

Free recording in accordance  
with California Government  
Code section 27383

RECORDING REQUESTED BY, AND  
WHEN RECORDED, MAIL TO:

California Tax Credit Allocation Committee  
915 Capitol Mall, Rm. 485  
Sacramento, CA 95814  
CA-2009-

## **SUBORDINATION AGREEMENT AND ESTOPPEL CERTIFICATE**

**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.**

**THIS SUBORDINATION AGREEMENT AND ESTOPPEL CERTIFICATE** (the "Agreement") is dated as of this \_\_\_\_ day of \_\_\_\_\_, 2010, for reference purposes only, and is entered into by and among the \_\_\_\_\_, (the "Junior Lienholder") and \_\_\_\_\_, a California limited partnership (the "Borrower"), and the California Tax Credit Allocation Committee, a public agency of the State of California (the "Senior Lender").

### **RECITALS**

A. Borrower is the owner of the fee simple interest or a leasehold estate in that real property described in Exhibit A attached hereto and made a part hereof (the "Property"). The Borrower has acquired the property and will construct an \_\_\_\_\_-unit residential rental development on the Property (the "Improvements"). The Property and the Improvements are sometimes referred to collectively as the "Development."

B. The Junior Lienholder has made a loan to the Borrower in the principal sum of \_\_\_\_\_00/100 Dollars (\$0,000,000.00) (the "Junior Lienholder Loan"). The Junior Lienholder Loan is evidenced by a certain promissory note (the "Junior Lienholder Note"), secured by a certain deed of trust (the "Junior Lienholder Deed of Trust") recorded concurrently herewith, in the Official Records of \_\_\_\_\_ County, California (the "Official Records"), on \_\_\_\_\_, as Instrument No. \_\_\_\_\_. The Junior Lienholder and Borrower have also entered into a regulatory agreement affecting the use of the Development, recorded on \_\_\_\_\_, as Instrument No. 2 \_\_\_\_\_ in the Official Records (the "Junior Lienholder Regulatory Agreement"). (The Junior Lienholder Deed of

Trust, the Junior Lienholder Regulatory Agreement and all other documents evidencing or securing the Junior Lienholder Loan are collectively referred to herein as the "Junior Lienholder Documents.")

C. In order to finance the development of the Improvements, the Senior Lender has agreed to loan the Borrower a sum not to exceed Dollars (\$000000000.00) (the "ARRA Loan"), subject to the terms and conditions of: (i) a regulatory agreement restricting the use and occupancy of the Development and the income derived therefrom which shall be dated as of even date herewith and recorded as an encumbrance on the Property in the Official Records (the California Tax Credit Allocation Committee (TCAC) Regulatory Agreement"), and (ii) other loan documents. The ARRA Loan will be evidenced by a promissory note (the "ARRA Note"), the repayment of which will be secured by, among other things, a deed of trust by Borrower as trustor, to Senior Lender as beneficiary recorded as an encumbrance on the Property in the Official Records (the "ARRA Deed of Trust") and by such other security as is identified in other loan documents. All documents identified in this Recital C are collectively referred to herein as the "Senior Lender Documents."

D. The Senior Lender is willing to make the ARRA Loan provided the ARRA Deed of Trust and the TCAC Regulatory Agreement are liens, claims or charges upon the Development prior and superior to the Junior Lienholder Documents, and provided that the Junior Lienholder specifically and unconditionally subordinates and subjects the Junior Lienholder Documents to the liens, claims or charges of the ARRA Deed of Trust and the TCAC Regulatory Agreement.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to induce the Senior Lender to make its ARRA Loan, it is hereby declared, understood and agreed as follows:

1. The TCAC Regulatory Agreement and the ARRA Deed of Trust securing the ARRA Note in favor of the Senior Lender, and any and all renewals, modifications, extensions or advances thereunder or secured thereby (including interest thereon) shall unconditionally be and remain at all times liens, claims, or charges on the Development prior and superior to the Junior Lienholder Documents, and to all rights and privileges of the Junior Lienholder thereunder; and the Junior Lienholder Documents, together with all rights and privileges of the Junior Lienholder thereunder are hereby irrevocably and unconditionally subject and made subordinate to the liens, claims or charges of the ARRA Deed of Trust and the TCAC Regulatory Agreement.

2. This Agreement shall be the whole and only agreement with regard to the subordination of the Junior Lienholder Documents, together with all rights and privileges of the Junior Lienholder thereunder, to the liens, claims or charges of the ARRA Deed of Trust and the TCAC Regulatory Agreement, and this Agreement shall supersede and cancel any prior agreements to subordinate the claims, liens or charges of, but only insofar as would affect the priority between the claims, liens or charges of the Junior Lienholder Documents to the ARRA

Deed of Trust and the TCAC Regulatory Agreement including, but not limited to, those provisions, if any, contained in the Junior Lienholder Documents, which provide for the subordination of the lien or charge thereof to another lien or charge on the Property or the Improvements.

3. Senior Lender declares, agrees and acknowledges that:

a. Notice and Cure:

(i) Senior Lender agrees that it shall not complete a foreclosure sale of the Property, or any portion thereof, or record a deed-in-lieu of foreclosure with respect to the Property, or any portion thereof, (each, a "Foreclosure Remedy") unless and until the Junior Lienholder has first been given ninety (90) days written notice of the default(s) giving rise to Senior Lender's right to complete such Foreclosure Remedy (a "Default Notice"), and the Junior Lienholder has failed, within such ninety (90) day period to cure such default(s); provided, however, that the Senior Lender shall be entitled during such ninety (90) day period to continue to pursue all of its rights and remedies under its respective loan documents, including but not limited to acceleration of its note (subject to the de-acceleration provisions set forth below), commencement and pursuit of foreclosure (but not completion of the foreclosure sale), any guaranty (subject to any notice and cure provisions contained therein), and/or any other loan document. All such notices shall be at the address noted below

(ii) With respect to the exercise of the cure rights provided above, the following shall apply:

(A) Junior Lienholder shall have the right, but not the obligation, to elect to cure the noticed default(s) (the "Noticed Defaults") by giving the Senior Lender written notice of its intention to cure the Noticed Defaults within the ninety (90) day cure period described above (the "Cure Period") and thereafter curing all Noticed Defaults within the Cure Period.

(B) If a cure of all the Noticed Defaults is completed within the Cure Period, the Senior Lender will rescind any notice of default recorded and request dismissal of any receiver who has been appointed, after reimbursement of all of Senior Lender's costs, including, without limitation, reasonable attorneys' fees and costs.

(C) Following the timely cure of all Noticed Defaults by the Junior Lienholder, the Senior Lender will not exercise its right to accelerate (or will de-accelerate) the amounts due under the Senior Lender's loan documents by reason of the Noticed Defaults cured by such Notice Party; provided, however, that nothing herein shall be construed to waive or limit any of Senior Lender's rights or remedies as to any uncured Noticed Default, or any subsequent default by Borrower.

(D) Nothing in this Paragraph 3 is intended to limit or modify any covenant, term, or condition contained in Senior Lender Documents or the Junior Lienholder Documents, including, without limitation, any covenant against creating or recording any liens or encumbrances against the Property without Senior Lender's or Junior Lienholder's prior written approval, as applicable, and any acceleration clause in the Senior Lender Documents or the Junior Lienholder Documents. Nothing in this Paragraph (i) is intended to diminish the rights of Lenders pursuant to California Civil Code Section 2924b, or to diminish the rights of Junior Lienholder to receive notice under applicable law.

(iii) If following the occurrence of a default under the Senior Lender Documents but prior to any foreclosure or deed in lieu of foreclosure under the Senior Lender Documents, Junior Lienholder takes title to or possession of the Property and cures all outstanding

defaults under the Senior Lender Documents, Senior Lender hereby agrees not to exercise any rights Senior Lender may have under the Senior Lender Documents to declare a default and accelerate the Senior Lender Loan that arise solely as a result of the transfer of title or possession of the Property to Junior Lienholder (or, if Senior Lender has already accelerated the Senior Lender Loan, Senior Lender hereby agrees that Senior Lender will reinstate the Senior Lender Loan at that time) and Senior Lender shall permit the transfer of the entire Property to Junior Lienholder subject to the Senior Lender Documents if and only if each and all of the following conditions have been satisfied in Senior Lender's reasonable determination: (1) Junior Lienholder has executed the form of Assumption Agreement provided by Senior Lender; and (2) Junior Lienholder cures any existing defaults under the Senior Lender Documents through escrow, and there exists no other event, which, with the giving of notice or the passage of time or both, would constitute an event of default under any of the Senior Lender Documents. In the event the above conditions are met, all existing terms of the Senior Lender Documents will remain in effect. The obligations of Senior Lender stated herein are expressly conditioned upon the assumption transaction being in compliance with the applicable law and regulations of all government agencies having jurisdiction over Senior Lender at the time of the transfer. The provisions of this paragraph shall apply to the transfer of the Property to Junior Lienholder only and it shall not apply to any other or subsequent transfer to any other party.

(iv) As required pursuant to Section 33334.14(a)(4) of the California, Health and Safety Code, Junior Lienholder has determined that an economically feasible alternative method of financing, refinancing or assisting the project situated or to be situated on the Property, on substantially comparable terms and conditions to the Senior Lender Documents, without subordination, is not reasonably available.

4. The Junior Lienholder declares, agrees and acknowledges that:

(a) The Junior Lienholder consents and approves (i) all provisions of the ARRA Note, the ARRA Deed of Trust and the TCAC Regulatory Agreement, and (ii) all agreements among the Junior Lienholder, Borrower and Senior Lender for the disbursement of the proceeds of the ARRA Loan, including without limitation any loan escrow agreements which have been provided to the Junior Lienholder for review;

(b) The Senior Lender, in making disbursements of the ARRA Loan pursuant to the ARRA Note or any other agreement, is under no obligation or duty to, nor has the Senior Lender represented that it will, see to the application of such proceeds by the person or persons to whom the Senior Lender 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;

(c) That none of the execution, delivery or recordation of any of the ARRA Note, ARRA Deed of Trust, or TCAC Regulatory Agreement, or the performance of any provision, condition, covenant or other term thereof, will conflict with or result in a breach of the Junior Lienholder Documents or the Junior Lienholder Note; and

(d) The Junior Lienholder intentionally and unconditionally waives, relinquishes, subjects and subordinates the claims, liens or charges upon the Development of the Junior Lienholder Documents, all present and future indebtedness and obligations secured thereby, in favor of the claims, liens or charges upon the Development of the ARRA Deed of Trust and the TCAC Regulatory Agreement, and understands that in reliance upon, and in consideration of, this waiver, relinquishment, subjection, and subordination, the ARRA Loan and advances thereof are being and will be made and, as part and parcel thereof, 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, subjection and subordination.

5. The Senior Lender would not make the ARRA Loan without this Agreement.

6. This Agreement shall be binding on and inure to the benefit of the legal representatives, heirs, successors and assigns of the parties.

7. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

8. In the event that any party to this Agreement brings an action to interpret or enforce its rights under this Agreement, the prevailing party in such action shall be entitled to recover its costs and reasonable attorneys' fees as awarded by the court in such action.

9. This Agreement may be signed by different parties hereto in counterparts with the same effect as if the signatures to each counterpart were upon a single instrument. All counterparts shall be deemed an original of this Agreement.

10. Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

(a) personal delivery, in which case notice is effective upon delivery;

(b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt;

(c) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;

(d) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

Agency:

Senior Lender: California Tax Credit Allocation Committee  
915 Capitol Mall, Rm. 485  
Sacramento, CA 95814  
CA-2009-

Borrower:

**SIGNATURE PAGE FOLLOWS**

**NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON (OR ENTITY) OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.**

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first set forth above and agree to be bound hereby:

**JUNIOR LIENHOLDER:**

a public body corporate and politic

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST

By: \_\_\_\_\_  
Agency Secretary

**BORROWER:**

a California limited partnership

By:

**SENIOR LENDER:**

California Tax Credit Allocation Committee, a public agency of the State of California

By: \_\_\_\_\_  
William J. Pavão  
Executive Director

***[Signatures must be acknowledged]***

## ACKNOWLEDGMENT

State of California County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_,  
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 \_\_\_\_\_ (Seal)



## ACKNOWLEDGMENT

State of California County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
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WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

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State of California County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

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WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

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**EXHIBIT A**

**Legal Description of the Property**