

Matthew S. Willis Register of Deeds
Harnett County, NC
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Return to:
David Ross, Esquire
McAngus, Goudelock & Courie, LLC
1320 Main Street, 10th Floor
Columbia, South Carolina 29201

SUBORDINATION AND INTERCREDITOR AGREEMENT

THIS SUBORDINATION AND INTERCREDITOR AGREEMENT ("Agreement") is made as of November 8, 2024 by and among **FD Raleigh, Inc.**, a North Carolina corporation ("Borrower"), **Clayton Properties Group, Inc. d/b/a Mungo Homes**, a Tennessee Corporation ("Purchaser"), and **Southern First Bank** ("Lender").

Recitals

Lender has extended an acquisition and development loan to Borrower in the principal amount of \$1,500,000.00 ("Loan"), as evidenced by the Promissory Note, dated September 26, 2024, from Borrower to Lender in that amount ("Note"). The security for the Loan includes, among other instruments, that certain Deed of Trust dated September 26, 2024, and recorded in the Office of the Register of Deeds for Harnett County, North Carolina ("ROD"), in Record Book 4253, Page 2223, (the "Senior Deed of Trust"), granting to Lender a lien on the real property located in Harnett County, North Carolina and more particularly described in **Exhibit A** attached hereto ("Property"). The Note, the Senior Deed of Trust, and all other documents executed in connection with the Loan are collectively called the "Loan Documents." The Loan and any other advances, interests, costs, expenses, or indebtedness secured by the Senior Deed of Trust and any partial or total extensions, renewals, modifications, amendments, restatements or substitutions thereof or therefor are collectively called the "Senior Debt."

Borrower has agreed to sell the Property to Purchaser in accordance with the Purchase Agreement dated July 9, 2024 (the "Purchase Contract"). In accordance with the terms of the Purchase Contract, Purchaser will deliver to Borrower a deposit in the amount of Nine Hundred Thirty Thousand Seven Hundred and Fifty and no/100 Dollars (\$930,750.00) (such deposit, together with the interest thereon, is called the "Deposit"). Borrower's obligations with regard to the Deposit as set forth in the Purchase Contract are collectively called the "Deposit Obligations." The Deposit Obligations are secured by the that certain Deed of Trust dated November 8, 2024 and recorded in the ROD in Record Book 4260, Page 580 (the "Deposit Deed of Trust"), granting to Purchaser a first lien on the Property. The Purchase Contract and the Deposit Deed of Trust, and all other documents executed in connection with Purchaser's Submitted electronically by Adams, Howell, Sizemore & Adams, P.A. in compliance with North Carolina statutes governing recordable documents and the terms of the submitter agreement with the Harnett County Register of Deeds.

Purchaser's purchase of any portion of the Property and the Deposit Obligations are collectively called the "Purchaser Documents".

Purchaser understands and acknowledges that the Loan is a purchase money loan and Lender agrees to execute an intercreditor agreement, as a condition of the Deposit Obligations, with the Purchaser in accordance with the terms of the Purchase Agreement.

Lender acknowledges and approves Purchaser's right to certain credits corresponding with the Deposit to be credited at lot closings as further described in the Purchase Contract.

Lender and Purchaser want to establish their respective rights with respect to the Property and the indebtedness of Borrower to Lender, and Lender, Borrower and Purchaser hereby agree to the terms hereof.

NOW, THEREFORE, in consideration of the recitals herein set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1) Incorporation of Recitals. The statements set forth in the Recitals of this Agreement are true and correct and are incorporated herein and made a part hereof.

2) Consents and Acknowledgments.

(a) Purchaser. Purchaser further certifies to Lender the following facts with respect to the Purchase Contract and the other Purchaser Documents:

(i) The Purchase Contract is in full force and effect in accordance with its terms and provisions and has not been modified, amended, supplemented, extended, renewed or terminated.

(ii) To the actual knowledge of Purchaser, no default exists on the part of Borrower or Purchaser under the Purchaser Documents.

(b) Borrower. Borrower certifies to Lender and Purchaser the following facts with respect to the Purchase Contract, the other Purchaser Documents and the Loan Documents:

(i) The Purchase Contract is in full force and effect in accordance with its terms and provisions and has not been modified, amended, supplemented, extended, renewed or terminated.

(ii) To the actual knowledge of Borrower, no default exists on the part of Borrower or Purchaser under the Purchaser Documents, nor has any event occurred which, with the giving of notice, the passage of time, or both would constitute a default under the Purchaser Documents.

(c) Lender. Lender certifies to Borrower and Purchaser the following facts with respect to the Loan Documents:

(i) The Loan Documents are in full force and effect in accordance with their terms and provisions and have not been modified, amended, supplemented, extended, renewed or terminated.

(ii) To the actual knowledge of Lender, no default exists on the part of Borrower or Lender under the Loan Documents, nor has any event occurred which, with the giving of notice, the passage of time, or both would constitute a default under the Loan Documents.

3) Subordination. All right, title and interest of Purchaser in and to the Property, if any, and no other right title and interest, shall be and hereby are made subordinate, junior and inferior and postponed in priority, operation and effect to the Senior Deed of Trust, irrespective of the dates of execution, delivery or recording of any of them. Without limiting the generality of the foregoing:

(a) Purchaser hereby subordinates the Deposit Deed of Trust and its lien position and security interest in and on the Property to the Senior Deed of Trust and its lien position and security interest in and on the Property.

(b) The Purchase Contract now is and shall at all times continue to be subject and subordinate in each and every respect to the Senior Deed of Trust. In no event shall Lender or its successors have any obligation(s) under the Purchase Contract, except to the extent expressly provided herein.

(c) Purchaser hereby acknowledges and agrees that (i) the Senior Deed of Trust is and shall constitute a first, prior and superior lien on and against the Property, and (ii) the Deposit Deed of Trust shall be subject, subordinate and inferior to the Senior Deed of Trust.

(d) Notwithstanding the foregoing, if (i) Lender acquires title to the Property pursuant to the exercise of any remedy provided for in the Senior Deed of Trust, then, so long as no material default by Purchaser under the Purchase Contract has occurred (including the expiration of any corresponding cure period) and is continuing, Purchaser shall have an option to purchase from Lender the Property, for a purchase price which shall be equal to the amount of outstanding principal due under the loan when foreclosed plus accrued interest and other amounts owed thereunder together with any third-party costs, attorney and other fees incurred by Lender in connection with the enforcement of the Loan Documents (as hereinafter defined), not to exceed Five Thousand and no/100 Dollars (\$5,000.00), on the terms and conditions hereinafter specified. Said option shall terminate on that date which is sixty (60) days after Lender's giving written notice to Purchaser that Lender has acquired the Property (the "Option Deadline"). Purchaser may exercise said option by giving written notice ("Purchaser's Notice") to Lender at any time prior to the Option Deadline. If Purchaser does not timely provide Purchaser's Notice, then said option shall automatically terminate. Upon Purchaser's timely exercise of the option, Purchaser and Lender shall enter into a purchase and sale agreement, on terms mutually agreed to by the parties, for the Property pursuant to which (i) Lender agrees to sell to Purchaser the Property, for no more than the purchase price defined herein, on an "AS-IS, WHERE-IS" basis with no representations or warranties from Lender whatsoever, (ii) Purchaser agrees to pay all closing costs in connection therewith, excepting Lender attorney fees and (iii) closing occurs within forty-five (45) days after the later of the Option Deadline. Notwithstanding anything to the contrary, in no event shall Lender or Purchaser be bound under any of the terms, covenants and conditions of the Purchase Contract unless both Purchaser and Lender ratify the Purchase Contract in writing.

4) Notices of Default Under Purchase Contract / Loan Documents by Borrower. Lender agrees to promptly give Purchaser notice of any default of Borrower asserted by Lender under the Loan Documents. Purchaser agrees to promptly give Lender notice of any default of Borrower asserted by Purchaser under the Purchase Contract.

5. Notice of Default; Cure Rights.

(a) Purchaser's Right to Cure Borrower's Default Under Loan Documents. So long as this Agreement remains in effect Lender shall furnish to Purchaser a copy of all notices of default given to Borrower under the Loan Documents (a "Borrower Default Notice"). Upon receipt of any such Borrower Default Notice, Purchaser shall have thirty (30) days from the date of the Notice in which to cure the default or other failure to perform and Lender agrees to accept, and Borrower agrees to permit, performance by Purchaser of any term or condition contained in the Loan Documents necessary to cure such default or non-compliance; provided, however, that Lender and Borrower acknowledge and agree that Purchaser has no obligation to cure any such default or non-compliance. The Borrower Default Notice shall include, among other information, the date on which any applicable cure period shall expire. This provision is intended for the benefit of, and shall benefit, Purchaser only and may not be used or interposed as a defense by Borrower in any proceeding between Lender and Borrower.

(b) Right to Purchase Loan Documents. In addition to Purchaser's rights in Section 5(a) above, so long as this Agreement remains in effect and so long as Purchaser is not in default of any of its obligations under the Purchase Contract, upon the occurrence of an event of default by Borrower under the Loan Documents and the failure by Borrower to cure such event of default within any applicable cure period provided therefor, Purchaser shall have the exclusive right, but not the obligation, to purchase the Loan and the Loan Documents from Lender in accordance with the terms of this Section 5(b). The purchase price for the Loan and the Loan Documents shall be an amount equal to the aggregate amount of all outstanding principal, accrued and unpaid interest, plus late fees, other fees, unpaid commitment fees, costs and other amounts due and payable to Lender under the Loan Documents as of the date of the Loan Sale (defined below), including without limitation all amounts owing to reimburse Lender for advances made pursuant to the Loan Documents such as, for example, advances for real property taxes, insurance premiums and security and repair costs and other amounts owing to Lender pursuant to the exercise of Lender's rights and remedies under the Loan Documents, all not to exceed Ten Thousand and no/100 Dollars (\$10,000.00) (collectively, "Loan Purchase Price"). Purchaser must notify Lender of its intention to exercise its right to purchase the Loan, and must consummate such Loan Sale, on or before the date that is the later to occur of (i) forty-five (45) days after the receipt by Purchaser of a Borrower Default Notice, and (ii) the expiration of any applicable cure period afforded to Borrower or Purchaser in connection with such event of default. Upon the receipt by Lender of the Loan Purchase Price, Lender shall transfer, sell, convey and assign to Purchaser ("Loan Sale") all of Lender's right, title and interest in and to the Loan and the Loan Documents, pursuant to the terms of Lender's customary form of non-recourse assignment agreement. This provision is intended for the benefit of, and shall benefit, Purchaser only and may not be used or interposed as a defense by Borrower in any proceeding between Lender and Borrower. If Purchaser fails to exercise its right to purchase the Loan and the Loan Documents within the time provided in this paragraph, such purchase option shall terminate and Lender shall have the right to sell the Loan and the Loan Documents to any other person and proceed with any remedies available to Lender.

(c) Statement of Account. Upon the written request of Purchaser, Lender shall promptly, and in any event within five (5) days, deliver to Purchaser a statement of the amount of debt outstanding under the Loan, along with a copy of all amendments to the Loan Documents.

(d) Financial Information. In the event of default under the Senior Debt or the Purchase Contract, Borrower shall promptly, and in any event within five (5) days, deliver to Purchaser financial and other information regarding the development of the Property as Purchaser may reasonably request.

6. Communications. Borrower hereby covenants and agrees that Lender and Purchaser may communicate directly about any and all matters relating to their respective obligations, including, after an event of default under either the Loan Documents or the Purchaser Documents, communication between

Purchaser and Lender relating to any default remedies that may be pursued or possible loan restructurings or workout arrangements. Borrower hereby authorizes such communications and waives any and all rights to prior notice of such communications.

7. **Amendment of Loan Documents.** Lender, at any time or from time to time and without further consent of or notice to Purchaser and without in any manner affecting, impairing, lessening, or releasing any of the provisions of this Agreement, may renew, extend, change the manner, time, place, and terms of payment of, sell, exchange, release, substitute, surrender, realize upon, modify, waive, grant indulgences with respect to, and otherwise deal with in any manner: (a) all or any part of the Senior Debt; (b) all or any of the Loan Documents; (c) all or any part of any property at any time securing all or any part of the Senior Debt; and (d) any person at any time primarily or secondarily liable for all or any part of the Senior Debt or any collateral and security therefor. For so long as this Agreement remains in effect, neither Borrower nor Lender shall, without the prior written consent of Purchaser, increase the principal amount secured by the Senior Deed of Trust as of the date of this Agreement.

8. **Notices.** To be effective, any notice, demand, request or other communication required, permitted, or contemplated by this Agreement (collectively, a "**Notice**") must be in writing and must be sent by email, certified mail (return-receipt requested), overnight delivery service (with proof of delivery), or commercial courier (with proof of delivery) to the following addresses. Any party hereto may change its address(es) by giving five (5) days prior notice to the other parties hereto of such change. Notice given by certified mail shall be deemed delivered and received three (3) days after the postmark. Notice given by overnight delivery service (for example, Federal Express, UPS Next Day Air, Express Mail (provided by the United States Post Office), etc.) shall be deemed delivered and received on the next Business Day after it is deposited with such delivery service. Notice given by commercial courier shall be deemed delivered and received on the day the Notice is actually delivered to and received by the receiving party. Any Notice sent as required by this Section and refused shall be deemed delivered and received as of the date of such refusal. The parties agree that the attorney for a party shall have the authority to deliver Notices on such party's behalf to the other parties hereto.

If to Borrower:

FD Raleigh, Inc.
Attn: Jim Saputo
341 Kilmayne Drive, Suite 201
Cary, North Carolina 27511
Email: jim.saputo@floyddevelopment.com

with copy to Borrower's counsel:

Jonathan T. Sizemore, Esq.
Adams Howell Sizemore & Adams P.A.
1600 Glenwood Ave., Suite 101
Raleigh, NC 27608
Email: Jonathan.sizemore@adamshowell.com

If to Purchaser:

Clayton Properties Group, Inc. d/b/a/ Mungo Homes

Attn: Mrs. Maureen Mouzakis
441 Western Lane
Irmo, South Carolina 29063
Email: mmitchell@mungo.com

with copy to Purchaser's counsel:

David Ross, Esq.
McAngus, Goudelock & Courie, LLC
1320 Main Street, 10th Floor
Columbia, South Carolina 29201
Email:david.ross@mgclaw.com

If to Lender:

Southern First Bank
5444 Wade Park Blvd., Suite 100
Raleigh, NC 27607
lkeefers@southernfirst.com

9. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns; provided that no assignment shall relieve a party from its obligations hereunder. Without limiting the generality of the foregoing, the provisions hereof including but not limited to (i) the obligation to grant an option to Purchaser to purchase the Loan Documents pursuant to Section 5(b) prior to a foreclosure action, and (ii) the obligation of Lender under Section 3(d) after a foreclosure action are in all respects binding upon all owners of any beneficial interest in the Loan Documents, their successors in interest and assigns, however are intended specifically to bind all owner(s) of a beneficial interest in any of the Loan Documents only and shall not bind any third party other than Lender or a successor to Lender as holder of the Loan Documents who acquires title to the Property. Lender may divulge to any potential transferee, assignee or participant all information, reports, financial statements, and documents obtained in connection with this Agreement, any of the Loan Documents, or otherwise.

10. No Waiver. This Agreement shall not be affected, impaired, or released by the delay or failure of Lender or Purchaser to exercise any of its rights and remedies against Borrower under any of the Loan Documents or against any collateral or security for the Senior Debt, or under the Purchase Contract or Purchaser Documents. No delay or failure on the part of Lender or Purchaser to exercise any of its rights or remedies against Borrower hereunder or now or hereafter existing at law or in equity or by statute or otherwise against Borrower, or any partial or single exercise thereof, shall constitute a waiver thereof. All such rights and remedies are cumulative and may be exercised singly or concurrently and the exercise of any one or more of them will not be a waiver of any other. No waiver of any of its rights and remedies hereunder and no modification or amendment of this Agreement shall be deemed to be made by any party hereto unless the same shall be in writing, duly signed on behalf of such party, and each such waiver, if any, shall apply only with respect to the specific instance involved and shall in no way impair the rights and remedies of a party hereunder in any other respect at any other time.

11. Severability. If any term of this Agreement or any obligation thereunder shall be held to be invalid, illegal, or unenforceable, the remainder of this Agreement and any other application of such term shall not be affected thereby.

12. Counterparts. This Agreement may be executed in duplicate originals or in several counterparts, each of which shall be deemed an original but all of which together shall constitute one instrument, and it shall not be necessary in making proof hereof to produce or account for more than one such duplicate, original, or counterpart.

13. Miscellaneous. As used herein, the singular number shall include the plural, the plural the singular, and the use of the masculine, feminine, or neuter gender shall include all genders, as the context may require, and the term "person" shall include an individual, a corporation, an association, a

partnership, a trust, and an organization. The paragraph headings of this Agreement are for convenience only and shall not limit or otherwise affect any of the terms hereof.

14. Entire Agreement. This Agreement constitutes the entire agreement among the parties hereto with respect to the matters set forth herein, and any term or condition not expressed in this Agreement does not constitute a part of the agreement of the parties with respect to such matters.

15. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina and shall be deemed to be executed, delivered, and accepted in the State of North Carolina.

16. JURY TRIAL WAIVER. THE PARTIES HERETO JOINTLY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH ANY OF THEM MAY BE PARTIES, ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS AGREEMENT. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY EACH OF THE PARTIES HERETO, AND EACH PARTY HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. EACH OF THE PARTIES HERETO FURTHER REPRESENTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

17. Further Assurances. All entities executing this Agreement covenant and agree that they will execute all such additional documents, instruments and writings requested by a party hereto which are reasonably necessary to implement the intent of the parties hereto, and shall take all such other actions as may be reasonably requested by Purchaser.

18. Time. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, TIME IS OF THE ESSENCE WITH RESPECT TO THE OBLIGATIONS TO PERFORM SET FORTH IN THIS AGREEMENT. Unless otherwise specified herein, all references to "day" or "days" in this Agreement will mean a calendar day or calendar days and all references to "year" and "years" will mean a calendar year or calendar years. In the computation of any period of time provided for in this Agreement or by law, the day of the act or event from which the period of time runs shall be excluded, and the last day of such period shall be included, unless it is a Saturday, Sunday, or another day on which national banks in Harnett County, North Carolina are required or permitted to close for customary banking business with the public, in which case the period shall be deemed to run until the end of the next day which is not a Saturday, Sunday or day on which national banks in Harnett County, North Carolina are required or permitted to close for customary banking business with the public. As used herein, the term "Business Day" or "Business Days" means any day other than a Saturday, a Sunday or day on which national banks in Harnett County, North Carolina are required or permitted to close for customary banking business with the public. For purposes of this Agreement, the term "Normal Business Hours" shall mean and refer to 8:00 a.m. through 5:00 p.m. Eastern Time on a Business Day.

19. Prevailing Party. In the event of a default by any party of its obligations under this Agreement, the prevailing party in any action or proceeding in any court in connection therewith shall be entitled to recover from such defaulting party its costs and expenses, including reasonable legal fees and associated court costs.

20. Recordation. The parties hereby agree that this Agreement may be recorded in the ROD at the sole expense of the party recording the same.

21. Termination. So long as Lender has not enforced any of its rights and/or remedies under any of the Loan Documents, this Agreement will terminate upon the (a) full, final, and indefeasible payment of all amounts due under the Loan Documents and the expiration or termination of all commitments of Lender to make loans or otherwise provide credit pursuant to the Loan Documents and (b) the release of the Property from the lien of the Senior Deed of Trust.

22. Conflicts. In the event of any conflict between the terms and conditions of this Agreement and the Purchase Contract or the Senior Deed of Trust, this Agreement shall control.

*[Remainder of Page Intentionally Left Blank –
Signature Pages Follow]*

**SIGNATURE PAGE FOR
SUBORDINATION AND INTERCREDITOR AGREEMENT
OF BORROWER**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed, sealed, and delivered on the day and year first written above.

WITNESS:

BORROWER:

[Signature]
Witness #1

FD Raleigh Inc
By: [Signature] (SEAL)
Jim Saputo
Its: Vice President

Witness #2

STATE OF NORTH CAROLINA)
)
COUNTY OF Wake)

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do certify that the within named Jim Saputo, Vice President of FD Raleigh, Inc., personally appeared before me, and having satisfactorily proven to be the person whose name is subscribed above, has acknowledged the due execution of the within instrument.

SWORN to before me this 6
day of November, 2024

[Signature] (L.S.)
Notary Public for North Carolina
My Commission Expires: March 8, 2028



**SIGNATURE PAGE FOR
SUBORDINATION AND INTERCREDITOR AGREEMENT
OF LENDER**

WITNESS:

LENDER:

Witness #1 _____
Witness #2 _____

Southern First Bank
By: _____ (SEAL)
Name: Laura Keefe
Title: VP, team leader

STATE OF NORTH CAROLINA)
)
COUNTY OF Wake)

I, the undersigned Notary Public, do certify that the within named Laura Keefe of Southern First Bank, personally appeared before me, and having satisfactorily proven to be the person whose name is subscribed above, has acknowledged the due execution of the within instrument.

SWORN to before me this 16 day of November, 2024

Kimberly Z Lundy (L.S.)
Notary Public for North Carolina
Print Name of Notary: Kimberly Z Lundy
My Commission Expires: MARCH 8, 2028



EXHIBIT A

Property Description

That certain tract, piece, or parcel of land lying and being situated in Upper Little River Township and Lillington Township, Harnett County, more particularly described as follows:

Being all of Lot 1, containing 93.52 acres, as shown on that plat entitled, "Minor Subdivision Survey of the Carrie Lee Ray Parcel," dated May 28, 2024, by Sean R. Seever, PLS, and recorded in Map Book 2024, Page 304, Harnett County Registry, which plat is incorporated by reference for a more particular description.