

CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE
AMERICAN RECOVERY AND REINVESTMENT ACT of 2009
TRI-PARTY AGREEMENT

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") LENDER:

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

ARRA LOAN

Loan amount:

Date of ARRA Loan 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 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 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 Lender has executed the ARRA Loan 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 Loan Documents, ARRA Lender has agreed (upon the satisfaction of certain conditions) to provide a loan (the "ARRA Loan") to repay a portion of the amount outstanding under the Loan. The obligations of Borrower in connection with the ARRA Loan 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 Lender 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 Loan Documents. ARRA Lender 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 Loan Documents. The ARRA Loan Documents have not been amended or modified, are in full force and effect and are valid, binding and enforceable against the Borrower and ARRA Lender.

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

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

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

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

(c) The ARRA Loan 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 Loan Documents after the expiration of any notice and cure periods set forth in the ARRA Loan Documents, ARRA Lender shall deliver to Lender a copy of any such notice of default at the address set forth in paragraph 7(b), below; provided, however, that ARRA Lender shall have no duty to monitor or evaluate Borrower's compliance with this Agreement or the ARRA Loan Documents.

(b) Lender's and Borrower's Right to Cure Default Under ARRA Loan Documents. Notwithstanding anything stated to the contrary in the ARRA Loan Documents, Borrower shall not be in default under the ARRA Loan Documents, nor shall ARRA Lender 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 Loan Documents, until and unless ARRA Lender has notified Borrower and Lender in writing of the occurrence of any such default in accordance with the terms and conditions of paragraph 3(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.

4. Default Under Loan Shall Not Constitute Default Under ARRA Loan Documents. Notwithstanding anything stated to the contrary in the ARRA Loan 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 Loan Documents nor entitle ARRA Lender delay or excuse any funding obligations, or accelerate amounts due under the ARRA Loan Documents.

5. Lender's Right to Cause Substitution of Borrower Under ARRA Loan Documents. In the event that Borrower defaults or fails to satisfy the conditions to funding under the ARRA Loan 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 Lender 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 Loan Documents, provided the Successor Developer satisfies all Program Requirements.

6. 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 copies of all building inspection reports for all ARRA Loan 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 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 Loan Documents or in this Agreement, the ARRA Lender, 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 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 rights) of ARRA Loan Documents, or
- (iii) the full funding of the ARRA Loan, or
- (iv) expiration of the ARRA Loan Documents (subject to any extensions).

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 LENDER:

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

By: _____
Its: _____

LENDER:

By: _____
Its: _____

EXHIBIT A
PROPERTY
(Legal Description)