing Authority may require the Borrower to indemnify and hold the Housing Authority harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against the Housing Authority relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold the Housing Authority harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.

[SIGNATURES FOLLOW ON THE NEXT PAGE]

BORROWER:

MECCA III LP,
a California limited partnership

By: Trillium Housing Services,
a Washington non-profit corporation

By: _____
Name: _____
Title: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____, notary public, personally appeared _____, who 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 Signature) (Seal)

[SIGNATURES CONTINUE ON THE NEXT PAGE]

AUTHORITY:

**THE HOUSING AUTHORITY
OF THE COUNTY OF RIVERSIDE,**

a public entity corporate and politic, in its capacity as housing
successor to the former Redevelopment Agency for the County of Riverside

By: _____

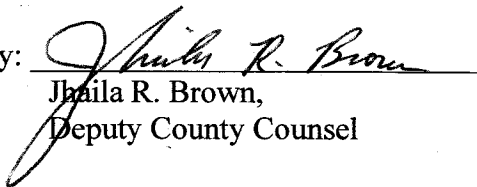
Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

Gregory P. Priamos, County Counsel

By:  _____
Jhaila R. Brown,
Deputy County Counsel

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Riverside)

On _____, before me, _____, notary public, personally appeared _____, who 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 Signature) (Seal)

EXHIBIT A
LEGAL DESCRIPTION

PARCEL A:

PARCEL 2, AS SHOWN BY PARCEL MAP 27493, ON FILE IN BOOK 180 PAGES 42 AND 43, OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL B:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OVER THE NORTHERLY AND EASTERLY 46 FEET OF PARCEL 1 OF PARCEL MAP 27493 ON FILE IN BOOK 180 PAGES 42 AND 43 OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

APN: 727-220-006-8