

**CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE
AMERICAN RECOVERY AND REINVESTMENT ACT of 2009
RIGHT OF FIRST REFUSAL AGREEMENT**

THIS RIGHT OF FIRST REFUSAL AGREEMENT (this “**Agreement**”) is entered into as of _____ by and between _____, A California Limited Partnership (“**Owner**”), and California Tax Credit Allocation Committee, a public agency of the state of California (“**Grantee**”).

RECITALS

- A. Owner has a fee simple (ground leasehold) interest in certain land and owns the improvements located thereon which consist of _____ (___) residential apartment units (including ___ manager’s unit(s)) for _____ located in _____, California, which is more particularly described in **Exhibit A** attached to this Agreement and incorporated herein by this reference (together, the “**Project**”).
- B. Grantee is providing funds in exchange for an allocation of low income housing tax credits to Owner, in connection with the development of the Project.
- C. Owner has agreed to grant Grantee a Right of First Refusal to purchase the Project.
- D. The parties desire to set forth the terms of the Right of First Refusal granted by Owner to Grantee.

NOW, THEREFORE, the parties agree as follows:

**ARTICLE 1
Grant of Right of First Refusal.**

Grant of Right of First Refusal. Owner grants to Grantee the right of first refusal (the “**Right of First Refusal**”) to purchase the Project and any reserves required or controlled by any lender to the Project on the terms and conditions set forth in this Agreement.

**ARTICLE 2
Term**

2.1 Term of Right of First Refusal. The term of the Right of First Refusal shall commence on the date of this Agreement and end fifty-five (55) years thereafter.

**ARTICLE 3
Manner of Exercising Right of First Refusal**

3.1 Refusal Right Trigger. Prior to a) soliciting any offer for sale of the Project or any ownership interest in the Project; or b) accepting any offer to purchase the Project or any beneficial ownership interests in the Project, Owner shall notify Grantee of such interest to sell or offer and deliver to Grantee a copy thereof. Grantee may exercise the Refusal

Right by delivery to Owner of written notice of exercise within ninety (90) days after Grantee has received Owner's notice of an intent to sell. In the event Grantee does not exercise the Right Of First Refusal, Owner may sell the Project, provided the Project shall continue to be subject to the Right Of First Refusal and Grantee's Regulatory Agreement which shall bind all subsequent owners until the Right Of First Refusal terminates pursuant to Article 2 and the Regulatory Agreement terminates by its own terms.

3.2 Grantee's exercise. Grantee may exercise the Right of First Refusal by delivering to Owner, during the Right of First Refusal term, written notice of the exercise (the "**Right of First Refusal Notice**"). The Right of First Refusal Notice shall state that the Right of First Refusal is exercised without condition or qualification.

ARTICLE 4 Purchase Price

4.1 Purchase Price .

(a) The purchase price of the Project (the "**Purchase Price**") and the reserves shall be the greater of the outstanding debt or the then fair market value of the Project and the reserves. Fair market value shall be the value of the real estate and any reserves required or controlled by any lender to the Project.

(b) The fair market value of the Project shall be determined as follows. Grantee shall provide Owner with a list of no fewer than four acceptable appraisers for Owner's approval. Owner may reject any appraiser for reasonable cause. If any appraiser(s) are rejected with cause, then Grantee will provide alternative appraiser(s) of an equal number. In the event Owner fails to select an appraiser within 15 days of receiving the list of appraisers, Grantee may select appraiser. The appraisal shall take into account the requirement that the Project remain dedicated for the use of low-income households pursuant to any restrictions under any loan agreements or regulatory agreements. Grantee shall pay the cost of the appraiser. Any appraiser selected pursuant to this section shall be an MAI appraiser with at least five years of experience and have experience appraising affordable rental housing in the region.

ARTICLE 5 Completion of Sale

5.1 Conditions Precedent. As a condition to closing, and in addition to payment of the Purchase Price and the satisfaction of the other conditions to closing set forth in this Agreement, Grantee shall be entitled to a California Land Title Association owner's policy of title insurance, dated as of the close of escrow, in the amount equal to the Purchase Price for the Project, showing title of the Project vested in Grantee and, subject to all liens, encumbrances and other exceptions then affecting title.

5.2 Closing. Escrow for the sale of the Project shall close on or before the later of (a) one hundred twenty (120) days after Owner's receipt of Grantee's written notice of exercise of the Right of First Refusal or (b) 90 days after receipt of the appraisal required under Section 4.1(b) above. The Purchase Price shall be payable by taking subject to the existing debt (if permitted by the holders of the then existing debt) and if the Purchase Price exceeds the debt, the balance of the Purchase Price shall be payable in readily available funds. As a condition to closing, Owner shall cooperate in obtaining all consents from any lessor, governmental agency and holder of a mortgage or deed of trust on the Project, whose consent to a sale is required. All costs associated with the sale of the Project to Grantee shall be paid by Grantee including, without limitation, any transfer taxes, title policy premiums, recordation costs and costs related to the assumption of the underlying loans.

5.3 Conveyance. Owner shall convey the Project to Grantee in an "as is" condition without representation or warranty.

5.4 Subordination. The rights granted herein are subject to and subordinate to any similar option or right of first refusal granted to a partner of Owner and to all liens for borrowed money secured by the project.

ARTICLE 6

Assignment of Right of First Refusal

Grantee may assign this Agreement and all of Grantee's rights hereunder to a corporation that is tax-exempt under Section 501(c)(3) of the Code and that is qualified to own and operate housing developments for low income persons. Nothing in this Article 6 shall be deemed to waive or modify the terms of Article 1.

ARTICLE 7

Quitclaim Instrument on Termination of Right of First Refusal

Upon termination of this Right of First Refusal pursuant to Article 1 or Article 2 of this Agreement, Grantee agrees, upon Owner's request, to execute and deliver a written instrument (in form appropriate for recording if this Agreement or a memorandum thereof has been recorded as of such time) relinquishing and terminating its rights under this Agreement to Owner within thirty (30) days after termination and to execute, acknowledge and deliver any other documents required by Owner's title insurance company to remove this Agreement as an encumbrance against the Project.

ARTICLE 8

Notices

Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be personally delivered including but not limited to overnight delivery or deposited in the certified U.S. mail, return receipt requested, first

class and postage prepaid, addressed to each party at the following addresses or such other address as may be designated by a notice pursuant to this Article 8:

If to Owner:

and, if intended for Grantee, shall be addressed to:

California Tax Credit Allocation Committee

915 Capitol Mall, room 485

Sacramento, CA 95814

Any notice provided in accordance with this Article 8 shall be deemed to have been given on the delivery date or the date that delivery is refused by the addressee, as shown on the return receipt.

ARTICLE 9 Attorneys' Fees

In the event of any action, arbitration, or proceeding at law or in equity to enforce any provision of this Agreement or to protect or establish any right or remedy of any party hereunder, the unsuccessful party to the litigation shall pay to the prevailing party all costs and expenses, including reasonable attorneys' fees incurred therein by the prevailing party, and if the prevailing party recovers judgment in any action, proceeding, or arbitration, the costs, expenses and attorneys' fees shall be included in and as a part of the judgment.

ARTICLE 10 Purchase of Partnership Interest

Notwithstanding anything to the contrary contained herein, but only upon satisfaction of any conditions precedent established for the exercise of the Right of First Refusal, Grantee may elect to purchase the Partners' interests in the Owner for an amount equal to the Purchase Price in lieu of purchasing the Project.

ARTICLE 11 Miscellaneous

(a) Each party hereby agrees to indemnify the other party from and against any real estate brokerage commissions or similar obligations incurred by the indemnifying party as a result of the negotiations or exercise of the Right of First Refusal.

(b) Contemporaneously with the execution of this Agreement, Owner and Grantee shall execute, acknowledge and record the Memorandum of Right of First Refusal evidencing this Agreement in the Official Records of the County in which to Project is located.

(c) The rights and obligations of the parties to this Agreement shall inure to the benefit of and bind their respective successors and assigns.

(d) The captions used herein are for convenience of reference only and are not part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

(e) Time is of the essence of each and all of the agreements, covenants and conditions of this Agreement.

(f) This Agreement shall be interpreted in accordance with and governed by the laws of the State of California.

(g) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral and written. This Agreement may not be amended or modified in any respect whatsoever except by an instrument in writing signed by Owner (which requires the approval of the Special Limited Partner) and Grantee.

(h) This Agreement may be executed in one or more counterparts by some or all of the parties hereto, each of which counterparts shall be an original and all of which taken together shall constitute a single agreement.

(i) Notwithstanding any provisions to the contrary set forth elsewhere herein, this Agreement and the rights of the Grantee hereunder shall be subject and subordinate to the rights of Construction Lender and to any other lender that has made a loan to the Partnership secured by (i) a deed of trust lien on the Project, and (ii) a lien on any related non-real property collateral.

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

OWNER:

_____, A California Limited Partnership

By:

its general partner

By:

Name:

Title:

GRANTEE:

California Tax Credit Allocation Committee

By:

Name:

Title:

EXHIBIT A

(Legal Description)

Real property in the City of _____, County of _____, State of
California, described as follows: