

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS  
OF SAN BERNARDINO COUNTY  
AND RECORD OF ACTION**

December 19, 2023

**FROM**

**CARRIE HARMON, Director, Community Development and Housing Department**

**SUBJECT**

Senior Subordination Agreement and Subordination, Nondisturbance and Attornment Agreement for the Las Terrazas Project in an unincorporated area of the County near Colton

**RECOMMENDATION(S)**

1. Approve the Senior Subordination **Agreement No. 23-1367**, including non-standard terms, with AMCAL Las Terrazas Fund, L.P. and the California Department of Housing and Community Development for the Las Terrazas Project in an unincorporated area of the County near Colton.
2. Approve the Subordination, Nondisturbance and Attornment **Agreement No. 23-1368**, including non-standard terms, with AMCAL Las Terrazas Fund, L.P. and the California Department of Housing and Community Development for the childcare facility at the Las Terrazas Project in an unincorporated area of the County near Colton.
3. Authorize the Chair of the Board of Supervisors, Chief Executive Officer, or Director of the Community Development and Housing Department, to execute the Senior Subordination Agreement, the Subordination, Nondisturbance and Attornment Agreement, and all required documents related to the escrow transaction for conversion of financing, and to make any necessary non-substantive modifications to conform to the escrow transaction for conversion of financing, subject to review by County Counsel.
4. Direct the Director of the Community Development and Housing Department to transmit copies of the executed Senior Subordination Agreement and the Subordination, Nondisturbance and Attornment Agreement to the Clerk of the Board of Supervisors within 30 days of full execution.

(Presenter: Carrie Harmon, Director, 382-3983)

**COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

**Operate in a Fiscally-Responsible and Business-Like Manner.**

**Ensure Development of a Well-Planned, Balanced, and Sustainable County.**

**Provide for the Safety, Health and Social Service Needs of County Residents.**

**FINANCIAL IMPACT**

Approval of this item will not require Discretionary General Funding (Net County Cost). There is no cost associated with the Senior Subordination Agreement or the Subordination, Nondisturbance and Attornment Agreement (Agreements).

**BACKGROUND INFORMATION**

The Las Terrazas affordable multifamily housing and childcare facility project (Project) consists of 112 affordable housing units, of which 12 are set aside for permanent supportive housing for

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homeless, special needs clients with mental health conditions, for whom the Department of Behavioral Health provides supportive services. The Project site includes a childcare facility for preschool age children, with priority being given to residents of the affordable housing site, and thereafter to those residing in the adjacent community.

The Project is an example of collaborative efforts between private and public sector organizations, which benefit the local community by increasing affordable housing options for county residents. Approval of the Agreements in the Recommendation will allow for the developer to leverage funding from the California Department of Housing and Community Development (HCD), thereby lowering the Project's permanent loan amount.

On January 7, 2020 (Item No. 16), the Board of Supervisors (Board) approved an Amended and Restated Land Disposition, Development and Loan Agreement No. 20-04 (LDDA) with AMCAL Las Terrazas Fund, L.P. (AMCAL) in the amount of \$3,042,000 for the financing and development of approximately 5.92 acres of County-owned property located at 1176 West Valley Boulevard in an unincorporated area near Colton for the Project. The LDDA provided that the parties would enter into a 57-year Ground Lease, and that AMCAL would sublease the childcare facility to San Bernardino County (County).

On November 17, 2020 (Item No. 36), the Board approved Amendment No. 1 to the LDDA, increasing the amount from \$3,042,000 to \$4,995,289, and extending the term of the Ground Lease from 57 to 85 years. On April 25, 2023 (Item No. 60), the Board approved Sublease Agreement No. 23-288 with AMCAL for the childcare facility in the amount of \$200 for 20 years commencing on May 1, 2023, and continuing through April 30, 2043.

Construction of the Project has been completed so AMCAL is in the process of converting the construction financing to permanent financing. The Agreements with AMCAL and HCD are required for conversion of this financing, which will reduce overall costs associated with the Project, as permanent loans allow for structured payments at lower interest rates. In addition to the LDDA, the Project has funding from various sources, including County loans and \$2,591,000 in No Place Like Home (NPLH) funds, administered by HCD.

HCD is willing to provide the NPLH funds if the County approves their lien position to be junior to HCD's position. In addition, HCD is requiring the use of its Agreements. The Agreements contain the following term which differs from the County's standard language:

1. In both Agreements, the prevailing party is entitled to recover attorneys' fees and costs.
  - The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
  - Potential Impact: If either party institutes any legal proceedings related to the Agreements, the prevailing party will be entitled to recover reasonable attorneys' fees.

The Subordination, Non-disturbance and Attornment Agreement also provides that in the event of any conflict related to the childcare facility, the terms of the Agreement will supersede the terms of Sublease Agreement No. 23-288 between AMCAL and the County.

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Recommendation No. 3 will authorize the Chair of the Board of Supervisors, the Chief Executive Officer, or Director of the Community Development and Housing Department to execute the Agreements and all required documents related to the escrow transaction for conversion of financing, subject to review by County Counsel, and to make any necessary non-substantive modifications to the Agreements in order to facilitate the closing of escrow to convert to permanent financing.

In recognizing the need for ongoing partnerships to address housing shortages, the Community Development and Housing Department recommends the approval of the Agreements, despite the non-standard terms, so that HCD can contribute the \$2,591,000 of NPLH funds and the Project can convert to permanent financing.

**PROCUREMENT**

N/A

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Suzanne Bryant, Deputy County Counsel, 387-5455) on December 1, 2023; Finance (Christopher Lange, Administrative Analyst, 386-8393) on December 4, 2023; and County Finance and Administration (Cheryl Adams, Deputy Executive Officer, 388-0332) on December 5, 2023.

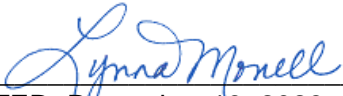
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Record of Action of the Board of Supervisors  
San Bernardino County

**APPROVED (CONSENT CALENDAR)**

Moved: Curt Hagman Seconded: Col. Paul Cook (Ret.)  
Ayes: Col. Paul Cook (Ret.), Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY  \_\_\_\_\_  
DATED: December 19, 2023



cc: CDH - Harmon w/agrees for sign.  
Contractor c/o Harmon w/agrees  
File - w/agrees  
MA 01/4/2024