

LINCOLN COUNTY, NV

2022-162054

\$37.00

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FIRST AMERICAN TITLE INSURANCE COMPANY

OFFICIAL RECORD

AMY ELMER, RECORDER

Assessor's Parcel No. 003-053-03

NCS-1000088

WHEN RECORDED, RETURN TO:

Kirton McConkie

50 East South Temple, Suite 400

Salt Lake City, Utah 84111

Attn: John B. Lindsay

SUBORDINATION AND INTERCREDITOR AGREEMENT

(Bridge Loan to 538 Loan)

This Subordination and Intercreditor Agreement ("Agreement") is effective as of March 10, 2022 (the "Closing Date"), and entered into by and between Bonneville Mortgage Company, a Utah corporation, its successors and/or assigns ("Junior Lender"), and Bonneville Mortgage Company, a Utah corporation ("Senior Lender").

Recitals

A. minnie st. 2020 LLC, a Nevada limited liability company (the "Borrower"), has applied to Senior Lender for a loan guaranteed by the USDA through its 538 loan program in the original principal amount of One Million Five Hundred Fifty Thousand and 00/100 Dollars (\$1,550,000.00) (the "Senior Loan"), for the acquisition, construction, rehabilitation, development, equipping and/or operation of the "Mortgaged Property" which term is defined as (i) the land and improvements known or to be known as the Caliente Renaissance Apartments, located in Caliente, Lincoln County, State of Nevada, which land is more particularly described on Exhibit A attached hereto and incorporated herein by this reference, and (ii) all furniture, fixtures and equipment located at such apartments and other property, accounts, deposits and rights and interests of Borrower encumbered by the "Senior Security Instrument" and the other "Senior Loan Documents" as such terms are hereafter defined.

B. The Senior Loan is evidenced by that certain Multifamily Note effective as of the Closing Date in the amount of One Million Five Hundred Fifty Thousand and 00/100 Dollars (\$1,550,000.00) (the "Senior Note"), and is secured by, among other things, that certain Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "Senior Security Instrument") effective as of the Closing Date, encumbering the Mortgaged Property, and will be advanced to Borrower pursuant to that certain Construction and Term Loan Agreement, effective as of the Closing Date, entered into by and between Borrower and Senior Lender relating to the Senior Loan (the "Senior Loan Agreement"). The Senior Note, Senior Loan Agreement, Senior Security Instrument, and all of the other documents, instruments and agreements now or hereafter evidencing, securing or otherwise executed in connection with the Senior Loan, as the same may from time to time be extended, consolidated, substituted for, modified, amended and supplemented in accordance with the provisions of this Agreement are hereafter collectively referred to as the "Senior Loan Documents."

C. Borrower has applied to Junior Lender for a loan to provide Borrower with gap financing in the original principal amount of One Million Three Hundred Thousand and 00/100 Dollars (\$1,300,000.00) (the "Junior Loan"), for the acquisition, construction, rehabilitation, development, equipping and/or operation of the Mortgaged Property.

D. The Junior Loan is evidenced by that certain Multifamily Note effective as of the Closing Date in the amount of One Million Three Hundred Thousand and 00/100 Dollars (\$1,300,000.00), and is secured by, among other things, that certain Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "Junior Security Instrument"), effective as of the Closing Date, encumbering the Mortgaged Property, and will be advanced to Borrower pursuant to that certain Construction Loan Agreement effective as of the Closing Date, entered into by and between Borrower and Junior Lender relating to the Junior Loan (the "Junior Loan Agreement"). The Junior Note, Junior Loan Agreement, Junior Security Instrument, and all of the other documents, instruments and agreements now or hereafter evidencing, securing or otherwise executed in connection with the Junior Loan, as the same may from time to time be extended, consolidated, substituted for, modified, increased, amended and supplemented in accordance with the provisions of this Agreement are hereafter collectively referred to as the "Junior Loan Documents."

E. The Junior Loan Documents include (1) a Pledge and Security Agreement effective as of the Closing Date and executed by Borrower and Minnie St. 2020 LLC, a Nevada limited liability company, as "Managing Member" (the "Pledge and Security Agreement"), granting to Junior Lender a security interest in all member interests, tax credit collateral and other "Collateral" as described therein (the "Pledged Collateral"), and (2) an Assignment of Developer Rights effective as of the Closing Date and executed by Borrower (the "Assignment of Developer Rights"), granting to Junior Lender a security interest in the "Collateral" described therein (the "Developer Rights Collateral").

F. As a condition of making the Senior Loan to Borrower, and as a condition of Junior Lender making the Junior Loan to Borrower, Junior Lender and Senior Lender enter into this Agreement establishing the respective priorities of their liens and security interests.

Agreement

In exchange for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Junior Lender and Senior Lender agree as follows:

1. Subordination of Junior Security Instrument. Junior Lender hereby expressly subordinates the lien and encumbrance of the Junior Security Instrument in the Mortgaged Property to the priority of the lien and encumbrance of the Senior Security Instrument. All liens and interests of Junior Lender under the Junior Security Instrument in the Mortgaged Property are and shall be inferior and junior to all liens and interests of Senior Lender under the Senior Security Instrument. In the event of foreclosure or the exercise of any power of sale set forth in the Senior Security Instrument, or in any condemnation or eminent domain proceedings of any portion of the Mortgaged Property, the priority herein established shall be respected to the same

extent and in the same manner as if the Senior Security Instrument had predated (in both time of execution and date of recordation and/or filing of any related UCC financing statements) the Junior Security Instrument.

2. Seniority of Pledge and Security Agreement and Assignment of Developer Rights. Notwithstanding Section 1 above, Senior Lender hereby expressly agrees and acknowledges that (a) the liens and security interests in the Pledged Collateral granted in favor of Junior Lender by the Pledge and Security Agreement, and (b) the liens and security interests in the Developer Rights Collateral granted in favor of Junior Lender by the Assignment of Developer's Rights, whether now existing or hereafter arising, are senior and superior to any lien and security interests in the Pledged Collateral and the Developer Rights Collateral granted to Senior Lender pursuant to the Senior Loan Documents. In the event of any foreclosure or the exercise of any non-judicial remedies set forth in the Pledge and Security Agreement or the Assignment of Developer's Rights or provided by the Uniform Commercial Code, the priority herein established in favor of Junior Lender shall be respected to the same extent and in the same manner as if the Pledge and Security Agreement and the Assignment of Developer Rights had predated (in both time of execution and the filing of any related UCC financing statements) the Senior Loan Documents with respect to the Pledged Collateral and the Developer Rights Collateral.

3. Junior Lender's Rights to Collect. Nothing whatsoever contained herein shall be construed to limit Junior Lender's rights to collect amounts owed under the Junior Note and to enforce Junior Lender's rights and remedies under the Junior Loan Documents in any circumstances permitted by the Junior Loan Documents.

4. Notices. All notices, demands and other communications under or concerning this Agreement or the other Loan Documents shall be in writing. Each notice shall be addressed to the intended recipient at its address set forth below in this Section 4, and shall be deemed given on the earliest to occur of (i) the date when the notice is received by the addressee; (ii) the first Business Day after the notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (iii) the third Business Day after the notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested. As used in this Section 4, the term "Business Day" means any day other than a Saturday, a Sunday or any other day on which Senior Lender is not open for business.

Any person entitled to receive notice under this Agreement may change the address to which notices intended for it are to be directed by means of notice given to the other party in accordance with this Section 4. Senior Lender and Junior Lender each agree that it will not refuse or reject delivery of any notice given in accordance with this Section 4, that it will acknowledge, in writing, the receipt of any notice upon request by the other party and that any notice rejected or refused by it shall be deemed for purposes of this Section 4 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

Senior Lender: Bonneville Mortgage Company
111 Main, Suite 1600
Salt Lake City, Utah 84111
Attn: Brent H. Peterson

With copies to: Kirton McConkie
50 East South Temple, Suite 400
Salt Lake City, Utah 84111
Attn: John B. Lindsay

Junior Lender: Bonneville Mortgage Company
111 Main, Suite 1600
Salt Lake City, Utah 84111
Attn: Brent H. Peterson

With copies to: Kirton McConkie
50 East South Temple, Suite 400
Salt Lake City, Utah 84111
Attn: John B. Lindsay

5. Subordination Absolute. Junior Lender agrees that Senior Lender shall not be (a) liable for any act or omission of Borrower; (b) obligated to cure any defaults of Borrower to Junior Lender; (c) subject to any offsets or defenses which Junior Lender may be entitled to assert against Borrower; or (d) bound by any amendment or modification of the agreements between Junior Lender and Borrower made without the prior written consent of Senior Lender not to be unreasonably withheld, conditioned or delayed; provided, however, that no consent is required of Senior Lender with respect to amendments and modifications to the "Allocations" as described and permitted in the Junior Loan Documents. Senior Lender agrees that Junior Lender shall not be (w) liable for any act or omission of Borrower; (x) obligated to cure any defaults of Borrower to Senior Lender; (y) subject to any offsets or defenses which Senior Lender may be entitled to assert against Borrower; or (z) bound by any amendment or modification of the agreements between Senior Lender and Borrower made without the prior written consent of Junior Lender not to be unreasonably withheld, conditioned or delayed.

6. Run with the Land. This Agreement shall run with the land and be binding upon and inure to the benefit of Senior Lender and Senior Lender's successors and assigns, and shall be binding upon and inure to the benefit of Junior Lender and Junior Lender's successors and assigns.

7. Senior Lender Covenants. Senior Lender expressly consents to the Junior Loan and any and all security interests in the Mortgaged Property and all other collateral pledged by Borrower to Junior Lender, and the creation of such security interests and liens in favor of Junior Lender shall not constitute a default under the Senior Loan Documents. Senior Lender agrees to

provide Junior Lender with the same notice and cure rights under the Senior Loan Documents provided to Borrower thereunder.

8. Junior Lender Covenants. Junior Lender expressly consents to the Senior Loan and any and all security interests in the Mortgaged Property and all other collateral pledged by Borrower to Senior Lender, and the creation of such security interests and liens in favor of Senior Lender shall not constitute a default under the Junior Loan Documents. Junior Lender agrees to provide Senior Lender with the same notice and cure rights under the Junior Loan Documents provided to Borrower thereunder.

9. Renewals and Extensions. Any and all material amendments and/or modifications of the liens and security interests created by the Junior Loan Documents are subject to the written approval of Senior Lender, such approval not to be unreasonably withheld, conditioned or delayed; provided, however, that no consent is required of Senior Lender with respect to amendments and modifications to the "Allocations" as described and permitted in the Junior Loan Documents. Any and all material amendments and/or modifications of the liens and security interests created by the Senior Loan Documents are subject to the written approval of Junior Lender, such approval not to be unreasonably withheld, conditioned or delayed. In the event that either Senior Lender or Junior Lender submits to the other party a material amendment and/or modification to the liens and security interests created by such party's loan documents for approval and the approving party fails or refuses to respond on or before fifteen (15) days after receipt of such amendment and/or modification, the amendment and/or modification is deemed approved.

10. Multiple Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original for all purposes, but all of which taken together shall constitute only one agreement. The production of any executed counterpart of this Agreement shall be sufficient for all purposes without producing or accounting for any other counterpart.

11. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the state in which the Mortgaged Property is located and the United States of America, as applicable.

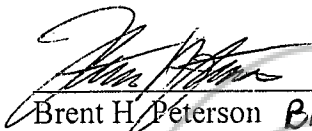
12. WAIVER OF JURY. SENIOR LENDER AND JUNIOR LENDER EACH WAIVE THE RIGHT TO HAVE A JURY DETERMINE, ADVISE, OR RESOLVE ANY DISPUTE OR OTHER CLAIM BETWEEN THEM WITH RESPECT TO THIS AGREEMENT, WHETHER BASED ON PRINCIPLES OF CONTRACT, TORT, STATUTORY, OR OTHER LAW.

*[SIGNATURE PAGE(S) AND EXHIBIT(S),
IF ANY, FOLLOW THIS PAGE]*

IN WITNESS WHEREOF, Junior Lender and Senior Lender have caused this Agreement to be executed as of the date set forth above.

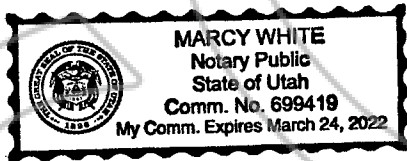
JUNIOR LENDER

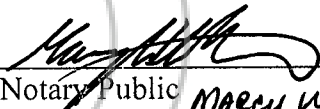
BONNEVILLE MORTGAGE COMPANY,
a Utah corporation

By: 
Brent H. Peterson **BRENT H. PETERSON**
President, Multifamily Division

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)


The foregoing instrument was acknowledged before me this 9th day of March, 2022, by Brent H. Peterson, President, Multifamily Division, Bonneville Mortgage Company, a Utah corporation.




Notary Public **Marcy White, Notary Public**

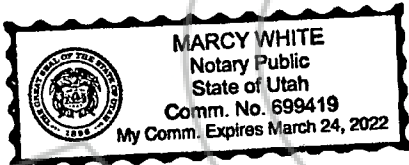
SENIOR LENDER

BONNEVILLE MORTGAGE COMPANY,
a Utah corporation

By: 
Brent H. Peterson **BAENT H. PETERSON**
President, Multifamily Division

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 9th day of March, 2022, by Brent H. Peterson, President, Multifamily Division, Bonneville Mortgage Company, a Utah corporation.




Notary Public **MARCY WHITE, NOTARY PUBLIC**

EXHIBIT A

REAL PROPERTY DESCRIPTION

The real property referred to herein below is situated in the City of Caliente, County of Lincoln, State of Nevada, and is described as follows:

LOTS TWO (2) AND THREE (3) IN BLOCK FORTY-SIX (46) OF THE NORTH SIDE ADDITION TOWN OF CALIENTE AS SHOWN BY MAP THEREOF RECORDED OCTOBER 08, 1940, AS FILE NO. 15661 IN THE OFFICE OF THE COUNTY RECORDER OF LINCOLN COUNTY, NEVADA.