

# UNOFFICIAL COPY

This instrument prepared by:

Keith W. Groebe, Esq.  
Masuda, Funai, Eifert & Mitchell, Ltd.  
203 North LaSalle Street, Suite 2500  
Chicago, IL 60601



Doc#: 1215118109 Fee: \$58.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 05/30/2012 03:37 PM Pg: 1 of 11

Upon recording, return to:

PNC Bank, N.A.  
c/o PNC Multifamily Capital  
575 Market St 28<sup>th</sup> Floor  
San Francisco, CA 94108  
ATTN: Kathy Kadiff, SVP

Project No.: 071-10012 and 071-35820  
Project Name: Lake View Towers Apartments

## SUBORDINATION AGREEMENT

**THIS SUBORDINATION AGREEMENT** (this "Agreement") is made as of the 1<sup>st</sup> day of May, 2012, by and among the Secretary of Housing and Urban Development (the "Subordinate Lender or at times ("HUD")), PNC Bank, N.A., a national banking association, its successors and assigns (the "Senior Lender" or at times, "PNC"), and Lake View Towers Residents Association Inc., an Illinois not-for-profit corporation (the "Borrower" or the "Owner").

### Recitals

A. The Subordinate Lender is the payee under that certain Residual Receipts Note, dated as of August 1, 1992, in the original principal amount of \$7,099,500 made by American National Bank and Trust Company of Chicago, not personally, but solely as Trustee (the "Land Trustee") under Trust Agreement dated August 26, 1991 and amended and restated August 1, 1992 and known as Trust No. 114365-08 (the "Subordinate Note"). The Subordinate Note is: (i) secured by that certain Third Mortgage, recorded August 27, 1992 in the Office of the Cook County Recorder as Document Number 92635719 (the "Subordinate Mortgage"), and encumbering certain property commonly known as 4550 N. Clarendon, Chicago, Illinois, 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 "Development"; and (ii) evidenced, secured and governed by certain other loan documents (the "Other Documents"). The Subordinate Lender is also the payee under that certain Flexible Subsidy Residual Receipts Note in the original principal amount of \$450,000, executed September 14, 1994 by Lake View Towers Preservation Corp. (the "Unsecured Subordinate Note"). The Subordinate Note, the Subordinate Mortgage, the Other Documents and the Unsecured Subordinate Note (collectively the "Subordinate Loan Documents") are being subordinated and amended by this Agreement.

B. The Subordinate Note and the Unsecured Subordinate Note are also governed by that certain Use Agreement, recorded August 27, 1992 in the Office of the Cook County Recorder as Document Number 92635720, as amended by that certain Agreement Amending and

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Extending Use Agreement, recorded December 4, 2009 in the Office of the Cook County Recorder as Document Number 0933818090, and that certain Second Agreement Amending and Extending Use Agreement, between HUD and Owner, recorded May 30, 2012 in the Office of the Cook County Recorder as Document Number 1215118101, (collectively, the "HUD Flex Use Agreement").

C. The Borrower has succeeded to the Land Trustee as owner of the Development, and pursuant to that certain Assumption and Modification Agreement recorded October 2, 2001 in the Office of the Cook County Recorder as Document Number 0010918442, whereunder the Borrower, among other things, assumed all of the obligations of the Land Trustee under the Subordinate Note, the Subordinate Mortgage and the Other Documents. Pursuant to that certain Acknowledgement of Assumption of Flexible Subsidy Residual Receipts Note, dated as of December 4, 2009 by and between the Subordinate Lender and the Borrower, the Borrower among other things assumed all of the obligations of Lake View Towers Preservation Corp. under the Unsecured Subordinate Note.

D. The Senior Lender is, concurrently herewith, making a loan to the Borrower in the amount of \$27,943,500.00 (the "Senior Loan") insured or to be insured by HUD under Section 223(a)(7) of the National Housing Act. The proceeds of the Senior Loan are being used to refinance and repay an existing first priority mortgage loan. The Senior Loan is evidenced by that certain Mortgage Note, dated May 1, 2012 (the "Senior Note") made by the Borrower payable to the order of the Senior Lender in the original principal amount of \$27,943,500.00. The Senior Note is secured by, among other things, that certain Mortgage, dated May 1, 2012 (the "Senior PNC Mortgage"), made by the Borrower in favor of the Senior Lender, which is being recorded concurrently herewith in the Office of the Cook County Recorder. In connection with the Senior Loan, the Borrower and the Secretary of Housing and Urban Development have entered into that certain Regulatory Agreement for Multifamily Housing Projects dated as of the date hereof and being recorded in the Office of the Cook County Recorder concurrently herewith (the "Senior Regulatory Agreement").

E. The Senior Note, Senior PNC Mortgage and Senior Regulatory Agreement, and all other documents evidencing, securing or governing the Senior Loan are hereinafter collectively referred to as the "Senior Loan Documents".

F. PNC is also the holder of that certain Second Mortgage Note dated as of December 1, 2009 evidencing a loan insured by HUD under Section 241(a) of the National Housing Act, secured by a Second Mortgage dated as of December 1, 2009, recorded in the Office of the Cook County Recorder as Document Number 0933818092 and governed by a certain Amended and Restated Regulatory Agreement for Multifamily Housing Projects dated as of December 1, 2009 recorded in the Office of the Cook County Recorder as Document Number 0933818092 and which is being amended by that certain Amendment to Amended and Restated Regulatory Agreement dated as of the date hereof and being recorded in the Office of the Cook County Recorder concurrently herewith. Such Second Mortgage Note, Second Mortgage, Amended and Restated Regulatory Agreement for Multifamily Housing Projects (being amended as aforesaid) and other documents evidencing, governing and securing such loan are being amended by that certain Subordination Agreement and Amendment of Junior Loan Documents between PNC and the Owner dated as of the date hereof and being recorded in the Office of the Cook County Recorder concurrently herewith, and are all (as so amended) collectively, the "Amended 241(a) Documents". All obligations of the Borrower to the Senior Lender now existing or hereafter arising, due or to become due, under the Senior Note and the other Senior

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Loan Documents along with all obligations of the Borrower now existing or hereafter arising, due or to become due, under the Amended 241(a) Documents, are collectively referred to in this Agreement as the "Senior Liabilities". All obligations of the Borrower to the Subordinate Lender now existing or hereafter arising, due or to become due, under the Subordinate Note, the Unsecured Subordinate Note and the other Subordinate Loan Documents are collectively referred to in this Agreement as the "Subordinate Liabilities." The term "Subordinate Liabilities" shall not include the HUD Flex Use Agreement.

G. The making of the Senior Loan by the Senior Lender and subordination of the Subordinate Loan Documents and Subordinate Liabilities by HUD are conditioned upon the entry into this Agreement by the parties hereto.

**NOW, THEREFORE**, in consideration of the foregoing Recitals and as an inducement to the Senior Lender to make the Senior Loan, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto represent, warrant and agree as follows:

1. Warranties of the Subordinate Lender. The Subordinate Lender represents and warrants that true, correct and complete copies of all of the Subordinate Loan Documents have previously been delivered to the Senior Lender and are described in Recital A above.
2. Subordination of Liens, Consents and Approvals.
  - a. The Subordinate Liabilities and any and all amendments, modifications, extensions, replacements or renewals thereof are and hereby shall be subordinate to the Senior Liabilities and the Amended 241(a) Documents, and the liens and security interests created by the Subordinate Loan Documents are and hereby shall be subordinate to the liens and security interests created by the Senior Loan Documents, the Amended 241(a) Documents and to any and all amendments, modifications, extensions, replacements or renewals of the Senior Loan Documents and the Amended 241(a) documents, and to any and all advances heretofore made or hereafter to be made under the Senior Loan Documents, the Amended 241(a) Documents or in connection with the Senior Liabilities, pursuant to any of the terms thereof. The Subordinate Lender hereby consents to and approves the Senior Loan Documents, the Amended 241(a) Documents and all documents evidencing, governing or securing the Senior Liabilities, the Amended 241(a) Documents and all amendments, modifications, extensions, replacements or renewals heretofore or hereafter made to the Senior Loan Documents, the Amended 241(a) Documents and all documents evidencing, governing or securing the Senior Liabilities.
  - b. The Senior Liabilities and the Amended 241(a) Documents and the liens and security interests created by the Senior Loan Documents and the Amended 241(a) Documents, and any and all amendments, modifications, extensions, replacements or renewals thereof are and hereby shall be subordinated to the HUD Flex Use Agreement, and the covenants, conditions and restrictions created thereby and to any and all amendments, modifications, extensions, replacements or renewals of the HUD Flex Use Agreement, pursuant to any of the terms thereof.
3. Subordination of Payment. Until such time as all of the Senior Liabilities and the Amended 241(a) Documents have been paid in full, the payment of the Subordinate Liabilities shall be subordinated to the payment of all of the Senior Liabilities and the Amended 241(a)

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Documents, and the Subordinate Lender shall accept no payments or other distributions whatsoever except from distributable "Residual Receipts" or "Surplus Cash", (as applicable, as defined and determined in accordance with the HUD Regulatory Agreements) on account of the Subordinate Liabilities or the Amended 241(a) Documents, nor shall any property or assets of the Borrower be applied to the purchase or acquisition of any of the Subordinate Liabilities or the Amended 241(a) Documents. The Subordinate Lender acknowledges that any payment of the Subordinate Liabilities from "Residual Receipts" or "Surplus Cash", as applicable, is subordinate to payment of any of the Senior Liabilities or Amended 241(a) Documents that are payable from "Residual Receipts" or "Surplus Cash", as applicable, if any.

4. Constructive Trust. If the Subordinate Lender receives any payment or other distribution of any kind of character from the Borrower or from any other source whatsoever in respect to any of the Subordinate Liabilities, other than as expressly permitted by the terms of this Agreement, such payment or other distribution shall be received and held by the Subordinate Lender in trust for the Senior Lender or PNC as holder of the Amended 241(a) Documents, as applicable, and promptly turned over by the Subordinate Lender to the Senior Lender.

5. Successors and Assigns. This Agreement shall be binding upon PNC and the Subordinate Lender and the successors and assigns thereof, whether immediate or remote.

6. Amendment of Agreement. This Agreement may not be altered or amended without the prior written consent of all of the parties hereto.

7. Effect on Due on Sale Provisions. The Subordinate Lender waives any due on sale, due on encumbrance or due on refinancing provision in the HUD Flex Use Agreement that certain Amended and Restated Regulatory Agreement for Multifamily Housing Projects dated as of December 1, 2009 recorded in the Office of the Cook County Recorder as Document Number 0933818092 being amended by that certain Amendment to Amended and Restated Regulatory Agreement for Multifamily Housing Projects dated as of the date hereof Being recorded concurrently herewith in the Office of the Cook County Recorder, that certain Regulatory Agreement for Multifamily Housing Projects dated as of the date hereof being recorded concurrently herewith in the office of the Cook County Recorder, or the Subordinate Loan Documents that would give rise to the Subordinate Liabilities becoming accelerated or immediately due and payable, as the same may relate to the Senior Liabilities. This waiver does not extend to any subsequent sale, encumbrance or refinancing of the Development. As subordinated by this Agreement, the Subordinate Loan Documents shall continue to remain in full force and effect and are hereby ratified and confirmed by the Borrower and the Subordinate Lender.

8. Notices. 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; (b) overnight courier; or (c) registered or certified United States mail, postage prepaid, return receipt requested.

If to the Senior Lender:

PNC Bank, N.A.  
c/o PNC Multifamily Capital  
575 Market St, 28<sup>th</sup> Floor

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San Francisco, CA 94108  
ATTN: Kathy Ratliff, SVP

With a copy to:

United States Department of Housing and Urban Development  
77 West Jackson Boulevard, 26th Floor  
Chicago, Illinois 60604  
Attention: Regional Counsel  
HUD Project No's. 071-35820, 071-10012 and 071-41008

If to the Subordinate Lender:

Secretary of Housing and Urban Development  
c/o U.S. Department of Housing and Urban Development  
77 W Jackson  
26th Floor  
Chicago, Illinois 60604  
Attention: Legal Department

If to the Borrower:

Lake View Towers Residents Association Inc.  
4550 N. Clarendon  
Chicago, IL 60611  
Attention: President

With a copy to:

Keith W. Groebe, Esq.  
Masuda, Funai, Eifert & Mitchell, Ltd.  
203 North LaSalle Street, Suite 2500  
Chicago, IL 60601

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. 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.

9. Construction and Interpretation of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall only be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

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10. Termination. This Agreement shall terminate as to the Senior Liabilities upon full and final payment of any and all amounts due under the Senior Liabilities, and shall terminate as to the Amended 241(a) Documents upon full and final payment of all amounts due under the Amended 241(a) Documents, provided that all rights of the Subordinate Lender under this Agreement shall automatically terminate at such time as the Subordinate Liabilities have been paid in full and the HUD Use Agreement has been terminated.

11. Counterparts. This Agreement may be executed in counterparts, and each counterpart shall, for all purposes for which an original of this Agreement must or may be produced or exhibited, be the Agreement, but all such counterparts shall constitute but one and the same instrument.

[Signatures appear on the following page.]

Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, this Agreement has been executed and delivered by the authorized representatives of the parties.

**SENIOR LENDER:**

PNC Bank, N.A.,  
a national banking association, in its capacities as  
both the Senior Lender and Holder of the Amended  
241(a) Documents

By: Kathy Raliff  
Name: KATHY RALIFF  
Title: Vice President

See Attached CA Acknowledgement  
**SUBORDINATE LENDER:**

The Secretary of Housing and Urban Development

By: [Signature]  
Name: \_\_\_\_\_  
Title: Authorized Agent

**BORROWER:**

Lake View Towers Residents Association Inc.,  
an Illinois not-for-profit corporation

By: \_\_\_\_\_  
Name: Stephen Somuah  
Title: President

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IN WITNESS WHEREOF, this Agreement has been executed and delivered by the authorized representatives of the parties.

**SENIOR LENDER:**

PNC Bank, N.A.,  
a national banking association, in its capacities as  
both the Senior Lender and Holder of the Amended  
241(a) Documents

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_


**SUBORDINATE LENDER:**

The Secretary of Housing and Urban Development

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Authorized Agent

**BORROWER:**

Lake View Towers Residents Association Inc.,  
an Illinois not-for-profit corporation

By:  \_\_\_\_\_  
Name: Stephen Somuah  
Title: President



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State of \_\_\_\_\_ )  
 ) ss  
County of \_\_\_\_\_ )

This instrument was acknowledged before me on May \_\_\_\_\_, 2012, by \_\_\_\_\_, as \_\_\_\_\_ of PNC Bank, N.A.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

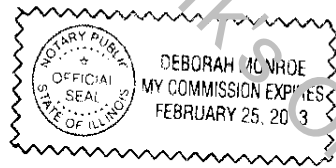
State of Illinois )  
 ) ss  
County of Cook )

Before me, Deborah Monroe, a Notary Public in and for said State, on this 30th day of May, 2012, personally appeared MARY Anderson, who is personally well known to me to be the Authorized Agent of the Department of Housing and Urban Development, and the person who executed the foregoing instrument by virtue of the authority vested in him/her by the National Housing Act, as amended, and I having first made known to him/her the contents thereof, he/she did acknowledge the signing thereof to be his/her free and voluntary act and deed on behalf of the Secretary of Housing and Urban Development, for the uses, purposes and considerations therein set forth.

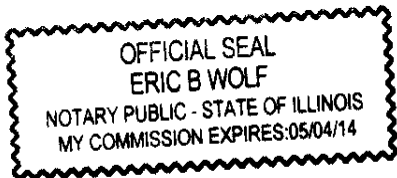
Witness my hand and official seal this 30th day of May, 2012.

Deborah Monroe  
\_\_\_\_\_  
Notary Public

State of Illinois )  
 ) ss  
County of Cook )



This instrument was acknowledged before me on May 29, 2012, by Stephen Somuah, as President of Lake View Towers Residents Association Inc.



Stephen Somuah  
\_\_\_\_\_  
Notary Public

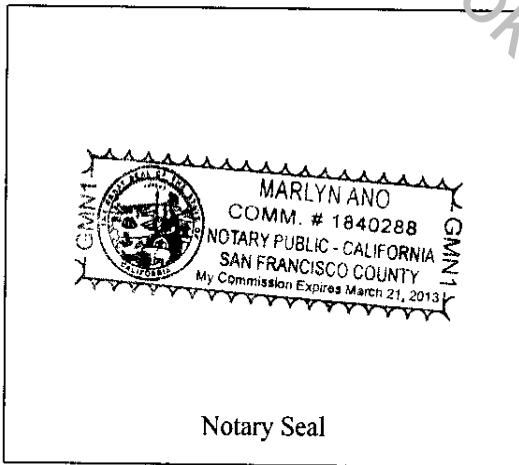
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## ACKNOWLEDGMENT

State of: CALIFORNIA }  
 County of: SAN FRANCISCO } ss }

On May 23, 2012 before me, MARLYN ANO, Notary Public, personally appeared Kathy Ratliff who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

Signature: [Signature]

Printed Name: Marlyn Ano

My Commission Expires: 3/21/13

DESCRIPTION OF ATTACHED DOCUMENT: (Optional)

Title or Type of Document: Subordination Agreement

Document Date: 5/1/12 Number of Pages: 8

Signers other than named above : \_\_\_\_\_

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## Exhibit A Legal Description

Parcel 1:

Lot 3 (except the West 11.0 feet of the North 79.336 feet) and Lots 4 to 12, both inclusive, the East 79 feet of Lot 1 (measured along the South Line of said Lot); all of the East and West vacated alley lying South of and adjoining Lots 3 to 6, both inclusive, and all of the North and South vacated alley lying West of and adjoining Lots 7 to 11, both inclusive, all in Christian Kurz's Resubdivision of Lots 5 and 6 in Rufus C. Hall's Subdivision of part of the East 1/2 of the Northeast 1/4 of Section 17, Township 40 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2:

Lot 10 and the East 50.60 feet of Lot 9 in Wallingford's Subdivision of the 15 Rods South of and adjoining the North 95 Rods of the East 1/2 of the Northeast 1/4 of Section 17, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N.: 14-17-221-009-0000  
 14-17-221-010-0000  
 14-17-221-011-0000  
 14-17-221-012-0000  
 14-17-221-025-0000  
 14-17-221-026-0000  
 14-17-221-027-0000  
 14-17-221-028-0000  
 14-17-221-029-0000  
 14-17-221-032-0000

Address: 4550 North Clarendon Avenue  
Chicago, Illinois