

2020-004879

Klamath County, Oregon

04/16/2020 01:21:54 PM

Fee: \$127.00

WHEN RECORDED RETURN TO:

Umpqua Bank
1111 Third Avenue, Suite 2900
Seattle, Washington 98101
Attention: Brianne Nevill

**SUBORDINATION AGREEMENT
(Sponsor Loan)**

303362 AM
THIS SUBORDINATION AGREEMENT is made and entered into as of April 16, 2020, by and among **UMPQUA BANK**, an Oregon banking corporation (together with its successors and assigns, "Senior Lender"), **KLAMATH HOUSING AUTHORITY**, an Oregon public body corporate and politic ("Subordinated Lender"), and **SUNRISE VISTA APARTMENTS, LLC**, an Oregon limited liability company ("Borrower").

WITNESSETH:

WHEREAS, Senior Lender has agreed, subject to certain conditions, to lend to Borrower up to \$8,100,000 (the "Senior Loan") to be secured by a Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing granted by Borrower for the benefit of Senior Lender against the real property described on Exhibit A attached hereto (the "Property") and recorded in the official records of Klamath County, Oregon, concurrently herewith (as may be amended, restated, replaced, renewed, extended, assigned or otherwise modified from time to time, the "Senior Trust Deed").

WHEREAS, Subordinated Lender has made or has agreed, subject to certain conditions, to make a loan to Borrower in the aggregate principal amount of up to \$136,943 (the "Subordinated Loan"). The Subordinated Loan is evidenced by the Subordinated Loan Documents (defined below).

WHEREAS, one of the conditions of Senior Lender extending credit to Borrower is the subordination of the Subordinated Liens (defined below) to the Senior Liens (defined below).

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

1.1 "Subordinated Indebtedness" means all obligations of any type or nature secured by the Subordinated Liens, presently or hereafter due from Borrower to Subordinated Lender, together with all interest and other charges or expenses incidental thereto.

1.2 "Subordinated Liens" means all liens, mortgages, encumbrances, restrictions, and security interests of any type or nature, previously or hereafter granted by Borrower to Subordinated Lender, including without limitation, liens, encumbrances, restrictions, and security interests granted in the Subordinated Loan Documents.

1.3 "Subordinated Loan Documents" means the documents listed on Exhibit B attached hereto and such other documents executed to evidence or secure the Subordinated Indebtedness, as each may be amended, restated, renewed, replaced or otherwise modified from time to time.

1.4 "Senior Indebtedness" means all obligations of any type or nature secured by the Senior Trust Deed, presently or hereafter due from Borrower, its successors and assigns, to Senior Lender, its successors, assigns, or participants, including, without limitation, all principal, interest, charges, and expenses under or incidental to the indebtedness secured by the Senior Liens.

1.5 "Senior Liens" means all liens, mortgages, security interests, and collateral assignments of any type or nature granted by Borrower to Senior Lender in the Senior Trust Deed, or in any other document or agreement securing payment of the Senior Indebtedness, and any amendments, modifications, or supplements thereto.

2. Consent of Subordinated Lender. Notwithstanding any of the terms of the documents and instruments creating the Subordinated Indebtedness, the Subordinated Lender does hereby consent to the creation, now or hereafter, of the Senior Indebtedness and the Senior Liens and to the execution and delivery by Borrower of any and all documents and instruments in connection therewith, including, without limitation, the Senior Trust Deed, and to the performance by Borrower of any and all of its obligations under or in connection therewith. Subordinated Lender agrees that no such action shall constitute an event of default or event, which with the passage of time, will become an event of default under any document or instrument relating to the Subordinated Indebtedness or Subordinated Liens.

3. Subordination of Subordinated Liens. In consideration of Senior Lender advancing the Senior Indebtedness, the Subordinated Liens are hereby subordinated to the Senior Liens; the Senior Liens shall be first, prior, and superior to the Subordinated Liens. The terms and provisions of any document creating a Subordinated Lien are hereby amended to provide that the Subordinated Liens therein granted are subordinate to the Senior Liens and that none of the terms of such documents or instruments evidencing the Subordinated Liens shall affect or limit in any way the rights or remedies provided to the holder of the Senior Indebtedness under the Senior Liens.

4. Insolvency Proceedings Against Borrower. The insolvency or bankruptcy of Borrower shall not affect this Agreement, and the same shall remain in full force and effect. In any insolvency or bankruptcy proceeding for the complete liquidation of Borrower (as opposed to a Chapter 11 Reorganization), Subordinated Lender shall not receive any distribution from the bankruptcy estate of Borrower unless and until the Senior Indebtedness has been satisfied in full.

5. Subordinated Loan Documents. Subordinated Lender shall not, without the prior written consent of Senior Lender, amend, modify, or supplement any of the documents or instruments creating or evidencing the Subordinated Indebtedness or Subordinated Liens.

6. Assignment. Subordinated Lender represents and warrants that no part of the Subordinated Indebtedness or Subordinated Liens have been assigned or transferred to or for the benefit of others. Subordinated Lender agrees not to sell, assign, transfer, or endorse the Subordinated Indebtedness, no matter how evidenced, to anyone except subject to the terms and conditions of this Agreement. The terms of this Agreement shall bind the successors and assigns of the parties.

7. Additional Documentation. Subordinated Lender agrees to execute and deliver to Senior Lender such other instruments as may reasonably be requested by Senior Lender in order to enable Senior Lender to enforce its rights hereunder.

8. No Liability. The parties hereto agree that Senior Lender shall not be liable for any action or failure to act under or in connection with any of the documents or instruments creating the Senior Liens or the Senior Indebtedness, it being understood that the decision of whether and when to act and the manner of proceeding under such instruments and documents shall not be affected in any manner by the existence of the Subordinated Indebtedness and the Subordinated Liens. It is further agreed that such obligations as may be imposed under the documents and instruments creating the Senior Liens or under applicable laws shall run exclusively to the benefit of Lender and may be enforced or waived only by Lender and not by the holders of the Subordinated Liens or Subordinated Indebtedness.

9. Insurance and Condemnation. Subordinated Lender agrees that if it receives any insurance or condemnation proceeds in respect of any of the assets of Borrower subject to the Senior Liens, Subordinated Lender shall immediately so notify Senior Lender in writing and shall deliver such proceeds to Senior Lender so long as any Senior Indebtedness remains unpaid.

10. Irrevocability of Agreement. Subordinated Lender agrees that, without notice to or further assent by Subordinated Lender (a) the liability of Borrower in respect of the Senior Indebtedness may, in whole or in part, be renewed, extended, modified, increased, or released by Senior Lender and the documents and instruments creating or evidencing the Senior Indebtedness or the Senior Liens may be amended or supplemented, as Senior Lender may deem advisable, (b) any collateral and/or security interests in respect of the Senior Indebtedness may, from time to time, in whole or in part, be exchanged, sold, or surrendered by Senior Lender, and (c) any deposit balance or balances to the credit of Borrower may, from time to time, in whole or in part, be surrendered or released by Senior Lender to Borrower, all without impairing or in any way affecting the subordination contained in this Agreement; nor shall the subordination herein contained be impaired or affected in any way by any other action, inaction, or omission in respect of the Senior Indebtedness or the Senior Liens or this Agreement.

11. Default.

11.1 Upon the occurrence of any event which would permit Subordinated Lender to accelerate the maturity of the Subordinated Indebtedness, before exercising such acceleration remedy, Subordinated Lender shall provide 30 days' advance written notice to Senior Lender of its intent to accelerate the Subordinated Indebtedness. Such notice shall specify in reasonable detail the default entitling Subordinated Lender to accelerate.

11.2 Upon the occurrence of any event which would permit Senior Lender to accelerate the maturity of the Senior Indebtedness, Senior Lender shall notify Subordinated Lender thereof before exercising such acceleration remedy. After receipt of notice from Senior Lender of such acceleration, Subordinated Lender shall hold for the benefit of Senior Lender all payments received thereafter from Borrower and shall promptly remit the same to Senior Lender.

12. Miscellaneous.

12.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, including any party substituted as a beneficiary under the Senior Trust Deed. This Agreement shall be construed and enforced in accordance with the laws of the state of Oregon without regard to conflict-of-law provisions.

12.2 If any of the provisions or terms of this Agreement shall for any reason be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other of the terms hereof, and this Agreement shall be construed as if such unenforceable term had never been contained herein.

12.3 All notices and other communications hereunder shall be deemed to have been duly given, made, or served, if in writing and delivered personally or mailed by first class mail, postage prepaid, to the respective parties to this Agreement as follows:

(a) If to Borrower:

Sunrise Vista Apartments, LLC
1007 N.W. Rimrock Drive
Redmond, Oregon 97756
Attention: Lisa Drayton

(b) If to Subordinated Lender:

Klamath Housing Authority
1445 Avalon Street
Klamath Falls, Oregon 97601
Attention: Diana Otero, Executive Director

(c) If to Senior Lender:

Umpqua Bank
One S.W. Columbia Street, Suite 1170
Portland, Oregon 97204
Attention: Gina A. León
Loan Nos. 748040923 and 748040921

with a copy to:

Umpqua Bank
Post Office Box 1580
Roseburg, Oregon 97470-9972
Loan Nos. 748040923 and 748040921

The designation of the person to be so notified or the address of such person for the purposes of such notice may be changed from time to time by similar notice in writing, except that any communication with respect to a change of address shall be deemed to be given and made when received by the party to whom such communication was sent.

12.4 This Agreement represents the entire Agreement between the parties hereto on the subject matter hereof and, except as expressly provided herein, shall not be affected by reference to any other documents. Neither this Agreement nor any provision hereof may be changed, waived, discharged, or terminated orally, but such may be accomplished only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.


12.5 In the event any action is filed to enforce or construe the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees. Attorney fees shall include services rendered at both the trial and appellate levels, as well as services rendered in any bankruptcy proceeding or arbitration proceeding.

[Remainder of this page intentionally left blank.]

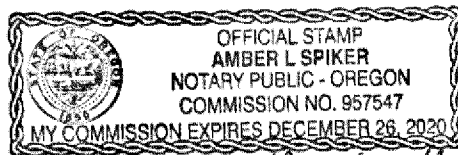
IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date and year first above written.

SUBORDINATED LENDER:


KLAMATH HOUSING AUTHORITY

By: 
Diana Otero, Executive Director

STATE OF OREGON)
COUNTY OF Klamath) SS

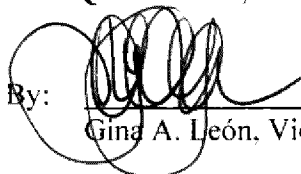


This instrument was acknowledged before me on April 9, 2020, by Diana Otero, as Executive Director of Klamath Housing Authority, on its behalf.


Notary Public for Oregon
My commission expires: December 26, 2020

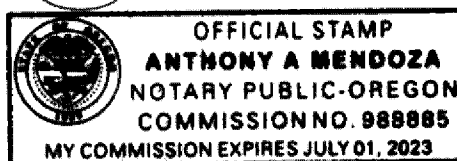
SENIOR LENDER:

UMPQUA BANK, an Oregon banking corporation


By: 

Gina A. León, Vice President

STATE OF OREGON)
 Washington) SS
COUNTY OF ~~MULTNOMAH~~ *As*)



This instrument was acknowledged before me on April 8, 2020, by
Gina A. León, who is Vice President of Umpqua Bank, an Oregon banking corporation, on its
behalf.



Notary Public for Oregon
My commission expires: July 1, 2023

SUNRISE VISTA APARTMENTS, LLC

By: Lisa Drayton
Lisa Drayton, Manager

STATE OF OREGON)
) SS
COUNTY OF Deschutes)

OFFICIAL STAMP
KRISTIN LEA GOIN
NOTARY PUBLIC-OREGON
COMMISSION NO. 978240
MY COMMISSION EXPIRES JUNE 25, 2022

Kristin Lea Gai
Notary Public for Oregon
My commission expires: June 25, 2022

EXHIBIT A

Legal Description

PARCEL 1:

Parcel 2 of Land Partition 2-17 Replat of Parcel 2 of Land Partition 8-00 situate in SE1/4 NE1/4 Section 14, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, recorded May 8, 2017 in 2017-004773, Records of Klamath County, Oregon.

PARCEL 2:

60 foot Access Easement as designated and delineated on Land Partition 2-17 Replat of Parcel 2 of Land Partition 8-00 situate in SE1/4 NE1/4 Section 14, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, recorded May 8, 2017 in 2017-004773, Records of Klamath County, Oregon.

EXHIBIT B

Subordinated Loan Documents

1. Loan Agreement dated April 1, 2020, between Borrower and Subordinated Lender
2. Promissory Note in the original principal amount of \$136,943 by Borrower in favor of Subordinated Lender
3. Leasehold Deed of Trust by Borrower in favor of Subordinated Lender relating to the obligations of Borrower under the above-described Promissory Note