

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE
AMERICAN RECOVERY AND REINVESTMENT ACT
TRI-PARTY AGREEMENT (GAP FINANCING)

Date of this agreement:

Parties to this agreement:

BORROWER:

Name:

Address:

LENDER:

Name:

Address:

Loan amount:

Date of loan agreement:

AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (Public Law 111-5) (“ARRA”) FUNDER:

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE, a
public agency of the State of California
915 Capitol Mall, Rm. 485
Sacramento, California 95814

ARRA FUNDS

Funded amount:

Date of ARRA Agreement:

The **PROPERTY** is:

Name of development:

Number of units:

Address:

This Tri-Party Agreement (this “Agreement”) is entered into as of the date and by and among the parties as indicated above with reference to the following facts:

- A. Borrower, or an affiliate of Borrower, is the fee owner of [or holder of a ground leasehold interest in] the Property, as more particularly described in Exhibit A attached hereto and made a part hereof.
- B. Borrower intends to construct [rehabilitate] upon the Property certain improvements consisting of low income housing apartment units and other related appurtenances (collectively, the "Improvements"). The Improvements and the Property

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are sometimes hereinafter collectively referred to as the "Project." The Improvements will qualify as a "qualified low-income housing project" under section 42(g) of the Internal Revenue Code of 1986, as amended.

C. Lender and Borrower have entered into certain agreements and documents (collectively, the "Loan Documents"), pursuant to which Lender has agreed (subject to the satisfaction of certain conditions) to make a loan to Borrower (the "Loan") in the original principal amount as indicated above to cover costs to be incurred by Borrower in connection with the acquisition and construction [rehabilitation] of the Project. The obligations of Borrower in connection with the Loan are evidenced by a loan agreement and promissory note and certain other loan documents, and are secured by a deed of trust on the Project and by other collateral.

D. For purposes of providing financial assistance to the Project, ARRA Funder has executed the ARRA Fund Documents as described above, a copy of which is attached hereto as Exhibit B and made a part hereof. Pursuant to the terms of the ARRA Fund Documents, ARRA Funder has agreed (upon the satisfaction of certain conditions) to provide funds (the "ARRA Funds") to repay a portion of the amount outstanding under the Loan or reimburse eligible costs incurred. The obligations of Borrower in connection with the ARRA Funds will be subject to a regulatory agreement, evidenced by a promissory note, and secured by a deed of trust encumbering the Project.

E. As a condition precedent to the disbursement of the proceeds of the Loan, Lender requires that Borrower and ARRA Funder enter into this Agreement.

NOW, THEREFORE, in consideration of Lender making the Loan to Borrower, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Status of ARRA Fund Documents. ARRA Funder and Borrower hereby make the following representations, warranties and covenants for the benefit of Lender:

(a) Exhibit B is a true, correct and complete copy of the ARRA Fund Documents. The ARRA Fund Documents have not been amended or modified, are in full force and effect and are valid, binding and enforceable against the Borrower and ARRA Funder.

(b) To the actual present knowledge of ARRA Funder, but without any duty to make further investigation, and Borrower:

(i) Borrower is not in default under the ARRA Fund Documents;

(ii) no condition to funding under the ARRA Fund Documents has failed; and

(iii) neither ARRA Funder nor Borrower knows of any reason why the conditions to funding under the ARRA Fund Documents will not be satisfied.

(c) The ARRA Fund Documents shall not be amended or modified without the prior written consent of Lender.

2. Notice of Default; Borrower's and Lender's Right to Cure.

(a) Notice of Default. Promptly following the failure of Borrower to cure any default under the ARRA Fund Documents after the expiration of any notice and cure periods set forth in the ARRA Fund Documents, ARRA Funder shall deliver to Lender a copy of any such notice of default at the address set forth in paragraph 8(c), below; provided, however, that ARRA Funder shall have no duty to monitor or evaluate Borrower's compliance with this Agreement or the ARRA Fund Documents.

(b) Lender's and Borrower's Right to Cure Default Under ARRA Fund Documents. Notwithstanding anything stated to the contrary in the ARRA Fund Documents, Borrower shall not be in default under the ARRA Fund Documents, nor shall ARRA Funder be entitled to exercise any rights or remedies it may have arising out of Borrower's failure to satisfy any of the terms, conditions and/or covenants set forth in the ARRA Fund Documents, until and unless ARRA Funder has notified Borrower and Lender in writing of the occurrence of any such default in accordance with the terms and conditions of paragraph 2(a), above, and Lender (with no obligation to do so) and Borrower have failed to: (i) cure such default or breach within ten (10) days following receipt of notice of any monetary default; or (ii) cure such default or breach within thirty (30) days following receipt of notice of any non-monetary default; provided however, if Lender could not reasonably be expected to cure the default without foreclosing upon or otherwise obtaining control of the property, Lender shall have until 30 days following the foreclosure or the date Lender obtains control of the property to cure the default.

3. Default Under Loan Shall Not Constitute Default Under ARRA Fund Documents. Notwithstanding anything stated to the contrary in the ARRA Fund Documents, the occurrence of a default under the Loan (or under any other loan secured by a deed of trust encumbering the Property) shall not in and of itself constitute a default under the ARRA Fund Documents nor entitle ARRA Funder delay or excuse any funding obligations, or accelerate amounts due under the ARRA Fund Documents.

4. Lender's Right to Cause Substitution of Borrower Under ARRA Fund Documents. In the event that Borrower defaults or fails to satisfy the conditions to funding under the ARRA Fund Documents (including any default or failure of condition related to default by Borrower under the Loan or any other loan secured by a deed of trust encumbering the Property), ARRA Funder will allow a person or entity which succeeds to ownership of the Property (the "Successor Developer") to succeed to the rights of Borrower under the ARRA Fund Documents, provided the Successor Developer agrees to comply with all Program Requirements.

5. Right of Foreclosing Lender to Reinstate ARRA Funds. In the event Lender forecloses on the Project in a manner which extinguishes the lien of the deed of trust securing the ARRA Funds and the Regulatory Agreement benefiting the ARRA Funder, promptly upon written notice from the foreclosing Lender or the successful bidder at the foreclosure sale, or their respective successors in ownership of the project (collectively, "Successor Owner"), ARRA Funder shall make any remaining undisbursed ARRA fund proceeds available to the Successor Owner pursuant to the ARRA Fund Agreement, so long as Successor Owner assumes the obligations of Owner under the ARRA Fund Agreement and permits the re-recording of the ARRA Funds deed of trust and Regulatory Agreement against the Project.

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6. Disbursement of ARRA Fund Proceeds to Lender. In addition, and without limitation on the foregoing, ARRA Funder acknowledges that the ARRA Funds are required to be disbursed to the Project to reimburse Eligible Costs on or before certain federally imposed deadlines ("Federal Deadlines"). ARRA Funder agrees that, on or before the date sixty (60) days prior to any applicable Federal Deadline, if no Event of Default has occurred and is continuing under the ARRA Fund Documents, all of the ARRA Funds which have not been disbursed to the Project will be disbursed to Lender to the extent Lender advanced Lender Loan funds to pay for or reimburse Borrower for Eligible Costs. Lender may utilize such funds to reduce Lender's Loan or as additional cash collateral for repayment of Lender's Loan.

7. Disbursement of ARRA Fund Proceeds to Lender After an Event of Default. If ARRA Funds are not disbursed to Lender pursuant to Section 6 hereof because an Event of Default has occurred pursuant to the ARRA Fund Documents, ARRA Funder shall still provide such ARRA Funds to Lender to pay for or reimburse Borrower for Eligible Costs to the extent Lender advanced Lender loan funds to pay such Eligible Costs, so long as prior to an applicable Federal Deadline Lender agrees that upon a foreclosure by Lender of its senior lien on the Project or receipt of a deed-in-lieu of foreclosure of the Project, the income and rental restrictions of the Regulatory Agreement executed by Borrower in favor of ARRA Funder ("Regulatory Agreement") shall continue to encumber the Project; provided, however, that in such event, the income and rent restrictions set forth in the Regulatory Agreement may be revised to require that all apartment units (other than manager's unit[s]) shall be required to be leased to tenants with income levels not exceeding sixty percent (60%) of Area Medium Income and that all such units shall remain Rent-Restricted, as set forth in the Regulatory Agreement. The revised income and rent restrictions shall be based upon the Lender's determination that higher income and rent targets are necessary for the financial feasibility of the project.

8. Miscellaneous.

(a) Assignment. Lender's rights under this Agreement shall be assignable by Lender only to assignees of the rights of Lender in and to the Loan.

(b) Lender's Obligation to provide specified reports to ARRA Lender. Lender agrees to provide, without warranty or liability, but subject to appropriate releases from ARRA Funder and third party providers copies of all building inspection reports for all ARRA Fund Disbursement requests and copies of all certifications provided to Lender, including without limitation, certifications from Borrower's licensed structural engineer (if required), a licensed asbestos abatement consultant and licensed lead-based paint abatement consultant (if required), and licensed architect.

(c) Notices. All notices and demands given pursuant to the terms hereof shall be given in writing delivered in person, by commercial courier, or by registered or certified mail, return receipt requested, with all postage and fees fully prepaid. Notices shall be considered delivered upon receipt, as indicated by the return receipt if mailed; except that, upon an attempt to effectuate service of notice as provided herein, if the party being given notice either (i) refuses to accept delivery, or (ii) has moved and the most recent address given to receive notice has no current registered forwarding address or a registered forwarding address only to a post office or other box, that party shall be deemed to have received the notice. Alternatively, notices may be served by

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facsimile transmission sent to the party intended to receive the notice, and shall be deemed served upon telephonic or return facsimile acknowledgment by the party receiving the notice that a complete and legible copy of the notice has been received. Notices shall be addressed to the respective parties at the addresses indicated above.

The address(es) for service of notice on any party may be changed by that party serving notice upon the other parties of the new address, except that any change of address to a post office box shall not be effective unless a street address is also specified for use in effectuating personal service.

(d) Counterparts. This Agreement may be executed in any number of counterparts by the parties hereto. Each of said counterparts shall be deemed to be an original and all such counterparts shall constitute but one and the same instrument.

(e) Attorneys' Fees. If any dispute arises between any of the parties hereto regarding the interpretation or the enforcement of this Agreement, the prevailing party or parties shall recover from the losing party or parties all reasonable expenses, attorneys' fees and court costs incurred by the prevailing party or parties.

(f) Binding Effect. The covenants, agreements, rights and options contained in this Agreement shall be binding upon and shall inure to the benefit of the respective heirs, executors, successors and assigns of the parties and all persons claiming by, through or under any of them.

(g) Governing Law. This Agreement shall be construed in accordance with the laws of the State of California.

(h) Time. Time is of the essence hereof.

(i) Waiver. Except as expressly provided in this Agreement, no waiver on the part of any party of any right it may have shall be implied from any failure to take action. To be effective, any such waiver must be in writing and signed by the party to be charged with the waiver. One waiver shall not be interpreted as a waiver of the obligation to comply with the applicable or related provisions in the future.

(j) Specific Performance. Each party hereto shall be entitled to specific performance of the covenants, agreements, rights and options contained in this Agreement.

(k) Consents. Whenever the consent or approval of the ARRA Lender, the Borrower, or the Lender is required under the ARRA Fund Documents or in this Agreement, the ARRA Funder, the Borrower and the Lender agrees that such consent or approval will not be unreasonably withheld or delayed, unless the same is specified as being in a party's sole discretion or other words of similar import.

(l) Headings. With the exception of the defined terms at the beginning of this Agreement, the headings of the paragraphs of this Agreement are for convenience of reference only and shall not be used to define or limit the terms hereof.

(m) Severability. In case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any

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respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein unless the effect thereof would materially alter the benefits or burdens hereof to the parties hereto.

- (n) Termination. This Agreement shall terminate upon the earlier to occur of:
- (i) the repayment in full of all amounts due and owing under the Loan, or
 - (ii) the termination (subject to Borrower's and Lender's cure and reinstatement rights) of the ARRA Fund Documents, or
 - (iii) expiration of the ARRA Fund Documents (subject to any extensions).

(Remainder of page intentionally left blank.)

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IN WITNESS WHEREOF, the parties hereto have executed this Tri-Party Agreement as of the day and year first hereinabove written.

BORROWER:

_____ L.P.,
a California limited partnership

By: _____
Its: General Partner

ARRA FUNDER:

CALIFORNIA TAX CREDIT ALLOCATION
COMMITTEE, a public agency of the State
of California

By: _____
Its: _____

LENDER:

By: _____
Its: _____

EXHIBIT A
PROPERTY
(Legal Description)