

Subordination Agreement: Credit Unions

This Subordination Agreement ("Agreement") is entered into as of _____, by and among the Federal Home Loan Bank of San Francisco ("Bank"), with its principal office located at 600 California Street, San Francisco, California 94108; _____, a corporate credit union ("Creditor"), with its chief executive office located at _____; and _____, a credit union ("Borrower").

WHEREAS, the Borrower has entered into an Advances and Security Agreement dated as of _____ with the Bank (as amended, restated, or otherwise modified from time to time, "Advances Agreement") whereby the Bank has made or may make certain extensions of credit to the Borrower from time to time, and the Borrower has assigned, transferred, and pledged to the Bank and granted to the Bank a security interest, or may assign, transfer, and pledge to the Bank and grant to the Bank a security interest from time to time, in certain Subject Collateral (as defined in Section II of this Agreement) in order to secure, among other things, the repayment to the Bank of such extensions of credit; and

WHEREAS, the Borrower has also issued one or more promissory notes in favor of the Creditor and entered into a related security agreement dated as of _____, with the Creditor (as amended, restated, or otherwise modified from time to time, and collectively with the promissory notes, "Creditor Agreements") whereby the Creditor has made or may make certain extensions of credit to the Borrower from time to time, and the Borrower has assigned, transferred, and pledged to the Creditor and granted to the Creditor a security interest, or may assign, transfer, and pledge to the Creditor and grant to the Creditor a security interest from time to time, in certain items of Collateral to the Creditor; and

WHEREAS, in order to induce the Bank to extend, or continue to extend, credit to the Borrower pursuant to the Advances Agreement on an "undelivered" basis (by which the Bank abstains from taking possession or control of the Subject Collateral), the Borrower desires to obtain a subordination of any interest that the Creditor may have in the Subject Collateral and, in certain circumstances, a subordination of any payment obligations the Borrower may have on the Creditor Obligations (as defined below) to its obligations on the Bank Obligations (as defined below);

NOW, THEREFORE, in consideration of the foregoing and as an inducement to the Bank to extend credit to the Borrower, the parties hereto hereby agree as follows:

- I. Affirmation of Recitals.** The parties hereby acknowledge and agree that the recitals above are true and correct.
- II. Defined Terms.** Unless defined in this Agreement, all capitalized terms used in this Agreement shall have the defined meanings assigned to them in Section I of the Advances Agreement, a copy of which is attached as Exhibit A hereto.
 - A. "Bank Obligations"** shall mean all of the liabilities and obligations of the Borrower to the Bank, whether now existing or hereafter incurred, arising out of or in connection with the Advances Agreement or any other document or transaction, together with all renewals, extensions, modifications, elevations, compromises, amendments, supplements, terminations, sales, exchanges, waivers, surrenders, and releases thereof or any part thereof.
 - B. "Creditor Obligations"** shall mean any and all principal of and interest on all obligations, indebtedness, and liabilities of the Borrower to the Creditor, whether under the Creditor Agreements or otherwise, together with all renewals, extensions, modifications, elevations, compromises, amendments, supplements, terminations, sales, exchanges, waivers, surrenders, and releases thereof or any part thereof.
 - C. "Subject Collateral"** shall mean all Loan Collateral.

- D. **“Subordinated Payments”** shall mean all obligations payable directly or indirectly by the Borrower from time to time with respect to the Creditor Obligations, whether now existing or hereafter arising, fixed or contingent, due or not due, liquidated or unliquidated, and determined or undetermined.

III. Subordination of Security Interest; Lien Priorities.

- A. All security interests, liens, pledges, mortgages, or other interests or rights of the Bank, now or hereafter existing, in and to the Subject Collateral are and shall be first, senior, and prior to any security interests, liens, pledges, mortgages, or other interests or rights at any time claimed by the Creditor in the Subject Collateral. Without limiting the foregoing, the Creditor hereby expressly subordinates to any security interest of the Bank in the Subject Collateral all security interests, liens, pledges, mortgages, and other interests and rights of the Creditor, now or hereafter existing, in and to the Subject Collateral, however any such security interest, lien, pledge, mortgage, or other rights of the Creditor may arise. The priorities agreed to and established by this Agreement are applicable irrespective of the manner or order of creation, attachment, or perfection; the time or order of filing of any financing instrument or the time of giving or failure to give any notice; or of any other priority that might otherwise exist under applicable law exclusive of this Agreement.
- B. All Indebtedness and Outstanding Commitments heretofore or hereafter made by the Bank to the Borrower on the security of the Subject Collateral shall be entitled to benefit from this Agreement without notice thereof being given to the Creditor.
- C. Notwithstanding any priority of security interest granted to the Creditor by any laws or other agreements, the Creditor warrants that it is authorized to subordinate its security interest in the Subject Collateral with the Borrower to the Bank as provided within this Agreement.
- D. The subordination of any security interest of the Creditor in the Subject Collateral shall not in any way be affected by (i) any action taken by the Bank with respect to the Subject Collateral pursuant to the Advances Agreement, (ii) any extension of credit to the Borrower by the Bank pursuant to the Advances Agreement, or (iii) the acceptance of any other Collateral by the Bank pursuant to the Advances Agreement.
- E. This Agreement is effective notwithstanding the definition of “Eligible Collateral” and the representation in Section V.G.(1) of the Advances Agreement that the Borrower owns and has marketable title to the Subject Collateral free and clear of any and all liens, claims, or encumbrances, and the Bank hereby acknowledges that the Borrower may grant a security interest to the Creditor in the Subject Collateral from time to time subject to the subordination by the Creditor of any such security interest under this Agreement.

F. Subordination of Payment Obligations.

- G. Upon the happening and continuing of an Event of Default (including any Event of Default which can be cured by the payment of money), (i) no Subordinated Payment shall be made by the Borrower unless and until such Event of Default shall have been cured or waived in accordance with the terms and provisions of the Advances Agreement or shall have ceased to exist, and (ii) all Bank Obligations that are due and payable, whether by lapse of time, acceleration, or otherwise, shall first be paid in full before any payment on the Creditor Obligations is made by the Borrower.
- H. In the event that the Creditor shall receive any Subordinated Payment in contravention of the foregoing provisions, then, unless and until such payment or distribution is no longer prohibited, such payment or distribution shall be held in trust for the Bank and shall be promptly paid over to the Bank for application to the payment of Bank Obligations.

IV. No Contest. The Creditor agrees that it will not at any time contest the validity, perfection, priority, or enforceability of the Bank’s security interest in the Subject Collateral.

V. Representations and Warranties. Each party represents and warrants to the other parties that:

- A. It is not now, and neither the execution of nor the performance of any of the obligations under this Agreement shall, with the passage of time, the giving of notice, or otherwise, cause such party to be (i) in violation of its formation documents, its governing documents, any applicable law or regulation or order, or any court decree; or (ii) in default under or in breach of any material indenture, contract, or other instrument to which such party is a party or by which it or any of its property is bound.
- B. It has full corporate power and authority and has received all corporate and governmental authorizations and approvals as may be required to enter into and perform its obligations under this Agreement.
- C. This Agreement has been duly executed and delivered by such party and constitutes a legal, valid, and binding obligation of such party enforceable in accordance with its terms.

- VI. **Advances Agreement.** Nothing contained herein amends or modifies any of the terms, conditions, covenants, representations, and warranties set forth in the Advances Agreement, and the Advances Agreement will remain in full force and effect without modification; shall continue to be valid, binding, and enforceable between the parties thereto (and any successors and assigns); and is hereby ratified by the Bank and the Borrower accordingly.
- VII. **Termination.** Payment of the entire Indebtedness of the Borrower to the Bank at any time shall not terminate this Agreement, and the Bank shall be entitled to rely thereon with respect to any Advance it may make to the Borrower that is secured by the Subject Collateral, so long as this Agreement remains in effect. This Agreement will remain in effect so long as the Creditor Agreements are outstanding and valid, binding and enforceable between the Creditor and the Borrower (and any respective successors and assigns).
- VIII. **Further Assurances.** Each party will execute such additional documents and take such other actions as any other party may reasonably request to effectuate the intent of this Agreement. The foregoing sentence shall not apply to the subordination of the Creditor's security interest in any collateral other than the Subject Collateral.
- IX. **No Third Party Rights.** The provisions of this Agreement are solely for the purpose of defining the relative rights of the Bank, on the one hand, and the Creditor, on the other hand, and the Borrower acknowledging those rights, and shall not be deemed to create any rights or priorities in favor of any other person, organization, governmental authority, or any other entity, including, without limitation, any receiver, debtor-in-possession, or trustee in bankruptcy.
- X. **Amendment; Waivers.** No modification, amendment, or waiver of any provision of this Agreement or consent to any departure therefrom shall be effective unless executed by the party against whom such change is asserted and shall be effective only in the specific instance and for the purpose for which given.
- XI. **Successors and Assigns; Assignment.** This Agreement shall be binding upon and inure to the benefit of the authorized and permitted successors and assigns of the parties. No party hereto may assign this Agreement or any of its rights under this Agreement to any third party without the prior written consent of the other two parties to this Agreement.
- XII. **Notices.** Any notice given pursuant to this Agreement shall be in writing or by a transmission in electronic or other form, and shall be deemed to have been duly given to and received by a party hereto when it shall have been mailed to such party at its address given above by first class mail, on the day of actual delivery (or the refusal to accept delivery) in the case of a notice sent by overnight courier service or if given by hand or by a transmission in electronic or other form when actually received by such party at its principal office, chief executive office, or as otherwise designated.

- XIII. Severability.** In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality, and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.
- XIV. Governing Law.** This Agreement shall be governed by the laws of the State of California, without giving effect to the choice of law principles included therein.
- XV. JURY TRIAL.** EACH PARTY HERETO WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTIONS RELATED HERETO.
- XVI. Captions and Headings.** The captions and headings in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement.
- XVII. Execution.** This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.
- XVIII. Construction.** Each party hereto acknowledges and agrees that it has had the benefit of legal counsel of its own choice and has been afforded an opportunity to review this Agreement with its legal counsel and that this Agreement shall be construed as if it had been jointly drafted by the parties hereto.
- XIX. Entire Agreement.** This Agreement, including the exhibits hereto and the agreements expressly referred to herein, constitutes the entire understanding between the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written. There are no warranties, representations, or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Federal Home Loan Bank of San Francisco

Authorized Signature	Authorized Signature
Name	Name
Title	Title

Creditor

Name of Corporate Credit Union	
Authorized Signature	
Name	Title

Borrower

Name of Credit Union	
Authorized Signature	
Name	Title

EXHIBIT A

Section I of the Advances and Security Agreement: Credit Unions

I. Definitions

The following terms have the following meanings in this Agreement:

- A. **“Act”** means the Federal Home Loan Bank Act, as amended, modified, or supplemented from time to time.
- B. **“Advance”** or **“Advances”** means any and all loans and other extensions of credit made by the Bank to the Member, including, without limitation, all payments made by the Bank on behalf of or for the account of the Member under outstanding Commitments and all loans and other extensions of credit made by the Bank to the Member prior to the date of this Agreement.
- C. **“Bank’s Credit Program”** means the credit program established by the Bank as it is described in the Bank’s “Credit Guide” and “Collateral Guide,” each as amended, modified, or supplemented from time to time.
- D. **“Blanket Lien”** means a security interest granted by the Member in the Member’s Loan Collateral whether now or in the future owned or acquired.
- E. **“Borrowing Capacity”** means the aggregate dollar amount assigned by the Bank, in its sole discretion, to the Member’s Collateral for purposes of determining the Member’s compliance with the Collateral maintenance obligations of Section IV.A. The Bank may calculate and change the Borrowing Capacity of the Member’s Collateral, at any time and for any reason including, but not limited to, the Bank’s assessment of the Member’s creditworthiness.
- F. **“Capital Stock”** means all of the capital stock of the Bank owned by the Member and all dividends and proceeds of such capital stock.
- G. **“Collateral”** means all property, including the proceeds and products thereof, at any time pledged to the Bank by the Member as security for Indebtedness, including, without limitation, all Loan Collateral, Securities Collateral, and Other Collateral pledged to the Bank pursuant to Section III.A. or otherwise, all Deposit Accounts, and all Capital Stock.
- H. **“Collateral Confirmation”** means a writing or electronic transmission from the Bank to the Member or a report or other information posted on the Bank’s member website confirming the contents of a Collateral Update Report.
- I. **“Collateral Guide”** means the Bank’s Collateral Guide, as amended, modified, or supplemented from time to time.
- J. **“Collateral Maintenance Level”** means the product of (1) the dollar sum of the Member’s (a) outstanding Advances, (b) outstanding Commitments, (c) the amount for which the Member is required to maintain Collateral under each outstanding Swap Transaction, and (d) any additional Indebtedness of the Member to the Bank, and (2) the percentage specified by the Bank from time to time and which the Bank, in its sole discretion, may increase or decrease at any time and for any reason including, but not limited to, the Bank’s assessment of the Member’s creditworthiness. In accordance with Section IV.A., the Member must at all times pledge Eligible Collateral with an aggregate Borrowing Capacity at least equal to the Member’s then current Collateral Maintenance Level.
- K. **“Collateral Update Report”** means a schedule, embodied on the media and in the form required by the Bank from time to time, specifying and describing certain Eligible Collateral pledged by the Member to the Bank as of the date of the schedule.
- L. **“Commercial Loan”** means a whole mortgage loan made for commercial, corporate, or business purposes and secured by a lien on real property that is not a dwelling unit or is not used for residential purposes and the parcel(s) of real estate on which it is located. A Multifamily Loan is not a Commercial Loan.

- M. “Commercial Loan Collateral”** means with respect to each Commercial Loan that is pledged by the Member to the Bank pursuant to Section III.A. or otherwise, the promissory note, bond, or other instrument that evidences the Commercial Loan; any related mortgage or deed of trust that secures the Commercial Loan; any endorsements or assignments thereof to the Member; all ancillary security agreements, policies, and certificates of insurance or guarantees, evidences of recordation, applications, underwriting materials, appraisals, approvals, permits, notices, opinions of counsel, loan servicing rights (if not otherwise pledged, sold, or conveyed to another party), loan servicing data and agreements; all other electronically stored and written records or materials relating to the Commercial Loan; and all proceeds and products of the Commercial Loan.
- N. “Commitments”** means any and all agreements under which the Bank is obligated to make Advances to the Member or payments on behalf of or for the account of the Member, existing on or after the date of this Agreement, including, without limitation, letters of credit, firm commitments, guarantees, or other arrangements intended to facilitate transactions between the Member and third parties, and irrespective of whether the Bank’s obligation under any applicable agreement is contingent upon the occurrence or nonoccurrence of a condition subsequent.
- O. “Confirmation”** means a writing or electronic transmission from the Bank to the Member confirming the terms and conditions upon which the Bank and the Member have agreed with respect to an Advance or Commitment.
- P. “Credit Guide”** means the Bank’s Credit Guide, as amended, modified, or supplemented from time to time.
- Q. “Deposit Account”** means a demand, time, term, savings, transaction, or similar account with the Bank that is established by the Member or the Bank for the benefit, or in the name, of the Member.
- R. “Eligible Collateral”** means Collateral, other than Deposit Accounts and Capital Stock, that at the time it becomes Collateral and at all times thereafter (1) qualifies as security for the origination, issuance, or renewal of any Advance, Commitment, or other Indebtedness under the terms and conditions of the Act and the Regulations, (2) satisfies the requirements established by the Bank pursuant to the Bank’s Credit Program or otherwise as specified in this Agreement or other writing, (3) is owned by the Member free and clear of any liens, encumbrances, or other interests other than the security interest granted to the Bank hereunder, and (4) in the case of Other Collateral and Securities Collateral, has been pledged by the Member to the Bank as Eligible Collateral pursuant to Section III.A. or otherwise.
- S. “Finance Agency”** means the Federal Housing Finance Agency or any successor agency thereto.
- T. “Government and Agency Securities Collateral”** means securities (including participation certificates) or other obligations issued, insured, or guaranteed by the United States Government or any agency thereof, including, without limitation, mortgage-backed securities issued or guaranteed by Freddie Mac, Fannie Mae, Ginnie Mae, or any other agency of the United States; and securities backed by, or representing an equity interest in, Government Loans.
- U. “Government Loan”** means a whole mortgage or other loan, regardless of delinquency status, to the extent the loan is insured or guaranteed by the United States or any agency thereof, or is otherwise backed by the full faith and credit of the United States, and such insurance, guarantee, or other backing is for the direct benefit of the holder of the loan.
- V. “Government Loan Collateral”** means, with respect to each Government Loan that is pledged by the Member to the Bank pursuant to Section III.A. or otherwise, the certificate of insurance or guarantee or other evidence of insurance, guarantee, or other backing by the United States or any agency thereof; all electronically stored and written records or materials relating to the Government Loan as required by the Bank from time to time (which may include the promissory note, bond, or other instrument that evidences the Government Loan; any related mortgage or deed of trust that secures the Government Loan; any endorsements or assignments thereof to the Member; any related certificates of deposit, stocks, bonds, certificates of title, notices, acknowledgments, control agreements, and other similar certificates, documents, and agreements that secure the Government Loan and represent a lien on certain personal property; and all ancillary security agreements, policies, certificates of insurance, or guarantees, evidences of recordation, applications, underwriting materials, appraisals, approvals, permits, notices, opinions of counsel, and loan servicing rights [if not otherwise pledged, sold, or conveyed to another party], loan servicing data and agreements); and all proceeds and products of the Government Loan.

- W.** “**Indebtedness**” means all indebtedness of the Member to the Bank, whether now outstanding or incurred after the date of this Agreement, and whether real, contingent, or conditional, including, without limitation, all Advances, any other sums owed by the Member to the Bank pursuant to any provision of this Agreement or any other agreement between the Member and the Bank, all obligations of the Member to provide credit enhancements to the Bank, and all other obligations and liabilities of the Member to the Bank.
- X.** “**Loan Collateral**” means all loans secured by a lien on real property; all loans made for commercial, corporate, and business purposes; and all participation interests in such loans that are pledged by the Member to the Bank pursuant to Section III.A. or otherwise. With respect to each loan pledged to the Bank, Loan Collateral includes, without limitation, the promissory note, bond, or other instrument that evidences the loan; any related mortgage or deed of trust that secures the loan; any endorsements or assignments thereof to the Member; any related certificates of deposit, stocks, bonds, certificates of title, notices, acknowledgments, control agreements and other similar certificates, documents, and agreements that secure the loan and represent a lien on certain personal property; all ancillary security agreements, policies, and certificates of insurance or guarantees, evidences of recordation, applications, underwriting materials, appraisals, approvals, permits, notices, opinions of counsel, loan servicing rights (if not otherwise pledged, sold, or conveyed to another party), loan servicing data and agreements; all other electronically stored and written records or materials relating to the loan; and all proceeds and products of the loan. Loan Collateral includes, without limitation, Residential Loan Collateral, Multifamily Loan Collateral, Commercial Loan Collateral, Government Loan Collateral, Participation Collateral, and any other loans and participation interests that are pledged by the Member to the Bank and accepted as Loan Collateral by the Bank.
- Y.** “**Multifamily Loan**” means a whole mortgage loan secured by a lien on a multifamily residential dwelling of five or more units and the parcel(s) of real estate on which it is located.
- Z.** “**Multifamily Loan Collateral**” means, with respect to each Multifamily Loan that is pledged by the Member to the Bank pursuant to Section III.A. or otherwise, the promissory note, bond, or other instrument that evidences the Multifamily Loan; any related mortgage or deed of trust that secures the Multifamily Loan; any endorsements or assignments thereof to the Member; all ancillary security agreements, policies, and certificates of insurance or guarantees, evidences of recordation, applications, underwriting materials, appraisals, approvals, permits, notices, opinions of counsel, loan servicing rights (if not otherwise pledged, sold, or conveyed to another party), loan servicing data and agreements; all other electronically stored and written records or materials relating to the Multifamily Loan; and all proceeds and products of the Multifamily Loan.
- AA.** “**Other Collateral**” means items of property, other than Capital Stock, Deposit Accounts, Loan Collateral, and Securities Collateral, that are pledged by the Member to the Bank pursuant to Section III.A. or otherwise as Collateral for Indebtedness, and all proceeds and products thereof.
- BB.** “**Other Securities Collateral**” means securities (other than Government and Agency Securities Collateral and Private Securities Collateral) that are pledged by the Member to the Bank pursuant to Section III.A. or otherwise as Collateral for Indebtedness, and all proceeds and products thereof.
- CC.** “**Participation**” means an undivided participation or fractional interest in a Residential Loan, Multifamily Loan, Commercial Loan, or any other loan. A Participation is “retained” where the Member owns the whole loan and has sold or conveyed a participation or fractional interest in the loan, and “purchased” where the Member purchases a participation or fractional interest in the loan from another entity.
- DD.** “**Participation Collateral**” means, with respect to each Participation that is pledged by the Member to the Bank pursuant to Section III.A. or otherwise, the related participation agreement or other similar agreement or document governing the Participation; all ancillary security agreements, policies, and certificates of insurance or guarantees, evidences of recordation, applications, underwriting materials, appraisals, approvals, permits, notices, opinions of counsel, loan servicing rights (if not otherwise pledged, sold, or conveyed to another party), loan servicing data and agreements; all other electronically stored and written records or materials relating to the Participation; and all proceeds and products of the Participation. With respect to a purchased Participation, Participation Collateral will also include the participation certificate or other instrument or document that evidences the Member’s Participation.

- EE.** “**Private Securities Collateral**” means privately issued securities representing unsubordinated interests in, or collateralized by first priority security interests in, both the interest and principal payments on fully disbursed whole first lien residential mortgage loans.
- FF.** “**Regulations**” means the regulations of the Finance Agency or its predecessor the Federal Housing Finance Board, as amended, modified, or supplemented from time to time.
- GG.** “**Residential Loan**” means a whole residential mortgage loan secured by a lien on a one- to four-unit residential dwelling and the parcel(s) of real estate on which it is located.
- HH.** “**Residential Loan Collateral**” means, with respect to each Residential Loan that is pledged by the Member to the Bank pursuant to Section III.A. or otherwise, the promissory note, bond, or other instrument that evidences the Residential Loan; any related mortgage or deed of trust that secures the Residential Loan; any endorsements or assignments thereof to the Member; all ancillary security agreements, policies, and certificates of insurance or guarantees, evidences of recordation, applications, underwriting materials, appraisals, approvals, permits, notices, opinions of counsel, loan servicing rights (if not otherwise pledged, sold, or conveyed to another party), loan servicing data and agreements; all other electronically stored and written records or materials relating to the Residential Loan; and all proceeds and products of the Residential Loan.
- II.** “**Securities Collateral**” means Government and Agency Securities Collateral, Private Securities Collateral, and Other Securities Collateral that are pledged by the Member to the Bank pursuant to Section III.A. or otherwise, and all proceeds and products thereof.
- JJ.** “**Solvent**” means the Member has maintained an amount of tangible capital, as determined by the Bank in its sole discretion, in a manner equivalent to the measure of tangible capital required for insured commercial banks, savings institutions, or industrial loan companies, under applicable federal law.
- KK.** “**Swap Transaction**” means an interest rate swap; interest rate cap, floor, or collar; currency exchange transaction; or similar transaction entered into between the Bank and the Member.