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Page 1 of 9

Rhonda Francis Summit County Recorder

09/11/2023 08:24:03 AM Fee \$40.00

By COTTONWOOD TITLE INSURANCE AGENCY, INC.

Electronically Recorded

When recorded mail to:

Utah Department of Workforce Services

Housing and Community Development Division

Olene Walker Housing Loan Fund

140 East 300 South, First Floor

Salt Lake City, UT 84111

149390- MCF

Tax Parcel I.D. No. YARD-B-1AM-X

### **SUBORDINATION AGREEMENT**

This Subordination Agreement ("Subordination Agreement") is made on 8<sup>th</sup> day of September, 2023, between the OLENE WALKER HOUSING LOAN FUND ("Senior Lender"), and JF ENGINEHOUSE MEMBER, LLC, a Utah limited liability company ("Subordinated Lender"), and is consented to by JF ENGINEHOUSE PARTNERS, LLC, a Utah limited liability company ("Borrower").

WHEREAS, Borrower owns a leasehold interest in that certain real property located in SUMMIT County, Utah, and more particularly described in Exhibit A annexed hereto ("Property"); and

WHEREAS, Subordinated Lender is the beneficiary of a Trust Deed and Security Agreement ("Subordinated Debt") that was recorded against the Property in the official records of the SUMMIT County Recorder's Office on 09-09-2023, as Entry No. 01209330, securing a loan to Borrower from Subordinated Lender in the original principal amount of \$866,244.00; and

WHEREAS, Senior Lender is the beneficiary of a Deed of Trust with Assignment of Rents that was recorded against the Property in the official records of the SUMMIT County Recorder's Office on 09-09-2023, as Entry No. 01209327, securing a loan to Borrower from Senior Lender in the original principal amount of \$967,252.00, in accordance with the terms and conditions set forth in the Trust Deed Notes, Trust Deeds, and Deed Restrictions (collectively "Loan Documents"); and

WHEREAS, in order to induce Senior Lender to consummate the transactions contemplated by the Loan Documents, Senior Lender has required the execution and delivery of this Subordination Agreement by the Subordinated Lender in order to set forth the relative rights and priorities of Senior Lender and Subordinated Lender.

NOW, THEREFORE, in consideration of the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Definitions:

- a. "Subordinated Debt" means each and every debt, liability and obligation of every type and description, including, without limitation, the Subordinated Debt, together with all interest, fees, charges, expenses and attorney's fees which the Borrower is now or hereafter becomes liable to pay to Subordinated Lender, together with all extensions, supplements, renewals, amendments, restatements and modifications thereof or of any part thereof, whether such debt, liability or

obligation now exists or is hereafter created or incurred, and whether direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several.

- b. "Senior Debt" means all loans, advances, liabilities, debit balances, covenants, restrictions and duties at any time owed by the Borrower to Senior Lender, whether direct or indirect, absolute or contingent, secured or unsecured, due or to become due, now existing or hereafter arising, including, without limitation, any debt, liability, or obligation owing from the Borrower to others which Senior Lender may have obtained by assignment, pledge, purchase, or otherwise, together with all interest, fees, charges, expenses, and attorney's fees for which the Borrower is now or hereafter becomes liable to pay to Senior Lender, together with any extensions, renewals, or modifications thereof or of any part thereof.

2. Subordination. The Subordinated Lender agrees that the Subordinated Debt is and shall remain subordinated in all respects to the indefeasible and irrevocable payment in full in cash of all Senior Debt. The Subordinated Lender subordinates any lien Subordinated Lender may have to secure the Subordinated Debt on the Property and any property of the Borrower to any lien on such property given to Senior Lender to secure any Senior Debt.

3. No Payment or Acceleration. Except as provided in Section 4, until the Senior Debt is fully, finally and irrevocably paid in full in cash and all financing arrangements between the Borrower and Senior Lender have been terminated, (i) the Subordinated Lender will not ask, demand, sue for, take or receive from the Borrower, and the Borrower will not make, give or permit, directly or indirectly, by setoff, redemption, purchase or in any other manner, any payment on or security for the whole or any part of the Subordinated Debt, and the Subordinated Lender will not accelerate the scheduled payments of its Subordinated Debt or take any action to enforce or collect amounts so owing against the Borrower or any security for any Subordinated Debt or act as a petitioning creditor in any bankruptcy proceeding filed against the Borrower, (ii) the Subordinated Lender has no right to possess any assets of the Borrower or to foreclose upon any such assets, whether by judicial action or otherwise, and (iii) the Senior Lender is subrogated to the rights of Subordinated Lender with respect to the Subordinated Lender's claims against the Borrower, and the Subordinated Lender's rights, liens and security interests in any of the Borrower's assets and the proceeds thereof.

Senior Lender may, without affecting the subordination: (1) release or compromise any obligation in the Loan Documents, (2) release its liens in, or surrender, release or permit any substitution or exchange of all or any part of any properties, including the Property, securing repayment of the Note, (3) retain or obtain a lien in any other property to further secure payment of the notes, or (4) exercise any remedies available under the trust deeds, the other Loan Documents or applicable law, including but not limited to foreclosure and sale of the Property. Notwithstanding the foregoing, Senior Lender shall not increase the loan amount or increase the payments due under the Loan Documents (with the exception of protective payments authorized by the trust deeds), decrease the term under the Loan Documents, or increase the interest rate under the Loan Documents, without the prior written consent of the Subordinated Lender.

4. Permitted Payments. Notwithstanding Section 3, until the Senior Lender provides the Subordinated Lender with written notice of an Event of Default, the Subordinated Lender may receive regularly

scheduled payments of the Subordinated Debt in accordance with the terms and conditions set forth in the subordinate loan notes granted by Subordinated Lender in favor of Borrower. If Senior Lender provides the Subordinated Lender with written notice of an Event of Default, the Subordinated Lender may not receive Permitted Payments until the Borrower is in full compliance with the Senior Loan Agreement and the cause of an Event of Default is no longer the cause of an actual or imminent Event of Default, as determined by Senior Lender. The Subordinated Lender shall not take any enforcement action against the Borrower or the Borrower's property without Senior Lender's prior written consent.

5. Liquidation. Upon any liquidation, dissolution or other winding up of the Borrower or its business or any sale, receivership, insolvency, reorganization or bankruptcy proceeding, assignment for the benefit of creditors, arrangement for the commencement of any proceeding by or against the Borrower for relief under any bankruptcy, reorganization or insolvency law or any other law relating to the relief of debtors, readjustment of debt, reorganization, composition or extension, or in the event of the occurrence and during the continuation of any Event of Default under any Senior Debt, then any such payment or distribution of any kind, whether in cash, property or securities which, but for the subordination provisions contained herein, would otherwise be payable or deliverable to the Subordinated Lender in respect of any Subordinated Debt, shall instead be paid or delivered to Senior Lender as a payment or prepayment on account of the Senior Debt.

6. Turnover of Prohibited Payments. Should any payment, distribution, security or instruments or any proceeds thereof, other than Permitted Payments, be received by the Subordinated Lender with respect to the Subordinated Debt prior to the full, final and irrevocable payment of the Senior Debt, the Subordinated Lender shall receive and hold the same in trust, as trustee for application to the Senior Debt, whether or not due.

7. Termination. Upon the first to occur: full, final and irrevocable payment of all Senior Debt or the Intermountain Loan being paid off, this Subordination Agreement shall automatically terminate.

8. Acknowledgment. The Subordinated Lender acknowledges and agrees that any default by the Borrower under this Subordination Agreement constitutes an Event of Default under the Loan Agreement with Senior Lender, and that any such Event of Default provides Senior Lender with the option to declare that the Senior Debt is immediately due and payable.

9. Notices. All notices, requests, demands or other communications required or permitted under this Subordination Agreement or by law shall be in writing and shall be deemed to have been given and received only when personally delivered or three business days after sent by United States mail, certified or registered, postage prepaid, return receipt requested, addressed appropriately, as follows:

If to Senior Lender:                      Olene Walker Housing Loan Fund  
   140 East 300 South, First Floor  
   Salt Lake City, UT 84111

If to the Subordinated Lender: JF EngineHouse Member, LLC  
   1216 West Legacy Crossing Blvd., Ste. 300  
   Centerville, Utah 84014

A party may change its address for notice in conformity with the requirements of this Section.

10. Non-Waiver. No delay on the part of Senior Lender in exercising any right or any failure to exercise any right shall operate as a waiver of such right, and no notice to or demand on the Borrower or Subordinated Lender shall be deemed a waiver of any obligation or duty of the Borrower or Subordinated Lender. No modification, alteration, or waiver of any provision of this Subordination Agreement shall be effective unless in writing and signed by a duly authorized representative of Senior Lender, and then only in the specific instance for which given.

11. Expenses. The Subordinated Lender shall pay to Senior Lender on demand all reasonable expenses of every kind, including reasonable attorney's fees, that Senior Lender may incur in enforcing its rights under this Subordination Agreement arising from a breach of this Agreement by the Subordinated Lender.

12. Governing Law. The provisions of this Subordination Agreement shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Subordination Agreement. Exclusive venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

13. Successors and Assigns. This Subordination Agreement shall inure to the benefit of Senior Lender, its successors and assigns, and shall be binding upon the Subordinated Lender, and its successors and assigns. Any reference to the Borrower shall include its successors and assigns, including any receiver, trustee or debtor-in-possession of or for the Borrower.

14. Severability. The provisions of this Subordination Agreement are independent and separable from one another. If any provision hereof is held invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of other provisions and this Subordination Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

15. Additional Documentation. The Subordinated Lender shall execute and deliver to Senior Lender such further instruments and take such further action as Senior Lender may reasonably request in order to carry out the provisions and intent of this Subordination Agreement.

16. Senior Lender's Duty Limited. The rights granted to Senior Lender in this Subordination Agreement are solely for its protection and nothing herein imposes on Senior Lender any duties with respect to any property of Borrower or Subordinated Lender.

17. Counterparts. This Agreement may be executed in counterparts each of which, when executed and delivered, will constitute one original instrument.

18. Reinstatement of Obligations and Security. To the extent that the Borrower or any obligor makes a payment to Senior Lender or Senior Lender receives any payments or proceeds of the collateral securing the Senior Debt for the Borrower's benefit, which payments or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be

repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law, or equitable doctrine, then to the extent of any payments or proceeds which have been received and not retained by Senior Lender, the Subordinated Lender's obligations under this Subordination Agreement intended to be satisfied thereby and this Subordination Agreement shall be reinstated and continue in full force and effect until full and final payment shall have been made to Senior Lender.

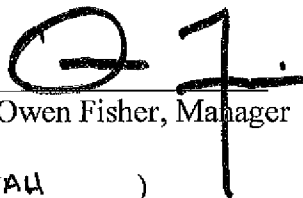
19. Entire Agreement. This Subordination Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, whether express or implied, oral or written.

**(Signature and Acknowledgement Pages Follow)**

IN WITNESS WHEREOF, the undersigned have executed this Subordination Agreement by their duly authorized officers as of the date and year first above written.

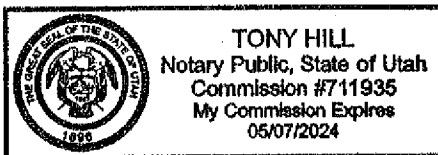
**JF Enginehouse Member, LLC, a Utah limited liability company, Subordinate Lender**

By: J. Fisher Companies, LLC,  
a Utah limited liability company,  
its sole manager

By:   
Owen Fisher, Manager

STATE OF UTAH        )  
                              :SS  
COUNTY OF DAVIS    )

On SEPTEMBER 7, 2023, Owen Fisher, personally appeared before me and presented satisfactory identification, and being duly sworn by me, the undersigned officer, did say that s/he is the Manager of J. Fisher Companies, LLC, which is the Sole Manager of JF Enginehouse Member, LLC, a Utah limited liability company, that the attached instrument was signed on behalf of said entity, and said persons acknowledged to me that said entity executed the same.



  
\_\_\_\_\_  
Notary Public

**Olene Walker Housing Loan Fund, Senior Lender**

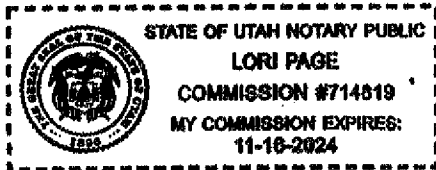


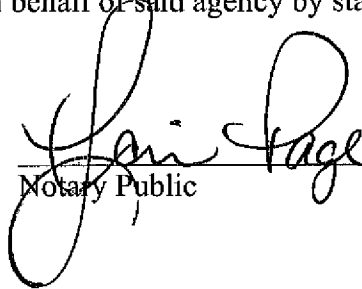
Name: Nathan McDonald

Title: Deputy Director of Department of  
Workforce Services

STATE OF UTAH                    )  
  :SS  
COUNTY OF SALT LAKE    )

On Sept. 8, 2023 personally appeared before me, Nathan McDonald, who being duly sworn, did say that he is the Director of Department of Workforce Services, The Department of Community and Culture, State of Utah, the Administrator of the Olene Walker Housing Loan Fund, and that the foregoing instrument was signed on behalf of said agency by statutory authority, and that the aforesaid agency executed the same.



  
\_\_\_\_\_  
Notary Public

**Borrower's Acknowledgment**

The undersigned Borrower accepts the terms and provisions of this Subordination Agreement, agrees to perform any and all acts which may be required on its part to enable the Subordinated Lender to perform the obligations herein expressed, and to refrain from doing any act which would cause or contribute to a violation by the Subordinated Lender of the Subordination Agreement or any of the Subordinated Lender's obligations. Borrower understands that, in the event it violates any of the terms and provisions hereof, or in the event the Subordinated Lender violates the Subordination Agreement, Senior Lender may, without notice or demand to Borrower, declare that the Senior Debt shall be immediately due and payable.

Dated this 7<sup>th</sup> day of September, 2023.

JF ENGINEHOUSE PARTNERS, LLC, a Utah limited liability company,

(Borrower)

By: JF ENGINEHOUSE MEMBER, LLC, a Utah limited liability company

Its: Managing Member

By: J. FISHER COMPANIES, LLC, a Utah limited liability company

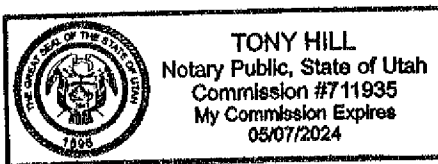
Its: Manager

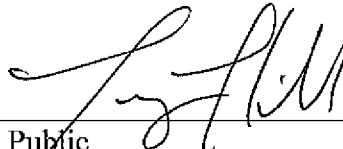
By:   
Name: OWEN FISHER  
Title: Manager

STATE OF UTAH )

COUNTY OF DAVIS )  
ss:

On the 7 day of September in the year 2023 before me, Tony Hill a notary public, personally appeared OWEN FISHER, who being by me duly sworn did say that he is the Manager for J. Fisher Companies, LLC, the Manager of JF ENGINEHOUSE MEMBER, LLC, the Managing Member of JF ENGINEHOUSE PARTNERS, LLC, proved on the basis of satisfactory evidence to be the person(s) whose name(s) is subscribed to in this document, and acknowledged he executed the same.



  
Notary Public



**EXHIBIT A**

**LEGAL DESCRIPTION:**

Lot B, THE YARD SUBDIVISION - FIRST AMENDED, according to the official plat recorded April 28, 2017 as Entry No. 1068309 in the Summit County Recorder's office.

Tax Parcel Nos.: YARD-B-1AM-X

Property is also known by property address: 1875 Homestake Road, Park City, UT 84060.