

Subordination Agreement Page 1 of 12  
Gary Christensen Washington County Recorder  
07/26/2022 04:00:45 PM Fee \$40.00 By  
COTTONWOOD TITLE INSURANCE AGENCY,  
INC.

Requested By and  
When Recorded Return To:

The Mortgage Capital Development  
Corporation  
1720 Broadway, 3<sup>rd</sup> Floor  
Oakland, CA 94612  
Attn: Servicing Department

Loan Name: Sunset Bowling, LLC  
Loan No.: 398 075 7005

CI-162895-MCP

Tax Serial (Parcel) No.: SG-6-2-23-4126

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**SUBORDINATION AGREEMENT**

This agreement dated for reference July 18, 2022 ("Subordination Agreement"), is made by and among: the SMALL BUSINESS ADMINISTRATION, an agency of the United States of America ("SBA"); Utah Community Credit Union ("Lender"); and Sunset Bowling Properties, LLC, a Utah limited liability company ("Owner").

**RECITALS**

SBA is the holder and beneficiary of a Deed of Trust, Fixture Filing and Assignment of Rents executed by Owner dated June 19, 2020, which was recorded on July 2, 2020 under Document ID number 20200034019, Washington County Official Records, State of Utah.

This Deed of Trust and Assignment of Rents together with Fixture Filing, Security Agreement covering equipment and fixtures ("SBA Security Instrument") was pledged to secure a note in the sum of \$1,159,000.00 in favor of The Mortgage Capital Development Corporation ("CDC"), which evidences a loan made by the CDC to Sunset Bowling Properties, LLC, a Utah limited liability company ("Borrower") under SBA's 504 Loan Program ("SBA Loan").

Owner has also executed, or is about to execute, a Deed of Trust dated July 16<sup>th</sup>, 2022 in favor of Lender, "which shall be recorded concurrently herewith."

This Deed of Trust together with an Assignment of Rents and Security Agreement ("Lender's Security Instrument") secures a note in a sum not to exceed \$1,700,000.00 dated July 26<sup>th</sup>, 2022, which evidences a loan to the Owner made by the Lender ("Lender Loan").

Lender has requested that SBA's lien position on the real and personal property described in the SBA Security Instrument ("Property") be subordinated to the lien position of Lender's Security Instrument. SBA is willing to do so provided that it retains its priority with regard to all other legal and equitable interests in the Property.

## AGREEMENT

In consideration of the mutual benefits to the parties and to induce Lender to make the Lender Loan, it is hereby agreed as follows:

(1) Use of Lender Loan Proceeds. 100% of the proceeds of the Lender Loan shall be used for the following described purpose(s): Refinance existing first mortgage loan with Mountain America Credit Union; project collateral improvements and reimburse borrower for documented capital improvements to the property located at 1476 West Sunset Blvd., St. George, UT 84770-4225. Any other use of the proceeds, except to pay necessary, reasonable and customary closing costs, shall void this Subordination Agreement.

(2) Lender Warranty. Lender would not make the Lender Loan without this Subordination Agreement.

(3) Accurate Information. The Lender warrants and represents that all information provided by the Lender to CDC, including, without limitation, all information regarding the Borrower's financial condition, is accurate to the best of its knowledge and that Lender has not withheld any material information. Lender acknowledges that for purpose of this transaction, CDC is acting on behalf of SBA, an agency in the United States Government, except that SBA accepts no liability or responsibility for any wrongful act or omission by CDC. Lender further acknowledges that any false statements to CDC can be considered false statements to the federal government under 18 U.S.C. §1001, and may subject the Lender to criminal penalties, and that CDC and SBA are relying upon the information submitted by the Lender.

(4) Subordination of SBA Lien Priority. Lender's Security Instrument, and any renewals or extensions thereof, shall be a lien on the Property prior to the lien of SBA's Security Instrument.

(5) Hold Harmless Agreement. Except as expressly provided herein, this Subordination Agreement shall not operate to, or be construed to, alter the priority of SBA's Security Instrument with regard to any legal or equitable interest in the Property. Owner and Lender shall hold SBA harmless from any impairment of its lien (with regard to any third party) which is occasioned by this Subordination Agreement.

(6) Required Signatures. This Subordination Agreement is void if it is not duly executed by SBA, Lender, and Owner, or does not contain the written approval of all other individuals and legal entities with direct or contingent liability for repaying the SBA Loan such as the Borrower and all guarantors.

(7) Waiver of Provision Not to Encumber Property. Lender waives its rights to enforce, as against CDC and SBA, any provisions in its documents that prohibit Borrower from further encumbering the Property or which restrict Borrower's ability to assign its lease on, or rents, income or profits from, the Property.

(8) **Lender Compliance with SBA 504 Loan Program Requirements.** Lender agrees that all documents evidencing the Lender Loan and the Lender Lien will comply with the 504 Loan Program Requirements as established by SBA, including those identified in the following subparagraphs, and, in the event one or more of the provisions in such documents do not comply with these 504 Loan Program Requirements, Lender waives any right to enforce such provisions while the 504 Loan has any unpaid balance and agrees that it must act in a commercially reasonable manner with regard to any enforcement action.

(a) **No Open-Ended Features and No Future Advances.** The Lender Loan must not be open-ended. The Lender may not make future advances except for reasonable costs of collection, maintenance, and protection of the Lender's Loan and Lender's Security Instrument.

(b) **No Early Call or Demand Provisions.** The documents evidencing the Lender Loan and the Lender's Security Instrument must not contain an early call feature or any provision that allows Lender to make demand other than when there has been a material default under the terms of the Lender Loan documents, such as failure to make timely payments, failure to pay taxes when due, or violation of any financial covenants that would cause a prudent lender to believe that the prospect of payment or performance of the Lender Loan is impaired.

(c) **No Cross-Collateralization.** The Property covered by Lender's Security Instrument must only secure the Lender Loan; and the Property must not, currently or in the future, be used as security for any other financing provided by Lender that purports to be in a superior position to that of the SBA Loan, unless authorized in writing by SBA.

(d) **No Cross-Default.** During the term of the SBA Loan, Lender must not exercise any cross-default, "deem at-risk," or any other provisions in the documents evidencing the Lender Loan or Lender's Security Instrument that allow Lender to make demand on the Lender Loan prior to maturity unless the Lender Loan is in material default.

(e) **Maturity and Balloon Payments.** The Lender Loan must have a term of at least 7 years (when the 504 loan is for a term of 10 years), or a term of at least 10 years (when the 504 loan is for 20 or 25 years). The start date of the term is the initial origination of the 504 loan. If the Lender has made more than one loan, then an overall loan maturity must be calculated, taking into account the amounts and maturities of each loan. Any balloon payment for the Lender Loan must be clearly identified and disclosed to SBA and approved at application or subsequently approved by SBA.

(f) **Reasonable Interest Rate.** The Lender Loan must have a reasonable interest rate that must not exceed the maximum interest rate for loans from commercial financial institutions as published periodically by SBA in the Federal Register and in effect as of the date of this Subordination Agreement.

(9) **Marshaling of Collateral for Lender Loan.** In the event Lender decides to liquidate the Lender Loan, if Lender has taken additional collateral as security for the Lender Loan, Lender must liquidate the additional collateral prior to foreclosing its Security Interest in the Property, and must apply the proceeds from liquidation of the additional collateral to the Lender Loan prior to the proceeds from liquidation of the Property. Provided, however, that the Lender shall not be required to liquidate the additional collateral if it is not commercially reasonable to do so, (e.g., the additional collateral has insufficient value to justify the cost of collection) and Lender provides written justification for not liquidating the additional collateral in the 60 day notice it is required to provide the CDC and SBA prior to foreclosing its Security Interest in the Property.

(10) **Notice of Default on Lender Loan.** Lender must provide CDC and SBA with written notice of any material default on the Lender Loan or Lender's Security Instrument (referencing the SBA Loan number on page one of this Agreement) within thirty (30) days after the expiration of any cure period. Lender must also provide CDC and SBA with written notice of its intent to enforce collection of the Lender Loan at least sixty (60) days prior to initiating any judicial or non-judicial proceedings against the Borrower, guarantors or the Property. Notice under this Subordination Agreement shall be deemed to have been given when sent to the CDC at the following address: 1720 Broadway, 3<sup>rd</sup> Floor, Oakland, CA 94612, Attn: Servicing Department; and to SBA at the following address: 801 R Street, Suite 101, Fresno, California 93721.

(11) **Limitation on Default Interest Rate on Lender Loan.** In the event of default on the Lender Loan, Lender may not escalate the interest rate to a rate greater than the maximum rate published by SBA in the Federal Register and in effect as of the date of this Subordination Agreement. If SBA purchases the Lender Loan or note, SBA will only pay the interest rate on the note in effect before the date of default.

(12) **Subordination to SBA Loan of Amounts Attributable to Default Charges.**

(a) The term "Default Charges" includes, but is not limited to, prepayment penalties, late fees, escalated interest, and other default charges after default on the Lender Loan.

(b) To the extent the Lender's Security Instrument secures any amounts attributable to Default Charges, the Lender's Security Instrument is and will be subordinate to SBA's Security Instrument. This subordination applies only to CDC and SBA and their successors and assigns, and shall not inure to the benefit of Borrower or any guarantor of the Lender Loan.

(c) In the event of default on the Lender Loan, CDC or SBA may bring the Lender Loan current or acquire the Lender Loan including Lender's Security Instrument. Lender agrees that in either of these circumstances, the amount to bring the Lender Loan current or the purchase price of the Lender Loan will be net of all amounts attributable to Default Charges subordinated to the SBA lien. Lender further agrees that if it receives any amounts attributable to Default Charges, Lender holds such funds in trust for SBA

and will immediately remit them to SBA.

(d) If Lender sells, or intends to sell the note evidencing the Lender Loan, then Lender agrees:

(1) If the Lender sells its Note (other than when liquidating the Lender Loan), then the Lender must provide CDC/SBA, within fifteen (15) days of the sale, with written notice of the purchaser's name, address and telephone number and confirmation that the purchaser has received a copy of the executed Subordination Agreement.

(2) If the Lender Loan is in default and the Lender, as part of its liquidation strategy,

(i) proposes to sell its note, or

(ii) receives an offer from a third party, then the Lender must provide CDC/SBA with the option to purchase the note at the same price offered by the potential purchaser, net any Default Charges per paragraph 12(c). SBA will have forty-five (45) days from receipt of the notice from Lender to exercise its option to purchase the note. If SBA does not exercise its option and Lender sells its note, then the Lender must provide CDC/SBA, within fifteen (15) days of the sale, with written notice of the purchaser's name, address and telephone number, and must provide the purchaser with a copy of the executed Subordination Agreement.

(e) If the Lender sells or otherwise transfers its note to a third party, then any Default Charges, including, but not limited to, prepayment penalties, late fees, other Default Charges, and escalated interest after default due under the Lender Loan must be subordinate to the amounts outstanding on the 504 Loan and/or CDC Lien.

(f) If the Lender loan documents contain a swap component or hedging contract (hereinafter defined as "swap agreement"), all costs associated with this swap agreement, which may be termed swap fees, termination fees, default fees or other related fees, shall be subordinate to the amounts outstanding on the 504 Loan and/or CDC Lien.

(13) Cooperation in Event of Liquidation. In the event either the Lender Loan or SBA Loan is declared in default, the parties agree to liquidate the Property in a commercially reasonable and cooperative manner. For example, Lender agrees to: (a) accept a U.S. Treasury check(s) from SBA or CDC to facilitate SBA's liquidation strategy, including, for example, purchase of the Lender Loan; (b) to provide CDC and SBA with the loan payment status, loan payment history, and an itemized payoff statement on the Lender Loan; (c) to provide CDC and SBA, at no charge (except for reasonable charges for photocopies) with copies of any appraisal, environmental investigation, title examination or searches conducted by or for the Lender; and (d) provide any other information about Borrower or the Lender Loan requested by CDC and SBA.

(14) Lender Waiver of Right to Indemnification by SBA or CDC. If the Lender Loan

documents contain provisions granting Lender the right to indemnification by subsequent owners of the Property, then Lender waives its right to enforce such provisions against SBA and CDC in the event SBA or CDC acquires title to the Property through foreclosure, acceptance of a deed in lieu of foreclosure, or otherwise.

(15) No Implied Third Party Beneficiaries. To the extent there is a conflict between this Subordination Agreement and any provision in any agreement either Party may have with a third party, including but not limited to, Borrower, the terms and conditions in this Subordination Agreement shall supersede any such provision. The parties agree that SBA may enforce this agreement as a third party beneficiary, and further agree that this Agreement shall not grant any right, benefit, priority, or interest to any other third party, including but not limited to, Borrower and Guarantor(s).

(16) Successors and Assigns. This Subordination Agreement shall bind and inure to the benefit of the respective parties and their successors and assigns, including any party acquiring the Lender Loan and Lender's Security Instrument by sale, assignment, or other transfer from Lender. Lender agrees that SBA may assign this Subordination Agreement, and waives all rights to contest such assignment.

(17) Federal Law. When SBA is the holder of the note evidencing the SBA Loan, this Subordination Agreement and all related loan documents shall be construed in accordance with federal law. CDC or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes, but by using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax, or liability. Lender may not claim or assert against SBA any local or state law to deny any obligation of the Borrower, or defeat any claim of SBA with respect to the SBA Loan.

(18) Termination. This Subordination Agreement will terminate upon payment in full of either the Lender Loan or the SBA Loan and all costs related thereto.

(19) Counterparts. This Subordination Agreement may be executed in any number of counterparts, each of which will be deemed an original, and all of which together constitute one and the same instrument.

(20) Validity of Provisions. In the event that any provision of this Subordination Agreement is deemed invalid by a court of competent jurisdiction, all other provisions of this Subordination Agreement shall remain valid and enforceable.

(21) Revision of this Agreement. Both Lender and CDC agree that this Subordination Agreement is a standard SBA Form, and, as such, neither party has authority to modify or delete any provision in this Agreement, or add any additional provisions, without prior written authorization from the SBA.

(22) Authority to Execute Subordination Agreement. The persons signing below certify that they have been duly authorized to execute this Subordination Agreement on behalf of their respective party.

U.S. SMALL BUSINESS ADMINISTRATION  
BY The Mortgage Capital Development  
Corporation, its Attorney-in-Fact

By: *Cynthia Basco*  
Cynthia Basco, Vice President

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 Alameda

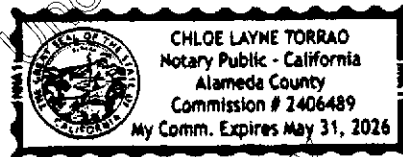
On JULY 18, 2022 before me, CHLOE LAYNE TORRAO, notary public, personally appeared Cynthia Basco, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in his/her/their 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.

Signature

*[Handwritten Signature]*



**LENDER:**  
**Utah Community Credit Union**

By: Brian Luke  
Name: Brian Luke  
Title: VP Commercial

**ACKNOWLEDGMENT**

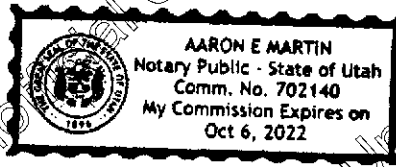
State of Utah )

County of Utah )

On this 21 day of July, in the year 2022, before me, Aaron E. Martina notary public, personally appeared Brian Luke, proved on the basis of satisfactory evidence to be the basis of satisfactory evidence to be the person(s) whose name(s) (is/are) subscribed to this instrument, and acknowledged (he/she/they) executed the same.

WITNESS my hand and official seal.

Signature [Handwritten Signature]




(seal)



**OWNER:**

**Sunset Bowling Properties, LLC, a Utah limited liability company**

By:   
Myron Mitchell, Manager

**BORROWER:**


**Sunset Bowling Properties, LLC, a Utah limited liability company**

By:   
Myron Mitchell, Manager

**Consented to and approved by:**

**Sunset Bowling, LLC, a Utah limited liability company**

By:   
Myron Mitchell, Manager

  
Myron H. Mitchell, individually

**ACKNOWLEDGMENT**

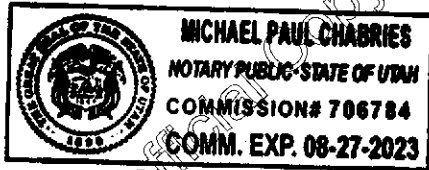
State of Utah )

County of SALT LAKE

On this 26<sup>th</sup> day of July, in the year 2022, before me, Michael P. Chabries a notary public, personally appeared MYRON<sup>(H)</sup> MITCHELL, proved on the basis of satisfactory evidence to be the basis of satisfactory evidence to be the person(s) whose name(s) (is/are) subscribed to this instrument, and acknowledged (he/she/they) executed the same.

WITNESS my hand and official seal.

Signature Michael P. Chabries



(seal)

**ACKNOWLEDGMENT**

State of Utah )

County of SALT LAKE

On this 26<sup>TH</sup> day of JULY, in the year 2022, before me, MICHAEL P. CHARRIES a notary public, personally appeared MYRON H. MITCHELL, proved on the basis of satisfactory evidence to be the basis of satisfactory evidence to be the person(s) whose name(s) (is/are) subscribed to this instrument, and acknowledged (he/she/they) executed the same.

WITNESS my hand and official seal.

Signature Michael P. Charries



(seal)

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

**Beginning at a point which lies North 89 deg. 28' 15" East long the section line 70.54 feet and South 348.14 feet from the North quarter corner of Section 23, Township 42 South, Range 16 West, Salt Lake Base and Meridian, said point being the true point of beginning and running thence South 300.0 feet to a point on the North right of way line of Sunset Blvd., said point being on a curve to the right whose radius point bears North 11 deg. 56' 30" West 2814.90 feet; thence along the arc of said curve and said North line of Sunset Blvd. 367.02 feet; thence North 291.944 feet; thence North 80 deg. 33' 06" East 367.99 feet to the true point of beginning.**

**Parcel No.: SG-6-2-23-4126**