

TRI-PARTY AGREEMENT

Date of this agreement:

Parties to this agreement:

BORROWER:

Name:

Address:

LENDER:

Name:

Address:

Loan amount:

Date of loan agreement:

TAKEOUT LENDER:

Name:

Address:

TAKEOUT COMMITMENT

Loan amount:

Date of Conditional Commitment Letter:

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 the Property, as more particularly described in Exhibit A attached hereto and made a part hereof.

B. Borrower intends to construct 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 of the Project. The obligations of Borrower in connection with the Loan are evidenced by a loan agreement and promissory note, 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, Takeout Lender has issued the Takeout Commitment as described above, a copy of which is attached hereto as Exhibit B and made a part hereof. If the Takeout Commitment was issued to an entity other than Borrower, it has been, or will be, assigned to and assumed by Borrower, and such assignment and assumption has been or will be subject to approval by Takeout Lender pursuant to the terms of the Takeout Commitment. Pursuant to the terms of the Takeout Commitment, Takeout Lender has agreed (upon the satisfaction of certain conditions) to provide a loan (the "Takeout Loan") to repay a portion of the amount outstanding under the Loan. The obligations of Borrower in connection with the Takeout 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 Takeout 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 Takeout Commitment. Takeout 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 Takeout Commitment. The Takeout Commitment has not been amended or modified except as indicated in Exhibit B, is in full force and effect and is valid, binding and enforceable against the Takeout Lender.

(b) To the actual present knowledge of Takeout Lender, but without any duty to make further investigation, and Borrower, (i) Borrower is not in default under the Takeout Commitment; (ii) no condition to funding under the Takeout Commitment has failed; and (iii) neither Takeout Lender nor Borrower knows of any reason why the conditions to funding under the Takeout Commitment will not be satisfied.

(c) The Takeout Commitment shall not be amended or modified without the prior written consent of Lender (which consent shall not be unreasonably withheld or delayed).

2. Satisfaction of Completion Condition Under Takeout Commitment. Takeout Lender, for the benefit of Lender and Borrower, hereby acknowledges and agrees that Borrower providing Takeout Lender the documentation required by the Allocation Committee's regulations for "Placed-in-Service application" (Cal. Code Regs., title 4, sec. 10322(i)(2)(A)-(M)) and review and approval of same by Takeout Lender shall constitute evidence satisfactory to Takeout Lender that the Project has been completed and that the Project, and the intended uses thereof, fully comply with all applicable federal, state and local laws as required by the terms of Exhibit A, section 47 of the Takeout Commitment.

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

(a) Notice of Default. Concurrently with the delivery by Takeout Lender to Borrower of any notice of default under the Takeout Commitment, Takeout 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 Takeout Lender shall have no duty to monitor or evaluate Borrower's compliance with this Agreement or the Takeout Commitment.

(b) Lender's and Borrower's Right to Cure Default Under Takeout Commitment. Notwithstanding anything stated to the contrary in the Takeout Commitment, Borrower shall not be in default under the Takeout Commitment, nor shall Takeout 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 Takeout Commitment, until and unless Takeout 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.

4. Default Under Loan Shall Not Constitute Default Under Takeout Commitment. Notwithstanding anything stated to the contrary in the Takeout Commitment, 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 Takeout Commitment nor entitle Takeout Lender to terminate any of its obligations thereunder.

5. Lender's Right to Cause Substitution of Borrower Under Takeout Commitment. In the event that Borrower defaults or fails to satisfy the conditions to funding under the Takeout Commitment (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), Takeout 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 Takeout Commitment, or to obtain a takeout commitment on terms and conditions substantially identical to those contained in the Takeout Commitment (a "Replacement Commitment") upon satisfaction of the following conditions:

(a) The Successor Developer shall apply for an assignment of the Takeout Commitment or for a Replacement Commitment within a reasonable time after the Successor Developer obtains ownership of the Property;

(b) The Successor Developer shall have been reasonably approved by Takeout Lender in the application of its customary underwriting standards; and

(c) The Successor Developer shall comply with all of the requirements of the Multifamily Housing Program (California Health & Saf. Code, ch. 6.7, sec. 50675 et seq.) and all applicable guidelines and regulations thereunder.

6. No Extension. Notwithstanding any other provision of this Agreement, Takeout Lender shall not be obligated, directly or indirectly, to extend the deadline for Borrower to satisfy all the conditions to close the Takeout Loan stated in paragraph B of the General Conditions attached as Exhibit A to the Takeout Commitment.

7. 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) 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.

(c) 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.

(d) 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.

(e) 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.

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

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

(h) 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.

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

(j) Consents. Whenever the consent or approval of the Takeout Lender is required under the Takeout Commitment or in this Agreement, Takeout Lender agrees that such consent or approval will not be unreasonably withheld or delayed, unless the same is specified as being in Takeout Lender's sole discretion or other words of similar import.

(k) 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.

(l) 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.

(m) 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 the Takeout Commitment, or (iii) the full funding of the Takeout Loan, or (iv) expiration of the Takeout Commitment (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:

a California corporation, general partner

By: _____
Its: _____

By: general partner

By: _____
Its: _____

TAKEOUT LENDER:

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, a public agency of the State of California

By:

Reed Flory
Its Multifamily Section Manager

LENDER:

BANK, N.A.

By:

Its Vice President

EXHIBIT A
PROPERTY
(Legal Description)

EXHIBIT B
TAKEOUT COMMITMENT

See attached Conditional Commitment Letter dated _____ as
modified by the attached Interim Closing Report dated _____.