

CITY OF LOMA LINDA  
CITY COUNCIL AGENDA

REGULAR MEETING OF SEPTEMBER 27, 2016

A regular meeting of the City Council of the City of Loma Linda is scheduled to be held Tuesday, September 27, 2016 at 7:00 p.m. in the City Council Chamber, 25541 Barton Road, Loma Linda, California.

Reports and Documents relating to each agenda item are on file in the Office of the City Clerk and are available for public inspection during normal business hours. The Loma Linda Branch Library is also provided an agenda packet for your convenience. The agenda and reports are also located on the City's Website at [www.lomalinda-ca.gov](http://www.lomalinda-ca.gov).

*Materials related to an item on this Agenda submitted to the City Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office, 25541 Barton Road, Loma Linda, CA during normal business hours. Such documents are also available on the City's website at [www.lomalinda-ca.gov](http://www.lomalinda-ca.gov) subject to staff's ability to post the documents before the meeting.*

Persons wishing to speak on an agenda item, including any closed session items, are asked to complete an information card and present it to the City Clerk prior to consideration of the item. When the item is to be considered, please step forward to the podium, the Chair will recognize you and you may offer your comments. The City Council meeting is recorded to assist in the preparation of the Minutes, and you are therefore asked to give your name and address prior to offering testimony.

The Oral Reports/Public Participation portion of the agenda pertains to items NOT on the agenda and is limited to 30 minutes; 3 minutes allotted for each speaker. Pursuant to the Brown Act, no action may be taken by the City Council at this time; however, the City Council may refer your comments/concerns to staff or request that the item be placed on a future agenda.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk at (909) 799-2819. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. Later requests will be accommodated to the extent feasible.

**Agenda item requests for the OCTOBER 11, 2016 meeting must be submitted in writing to the City Clerk no later than NOON, MONDAY, SEPTEMBER 26, 2016**

**A. Call To Order**

**B. Roll Call**

**C. Items To Be Added Or Deleted**

**D. Oral Reports/Public Participation - Non-Agenda Items (Limited to 30 minutes; 3 minutes allotted for each speaker)**

**E. Conflict of Interest Disclosure** - Note agenda item that may require member abstentions due to possible conflicts of interest

**F. Scheduled And Related Items**

1. Joint meeting of the City Council and Loma Linda Housing Authority relating to an Intercreditor and Subordination Agreement among by and among the County of San Bernardino, the City of Loma Linda, the Loma Linda Housing Authority, and Loma Linda Vets., L.P., a California limited partnership
  - a. Council Bill #R-2016-39 – City Council Authorizing the execution of the Intercreditor and Subordination Agreement
  - b. LLHA Bill #R-2016-05 – Housing Authority Authorizing the execution of the Intercreditor and Subordination Agreement

**H. Reports of Councilmen** (This portion of the agenda provides City Council Members an opportunity to provide information relating to other boards/commissions/committees to which City Council Members have been appointed)

**I. Reports Of Officers** (This portion of the agenda provides Staff the opportunity to provide informational items that are of general interest as well as information that has been requested by the City Council)

**J. Adjournment**



# City of Loma Linda Official Report

Rhodes Rigsby, Mayor  
Phill Dupper, Mayor pro tempore  
Ovidiu Popescu, Councilman  
Ron Dailey, Councilman  
John Lenart, Councilman

COUNCIL AGENDA: September 27, 2016

TO: City Council and Housing Authority Board

FROM: Pamela Byrnes-O'Camb, City Clerk and Housing Authority Secretary

SUBJECT: Intercreditor and Subordination Agreement by and among the County of San Bernardino, the City of Loma Linda, the Loma Linda Housing Authority, and Loma Linda Vets., L.P., a California limited partnership

Approved/Continued/Denied By City Council
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## **RECOMMENDATION**

It is recommended that each of the City Council and the Housing Authority adopt resolutions in the respective forms submitted herewith approving subordination as described below and the accompanying Intercreditor and Subordination Agreement.

## **BACKGROUND**

The Loma Linda Housing Authority ("Housing Authority") and the City of Loma Linda ("City"), following an extended period of negotiations, entered into a Disposition and Development/Affordable Housing Agreement dated as of July 23, 2013 (the "DDA") with Golden Eagle Multi-Family Properties, LLC, a California limited liability company ("Golden Eagle"). Under the DDA, the Housing Authority conveyed to Golden Eagle certain land located on the south side of Van Leuven Street (the "Site" or "Housing Authority Property"), adjacent to certain privately-owned property (the "Hood Property" and, together with the Site, the "Combined Properties"). Golden Eagle has engaged in subsequent transactions with the County of San Bernardino (the "County") and Loma Linda Vets, L.P., a California limited partnership ("New Development Entity") as a result of which New Development Entity has obtained financing commitments for the development of the Site and the Hood Property.

The DDA included requirements that in the event dwelling units were developed on the Site or the Hood Property, that no fewer than one dwelling unit would be restricted to occupancy by households having an income limited to that allowable for households earning not greater than 120% of median income (Moderate Income Households) at rent that would not exceed "Affordable Rent" as defined in the DDA consistent with definitions used in Health & Safety Code section 50052.5 (sometimes referred to as "Redevelopment Rents"). The requirements as to affordability were reflected in the DDA and three instruments executed and recorded with the

San Bernardino County pursuant to the DDA, namely, as referred to therein, the “Authority Deed”, the “Authority Developer CC&Rs” and the “City Covenants” (the executory provisions of which are collectively referred to herein as the “Loma Linda Prior Recorded Requirements”). The County requires, as a condition of implementing a portion of its agreement with the New Development Entity (the “Home Investment Partnerships Act Loan Agreement”, or “HOME Agreement”) that the Housing Authority and the City agree to subordinate the Loma Linda Prior Recorded Requirements to regulatory agreement substantially in the form of Exhibit F to the HOME Agreement (the “County Regulatory Agreement”). No City approval is required for the approval or implementation by County of the HOME Agreement (or the County Regulatory Agreement). The County has reported that the New Development Entity has obtained commitments for financing for housing serving certain veterans to be provided by the Housing and Community Development Department of the State of California (herein, “State”) pursuant to its Veterans Housing and Homeless Prevention Program (“State Program”). The State will later present an instrument seeking subordination of the Loma Linda Prior Recorded Requirements to a recordable instrument to be prepared by the State implementing the State Program (the “State Agreement”).

The HOME Agreement provides, in part, that for a 55-year period, the New Development Entity shall rent forty-nine (49) dwelling units to households having incomes of not greater than 30% of median income, and an additional 37 dwelling units to households having incomes of not greater than 50% of median income, all with rents that do not exceed affordable rents as defined in the HOME Agreement. In consideration of the City and Housing Authority so subordinating the Loma Linda Prior Recorded Requirements and agreeing to subordinate the Loma Linda Prior Recorded Requirements to the State Agreement, the County and the New Development Entity will agree, as provided in the accompanying draft of intercreditor and subordination agreement (“Intercreditor Agreement”), that: (i) each of the City and the Housing Authority will, by the Intercreditor Agreement, be treated as a third party beneficiary under the HOME Agreement with the right (but not the obligation) to enforce the affordable housing provisions thereof; and (ii) the New Development Entity will be required to submit to each of the City and the Housing Authority a copy of those reports which New Development Entity is required to make to the County under the HOME Agreement demonstrating compliance with the affordable housing provisions thereof (which reports are to depict the actual rents charged for the eighty-six income restricted units at the Combined Properties. The ability of the City and Housing Authority to proceed with remedies against the New Development Entity is subject to certain time constraints and standstill running in favor of the County. The County has agreed to infuse \$2.1 million to the development of affordable housing units on the Combined Properties. No financial contribution will be made by the Housing Authority or City.

The County and the New Development Entity have requested that the City and the Housing Authority agree to subordinate provisions of the Loma Linda Prior Recorded Requirements to the County Regulatory Agreement and authorize subordination to a State Agreement; the preference of the County is that such agreement to subordinate take the form of resolutions approving such subordination. Draft resolutions which would accomplish such subordination, on the terms and conditions set forth in the Intercreditor and Subordination Agreement, are submitted herewith.

## **ANALYSIS**

The virtue of the City and Housing Authority becoming third party beneficiaries with rights to enforce the affordability provisions of HOME Agreement, the Housing Authority and City should be able to count the units as production units of the City and the Housing Authority. The categories under which the units may be counted are not determinable at this time, but it is anticipated that 49 units will be either Extremely Low Income units (income not greater than 30% of median income, rents affordable) or Very Low Income units (income not greater than 50% of median income), and the additional 37 units will be countable as either Very Low Income units or Low Income units. The reason for the potential shift in income categories is due to the circumstance that the computation of affordable rents for tax credit purposes is different and sometimes results in higher rents than the formulation in Health & Safety Code section 50052.5 which the Loma Linda Redevelopment Agency formerly used. The City Covenants and Housing Authority CC&Rs will remain in effect; the unit required to be affordable at 120% or below will probably be satisfied by counting one of the 86 units restricted at lower affordability levels under the HOME Agreement.

The addition of affordable units which are countable by the City and the Housing Authority achieves a substantial benefit to each of the City and Housing Authority.

## **ENVIRONMENTAL**

The Intercreditor Agreement is not a project for purposes of the California Environmental Quality Act; moreover, the development at the Combined Properties was earlier analyzed and achieved environmental clearance through the City's customary processes.

## **FINANCIAL IMPACT**

There are no costs to the City or the Housing Authority.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOMA LINDA APPROVING AND AUTHORIZING THE EXECUTION OF AN INTERCREDITOR AND SUBORDINATION AGREEMENT BY AND AMONG THE COUNTY OF SAN BERNARDINO, THE CITY OF LOMA LINDA, THE LOMA LINDA HOUSING AUTHORITY, AND LOMA LINDA VETS., LP., A CALIFORNIA LIMITED PARTNERSHIP**

WHEREAS, the Loma Linda Housing Authority (“Authority”) and the City of Loma Linda (“City”), following an extended period of negotiations, entered into a Disposition and Development/Affordable Housing Agreement dated as of July 23, 2013 (the “DDA”) with Golden Eagle Multi-Family Properties, LLC, a California limited liability company (“Golden Eagle”). Under the DDA, the Authority conveyed to Golden Eagle certain land located on the south side of Van Leuven Street (the “Site” or “Housing Authority Property”), adjacent to certain privately-owned property (the “Hood Property” and, together with the Site, the “Combined Properties”). Golden Eagle has engaged in subsequent transactions with the County of San Bernardino (the “County”) and Loma Linda Vets, L.P., a California limited partnership (“New Development Entity”) as a result of which New Development Entity has obtained financing commitments for the development of the Site and the Hood Property; and

WHEREAS, the Site was acquired by the former Loma Linda Redevelopment Agency (“Redevelopment Agency”) using moneys from its Low- and Moderate-Income Housing Fund (as established and maintained under Health & Safety Code sections 33334.2 and 33334.3) for the purpose of promoting affordable housing; and

WHEREAS, the DDA included requirements that in the event dwelling units were developed on the Site or the Hood Property, that no fewer than one dwelling unit would be restricted to occupancy by households having an income limited to that allowable for households earning not greater than 120% of median income (Moderate Income Households) at rent that would not exceed “Affordable Rent” as defined in the DDA consistent with definitions used in Health & Safety Code section 50052.5. The requirements as to affordability were reflected in the DDA and three instruments executed and recorded with the San Bernardino County pursuant to the DDA, namely, as referred to therein, the “Authority Deed”, the “Authority Developer CC&Rs” and the “City Covenants” (the executory provisions of which are collectively referred to herein as the “Loma Linda Prior Recorded Requirements”); and

WHEREAS, the County requires, as a condition of implementing a portion of its agreement with the New Development Entity (the “Home Investment Partnerships Act Loan Agreement”, or “HOME Agreement”) that the Authority and the City agree to subordinate the Loma Linda Prior Recorded Requirements to regulatory agreement substantially in the form of Exhibit F to the HOME Agreement (the “County Regulatory Agreement”). Under the HOME Agreement, the County has agreed to infuse \$2.1 million to the development of affordable housing units on the Combined Properties. No City approval is required for the approval or implementation by County of the HOME Agreement (or the County Regulatory Agreement). The subordination of the Loma Linda Prior Recorded Requirements would be evidenced and implemented by an agreement entitled “Intercreditor and Subordination Agreement” substantially in the form submitted herewith (the “Intercreditor and Subordination Agreement”); and

WHEREAS, the County has reported that the New Development Entity has obtained commitments for financing for housing serving certain veterans to be provided by the Housing and Community Development Department of the State of California (herein, "State") pursuant to its Veterans Housing and Homeless Prevention Program ("State Program"). The State will later present an instrument seeking subordination of the Loma Linda Prior Recorded Requirements to a recordable instrument to be prepared by the State implementing the State Program (the "State Agreement"); and

WHEREAS, the HOME Agreement provides, in part, that for a 55-year period, the New Development Entity shall rent forty-nine (49) dwelling units to households having incomes of not greater than 30% of median income, and an additional 37 dwelling units to households having incomes of not greater than 50% of median income, all with rents that do not exceed affordable rents as defined in the HOME Agreement. In consideration of the City and Authority so subordinating the Loma Linda Prior Recorded Requirements, the County and the New Development Entity will agree, as provided in the Intercreditor and Subordination Agreement, that: (i) each of the City and the Authority will, by the Intercreditor and Subordination Agreement, be treated as a third party beneficiary under the HOME Agreement with the right (but not the obligation) to enforce the affordable housing provisions thereof; and (ii) the New Development Entity will be required to submit to each of the City and the Authority a copy of those reports which New Development Entity is required to make to the County under the HOME Agreement demonstrating compliance with the affordable housing provisions thereof (which reports under the HOME Agreement will depict the actual rents charged for the eighty-six income restricted units at the Combined Properties). The ability of the City and Authority to proceed with remedies against the New Development Entity is subject to certain limitations as to the priority of the County to enforce, as more particularly set forth in the Intercreditor and Subordination Agreement; and

WHEREAS, no financial contribution will be made by the Authority or City; and

WHEREAS, by virtue of the City and Authority becoming third party beneficiaries with rights to enforce the affordability provisions of HOME Agreement, the Authority and City should be able to count the units as production units of the City and the Authority, as more particularly described in the accompanying staff report. The City Covenants and Housing Authority CC&Rs will remain in effect; the unit required to be affordable at 120% or below would be satisfied by counting one of the 86 units restricted at lower affordability levels under the HOME Agreement; and

WHEREAS, the addition of affordable units which are countable by the City and the Authority achieves a substantial benefit to each of the City and Authority.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LOMA LINDA DOES RESOLVE AS FOLLOWS:

Section 1. The City Council finds and determines that the statements set forth in the Recitals above are true and correct.

Section 2. The City Council hereby finds that the use of land acquired by the former Redevelopment Agency's Low and Moderate Income Housing Fund pursuant to the Agreement as used in connection with acquisition of the Site and will generate affordable housing

units (as well as additional units on the Combined Properties), will be of benefit to the Loma Linda Redevelopment Project Area for the reasons set forth above.

Section 3. The City Council finds and determines that, based upon the terms and conditions set forth in the Intercreditor and Subordination Agreement, the affordable housing policies of the Authority and the City will be promoted by the execution and implementation of the Intercreditor and Subordination Agreement.

Section 4. The City Council hereby approves the Intercreditor and Subordination Agreement in substantially the form presented to the City Council, subject to such revisions as may be made by the City Manager or his designee. The City Manager is hereby authorized to execute the Agreement (including without limitation all attachments thereto) on behalf of the City, and to take such actions as are necessary or convenient to implement the Intercreditor and Subordination Agreement, including without limitation the execution of escrow instructions. The City Council further authorizes and directs to execute on behalf of the City the State Agreement consistent with the terms hereinabove set forth. A copy of the Agreement when executed by the Authority shall be placed on file in the office of the City Clerk.

APPROVED AND ADOPTED this 27th day of September, 2016 by the following vote:

Ayes:  
Noes:  
Absent:  
Abstain:

By: \_\_\_\_\_  
Rhodes Rigsby, Mayor

ATTEST:

\_\_\_\_\_  
Pamela Byrnes-O'Camb  
City Clerk

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE LOMA LINDA HOUSING AUTHORITY APPROVING AND AUTHORIZING THE EXECUTION OF AN INTERCREDITOR AND SUBORDINATION AGREEMENT BY AND AMONG THE COUNTY OF SAN BERNARDINO, THE CITY OF LOMA LINDA, THE LOMA LINDA HOUSING AUTHORITY, AND LOMA LINDA VETS., LP., A CALIFORNIA LIMITED PARTNERSHIP**

WHEREAS, the Loma Linda Housing Authority (“Authority”) and the City of Loma Linda (“City”), following an extended period of negotiations, entered into a Disposition and Development/Affordable Housing Agreement dated as of July 23, 2013 (the “DDA”) with Golden Eagle Multi-Family Properties, LLC, a California limited liability company (“Golden Eagle”). Under the DDA, the Authority conveyed to Golden Eagle certain land located on the south side of Van Leuven Street (the “Site” or “Housing Authority Property”), adjacent to certain privately-owned property (the “Hood Property” and, together with the Site, the “Combined Properties”). Golden Eagle has engaged in subsequent transactions with the County of San Bernardino (the “County”) and Loma Linda Vets, L.P., a California limited partnership (“New Development Entity”) as a result of which New Development Entity has obtained financing commitments for the development of the Site and the Hood Property; and

WHEREAS, the Site was acquired by the former Loma Linda Redevelopment Agency (“Redevelopment Agency”) using moneys from its Low- and Moderate-Income Housing Fund (as established and maintained under Health & Safety Code sections 33334.2 and 33334.3) for the purpose of promoting affordable housing; and

WHEREAS, the DDA included requirements that in the event dwelling units were developed on the Site or the Hood Property, that no fewer than one dwelling unit would be restricted to occupancy by households having an income limited to that allowable for households earning not greater than 120% of median income (Moderate Income Households) at rent that would not exceed “Affordable Rent” as defined in the DDA consistent with definitions used in Health & Safety Code section 50052.5. The requirements as to affordability were reflected in the DDA and three instruments executed and recorded with the San Bernardino County pursuant to the DDA, namely, as referred to therein, the “Authority Deed”, the “Authority Developer CC&Rs” and the “City Covenants” (the executory provisions of which are collectively referred to herein as the “Loma Linda Prior Recorded Requirements”); and

WHEREAS, the County requires, as a condition of implementing a portion of its agreement with the New Development Entity (the “Home Investment Partnerships Act Loan Agreement”, or “HOME Agreement”) that the Authority and the City agree to subordinate the Loma Linda Prior Recorded Requirements to regulatory agreement substantially in the form of Exhibit F to the HOME Agreement (the “County Regulatory Agreement”). Under the HOME Agreement, the County has agreed to infuse \$2.1 million to the development of affordable housing units on the Combined Properties. No City approval is required for the approval or implementation by County of the HOME Agreement (or the County Regulatory Agreement). The subordination of the Loma Linda Prior Recorded Requirements would be evidenced and implemented by an agreement entitled “Intercreditor and Subordination Agreement” substantially in the form submitted herewith (the “Intercreditor and Subordination Agreement”); and

WHEREAS, the County has reported that the New Development Entity has obtained commitments for financing for housing serving certain veterans to be provided by the Housing and Community Development Department of the State of California (herein, "State") pursuant to its Veterans Housing and Homeless Prevention Program ("State Program"). The State will later present an instrument seeking subordination of the Loma Linda Prior Recorded Requirements to a recordable instrument to be prepared by the State implementing the State Program (the "State Agreement"); and

WHEREAS, the HOME Agreement provides, in part, that for a 55-year period, the New Development Entity shall rent forty-nine (49) dwelling units to households having incomes of not greater than 30% of median income, and an additional 37 dwelling units to households having incomes of not greater than 50% of median income, all with rents that do not exceed affordable rents as defined in the HOME Agreement. In consideration of the City and Authority so subordinating the Loma Linda Prior Recorded Requirements, the County and the New Development Entity will agree, as provided in the Intercreditor and Subordination Agreement, that: (i) each of the City and the Authority will, by the Intercreditor and Subordination Agreement, be treated as a third party beneficiary under the HOME Agreement with the right (but not the obligation) to enforce the affordable housing provisions thereof; and (ii) the New Development Entity will be required to submit to each of the City and the Authority a copy of those reports which New Development Entity is required to make to the County under the HOME Agreement demonstrating compliance with the affordable housing provisions thereof (which reports under the HOME Agreement will depict the actual rents charged for the eighty-six income restricted units at the Combined Properties). The ability of the City and Authority to proceed with remedies against the New Development Entity is subject to certain limitations as to the priority of the County to enforce, as more particularly set forth in the Intercreditor and Subordination Agreement; and

WHEREAS, no financial contribution will be made by the Authority or City; and

WHEREAS, by virtue of the City and Authority becoming third party beneficiaries with rights to enforce the affordability provisions of HOME Agreement, the Authority and City should be able to count the units as production units of the City and the Authority, as more particularly described in the accompanying staff report. The City Covenants and Housing Authority CC&Rs will remain in effect; the unit required to be affordable at 120% or below would be satisfied by counting one of the 86 units restricted at lower affordability levels under the HOME Agreement; and

WHEREAS, the addition of affordable units which are countable by the City and the Authority achieves a substantial benefit to each of the City and Authority.

NOW, THEREFORE, THE LOMA LINDA HOUSING AUTHORITY DOES RESOLVE AS FOLLOWS:

Section 1. The Authority finds and determines that the statements set forth in the Recitals above are true and correct.

Section 2. The Authority hereby finds that the use of land acquired by the former Redevelopment Agency's Low and Moderate Income Housing Fund as used in connection with acquisition of the Site and will generate affordable housing units (as well as additional units on the

Combined Properties), will be of benefit to the Loma Linda Redevelopment Project Area for the reasons set forth above.

Section 3. The Authority finds and determines that, based upon the terms and conditions set forth in the Intercreditor and Subordination Agreement, the affordable housing policies of the Authority will be promoted by the execution and implementation of the Intercreditor and Subordination Agreement.

Section 4. The Authority hereby approves the Intercreditor and Subordination Agreement in substantially the form presented to the Authority, subject to such revisions as may be made by the Executive Director of the Authority or his designee. The Authority further authorizes and directs to execute on behalf of the Authority the State Agreement consistent with the terms hereinabove set forth. The Executive Director of the Authority is hereby authorized to execute the Agreement (including without limitation all attachments thereto) on behalf of the Authority, and to take such actions as are necessary or convenient to implement the Intercreditor and Subordination Agreement, including without limitation the execution of escrow instructions. A copy of the Agreement when executed by the Authority shall be placed on file in the office of the Secretary of the Authority.

APPROVED AND ADOPTED this 27th day of September, 2016 by the following vote:

Ayes:  
Noes:  
Absent:  
Abstain:

By: \_\_\_\_\_  
Rhodes Rigsby, Chairman

ATTEST:

\_\_\_\_\_  
Pamela Byrnes-O'Camb  
Authority Secretary

RECORDING REQUESTED PURSUANT  
AND WHEN RECORDED MAIL TO:

Department of Community Development and Housing  
County of San Bernardino  
385 North Arrowhead Ave Third Floor  
San Bernardino, CA 92415-0121  
Attn: Community Development and Housing Director

No fee for recording pursuant to  
Government Code Section 27383

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(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

INTERCREDITOR AND SUBORDINATION AGREEMENT

(Loma Linda Veterans Village)

## INTERCREDITOR AND SUBORDINATION AGREEMENT

(Loma Linda Veterans Village)

### **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 SECURITY INSTRUMENT.**

This Intercreditor and Subordination Agreement (the "Agreement") is dated as of September 20, 2016, and is among the City of Loma Linda, a California charter city (the "City"), the Loma Linda Housing Authority, a public body, corporate and politic (the "Housing Authority"), the County of San Bernardino, a political subdivision of the State of California (the "County"), and Loma Linda Vets, L.P., a California limited partnership ("Borrower"), with reference to the following facts:

#### RECITALS

A. Borrower is the owner (or concurrently with the recording of this Agreement will be) acquiring that certain real property located at 25259, 25273, 25281, 25285, 25229, 25303 Van Leuven Street, in the City of Loma Linda, County of San Bernardino, State of California, as more particularly described in Exhibit A (the "Property"). Borrower intends to construct eighty-seven (87) units of multifamily rental housing on the Property (the "Development").

B. The County is making a loan to Borrower of up to Two Million One Hundred Thousand Dollars (\$2,100,000) of HOME Investment Partnerships Act Program funds, (the "County Loan") to fund the Development. The County Loan is evidenced by the following documents (among others): (1) that certain HOME Investment Partnership Act Loan Agreement by and between Borrower and the County (the "County Loan Agreement"); (2) that certain Deed of Trust With Assignment of Rents, Security Agreement and Fixture Filing executed by Borrower for the benefit of the County (the "County Deed of Trust"), and (iii) Promissory Note executed by Borrower for the benefit of the County in the amount of the County Loan (the "County Note"). The County Loan Agreement, the County Deed of Trust, and the County Note are hereinafter collectively referred to as the County Loan Documents.

C. The City, the Housing Authority and the Borrower's predecessor in interest entered into that certain unrecorded Disposition and Development/Affordable Housing Agreement, dated as of July 23, 2013 (the "Disposition Agreement"), a copy of the Disposition Agreement is on file with the Housing Authority at the address provided in Section 6 hereof. The Disposition Agreement provides in part that, the Borrower may, but is not obligated to construct dwelling units on Property; provided that if any dwelling units are developed on the Property, not fewer than one (1) dwelling unit shall be restricted to occupancy by "Moderate Income Households" at rent which does not exceed "Affordable Rent" throughout the "Required Covenant Period" of 55 years.

D. The Borrower's predecessor in interest acquired a portion of the Property pursuant to that certain Grant Deed, recorded as instrument number 2014-0228879 on June 25, 2014 (the "Authority Grant Deed"), which contains covenants related to the use of such portion of the

Property. In addition, as required under the Disposition Agreement, the Property is encumbered by: (1) the undated Regulatory Agreement, recorded as instrument number 2014-022880 on June 25, 2014 (the "Regulatory Agreement I"); (2) the undated Regulatory Agreement, recorded as instrument number 2014-022881 on June 25, 2014 (the "Regulatory Agreement II"); and (3) the Notice of Affordability Restrictions on Transfer of Property dated as of January 28, 2014, and recorded as instrument number 2014-022882 (the "Notice of Affordability"). The Authority Grant Deed, the Regulatory Agreement I, the Regulatory Agreement II, and the Notice of Affordability are hereinafter collectively referred to as the "Loma Linda Subordinate Documents."

E. As a condition precedent to the County Loan, the County requires that the County Regulatory Agreement shall unconditionally be and remain at all times a lien or charge upon the Development which are prior and superior to the liens or charges of the Loma Linda Subordinate Documents.

F. As a condition of City and Housing Authority to subordinate the Loma Linda Subordinate Documents to the County Regulatory Agreement, and to induce the City and the Housing Authority to subordinate the Loma Linda Subordinate Documents to the County Regulatory Agreement, the City and Housing Authority require that each be deemed a third party beneficiary with regards to the County Regulatory Agreement, with rights of enforcement as more particularly provided herein.

G. It is the mutual benefit to the Parties hereto, and the Parties hereto desire to enter into this Agreement to: (1) subordinate the Loma Linda Subordinate Documents to the County Loan Documents; (2) to make the City and Housing Authority third party beneficiaries under County Loan Documents; and (3) provide the City and Housing Authority notices and cure rights under the County Loan Documents, all as specified herein.

NOW, THEREFORE, in consideration of the funding of the County Loan, and in consideration of the mutual promises and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce the County to fund the County Loan to Borrower, the parties to this Agreement do hereby agree as follows:

#### AGREEMENT

1. Subordination to County Loan Documents.

(a) The County Regulatory Agreement shall unconditionally be and remain at all times liens, claims, or charges on the Development prior and superior to the Loma Linda Subordinate Documents, and to all rights and privileges of the City and Housing Authority (collectively, the "Junior Lienholders") thereunder; and the Loma Linda Subordinate 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 County Regulatory Agreement.

(b) Junior Lienholders declare, agree and acknowledge that the Junior Lienholders consent to and approve all provisions of the County Loan Documents.

(c) If, notwithstanding the provisions of this Agreement, any payment, distribution or security of any character (whether in cash, securities or other property) shall be received by the Junior Lien Holder out of or in connection with the Loma Linda Subordinate Documents before all of the County Loan shall have been paid in full, such payment, distribution or security, as applicable, shall not be commingled with any asset of Junior Lien Holder, shall be held in trust for the benefit of, and shall be delivered over or delivered and transferred to, the County or its representative, for application to the payment of the County Loan remaining unpaid, until all of the County Loan shall have been paid in full. Junior Lien Holder is not and shall not be permitted to receive or apply payments against the Loma Linda Subordinate Documents until such time as all obligations under the County Loan Documents have been fully satisfied and the County Loan has been paid in full (the "Release Event").

(d) Junior Lienholders shall be bound by any consent or waiver made by the County, and Junior Lienholders, hereby waive any and all rights of consent or approval with regard to any matters covered by or under the terms of the County Loan Documents.

(e) The County need not obtain the prior consent of Junior Lien Holder for extensions of the term of the County Loan, advancing payments for taxes, insurance or other necessary expenses to maintain security of the Property. Notwithstanding any provision of this Agreement to the contrary, any reference herein to the "County Deed of Trust," "County Loan Documents" or "County Note" is deemed to include and refer to any renewal, replacement, amendment, modification, refinancing, extension, substitution or consolidation thereof whether by the County, any successor or assign of the County, or any other person or entity.

2. Actions under Loma Linda Subordinate Documents.

(a) Until the Release Event has occurred, Junior Lienholders shall not take any of the following actions with respect to the Loma Linda Subordinate Documents, without the prior written consent of the County, which shall not be unreasonably withheld, conditioned or delayed:

i. Declare a default under the Loma Linda Subordinate Documents, accelerate all or any portion of any monies due pursuant to the Loma Linda Subordinate Documents, or exercise any remedies under the Loma Linda Subordinate Documents;

ii. Commence any legal proceedings (including commencing or consenting to bankruptcy proceedings) against the Borrower;

iii. Consent to any material amendment, extension, restatement, replacement, supplement, increase, consolidation, renewal or modification of the Loma Linda Subordinate Documents.

iv. Assign, convey, sell, hypothecate or transfer any interest whatsoever in the Loma Linda Subordinate Documents directly or indirectly (including, without

limitation, by means of a transfer of ownership interests in Junior Lienholders), whether such interest be collateral in nature (e.g., pledges or grants of security interests) or absolute.

v. Accept any payments under the Loma Linda Subordinate Documents.

3. Reports and Accounting of Residual Receipts.

In connection with all reports and income certifications required under Article 3 of the County Regulatory Agreement, Borrower hereby agrees to furnish copies of all materials submitted to the County to the Junior Lienholders, at the same time Borrower furnishes those materials to the County.

4. Notice of Default.

(a) The County, Housing Authority and the City shall each notify the other promptly upon declaring a default or learning of the occurrence of any material event of default, or any event which with the lapse of time would become a material event of default, under their respective documents.

(b) Junior Lienholders hereby agree to deliver to the County copies of any and all notices sent or received by Junior Lienholders or their agents in connection with the Loma Linda Subordinate Documents. Junior Lienholders hereby grant to the County the right, but not the obligation, to cure any default under the Loma Linda Subordinate Documents, and the Junior Lienholders also accepts all such performance by the County.

(c) The County hereby agrees to deliver to the Junior Lienholders copies of any and all notices sent or received by it or its agents in connection with the County Loan Documents. The County hereby grants to the Junior Lienholders the right, but not the obligation, to cure any default under the County Loan Documents, and the County also accepts all such performance by the Junior Lienholders.

5. Third Party Beneficiary. Each of the Junior Lienholders is deemed to be a third party beneficiary under the County Regulatory Agreement and shall have the limited rights to enforce through an action for specific performance against the Borrower, the County's rights under Article 2 and Article 3 of the Regulatory Agreement. The Junior Lienholders agree not to make any demands or enforce any rights under the Regulatory Agreement, until the date that is fifteen (15) business days following an uncured event of default by Borrower under Article 2 or Article 3 of the Regulatory Agreement. Nothing in this Section shall be read to abrogate, or otherwise limit the rights of the County to enforce the County Regulatory Agreement.

6. Notices. All notices required or permitted by any provision of this Agreement must be in writing and sent by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the Parties as follows:

City:

City of Loma Linda  
25541 Barton Road  
Loma Linda, CA 92354  
Attn: City Manager

Housing Authority:

Loma Linda Housing Authority  
25541 Barton Road  
Loma Linda, CA 92354  
Attn: Secretary

With a copy to:

Stradling Yocca Carlson & Rauth, P.C.  
660 Newport Center Drive, Suite 1600  
Newport Beach, CA 92660  
Attn: Mark J. Huebsch

County:

Department of Community Development and Housing  
County of San Bernardino  
385 North Arrowhead Ave Third Floor  
San Bernardino, CA 92415-0043  
Attn: Community Development and Housing Director

With a copy to:

Goldfarb & Lipman, LLP  
1300 Clay Street, 11<sup>th</sup> Floor  
Oakland, CA 94612  
Attn: Rafael Yaquian

Borrower:

Loma Linda Vets, L.P.  
c/o Meta Housing Corporation  
1640 S. Sepulveda Blvd., Suite 525  
Los Angeles, CA 90025  
Attn: Chairman and CEO

with a copy to:

Bocarsly Emden Cowan Esmail & Arndt LLP  
633 W. Fifth Street, 64th Floor  
Los Angeles, California 90071  
Attn: Nicole Deddens

with a copy to:

Housing Partners I, Inc.  
715 East Brier Drive  
San Bernardino, CA 92408-2841  
Attn: President

Such written notices, demands, and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate as provided in this Section. Receipt will be deemed to have occurred on the date marked on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

7. Titles. Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and are to be disregarded in interpreting any part of the Agreement's provisions.

8. California Law. This Agreement is governed by the laws of the State of California.

9. Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions will continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

10. Legal Actions. If any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach of this Agreement, then the party prevailing in any such action shall be entitled to recover against the party not prevailing all reasonable attorneys' fees and costs incurred in such action.

11. Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

12. Amendments. This Agreement may not be modified except by written instrument executed by and amongst the parties.

*[Remainder of Page Left Intentionally Blank]*



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 Los Angeles )

On September 15 2016, before me, Marian Kain, Notary Public, personally appeared George Russo, 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.



Marian Kain  
Name: \_\_\_\_\_  
Notary Public

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

**BORROWER:**

LOMA LINDA VETS, L.P., a California limited partnership

By: Loma Linda Vets, LLC, a California limited liability company, its Administrative General Partner

By: Meta Housing Corporation, a California corporation, its sole member and manager

By: \_\_\_\_\_  
Geroge M. Russo, Vice President

By: Loma Linda Veteran Partners, LLC, a California limited liability company, its Managing General Partner

By: Housing Partners I, Incorporated, a California nonprofit public benefit corporation, its sole member and manager

By: Maria Razo  
Maria Razo, Secretary/Treasurer

**CITY:**

CITY OF LOMA LINDA, a California charter city

ATTEST:

\_\_\_\_\_  
Pamela Byrnes-O'Camb,  
City Clerk

By: \_\_\_\_\_  
T. Jarb Thaipejr, City Manager

**HOUSING AUTHORITY:**

LOMA LINDA HOUSING AUTHORITY, a public body, corporate and politic

ATTEST:

\_\_\_\_\_  
Pamela Byrnes-O'Camb,  
Authority Secretary

By: \_\_\_\_\_  
T. Jarb Thaipejr, City Manager

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 San Bernardino )

On 9/15/16, before me, Angela Joyner, Notary Public, personally appeared Maria Razo, 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.



Angela Joyner  
Name: Angela Joyner  
Name: Notary Public

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

**BORROWER:**

LOMA LINDA VETS, L.P., a California limited partnership

By: Loma Linda Vets, LLC, a California limited liability company, its Administrative General Partner

By: Meta Housing Corporation, a California corporation, its sole member and manager

By: \_\_\_\_\_  
Kasey M. Burke, Vice President

By: Loma Linda Veteran Partners, LLC, a California limited liability company, its Managing General Partner

By: Housing Partners I, Incorporated, a California nonprofit public benefit corporation, its sole member and manager

By: \_\_\_\_\_  
Maria Razo, Secretary/Treasurer

**CITY:**

CITY OF LOMA LINDA, a California charter city

ATTEST:

\_\_\_\_\_  
Pamela Byrnes-O'Camb,  
City Clerk

By: \_\_\_\_\_  
T. Jarb Thaipejr, City Manager

**HOUSING AUTHORITY:**

LOMA LINDA HOUSING AUTHORITY, a public body, corporate and politic

ATTEST:

\_\_\_\_\_  
Pamela Byrnes-O'Camb,  
Authority Secretary

By: \_\_\_\_\_  
T. Jarb Thaipejr, City Manager

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.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

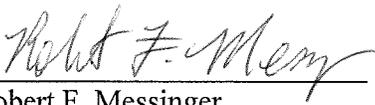
COUNTY:

COUNTY OF SAN BERNARDINO, a political  
subdivision of the State of California

By:   
Gregory C. Devereaux  
Chief Executive Officer, Board of Supervisors

APPROVED AS TO LEGAL FORM:

JEAN-RENE BASLE  
County Counsel

By:   
Robert F. Messinger  
Deputy County Counsel

Date: 9-14-16

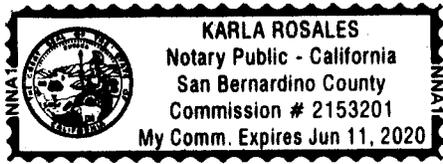
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 )  
COUNTY OF San Bernardino )

On September 15, 2016, before me, Karla Rosales, Notary Public, personally appeared Gregory C. Devereaux, 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.



*Karla Rosales*  
Name: Karla Rosales  
Name: Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOMA LINDA HOUSING AUTHORITY

AGENDA

REGULAR MEETING OF SEPTEMBER 27, 2016

A regular meeting of the Housing Authority of the City of Loma Linda is scheduled to be held at 7:00 p.m. or as soon thereafter as possible, Tuesday, September 27, 2016 in the City Council Chamber, 25541 Barton Road, Loma Linda, California.

Reports and Documents relating to each agenda item are on file in the Office of the City Clerk and are available for public inspection during normal business hours. The Loma Linda Branch Library is also provided an agenda packet for your convenience. The agenda and reports are also located on the City's Website at [www.lomalinda-ca.gov](http://www.lomalinda-ca.gov).

*Materials related to an item on this Agenda submitted to the Housing Authority Board after distribution of the agenda packet are available for public inspection in the City Clerk's Office, 25541 Barton Road, Loma Linda, CA during normal business hours. Such documents are also available on the City's website at [www.lomalinda-ca.gov](http://www.lomalinda-ca.gov) subject to staff's ability to post the documents before the meeting.*

Persons wishing to speak on an agenda item are asked to complete an information card and present it to the City Clerk prior to consideration of the item. When the item is to be considered, please step forward to the podium, the Chair will recognize you and you may offer your comments. The Housing Authority meeting is recorded to assist in the preparation of the Minutes, and you are therefore asked to give your name and address prior to offering testimony.

The Oral Reports/Public Participation portion of the agenda pertains to items NOT on the agenda and is limited to 30 minutes; 3 minutes allotted for each speaker. Pursuant to the Brown Act, no action may be taken by the Housing Authority at this time; however, the Housing Authority Board may refer your comments/concerns to staff or request that the item be placed on a future agenda.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk at (909) 799-2819. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. Later requests will be accommodated to the extent feasible.

**Agenda item requests for the OCTOBER 11, 2016 meeting must be submitted in writing to the City Clerk no later than NOON, MONDAY, SEPTEMBER 26, 2016**

**A. Call To Order**

**B. Roll Call**

**C. Items To Be Added Or Deleted**

**D. Oral Reports/Public Participation - Non-Agenda Items (Limited to 30 minutes; 3 minutes allotted for each speaker)**

**E. Conflict of Interest** Disclosure - Note agenda item that may require member abstentions due to possible conflicts of interest

**F. Scheduled Items**

1. Joint meeting of the City Council and Loma Linda Housing Authority relating to an Intercreditor and Subordination Agreement among by and among the County of San Bernardino, the City of Loma Linda, the Loma Linda Housing Authority, and Loma Linda Vets., L.P., a California limited partnership [**Special Counsel**]
  - a. Council Bill #R-2016-39 – City Council Authorizing the execution of the Intercreditor and Subordination Agreement
  - b. LLHA Bill #R-2016-05 – Housing Authority Authorizing the execution of the Intercreditor and Subordination Agreement

**G. Chair and Member Reports**

**H. Reports of Officers**

**I. Adjournment**



# City of Loma Linda Official Report

Rhodes Rigsby, Chairman  
Phill Dupper, Vice-Chairman  
Ovidiu Popescu, Member  
Ronald Dailey, Member  
John Lenart, Member

HOUSING AUTHORITY AGENDA: September 27, 2016

TO: Housing Authority Members

VIA: T. Jarb Thaipejr, Executive Director

FROM: Pamela Byrnes-O'Camb, Secretary

SUBJECT: Joint meeting of the City Council and Loma Linda Housing Authority relating to an Intercreditor and Subordination Agreement among by and among the County of San Bernardino, the City of Loma Linda, the Loma Linda Housing Authority, and Loma Linda Vets., L.P., a California limited partnership [**Special Counsel**]

Approved/Continued/Denied By: Housing Authority Date _____
--

- a. Council Bill #R-2016-39 – City Council Authorizing the execution of the Intercreditor and Subordination Agreement
- b. LLHA Bill #R-2016-05 – Housing Authority Authorizing the execution of the Intercreditor and Subordination Agreement

## RECOMMENDATION

Please see Item 1 on the City Council agenda.