

WHEN RECORDED MAIL TO:

James R. Peck, Esq
Tiber Hudson, LLC
11654 Plaza America Drive #630
Reston, VA 20190

File No.: 117228-LKF

ENT80703:2021 PG 1 of 11

Andrea Allen
Utah County Recorder

2021 Apr 28 04:59 PM FEE 40.00 BY IP
RECORDED FOR Cottonwood Title Insurance Agency, Inc
ELECTRONICALLY RECORDED

Subordination Agreement (515 Loan)

In Reference to Tax ID Number(s):

30-029-0037 and 30-029-0044

WHEN RECORDED, RETURN TO:
James R. Peck, Esq.
Tiber Hudson, LLC
11654 Plaza America Drive #630
Reston, VA 20190

**SUBORDINATION
AGREEMENT (515 LOAN)**
(Rev. 04/22/2020)

THIS SUBORDINATION AGREEMENT (“Subordination Agreement”), effective as of April 28, 2021 (“Closing Date”), is entered into by and **BELLWETHER ENTERPRISE REAL ESTATE CAPITAL, LLC**, a limited liability company organized and existing under the laws of Ohio, having its principal office at 1375 E. 9th Street, Suite 2400, Cleveland, OH 44114 (hereinafter referred to as the “Lender”), and the United States of America, acting through the UNITED STATES DEPARTMENT OF AGRICULTURE RURAL HOUSING SERVICE, whose principal office is located in Washington, DC (hereinafter referred to as “USDA RHS”).

WITNESSETH:

WHEREAS, **MOUNTAIN VIEW ASSOCIATES OF PAYSON, LLC**, a Utah limited liability company, having its principal office at 987 E. 200 N, Payson, Utah 84651 (hereinafter referred to as “Borrower”), obtained loans from USDA RHS in the original principal amount of \$1,860,825.31 (the “USDA RHS Loan”) and, as part of the terms and conditions of that financing, executed, *inter alia*, notes and deeds of trust as described on Exhibit B attached hereto and by this reference made a part hereof (collectively, the “USDA Note” or the “USDA Deed of Trust” as applicable), and a Restrictive-Use Covenant – Transferees Assuming Agency Loans dated contemporaneously herewith (hereinafter referred to as the “RUC”), recorded contemporaneously herewith, creating a lien on and an encumbrance in favor of USDA RHS in real property as described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter referred to as the “Property”); and

WHEREAS, Borrower has requested that USDA RHS subordinate its lien created by the USDA Deed of Trust so that Borrower can obtain a loan from Lender to replace certain construction financing previously obtained by Borrower; and

WHEREAS, Lender has agreed to make a loan to Borrower in the amount of **One Million Four Hundred Twenty Thousand Seven and No Hundredths Dollars (\$1,420,000.00)** as evidenced by a Multifamily Note effective as of the Closing Date (the “Lender’s Note”), which loan is secured by a deed of trust as evidenced by that certain Multifamily Deed of Trust, Assignment of Rents and Security Agreement effective as of the Closing Date and recorded concurrently herewith (hereinafter referred to as the “Lender’s Deed of Trust”) in favor of Lender, its successors and assigns, duly executed and delivered by Borrower, constituting a lien upon the Property, and recorded concurrently herewith; and

NOW, THEREFORE, in consideration of the above and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender, USDA RHS, and Borrower agree as follows:

1. (a) USDA RHS hereby subordinates its lien on the Property which was created by the USDA RHS Deed of Trust described on Exhibit B, to Lender's lien created by Lender's Deed of Trust together with the Lender's Regulatory Agreement and the Lender's Deed Restriction which are all recording substantially concurrently herewith. USDA RHS hereby expressly agrees that Lender's lien created by Lender's Deed of Trust, Lender's Regulatory Agreement and Lender's Deed Restriction will be superior to and prior in dignity to the USDA RHS's lien created by the USDA Deed of Trust.

(b) Notwithstanding the foregoing, Lender acknowledges and agrees that none of the accounts that Borrower has been required by USDA RHS to maintain for the Property pursuant to Section 515 of the Housing Act, including, without limitation, general operating accounts, reserve accounts, real estate tax and insurance accounts, and tenant security deposit accounts (collectively the "Housing Act Accounts"), provide security for Lender's Note. Lender will take no action to create a security interest in or execute upon funds deposited in the Housing Act Accounts. This requirement does not preclude accounts related to the Lender's Promissory Note for mortgages contained in the Government National Mortgage Association (Ginnie Mae) securities from meeting the requirements of the Ginnie Mae mortgage-backed securities program in which the timely payment of principal and interest on the securities is guaranteed by Ginnie Mae. The accounts must be set up and administered in accordance with Ginnie Mae requirements pursuant to Article V of Ginnie Mae's Guaranty Agreement, Ginnie Mae Mortgage- Backed Securities Guide, 5500.3, Rev. 1, Appendix III-15 and Chapter 4, Part 2 and Chapter 16 of Ginnie Mae's Mortgage-Backed Securities Guide, 5500.3, Rev. 1.

(c) Lender agrees the RUC is not subordinated to the Lender's Deed of Trust, Lender's Regulatory Agreement, Lender's Deed Restriction or Lender's UCC-1 Financing Statement, and that such instruments shall remain subordinate to the RUC. Lender further agrees that the RUC will run with the land and will remain in full force and effect notwithstanding a foreclosure or transfer of title.

2. The amount of this subordination will not exceed **One Million Four Hundred Twenty Thousand Seven and No Hundredths Dollars (\$1,420,000.00)**, plus unpaid accrued interest (the "Subordination Amount"). Any amount in excess of the Subordination Amount will not be covered by this subordination agreement unless prior written consent was obtained from the USDA RHS for incurring the expenditure in question.

3. Lender agrees that, in addition to Lender, USDA RHS shall be listed as loss payee as its interest appears on all insurance policies maintained on the Property.

4. (a) Lender and USDA RHS agree that they will not foreclose on their respective mortgages, or accept a deed in lieu of foreclosure, without first providing no less than

45 days written prior notice to the other lender.

(b) If the Lender’s deed of trust is foreclosed, the sale proceeds from the foreclosure sale will be applied as follows: (a) to pay the costs of foreclosure, including legal fees; (b) to reimburse Lender or USDA RHS for any protective advance made to preserve the Property or the mortgage lien of the foreclosing lender; (c) to Lender, until paid to the full extent of the Subordination Amount; (d) to USDA RHS, until paid in full, with the balance to be distributed in accordance with law.

(c) Subject to the foregoing subsection, the sale proceeds received from a foreclosure sale on Lender’s deed of trust which is contained in the GNMA MBS Program must be passed through to the GNMA security holders in their entirety, pursuant to the GNMA Guaranty Agreements.

5. All notices to be sent to USDA RHS will be sent to the following address:

USDA, Rural Development
Director of Production and Preservation Division
Multifamily Housing Program, Stop 0781 Room 1263S
1400 Independence Avenue SW
Washington, D.C. 20250-1530

USDA RHS may, by written notice to Lender, change the above address. All notices to be sent to Lender will be sent to the following address:

Bellwether Enterprise Real
Estate Capital, LLC
1375 E. 9th Street, Suite 2400
Cleveland, OH 44114Attn:
Loan Servicing

With a copy to:

Tiber Hudson, LLC
11654 Plaza America Drive #630
Reston, VA 20190
Attn: James R. Peck, Esq.

Lender may, by written notice to USDA RHS, change the above address.

6. (a) Lender acknowledges its awareness of a Loan Agreement, promissory note, and related agreements binding Borrower, its successors and assigns in interest, to use the improvements located on the Property for the purpose of those people eligible for occupancy as provided in Section 515 of Title V of the Housing Act of 1949, as amended, and federal regulations during the Thirty (30) year term of the USDA RHS financing beginning April 28, 2021. Until April 28, 20251, no eligible person occupying the housing shall be required to vacate without cause and no eligible person wishing to occupy shall be denied occupancy without cause. Borrower shall be released from the obligations of this Section 6 before April 28, 2051, only when the USDA RHS determines that there is no longer a need for housing on the Property under Section 515 of Title V of the Housing Act of 1949, as amended, or that financial assistance

for such housing will no longer be provided due to no fault, action or lack of action on the part of Borrower. A tenant of the Property, an individual wishing to become a tenant of the Property, or the USDA RHS may seek enforcement of this Section 6.

(b) Lender acknowledges that USDA RHS may re-amortize the USDA RHS loan to Borrower in accordance with 7 CFR 3560.455 or successor regulation(s).

(c) Lender acknowledges that prepayment of the USDA RHS loan and future transfers of the Property are restricted under 42 USC section 1472 and implementing regulations. Any release of the Property from the multi-family housing program by USDA RHS will be governed by applicable federal law and regulations at the time such release is requested.

7. USDA RHS will, upon request of Lender, provide Lender with a copy of any monitoring reports received by USDA RHS pursuant to 7 CFR PART 3560 or successor regulations. Lender reserves the right to monitor the Property at any time.

8. USDA RHS will, upon request of Lender, seek consent from Borrower to provide Lender with copies of annual audit reports for the Property. If Borrower consents, USDA RHS will provide a copy of the requested audit report to Lender. Lender shall have the right to request additional financial information from Borrower.

9. (a) USDA RHS and Lender shall each service and collect payments on their respective loans.

(b) Rental payments received from the Property may be assigned to Lender by Borrower, but the assignment cannot exceed the amount of any installment payment which is due and payable on the Lender's Note as such installment payments come due. This rental assignment will be in accordance with 7 CFR part 3560.256(c).

(c) In the event collections received from the operation of the Property, whether prior to or after the occurrence of a default or the institution of foreclosure proceedings, are insufficient to pay both the payments then due under the USDA RHS loan and the payments then due under the Lender's loan, the collections shall be applied first to the amount then due on Lender's loan with the balance, if any, applied to pay the amount then due on USDA RHS's loans to Borrower.

(d) After acceleration of maturity of either the Lender's Note or the USDA RHS Note, collections received from the operation of the Property may be applied to the payment of either Note in accordance with this Subordination Agreement. The application of said collections to either Note shall not operate to waive, negate or affect the prior acceleration of maturity of either Note.

10. Lender and USDA RHS shall each provide written notice to the other lender of the occurrence of a default, which written notice shall be sent no later than 15 days after the

Lender or USDA RHS has made a determination that a default has occurred. The written notice provided to the other lender shall specify the nature of the default and what action, if any, the sending party intends to take. Each lender shall promptly send to the other a copy of any notice or demand that it sends to Borrower.

11. Lender will take no action that would preclude Borrower from being able to comply with the requirements of Section 515 of Title V of the Housing Act of 1949, as amended and 7 CFR PART 3560 or successor regulations.

12. Subject to the provisions of Section 13 of this Subordination Agreement, Lender's loan may be prepaid in part or in whole subject to prepayment premiums as defined in the note. Prepayment in no event shall affect, modify or terminate the provisions of Section 6 of this Subordination Agreement.

13. Lender will not make any protective advances with respect to the Property without prior written approval from USDA RHS; provided, however, protective advances do not include payments to Ginnie Mae security holders.

14. This Subordination Agreement and the rights and obligations of the parties hereunder shall be governed by and construed and interpreted in accordance with federal law and the laws of the State in which the Property is located, as applicable, to the extent such laws do not conflict with applicable federal law.

15. This Subordination Agreement shall be binding upon and inure to the benefit of heirs, executors, administrators, successors and assigns of the respective parties.

16. This Subordination Agreement may only be waived, discharged, modified, amended or terminated by mutual consent of the parties in writing.

17. This Subordination Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as duplicate originals and shall constitute and be but one and the same instrument.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this SUBORDINATION AGREEMENT as of the day and year first written above.

BORROWER:

MOUNTAIN VIEW ASSOCIATES OF PAYSON, LLC,
an Utah limited liability company

By: CMN MOUNTAIN VIEW INC.,
an Utah corporation,
its Managing Member

By: Shawne Mastronardi
Shawne Mastronardi
Vice President

STATE OF COLORADO
COUNTY OF ~~DENVER~~ Pitkin

This record was acknowledged before me on April 20 2021, by Shawne Mastronardi as Vice President of CMN Mountain View, Inc., an Utah corporation, as Managing Member of Mountain View Associates of Payson, LLC, an Utah limited liability company, on behalf of said corporation and limited liability company.

[Signature]
(Notary's official signature)

Chase Bank - Notary
(Title of Office)

June 6, 2023
(Commission Expiration)

AMELIA M ESTRELLA
NOTARY PUBLIC - STATE OF COLORADO
NOTARY ID 20114032972
MY COMMISSION EXPIRES JUN 6, 2023

SENIOR LENDER:

**BELLWETHER ENTERPRISE REAL ESTATE
CAPITAL, LLC**
an Ohio limited liability company

By: Robert Morton
Robert Morton
Senior Vice President

STATE OF INDIANA]
] ss:
COUNTY OF LA PORTE]

Personally appeared before me, the undersigned authority in and for the said county and state, on this 4th day of April, 2021, within my jurisdiction, the within named Robert Morton, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed in the above and foregoing instrument and acknowledged that he executed the same in his representative capacity, and that by his signatures on the instrument, and as the act and deed of the person or entity upon behalf of which he acted, executed the above and foregoing instrument, after first having been duly authorized so to do.

Stacey Morton
NOTARY PUBLIC

My Commission Expires:
4.30.28

[SEAL]



USDA RHS

**UNITED STATES OF AMERICA, acting through the
RURAL HOUSING SERVICE, UNITED STATES
DEPARTMENT OF AGRICULTURE**

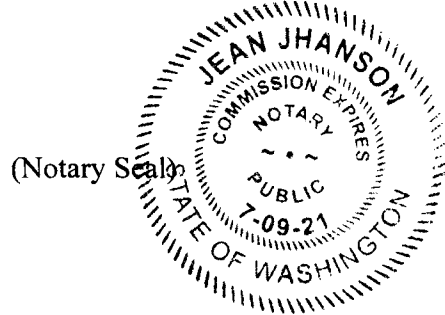
By: Mary Traxler
Name: MARY TRAXLER
Title: Closing Branch Chief

STATE OF WASHINGTON)
)
COUNTY OF Thurston) ss:

On this 23rd day of April, 2021, before me, the undersigned officer, personally appeared Mary Traxler as Closing Branch Chief of the Rural Housing Service of the United States Department of Agriculture, United States of America and that he/she/they, as such Closing Branch Chief, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the agency by ~~himself/herself/themselves~~ as Closing Branch Chief.

In witness thereof I hereunto set my hand and official seal.

Jean Hanson
Signature of Notary Public
Notary Public



My Commission expires: 07-09-2021

EXHIBIT A
LEGAL DESCRIPTION

PARCEL 1:

Beginning at a point which is West 1545.09 feet and North 1564.23 feet from the Southeast corner of Section 9, Township 9 South, Range 2 East, Salt Lake Base and Meridian; thence North 89°38'10" West 217.80 feet to the East right of way of 900 East Street; thence North 00°24'46" East along said right of way 295.00 feet; thence South 89°38'10" East 217.80 feet; thence South 00°24'46" West 295.00 feet to the point of beginning.

PARCEL 2:

Beginning at a point located South 89°47'08" West along the section line 1545.10 feet and North 1570.01 feet from the Southeast corner of Section 9, Township 9 South, Range 2 East, Salt Lake Base and Meridian; thence North 00°24'46" East 295.0 feet; thence North 89°38'10" West 217.80 feet; thence North 00°24'46" East 83.54 feet; thence along the arc of a 16 foot radius curve to the right 25.09 feet (chord North 45°19'49" East 22.60 feet); thence South 89°45'09" East 405.08 feet; thence South 395.359 feet; thence North 89°38'10" West 206.083 feet to the point of beginning.

LESS AND EXCEPTING the following:

Commencing North 1958.276 feet and West 1339.011 feet from the Southeast corner of Section 9, Township 9 South, Range 2 East, Salt Lake Base and Meridian; thence South 395.359 feet; thence North 89°38'10" West 68.77 feet; thence along the arc of a 16.00 foot radius curve to the left 25.12 feet (chord bears North 45°17'25" East 22.618 feet); thence North 00°13'00" East 363.22 feet; thence along the arc of a 16.00 foot radius curve to the left a distance of 25.120 feet (chord bears North 44°46'04" West 22.618 feet); thence South 89°45'09" East 67.22 feet to the point of beginning.

Parcels 1 and 2 above also being described by survey as one contiguous parcel as follows:

A portion of the Southeast quarter of Section 9, Township 9 South, Range 2 East, Salt Lake Base and Meridian, located in Payson, Utah, more particularly described as follows:

Beginning at the Southwest corner of that real property described in Deed Book 2241 at Page 386 of the official records of Utah County located South 89°47'08" West along the section line 1,762.90 feet and North 1,572.21 feet from the Southeast corner of Section 9, Township 9 South, Range 2 East, Salt Lake Base and Meridian; thence North 00°24'46" East along the Easterly right-of-way of 900 East Street 378.54 feet; thence along the arc of a 16.00 foot radius curve to the right 25.09 feet through a central angle of 89°50'05" (chord: North 45°19'49" East 22.60 feet); thence South 89°45'09" East along the Southerly right-of-way of 300 North Street 337.86 feet; thence along the arc of a 16.00 foot radius curve to the right 25.12 feet through a central angle of 89°58'09" (chord: South 44°46'05" East 22.62 feet); thence South 00°13'00" West along the Westerly right-of-way line of 1000 East Street 363.21 feet; thence along the arc of a 16.00 foot radius curve to the right 25.17 feet through a central angle of 90°08'50" (chord: South 45°17'25" West 22.66 feet); thence North 89°38'10" West along the Northerly right-of-way line of 200 North Street 355.11 feet to the point of beginning.

EXHIBIT B
USDA RHS DEED OF TRUST

I. **EXISTING, ASSUMED USDA FINANCING:**

- a. Promissory Note in the original principal amount of \$688,750.00 from Payson-Utah Associates (“Predecessor I”) and for the benefit of United States of America, acting through the Farmer Home Association, United States Department of Agriculture (“USDA – FHA”), dated December 23, 1985;
- b. Deed of Trust executed by Predecessor I in favor of USDA - FHA dated December 23, 1985, recorded December 23, 1988 and recorded as Entry Number 37635 in Book 2270 Page 230 in the land records of Utah County, Utah;
- c. Promissory Note in the original principal amount of \$136,799.00 from Predecessor I and for the benefit of the USDA, dated September 28, 2020;
- d. A Real Estate Deed of Trust executed by Predecessor I in favor of USDA, executed October 9, 2020, and recorded November 14, 2020 at Entry 186761: 2020 of the land records of Utah County, Utah.
- e. Promissory Note in the original principal amount of \$1,330,000.00 from Payton-Utah III Associates (“Predecessor II”) and for the benefit of USDA – FHA, dated April 4, 1995;
- f. Deed of Trust executed by Predecessor II in favor of USDA – FHA dated April 4, 1995 and recorded April 4, 1995 as Entry 20612 in Book 3651, Page 37 in the land records of Utah County, Utah;
- g. An Assignment of Rents recorded as additional security for the aforesaid Predecessor II note, recorded April 4, 1995, as Entry 20613 in Book 3651, Page 44 in the land records of Utah County, Utah;
- h. An Assumption Agreement in the amount of \$697,398.14, dated on or about April 27, 2021;
- i. An Assumption Agreement in the amount of \$1,163,427.17, dated on or about April 27, 2021; and
- j. A Consolidated RRH Loan Agreement for the combined amount of the two above Assumption Agreements, entered into on or around April 28, 2021 and secured by a Deed of Trust from Borrower, in favor of the United States of America, acting through the Rural Housing Service, United States Department of Agriculture, dated on or about April 28, 2021, and recorded contemporaneously herewith in the land records of Utah County, Utah.