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Doc#: 1035731066 Fee: \$54.00 Eugene "Gene" Moore RHSP Fee:\$10.00

Cook County Recorder of Deeds Date: 12/23/2010 12:49 PM Pg: 1 of 10

Prepared by, and after recording return to:

Levy, Levy & Levy 900 Larkspur Landing Circle, Suite 275 Larkspur, CA 94939 Attention: Paul Renno, Esq.

SUBORDINATION AGREEMENT

THIS SUBORD: ATION AGREEMENT ("Agreement") is dated as of December 23, 2010 by and between the CITY OF CHICAGO, ILLINOIS, an Illinois municipal corporation, acting by and through its Department of Community Development (the "City"), and MONTCLARE SENIOR RESIDENCES PHASE II, L.P., an Illinois limited partnership (the "Borrower"), for the benefit of PNC BANK, N.A., a national banking association ("Senior Lender") and the SECRETARY OF THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, acting by and through the Federal Housing Commissioner ("HUD").

RECITALS:

A. The City and the Borrower have entered into a certain Redevelopment Agreement dated as of the 1st day of September, 2003 and recorded September 5, 2003, in the Office of the Recorder of Deed of Cook County, Illinois as Document No. 0324839131 with HUD Required Provisions Rider attached (the "Phase II RDA") encumbering certain property commonly known as 6640 W. Belden, Chicago, Illinois, 60635 and legally described on Exhibit A attached to and made a part of this Agreement, which together with the improvements thereon are referred to herein as the "Mortgaged Property". The City and Montclare Senior Residences Phase I, L.P. as "Developer", have entered into a cortain Redevelopment Agreement dated as of December 1, 2000, recorded December 22, 2000 in the Office of the Cook County Recorder as Document Number 0001006902 with HUD Required Provisions Rider attached (the "Phase I RDA"), which pertains to the land described therein ("Phase I Land") and by virtue of encumbering Phase I Land, also encumbers an easement portion of the Mortgaged Property consisting of an easement over Phase I Land.

B. The Senior Lender is, concurrently herewith, making that certain loan in the original principal amount of \$10,512,500 (the "Senior Loan") represented by, among other things: (i) that certain Mortgage Note dated as of December 1, 2010, made by the Borrower payable to the order of Senior Lender in the original principal amount of \$10,512,500 (the "Senior Note"); (ii) that certain Mortgage from Borrower to Senior Lender dated as of December 1, 2010, to be recorded concurrently with this Agreement in the Office of the Cook County Recorder (the "Senior Mortgage"); (iii) that certain Security Agreement dated as of December 1, 2010, by and between the Senior Lender and the Borrower (the "Security Agreement"), (iv) those certain UCC Financing Statements with respect to the Security Agreement one of which is to be recorded concurrently herewith in the Office of the Cook County Recorder and one of

which is to be filed concurrently herewith in the Office of the Illinois Secretary of State (the "Financing Statements"), and (v) various collateral documents and instruments in connection with the mortgage insurance by HUD of the Senior Note (the "Other Senior Loan Documents"). HUD has issued a certain Firm Commitment dated August 10, 2010, as amended, (the "HUD Firm Commitment") by which HUD has agreed to provide mortgage insurance on the Senior Loan under provisions of Section 223(a)(7) of the National Housing Act, subject to the fulfillment of certain conditions set forth in the HUD Firm Commitment. In connection with the endorsement for mortgage insurance of the Senior Note by HUD, the Borrower has executed and delivered to HUD the Regulatory Agreement by and between the Borrower and HUD dated as of December 1, 2010 (the "HUD Regulatory Agreement") which is incorporated into the Senior Mortgage and which is being recorded concurrently herewith in the Office of the Cook County Recorder. The Senior Note, Senior Mortgage, Security Agreement, the Financing Statements and all Other Senior Loan Documents evidencing, securing or governing the Senior Loan and the FiCD Regulatory Agreement are collectively referred to herein as the "Senior Loan Documents".

- The Borrower intends to prepay the Mortgage Note dated September 1, 2003 in C. the original principal amount of \$11,200,000 (the "Original Note") made payable to the order of Midland Loan Services, Ir c, ("Original Mortgagee") secured by a Mortgage dated as of September 1, 2003, and recorded September 5, 2003 as Document No. 0324839132 ("Original Mortgage") concurrently with the making of Senior Loan from the net proceeds made available from the Senior Loan. The Original Mortgage incorporated a certain Regulatory Agreement by and between Borrower and HUD dated as of September 1, 2003 and recorded September 5, 2003, as Document No. 0324839133 (the 'Original Regulatory Agreement"). Upon the receipt of the prepayment of the Original Note, Original Mortgagee will execute and deliver to the title company for recording in the Office of the Cock County Recorder a release of mortgage lien extinguishing the lien of the Original Mortgage.
- The Borrower affirms that the following documents are currently recorded or will E. be recorded against and currently or will encumber the Montgaged Property (collectively, the Office Office "Documents of Record"):
 - 1. Senior Mortgage;
 - 2. HUD Regulatory Agreement;
 - 3. Financing Statements;
 - 4. The RDARDA, as subordinated by this Agreement;
 - 5. Extended Use Agreement by and Between Illinois Housing Development Authority (the "Authority") and Borrower dated as of September 1, 2003, recorded September 5, 2003 as Document No.0324839130 with HUD Required Provisions Rider attached (the "EUA") as subordinated by a Subordination Agreement by and between Borrower, Authority, Senior Lender and HUD;
 - 6. UCC Financing Statement in favor of Midland Loan Services, Inc. filed September 5, 2003 as Document No. 0324839134 intending to be released; and
 - 7. Regulatory Agreement by and between the Borrower and HUD dated as of September 1, 2003, and recorded September 5, 2003, in the Office of the Cook County Recorder as

Document No. 0324839133, intending to be released following the execution and delivery of the HUD Regulatory Agreement.

All Documents of Record that inure to the benefit of the Senior Lender and HUD are herein referred to as the "Senior Documents of Record."

- F. In connection with the Senior Loan, Borrower has requested the City subordinate the Phase II RDA to the Senior Loan Documents pursuant to the terms hereof, and it is a condition to the Senior Lender's making the Senior Loan to the Borrower, and a condition to the provision of mortgage insurance by HUD under the HUD Firm Commitment, that the Senior Loan Documents unconditionally be and remain at all times a lien, claim and charge upon the Mortgaged Property prior and superior to the liens, claims and charges of the Phase II RDA (except as set forth in Section 1 below). The Senior Lender would not make the Senior Loan and HUD wou'd not provide mortgage insurance pursuant to the HUD Firm Commitment without this Agreement.
- G. HUD's agreement to endorse the Senior Note for mortgage insurance is subject to the condition that the City and Borrower enter into this Agreement.

NOW THEREFORE, in consideration of the premises, the mutual covenants in this Agreement and for other valuable consideration, including Senior Lender's making the Loan and HUD endorsing the Senior Loan for incitgage insurance, the receipt and sufficiency of which are acknowledged, City and Borrower agree for the benefit of the Senior Lender and HUD as follows:

City's Acknowledgement and Aureement.

The City hereby acknowledges the Borrower's entering into the Senior Loan Documents, and HUD's endorsement of the Senior Loan for mortgage insurance, and consents to the Borrower's acceptance of the Senior Loan and the Borrower's execution and delivery of the Senior Loan Documents.

The City reaffirms to the Senior Lender and HUD the terms, conditions and provisions of the HUD Required Rider attached to and incorporated in the Phase II RDA and agrees that the same shall be and remain binding upon the City for the period of time stated therein. All references to the "HUD/FHA Loan Documents" contained in the HUD Required Provisions Riders to the Phase II RDA shall refer to the Senior Loan Documents as described herein. In the event of any conflict or inconsistency in the terms and provisions of this Agreement and the HUD Required Provisions Riders attached to and incorporated in the Phase II RDA, the HUD Required Provisions Riders made applicable to the Senior Loan Documents by this Agreement shall prevail.

The City acknowledges that the Phase I RDA encumbers the Phase I Land and by reason of that, creates an encumbrance on the easement parcel over Phase I Land constituting a portion of the Mortgaged Property. The City herby agrees that the Phase I RDA will be subordinated as to the easement rights in favor of Borrower created as a portion of the Mortgaged Property but by this Agreement the Phase I RDA shall not be subordinated as to the "Developer' for Phase I Land or to the Phase I Land itself. The Phase I RDA shall be and remains binding and enforceable against the Phase I Land and the Developer as owner of the Phase I Land without respect to any subordination hereunder.

- 2. No Modification of Certain Provision in Subordinate Security Instrument. The Borrower and the City each agrees that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of Senior Lender and HUD, amend or modify the Phase II RDA, or this Agreement.
- 3. Remedies Cumulative. None of the rights and remedies conferred upon or reserved to Senior Lender and HUD under this Agreement is intended to be exclusive of any other rights, and each and every such right shall be cumulative and concurrent, and may be enforced separately, successively or together, and may be exercised from time to time as often as may be deemed necessary by Senior Lender or HUD.
- 4. <u>Sorrower's Other Obligations Not Impaired</u>. Nothing contained in this Agreement sharin any manner whatsoever alter, impair or affect the obligations of Borrower, or relieve Borrower coany of its obligations to make payments and to perform all of its other obligations required under the Senior Loan Documents and the Phase II RDA.
- 5. <u>Successors and Assigns Bound</u>. This Agreement shall be binding upon Borrower and City and their respective successors and assigns, and shall inure to the benefit of and may be enforced by Senior Lender or HUD and their successors, transferees and assigns. Borrower shall not assign any of its not and obligations under this Agreement without the prior written consent of Senior Lender, HUD and the City.
- 6. <u>Limitations of Liability</u>. Bor ower expressly agrees that no member, official, employee or agent of the City shall be individually or personally liable to the Borrower or any of its successors or assigns in the event of a default or breach by the City under this Agreement.
- 7. <u>Capitalized Terms</u>. Any capitalized terms used in this Agreement and not specifically defined herein shall have the meanings set forth in the Senior Loan Documents.
- 8. Amendment and Waiver. No amendment to this Agreement will be valid unless it is made in writing and executed by the parties of this Agreement. No specific waiver or forbearance for any breach of any of the terms of this Agreement shall be considered as a general waiver of that or any other term of this Agreement.
- 9. Entire Agreement. This Agreement contains the complete and entire understanding of the parties with respect to the matters addressed in this Agreement and no changes shall be recognized as valid unless they are made in writing and signed by the Borrower and City with prior written consent of Senior Lender and HUD.
- 10. <u>Notices</u>. Any notice, demand, request or other communication that any party hereto may desire or may be required to give to any other party hereto under or with respect to this Agreement shall be given in writing, at the addresses set forth below, by any of the following means: (a) personal service al charges prepaid by sender; (b) overnight courier all charges prepaid by sender; or (c) registered or certified United States mail, postage prepaid by sender, return receipt requested.

If to the Senior Lender: PNC Bank, N.A. 100 Pine Street, 16th Floor

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San Francisco, California 94111 Attention: Mortgage Servicing

With a copy to: United States Department of Housing and Urban Development 77 West Jackson Boulevard 26th Floor Chicago, IL 60604 Attention: Regional Counsel HUD Project No. 071-35812

If to the City: Department of Community Development City of Chicago 121 N. LaSaile Street, Room 1000 Chicago, IL 60602

Attention: Commissioner

And to: Office of the Corporation Counse! City of Chicago 121 N. LaSalle Street, Room 600 Chicago, IL 60602

Attention: Finance and Economic Development Division

If to the Borrower: Montclare Senior Residences Phase II, L.P. 1350 E Touhy Ave., Suite 370W Des Plaines, IL 60018 Attention: Philip I. Mappa

With a copy to: Applegate & Thorne-Thomsen, P.C. 322 S. Green Street, Suite 400 Chicago, Illinois 60607 Attention: Mark Burns, Esq.

-OUNTY COPY'S Such addresses may be changed by notice to the other parties hereto given in the same manner as provided in this Agreement. Any notice, demand, request or other communication sent pursuant to subsection (a) shall be deemed to have been served and effective upon such personal service or the rejection of personal service by the addressee. Any notice, demand, request or other communication sent pursuant to subsection (b) shall be deemed to have been served and effective one (1) business day after deposit with the overnight courier. Any notice, demand, request or other communication sent pursuant to subsection (c) shall be deemed to have been served and effective three (3) business days after proper deposit with the United States Postal Service.

- Applicable Law. This Agreement shall be governed by and construed in 11. accordance with the internal laws of the state of Illinois, which is the jurisdiction in which the Mortgaged Property is located, and applicable federal law.
 - Severability. The invalidity, illegality, or unenforceability of any provision of this 12.

Agreement pursuant to judicial decree shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall remain in full force and effect.

- 13. **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall constitute one and the same instrument.
- City is the owner and holder of the Phase II RDA and it remains in full force and effect and has not been further modified or amended, (b) the City has no outstanding notices of default to the Borrower and, to the knowledge of the City, there are no defaults or circumstances which with the passage of time, or giving of notice, or both, would constitute a default under the Phase II RDA, (c) the City approves of the Senior Loan being extended to the Borrower by the Senior Lender, (d) the City acknowledges the Senior Documents of Record, and (e) the City continues to be bound by an terms and conditions of the Phase II RDA, including, but not limited to, the HUD Required Provisions Rider attached to and incorporated in the Phase II RDA made applicable to the Senior Loan Documents by this Agreement.
- hereby affirms and covenants that (a) the Senior Loan shall pay for mortgage interest, prepayment premiums, and interest associated with prepayment, and related transactional costs associated with the Senior Loan, and (b) not more than \$100 of the Senior Loan shall be disbursed to the Borrower, other than for reimbursement of the costs previously incurred by Borrower described in clause (a), or shall be withdrawn by the Borrower as equity.

It is the duty of the Borrower and the duty of the Borrower's officers, directors, agents, partners, employees, contractors, subcontractors and of every applicant for certification of eligibility for a City contract or program, to cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Municipal Code. The Borrower represents that it understands and will abide by all provisions of Chapter 2-56 of the Municipal Code and that it will inform subcontractors of this provision and require their compliance.

It is also the duty of the Borrower and the duty of the Borrower's cricers, directors, agents, partners, employees, contractors, subcontractors and of every applicant for certification of eligibility for a City contract or program, to cooperate with the Legislative Pispector General in any investigation undertaken pursuant to Chapter 2-55 of the Municipal Code. The Borrower represents that it understands and will abide by all provisions of Chapter 2-55 of the Municipal Code and that it will inform subcontractors of this provision and require their compliance.

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In witness whereof, Borrower and City have executed this Agreement as of the date above written.

BORROWER:

MONTCLARE SENIOR RESIDENCES PHASE II, L.P. an Illinois limited partnership

Dur Mantalana Deuts aus U.

Montclare Partners II, L.P. an Illinois limited partnership

its General Partner

By: Montclare Seriors II Corp. an Illinois Corporation

him Mann Prociden

ACKNOWLEDGMENT

State of ILLINOIS

County of COOK

(SEAL)

The foregoing instrument was acknowledged before me this 13th day of December, 2010 by Philip I. Mappa, President of Montclare Seniors II Corp., general partner of Montclare Partners II, L.P., the general partner of Montclare Senior Residences Phase II, L.P., an Illinois limited partnership.

Vandia Pr

(Signature of Notary Public)
My commission expires:

(expiration date)

[CITY EXECUTION ON FOLLOWING PAGE]

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CITY:

CITY OF CHICAGO, ILLINOIS

an Illinois municipal corporation acting by and through its Department of Community Development

By:

Name: Andrew J. Mooney

Title: Acting Commissioner

<u>ACKNOWLEDGEMENT</u>

STATE OF ILLINOIS

COUNTY OF COOK

The foregoing instrument was acknowledged before me this 2010 by Andrew J. Mooney, Acting Commissioner of the Department of Community Development of the City of Chicago, Illinois, an Illinois municipal corporation, on behalf of the JUNIA CICHT'S OFFICO

Notary Public

OFFICIAL SEAL

(SEAL)

YOLANDA QUESADA NOTARY PUBLIC - STATE OF ILLINOIS MY COMMISSION EXPIRES:09/28/13

Printed Name

My Commission Expires:

9. 28.2013

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EXHIBIT A

LEGAL DESCRIPTION

PARCEL A:

THAT PART OF LOTS 4 AND 5 IN OWNER'S DIVISION OF THAT PART OF THE EAST 400 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 31, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTHERLY OF THE NORTHERLY LINE OF THE CHICAGO, MILWAUKEE AND SAINT PAUL RAILROAD EXCEPTING THEREFROM STREETS AND THAT PART OF THE EAST 50 FEET THEREOF DEEDED TO THE CHICAGO SUBURBAN RAILROAD, ACCORDING TO THE PLAT DATED MARCH 16, 1926 AND RECORDED IN THE RECORDER'S OFFICE OF LOOK COUNTY, ILLINOIS AS DOCUMENT NUMBER 9208703, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE WEST LINE OF LOTS 1 THROUGH 6. BOTH INCLUSIVE, IN SAID OWNER'S DIVISION WITH THE SOUTH LINE OF THE NORTH 146 FEET OF SAID LOT 5, THENCE NORTH 00 DEGREES, 00 MINUTES AND 24 SECONDS WEST ALONG THE WEST LINE OF SAID LOTS 1 THROUGH 6, A DISTANCE OF 275.82 FEET TO A POINT, THENCE SOUTH 90 DEGREES 00 MINUTES AND 00 SECONDS EAST A DISTANCE OF 90.46 FEET TO A POINT, THENCE SOUTH 00 DEGREES 00 MINUTES AND 00 SECONDS EAST A DISTANCE OF 6.25 FEET TO A POINT, THENCE SOUTH 90 DEGREES, 00 MINUTES AND 00 SECONDS EAST A DISTANCE 169.50 FEET TO A POINT, THENCE NORTH 00 DEGREES, 00 MINUTES AND 00 SECONDS WEST, A DISTANCE OF 6.25 FEET TO A POINT, THENCE SOUTH 90 DEGREES, 00 MINUTES AND 00 SECONDS EAST A DISTANCE OF 70 FEET TO A POINT ON AN EXISTING FENCE LINE (BEING A CHAIN LINK FENCE) THENCE SOUTH 00 DEGREES, 01 MINUTES AND 43 SECONDS EAST ALONG SAID FENCE LINE AND ITS SOUTHERLY EXTENSION, A DISTANCE OF 279.74 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH 146 FEET OF SAID LOT 5. THENCE NORTH 89 DEGREES, 19 MINUTES AND 09 SECONOS WEST ALONG THE SOUTH LINE OF THE NORTH 146 FEET OF SAID LOT 5, A DISTANCE OF 330 06 FEET TO THE BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL B:

A PERPETUAL AND NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OVER, UPON, ALONG AND THROUGH THE WEST 20 FEET OF THE FOLLOWING DESCRIBED LAND AND SOUTH OF THE NORTHERLY RIGHT-OF-WAY LINE OF BELDEN AVENUE AS CRE4 I'ED IN THE GRANT OF EASEMENT DATED SEPTEMBER 25, 2001 AND RECORDED SEPTEMBER 27, 2001 AS DOCUMENT 0010901945:

LOT 2 (EXCEPT THE EAST 40.00 FEET THEREOF) AND THAT PART OF LOT 4 in owner's division of that part of the East 400.00 feet of the West 1/2 of the Northeast 1/4 of Section 31, township 40 north, range 13, east of the third principal meridian, lying northerly of the northerly line of the chicago, milwaukee and saint paul railroad, excepting therefrom streets and that part of the East 50.00 feet thereof deeded to the chicago suburban railroad, according to the plat dated march 16, 1926 and recorded in the recorder's office of cook county, illinois as document 9208703, bounded and described as follows:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 2; THENCE SOUTH 89 DEGREES, 19 MINUTES, 09 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 2, A DISTANCE OF 310.00 FEET TO A POINT 40.00 FEET WEST OF THE EAST LINE OF SAID LOT 2; THENCE SOUTH 00 DEGREE, 00 MINUTE, 24 SECONDS EAST ALONG A LINE 40.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID LOT 2, A DISTANCE OF 150.00 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 4; THENCE SOUTH 89 DEGREES, 19 MINUTES, 09 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 4, A DISTANCE OF 4.50 FEET TO A POINT; THENCE SOUTH 09

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DEGREES, 25 MINUTES, 37 SECONDS EAST, A DISTANCE OF 45.70 FEET TO A POINT; THENCE SOUTH 01 DEGREE, 22 MINUTES, 33 SECONDS EAST, A DISTANCE OF 60.94 FEET TO A POINT; THENCE SOUTH 12 DEGREES, 40 MINUTES, 46 SECONDS EAST, A DISTANCE OF 29.48 FEET TO A POINT; THENCE SOUTH 00 DEGREE, 01 MINUTE, 43 SECONDS EAST, A DISTANCE OF 131.72 FEET TO A POINT; THENCE NORTH 90 DEGREES, 00 MINUTE, 00 SECOND WEST, A DISTANCE OF 70.00 FEET TO A POINT; THENCE SOUTH 00 DEGREE, 00 MINUTE, 00 SECOND EAST, A DISTANCE OF 6.25 TO A POINT; THENCE NORTH 90 DEGREES, 00 MINUTE, 00 SECOND WEST, A DISTANCE OF 169.50 FEET TO A POINT; THENCE NORTH 00 DEGREE, 00 MINUTE, 00 SECOND WEST, A DISTANCE OF 6.25 FEET TO A POINT; THENCE NORTH 90 DEGREES, 00 MINUTE, 00 SECOND WEST, A DISTANCE OF 90.46 FEET TO A POINT ON THE WEST LINE OF LOTS 1 TO 6, BOTH INCLUSIVE, IN SAID OWNER'S DIVISION; THENCE NORTH 00 DEGREE, 00 MINUTE, 24 SECONDS WEST ALONG THE WEST LINE OF SAID LOTS, A DISTANCE OF 420.23 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL C:

NON-EXCLUSIVE EASEMENTS FOR INGRESS, EGRESS, USE AND ENJOYMENT AS CREATED BY AND SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR MONICLARE SENIOR RESIDENCES RECORDED AS DOCUMENT NUMBER 0515203114.

Apue, Co Commonly known as 6640 W. Belden Avenue, Chicago, Illinois 60635

PIN: 13-31-205-065-0000