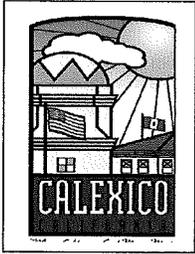


**AGENDA
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AGENDA STAFF REPORT

DATE: October 19, 2016

TO: Mayor and City Council

APPROVED BY: Armando G. Villa, City Manager

PREPARED BY: Julia R. Osuna, Interim Housing Manager and Economic Development Manager

SUBJECT: Authorize City Manager to Sign any and all Related Documents to the Subordination Agreement between the City, the California Department of Housing and Community Development (“HCD”) and the Villa Primavera CIC, LP

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Recommendation: Staff recommends that the City execute a Subordination Agreement between the City, the California Department of Housing and Community Development (“HCD”) and the Villa Primavera CIC, LP (“Borrower”) for the subordination of a HOME loan made by the City to an MHP loan to be made by HCD, and execute any and all other documents necessary for the Borrower’s closing on the permanent financing with the review and approval of the City Attorney.

Background: In November of 2014, the City made a loan of HOME funds in the amount of \$4,500,000 (the “HOME Loan”) to Borrower for the development of a 48-unit affordable apartment complex in the City (the “Project”). The HOME Loan was evidenced by a promissory note and loan agreement, and secured by a deed of trust and regulatory agreement that were recorded against the Property (collectively, the HOME Loan Documents”).

Borrower’s financing for the Project also includes a commitment for a \$2,790,000 loan of Multifamily Housing Program funds from HCD (“MHP Loan”), which financing must close by November 1, 2016 as required by the Project’s financing documents. HCD was also that state agency that provided the HOME program funds used by the City to fund the HOME Loan, and the City and HCD entered into a Standard Agreement effective August 9, 2013 in connection with the HOME funds (the “Standard Agreement”). The City agreed to comply with all state and federal regulations relating to the HOME program in the Standard Agreement and the HOME Loan Documents.

On July 17, 2012 the City passed Resolution No. 2012-73 which authorized the submittal of the application for HOME funds, the

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execution of the Standard Agreement and the execution of any related documents necessary to participate in the HOME program.

As a condition to closing the MHP Loan and in accordance with the Uniform Multifamily Regulations governing both the MHP and HOME loan programs, HCD has requested that the City subordinate the lien of the HOME Loan to the lien of the MHP Loan in accordance with both HOME and MHP regulations by execution of the Subordination Agreement.

While the aforementioned City passed Resolution No. 2012-73 passed on July 17, 2012 may be sufficiently broad to allow for the City to execute the Subordination, due to a clerical error in the 2014 HOME loan agreement the MHP Loan was not specifically described as a lien that would be senior to the HOME Loan, therefore this approval is requested to establish the City's authority to execute the Subordination Agreement and any other documents needed for the closing on the permanent financing.

Discussion & Analysis: The subordination of the lien of the HOME Loan to the lien of the City Loan pursuant to the Subordination Agreement was contemplated at the time that the City made the HOME Loan as evidenced by communications between the City's HOME program administrator and the Borrower, and is required by the rules and regulations of the HOME program to which the City is bound.

The City Attorney reviewed and provided comments to the draft Subordination Agreement provided by HCD and all changes requested by the City Attorney were made by HCD. The City Attorney now believes the Subordination Agreement to be in an industry-standard and reasonable form.

The City has an interest in supporting the continued operation of the Project, and the request for subordination is a typical and noncontroversial request in connection with the HOME Loan.

Finally, any source of permanent financing for the Project will require the subordination of the HOME Loan by the City.

Fiscal Impact: None – The Subordination Agreement does not impact the economic benefits anticipated by the City.

Coordinated With: City Attorney's office

Attachments: HOME Loan Subordination Agreement (subject to minor modification approved by the City Attorney)

**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: **Legal Affairs Division**
13-MHP-9122

SUBORDINATION AGREEMENT

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 (the "Agreement") is dated as of September 1, 2016, for reference purposes only, and is entered into by and among the City of Calexico (the "Junior Lienholder") and Villa Primavera CIC, LP, 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 is developing a 48-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 Four Million Five Hundred Thousand and no/100 Dollars (\$4,500,000.00) (the "Junior Lienholder HOME Loan"). The Junior Lienholder Loan is evidenced by a certain promissory note (the "Junior Lienholder HOME Note"), secured by a certain deed of trust (the "Junior Lienholder HOME Deed of Trust") recorded on November 7, 2014, as Instrument No. 2014022309 in the Official Records of Imperial County, California (the "Official Records"). The Junior Lienholder and Borrower have also entered into a Home Investment Partnerships Program (HOME) Regulatory Agreement affecting the use of the Development, recorded on November 7, 2014, as Instrument No. 2014022308 in the Official Records (the "Junior

Lienholder HOME Regulatory Agreement"). The Junior Lienholder has also made a loan to the Borrower in the principal sum of Six Hundred Thousand and no/100 Dollars (\$600,000.00) (the "Junior Lienholder CDBG Loan"). The Junior Lienholder CDBG Loan is evidenced by a certain promissory note (the "Junior Lienholder CDBG Note"), secured by a certain deed of trust (the "Junior Lienholder CDBG Deed of Trust") recorded on November 7, 2014, as Instrument No. 2014022310 in the Official Records (the "Official Records"). (The Junior Lienholder HOME Note, the Junior Lienholder HOME Deed of Trust, the Junior Lienholder HOME Regulatory Agreement, the Junior Lienholder CDBG Note, the CDBG Deed of Trust, and all other documents evidencing or securing the Junior Lienholder HOME Loan and the Junior Lienholder CDBG 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 Two Million Seven Hundred Ninety Thousand and no/100 Dollars (\$2,790,000.00) (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 concurrently herewith 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 concurrently herewith 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 Regulatory Agreement, the MHP Deed of Trust and the MHP Note may hereinafter be referred to as the "Senior 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. 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 and the Junior Lienholder 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 promptly (but in no event later than the following business day) send a copy of such notice to the Junior Lienholder 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 sixty (60) days of Junior Lienholder's receipt of the default notice, as determined by the Senior Lender in its sole 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 sixty (60) days of Junior Lienholder's receipt of the default notice, as determined by the Senior Lender in its sole 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 sole 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. Senior Lender agrees that upon Junior Lienholder's initiation of receivership and/or judicial foreclosure proceedings or foreclosure by private right of sale, Senior Lender will not exercise its right to accelerate the amounts due under the MHP Promissory Note or the Senior Lender Documents if:

(a) Junior Lienholder is the successful bidder at its own foreclosure sale, or if Junior Lienholder institutes a receivership and/or actions for specific performance; and

(b) Borrower's obligations to Senior Lender, including without limitation, the obligation to make timely payment of principal and interest and property taxes and to maintain insurance as required by the Senior Lender are met despite such foreclosure, receivership or action for specific performance.

The provisions of this paragraph 5 are not intended to waive, limit, modify or replace Senior Lender's remedies under the Senior Lender Documents, including without limitation, Senior Lender's right to accelerate the amounts due under the Senior Lender Documents or the MHP Promissory Note by reason of nonpayment of principal or interest or property taxes or the failure to maintain insurance as required by the Senior Lender.

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

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

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

9. 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.

10. 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.

[Signatures follow on page 6 of this Subordination Agreement. The remainder of this page is blank.]

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:

City of Calexico

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

BY: _____

NAME: _____

ITS: _____

[Signatures must be acknowledged.]

[Signatures continue on page 7 of this Subordination Agreement. The remainder of this page is blank.]

BORROWER:

Villa Primavera CIC, LP, a California limited partnership

By: Southern California Housing Collaborative,
a California non-profit public benefit corporation
Its: Managing General Partner

By: _____
Nathan E. Schmid, Executive Director

By: CIC Villa Primavera, LLC,
a California limited liability company
Its: Administrative General Partner

By: Chelsea Investment Corporation,
a California corporation
Its: Manager

By: _____
Cheri Hoffman, President

[Signatures must be acknowledged.]

[Signatures continue on page 8 of this Subordination Agreement. The remainder of this page is blank.]

SENIOR LENDER:

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

By: _____
Regi Fletcher, Closings Manager

[Signatures must be acknowledged.]

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Calexico, County of Imperial, State of California, described as follows:

PARCEL 1:

PARCEL B OF PARCEL MAP NO. 058-832-018, IN THE CITY OF CALEXICO, COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO MAP ON FILE IN BOOK 13, PAGE 54 OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER ON IMPERIAL COUNTY, FILED ON DECEMBER 29, 2010.

PARCEL 2:

A NONEXCLUSIVE EASEMENT FOR THE PURPOSE OF OPERATING A FIRE WATER LINE AND FOR THE FLOW OF WATER, THROUGH AND UNDER THAT CERTAIN 10 FEET STRIP OF LAND WITHIN PARCEL "A" OF PARCEL MAP NO. 058-832-040, AS SAID MAP WAS RECORDED ON BOOK 13 PAGE 54 OF PARCEL MAPS OF THE COUNTY RECORDER, IN THE CITY OF CALEXICO, COUNTY OF IMPERIAL, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING: AT THE SOUTHWEST CORNER OF PARCEL "A" PER PARCEL MAP NO. 058-832-040; THENCE NORTH 00°05'34" EAST, ALONG THE WEST LINE OF SAID PARCEL "A", A DISTANCE OF 42.40 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 89°51'05" EAST A DISTANCE OF 233.00 FEET; THENCE NORTH 00°05'34" EAST A DISTANCE OF 452.43 FEET; THENCE NORTH 44°58'09" WEST A DISTANCE OF 16.23 FEET; THENCE NORTH 00°01'51" EAST A DISTANCE OF 5.42 FEET TO A POINT ON THE NORTH LINE OF SAID PARCEL "A"; THENCE NORTH 89°48'42" WEST, ALONG SAID NORTH LINE OF PARCEL "A", A DISTANCE OF 10.00 FEET; THENCE SOUTH 00°01'51" WEST A DISTANCE OF 9.59 FEET; THENCE SOUTH 44°58'09" EAST A DISTANCE OF 16.23 FEET; THENCE SOUTH 00°05'34" WEST A DISTANCE OF 104.04 FEET; THENCE NORTH 89°54'26" WEST A DISTANCE OF 33.96 FEET; THENCE SOUTH 00°23'20" WEST A DISTANCE OF 10.00 FEET; THENCE SOUTH 89°54'26" EAST A DISTANCE OF 34.01; THENCE SOUTH 00°05'34" WEST A DISTANCE OF 290.97 FEET; THENCE NORTH 89°54'26" WEST A DISTANCE OF 9.14 FEET; THENCE SOUTH 00°32'16" WEST A DISTANCE OF 10.00 FEET; THENCE SOUTH 89°54'26" EAST A DISTANCE OF 9.22 FEET; THENCE SOUTH 00°05'34" WEST A DISTANCE OF 23.25 FEET; THENCE NORTH 89°51'05" WEST A DISTANCE OF 209.75 FEET; THENCE NORTH 00°08'55" EAST A DISTANCE OF 8.97 FEET; THENCE NORTH 89°51'05" WEST A DISTANCE OF 10.00 FEET; THENCE SOUTH 00°08'55" WEST A DISTANCE OF 8.97 FEET; THENCE NORTH 89°51'05" WEST A DISTANCE OF 3.25 FEET TO A POINT ON THE WEST LINE OF SAID PARCEL "A"; THENCE SOUTH

00°05'34" WEST, ALONG SAID WEST LINE OF PARCEL "A", A DISTANCE OF 10.00 FEET TO THE TRUE POINT OF BEGINNING.

APN: 058-832-040-000