

**EXHIBIT "D"**  
**Subordination Agreement**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Rabobank, N.A.  
Attention: Community Development Finance  
5151 Stockdale Highway  
Bakersfield, California 93309

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**SUBORDINATION AGREEMENT**  
**(City of Fresno)**

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 OR LATER SECURITY INSTRUMENT OR INSTRUMENTS.

THIS SUBORDINATION AGREEMENT ("**Agreement**") is made as of \_\_\_\_\_, 2018, by and among DUBLIN TRANSIT EAH, INC, a California nonprofit public benefit corporation ("**Borrower**"), the CITY OF FRESNO, a California municipal corporation ("**City**"), and RABOBANK, N.A., a national banking association, its successors and assigns ("**Bank**").

**RECITALS**

A. Pursuant to that certain Home Investment Partnerships Program Agreement executed by and between the City and Opportunity Builders, a California nonprofit public benefit corporation ("**Opportunity Builders**"), dated as of October 24, 2003, and recorded on October 28, 2003, as Instrument Number 2003-0260334 in the Official Records of the County of Fresno (the "**Official Records**"), as modified by that certain Amendment No. 1 thereto, executed by and between the City and Opportunity Builders, dated as of May 3, 2005 and recorded on June 16, 2005, as Instrument Number 2005-0134077 (collectively, the "**HIPP Agreement**"), the City made a loan to Opportunity Builders in the original principal amount of \$750,000.00 (the "**City Loan**") for the purpose of, among other things, the development of affordable housing on the Property (as defined below). The City Loan was evidenced by a promissory note made by Opportunity Builders in the amount of \$750,000.00 (the "**Original City Note**") and secured by that certain Deed of Trust executed by The Village at Kings Canyon, L.P., a California limited partnership ("**VKC LP**") and dated as of April 5, 2006 and recorded on April 21, 2006, as Instrument Number 2006-0084485 (the "**City Deed of Trust**") in the Official Records. In addition, Opportunity Builders and City have entered into that certain Declaration of Restrictions dated as of October 24, 2003 and recorded on May 21, 2004 as Instrument No. 2004-0112718 in the Official Records (the "**City Declaration**"), imposing certain restrictions on the property. Pursuant to that certain Assignment and Assumption of HOME Investment Partnerships Program Agreement and Related Documents dated as of \_\_\_\_\_, 2018 and executed by and among Opportunity Builders, City, **[VKC LP?]** and Borrower and to be recorded in the Official Records substantially concurrently herewith (the "**Assignment**"), Opportunity Builders and VKC LP are assigning the City Loan and all their respective rights and obligations under the HIPP Agreement, the City Deed of Trust, City Declaration to Borrower. To evidence the modified and recast City Loan being assigned to Borrower, the Original City Note is being amended, replaced and superseded in its entirety by that certain Second Amended Restated and Superseding Promissory Note Secured by Deed of Trust in the original principal amount of **\$618,748.84**, dated as of **February 15, 2018**, and to be executed by Borrower in favor of the City (the "**City Note**"). **[CONFIRM HOW ASSIGNMENT OF DEED OF TRUST TO BE HANDLED]**

B. The HIPP Agreement, the City Regulatory Agreement, the City Deed of Trust, the Assignment, and the City Note, are collectively referred to herein as the "**City Loan Documents**."

C. Pursuant to that certain Loan Agreement (the "**Loan Agreement**") by and between Bank and Borrower, dated as of even date herewith, Bank has agreed to make a loan (the "**Bank Loan**") to Borrower to provide long-term financing of 48 units of multifamily rental housing (the "**Improvements**") located at 5011 East Alta Avenue, 5015 East El Monte Way, 5019 East Montecito Avenue, Fresno, California, 93650, and known as Village at Kings Canyon (the "**Property**"). To evidence the Bank Loan, Borrower has executed to the order of Bank that certain Promissory Note Secured by Deed of Trust (Term Loan) (the "**Bank Note**") dated as of even date herewith, in the original principal amount of [Eight Hundred Twenty-One Thousand and No/100 Dollars (\$821,000.00)]. The obligations of Borrower under the Bank Note are secured by, among other things, a Deed of Trust with Absolute Assignment of Rents, Security Agreement and Fixture Filing dated as of even date herewith (the "**Bank Deed of Trust**") executed by Borrower, as trustor, for the benefit of Bank, as beneficiary. The Bank Deed of Trust is to be recorded in the Official Records. The Loan Agreement, the Bank Note, the Bank Deed of Trust and all other documents evidencing or otherwise relating to the Bank Loan are collectively referred to herein as "**Bank Loan Documents**."

D. As a condition to Bank making the Bank Loan, secured by the Bank Deed of Trust, Bank requires that the Bank Deed of Trust be unconditionally and at all times remain a lien or charge upon the Property, prior and superior to all the rights of City under the City Deed of Trust, the repayment of the City Loan, and City's rights under the HIPP Agreement, the City Regulatory Agreement and any other City Loan Documents, and that City specifically and unconditionally subordinates the City Deed of Trust, the repayment of the City Loan and the City's rights under the HIPP Agreement, the City Regulatory Agreement and any other City Loan Documents to the lien or charge of the Bank Deed of Trust.

E. The Bank Loan and the City Loan shall be referred to collectively in this Agreement as the "**Loans**", and each individually as a "**Loan**".

F. City and Borrower agree to the subordinations in favor of Bank described in the recitals above.

#### AGREEMENT

THEREFORE, for valuable consideration and to induce Bank to make the Bank Loan, City and Borrower hereby agree for the benefit of Bank as follows:

1. Subordination. The Bank Deed of Trust securing the Bank Note, and any modifications, renewals or extensions thereof, together with Bank's right to repayment of the Bank Loan and Bank's rights under any other Bank Loan Documents, shall unconditionally be and at all times remain a lien or charge on the Property prior and superior to the City Deed of Trust, the HIPP Agreement, the City Regulatory Agreement, the repayment of the City Loan and City's rights under the the HIPP Agreement, the City Regulatory Agreement (notwithstanding any language to the contrary contained in the HIPP Agreement or the City Regulatory Agreement) or under any other City Loan Documents subject to the terms of this Agreement.

2. Entire Agreement. This Agreement shall be the whole agreement with regard to the priority and subordination of the City Deed of Trust, the HIPP Agreement, the City Regulatory Agreement, the repayment of the City Loan and City's rights under the the HIPP Agreement, the City Regulatory Agreement and any other City Loan Documents, to the lien or charge of the Bank Deed of Trust, together with Bank's rights to repayment of the Bank Loan and Bank's rights under any other Bank Loan Documents, and shall supersede and cancel, but only insofar as would affect the priority of the Bank Deed of Trust, any prior agreements as to such subordination including, without limitation, those provisions, if any, contained in the City Loan Documents which provide for the subordination of the City Deed of Trust or any other City Loan Documents to a deed or deeds of trust or to a mortgage or mortgages.

3. Application of Proceeds. Bank, in making disbursements pursuant to the Bank Loan Documents, is under no obligation or duty to, nor has Bank represented that it will, see to the application

of proceeds of the Bank Loan by the person or persons to whom Bank disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat the subordination herein made in whole or in part.

4. Consents. City and Bank respectively declare, agree and acknowledge that:

(a) City and Borrower consent to and approve (i) all provisions of the Bank Loan Documents submitted to City and Borrower prior to the execution of this Agreement; (ii) all other agreements between Borrower and Bank for the disbursement of the proceeds of the Bank Loan submitted to City and Borrower prior to the execution of this Agreement; and

(b) City and Borrower intentionally and unconditionally waive, relinquish and subordinate the lien or charge of the instruments securing the City Loan, in favor of the liens or charges of the Bank Deed of Trust and other Bank Loan Documents upon the Property and Improvements as referred to in this Agreement and understand that in reliance upon, and in consideration of, such waiver, relinquishment and subordination, specific loans and advances are being and will be made, and specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination.

5. Rights Upon Default. Notwithstanding anything to the contrary contained in this Agreement, Bank hereby agrees as follows:

(a) Upon the occurrence of an event of default under the Bank Loan Documents, Bank shall promptly notify City at its address set forth below of the occurrence of such event of default, which notification shall be provided to City contemporaneously with the delivery to Borrower of any notice of default under the Bank Loan Documents;

(b) City shall have the right (i) to receive any notices of default under the Bank Loan Documents and (ii) to cure any default by the Borrower under the Bank Loan Documents within ninety (90) days after its respective receipt of such notice of default under the Bank Loan Documents;

(c) After a default under the Bank Loan Documents but prior to a foreclosure sale under the Bank Deed of Trust or deed in lieu of such foreclosure of the Property and Improvements thereunder, if City cures the default on a timely basis within the cure periods which apply to the Borrower pursuant to the Bank Loan Documents, Bank will not exercise any right it may have to accelerate the Bank Note by reason of the default so cured. This paragraph 5(c) shall not be deemed to prohibit Bank from accelerating the Bank Note by reason of a later uncured default; and

(d) If City forecloses the City Deed of Trust or accepts a conveyance of the Property in lieu of such foreclosure, Bank shall have the right to declare a default under the "due-on-sale" provisions contained in the Bank Loan Documents and accelerate the indebtedness secured thereby and implement remedies thereunder, unless Bank approves of the transfer of the Property to the purchaser at foreclosure of the City Deed of Trust, or the recipient of a conveyance of the Property in lieu of such foreclosure, which approval may be granted, conditioned or withheld in Bank's sole discretion.

6. Standstill. City declares, agrees, and acknowledges that it will not, without prior written notice to, and consent from, Bank: (i) commence any action to foreclose or exercise any power of sale under the City Deed of Trust, the HIPP Agreement, the City Regulatory Agreement or the City Loan Documents; (ii) accept a deed or assignment in lieu of foreclosure for the Property or any part or portion thereof; (iii) take possession or control of the Property, or collect or accept any rents from the Property; (iv) seek or obtain appointment of a receiver for the Property; (v) take any action that would terminate any leases or other rights held by or granted to or by third parties with respect to the Property; (vi) initiate any petition for bankruptcy, assignment for the benefit of creditors or creditor's agreement with respect to the Borrower other than as provided in the City Loan Documents; or (vii) take any other enforcement action against the Property or any part or portion thereof, provided, however, that upon the occurrence of an

event of default under the City Loan Documents, City shall have the continuing right to commence to pursue their remedies under the City Loan Documents on account of such default during any cure period allowed by the City Loan Documents, including but not limited to the right to accelerate the City Loan, record a notice of default and to obtain a receiver. In addition, City may, with notice to, but without the consent of the Bank, take such other enforcement action as City shall determine, including, but not limited to, action for specific performance of the obligations of the Borrower under the City Loan Documents. The provisions of this Section 6 shall apply for one hundred twenty (120) days from the date that Bank receives notice of a default under the City Loan Documents.

7. Subrogation. Neither City nor its respective successors and assigns shall acquire by subrogation, contract or otherwise any lien upon any other estate, right or interest in the Property or Improvements (including without limitation any which may arise in respect to real estate taxes, assessments or other governmental charges) which is or may be prior in right to the Bank Deed of Trust or other Bank Loan Documents, or any extension, consolidation, modification or supplement thereto, unless within sixty (60) days following written notice of such intention by City or its respective successors or assigns, the then holder of the Bank Deed of Trust or security instrument shall fail or refuse to purchase or acquire by subrogation or otherwise such prior lien, estate, right or interest, or shall fail within such period to commence and thereafter proceed diligently to purchase or acquire the same.

8. Insurance and Condemnation Proceeds. Notwithstanding any contrary provisions in the City Loan Documents, the determination as to whether proceeds of policies of insurance covering the Property or awards from proceedings in eminent domain may be released for application to costs of restoration of the Property and Improvements shall be made by Bank as the senior-most Lender in the order of lien priority. If not so applied, the proceeds of all policies of insurance covering the Property or Improvements or any awards from proceedings in eminent domain or condemnation relating to the Property shall be applied toward each Loan in the order of lien priority until such Loan is paid in full. In the event that, following any such application and disposition of the insurance proceeds, condemnation award or other compensation, resulting in full repayment of all indebtedness secured by the Bank Loan Documents, any balance remains, and Bank has no further obligation to disburse any portion of the Bank Loan, then such excess shall be made payable to the junior lender next in line following the order of lien priority until the excess insurance proceeds are exhausted.

9. Restoration. If the legal holder of the Bank Loan Documents shall at any time release to Borrower any such insurance proceeds or condemnation award for the purpose of restoration of the Property or Improvements, such release shall not be deemed to be an additional advance under the Bank Loan Documents nor shall such release otherwise be deemed to be in violation of any restriction upon any amount permitted to be secured by the Bank Loan Documents.

10. Further Assurances. So long as the Bank Loan Documents shall remain a lien upon the Property or Improvements or any part thereof, City and its successors or assigns, shall execute, acknowledge and deliver, upon Bank's demand, at any time or times, any and all further subordinations, agreements or other instruments in recordable form reasonably sufficient for that purpose or that Bank and its successors or assigns may hereafter reasonably require for carrying out the purpose and intent of this Agreement, so long as such further instruments do not contain provisions inconsistent with the terms and conditions of the City Loan Documents.

11. Confirmation. City hereby confirms to and agrees with Bank, and Bank hereby confirms to and agrees with City, as to the following:

(a) Each Lender has delivered to each other Lender, true and complete copies of its documents, and such documents have not been amended, modified or supplemented in any way.

(b) There are no defaults (or conditions or events which, with notice or the passage of time or both, would constitute a default), known to each Lender as of the date hereof, by Borrower under its obligations set forth in such Lender's documents.

(c) No Lender shall enter into any agreement to materially amend or modify the terms of any of such Lender's documents without notice to and the consent of each other Lender, which consent shall not be unreasonably withheld.

(d) Each Lender shall deliver to each other Lender, at the address indicated in Section 12 below, copies of any notices of default delivered to Borrower in connection with each respective Lender's documents.

12. Notices. All notices of any kind which any party hereto may be required or may desire to serve on the others shall be deemed served upon personal delivery, or, if mailed, upon the first to occur of receipt or the expiration of 72 hours after deposit in United States Postal Service, certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to Bank: Rabobank, N.A.  
Community Development Finance  
Attention: Community Development Finance  
5151 Stockdale Highway  
Bakersfield, California 93309

If to City: City of Fresno  
City Clerk  
2600 Fresno Street, Room 2133  
Fresno, CA 93721-3603  
Attention: \_\_\_\_\_

If to Borrower: Dublin Transit EAH, Inc  
2169 E. Francisco Blvd., Suite B  
San Rafael, CA 94901  
Attention: \_\_\_\_\_

13. Modification and Release. Bank may, without affecting the subordination of the City Loan Documents: (a) release or compromise any obligation of any nature with respect to the Bank Loan Documents; (b) release its security interest in, or surrender, release or permit any substitution or exchange of all or any part of any properties securing repayment of the Bank Note; (c) retain or obtain a security interest in any property to secure payment of the Bank Note; or (d) modify, amend, defer, extend, consolidate or supplement any of the original or subsequent Bank Loan Documents; provided, however, that Bank shall not increase the principal amount of the Bank Note without the prior written consent of City.

14. Priority of Payments. In the event of any judicial or nonjudicial sale of the Property or any of the collateral securing the Bank Loan, or any portion thereof, pursuant to the Bank Loan Documents, or of any liquidation or dissolution of Borrower, or of any execution sale, receivership, insolvency, bankruptcy, liquidation, readjustment, reorganization, or similar proceeding relating to Borrower or any portion of its property, all amounts due under the Bank Loan Documents shall first be paid in full according to the order of lien priority before any payment is made upon or in respect of the obligations under the City Loan Documents.

15. Application of Sections. The provisions of Sections 13 and 14 above are solely for the purpose of defining the relative rights of Bank on the one hand, and City on the other hand, against Borrower and its property and nothing herein shall impair, as between (i) Borrower and Bank and (ii) Borrower and City, the obligations of Borrower under the documents that govern their respective Loans.

16. Event of Default. The parties acknowledge that any default under the City Loan Documents (other than defaults that are timely cured by Borrower or waived by City) shall constitute a default under the Bank Loan Documents and any default under the Bank Loan Documents (other than defaults that are timely cured by Borrower or waived by Bank) shall constitute a default under the City Loan Documents. Notwithstanding the foregoing, in the event of default under the City Loan Documents which is deemed a default under such documents solely because it is a default under the Bank Loan Documents, City agrees not to begin pursuing its available remedies unless and until Bank has accelerated the Bank Loan or has taken other affirmative action to exercise its rights and remedies under the Bank Loan Documents, beyond the giving of notice of such default.

17. Counterparts. This Agreement may be executed in counterparts, each of which, when taken together, shall constitute one original Agreement.

**NOTICE: THIS AGREEMENT CONTAINS PROVISIONS WHICH ALLOW THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN LOANS WHICH MAY BE OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT OR INSTRUMENTS AND THE PROCEEDS OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE PROPERTY.**

**IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT HERETO.**

**BORROWER:**

**DUBLIN TRANSIT EAH, INC,**  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**CITY:**

CITY OF FRESNO  
a California municipal corporation

By: \_\_\_\_\_  
Wilma Quan-Schechter  
City Manager

**ATTEST:**

YVONNE SPENCE, MMC  
City Clerk

By: \_\_\_\_\_  
\_\_\_\_\_, Deputy

**APPROVED AS TO FORM:**

DOUGLAS T. SLOAN  
City Attorney

By: \_\_\_\_\_  
Tracy Parvanian, Deputy City Attorney

[CONFIRM SIGNATURE BLOCK]

**BANK:**

RABOBANK, N.A.

By:

\_\_\_\_\_  
Justin Williams  
Vice President

## EXHIBIT A

### DESCRIPTION OF PROPERTY

All that certain real property situated in the City of Fresno, County of Fresno, State of California, described as follows:

#### PARCEL ONE:

Lot 25 of Tract No. 2779, in the City and County of Fresno, State of California, as per Map thereof recorded September 8, 1977 in Book 31, Page 38 of Plats, Fresno County Records.

APN: 472-171-03

#### PARCEL TWO:

Lots 27, 28, 29 and 30 of Tract No. 2779, in the City and County of Fresno, State of California, as per Map thereof recorded September 8, 1977 in book 31, Page 38 of Plats, Fresno County Records.

Being described as Parcel A pursuant to the Lot Line Adjustment No. 2003-34, as disclosed in the Grant Deed dated October 27, 2003 and recorded April 13, 2004, Instrument No. 2004-0079157, Official Records.

APN: 472-171-26

#### PARCEL THREE:

Lots 37, 38, 39 and 40 of Tract No. 2779, in the City and County of Fresno, State of California, as per Map thereof recorded September 8, 1977 in Book 31, Page 38 of Plats, Fresno County Records.

Being described as Parcel A pursuant to the Lot Line Adjustment No. 2003-35, as disclosed in the Grant Deed dated October 27, 2003 and recorded April 13, 2004, Instrument No. 2004-0079160, Official Records.

APN: 472-161-25