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OCT 20 2011 09:15 P 14

Fee amount: 70.50
FB: 39-09841
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2011089041

SUBORDINATION, NONDISTURBANCE AND
ATTORNMENMENT AGREEMENT

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SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made and entered into as of October 17, 2011 by and among Piano Building Master Tenant, LLC, a Nebraska limited liability company ("Lessee"); Piano Building, LLC, a Nebraska limited liability company ("Owner"); Dundee Bank, a branch of Security State Bank (together with any permitted successors or assigns, the "Lender"); and TCC Historic Tax Credit Fund 2011, LP, a Virginia limited partnership ("Investor").

RECITALS

WHEREAS, Owner is the owner of a building located in Omaha, Nebraska and commonly known as the Hillcrest Building now known as the Piano Building (the "Building"), which Owner intends to rehabilitate/is in the process of rehabilitating; and

WHEREAS, Owner is the owner of the certain tract(s) of land upon which the Building is located, together with certain other improvements and all appurtenances, easements, rights of way and other rights belonging to or in any way pertaining thereto or to the Building, more particularly described on Exhibit A attached hereto (collectively, the "Land" and, together with the Building, the "Property"); and

WHEREAS, Owner intends to rehabilitate the Building in a manner that qualifies for the historic rehabilitation tax credit allowed for qualified rehabilitation expenditures incurred in connection with the "certified rehabilitation" of a "certified historic structure" (the "Historic Tax Credit") pursuant to Section 47 of the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of prior or succeeding law (the "Code"); and

WHEREAS, Lessee has been formed to lease the Property including the rehabilitated Building from Owner pursuant to the terms of that certain Lease dated October 17, 2011 between Owner, as landlord, and Lessee, as lessee (the "Lease"); and

WHEREAS, pursuant to that certain Operating Agreement of Lessee dated October 17, 2011 (the "Lessee's Operating Agreement"), Investor has acquired a 99.99% interest in Lessee and has made or will make a substantial investment therein; and

WHEREAS, Owner and Lessee have executed or will execute that certain HTC Pass-Through Agreement (the "Pass-Through Agreement") dated October 17, 2011 pursuant to which Owner will elect under Section 50 of the Code to pass-through to Lessee the Historic Tax Credit to which Owner is otherwise entitled as a result of the rehabilitation of the Building; and

WHEREAS, Lender is the lender under that certain Commercial Loan Agreement dated as of March 29, 2011 which will convert to or Lender shall extend to a five (5) year term loan on or about April 1, 2012, by and between Lender and Owner relating to a loan by Lender to Owner, as amended (collectively, the "Mortgage Loan"), which Mortgage Loan is secured by means of a first lien mortgage or deed of trust on the Property (the "Mortgage") and other related

security documents and financing statements given by Owner in favor of Lender, as amended (collectively, the “Mortgage Loan Documents”); and

WHEREAS, the Mortgage Loan Documents require that Lender consent to any lease of the Property; and

WHEREAS, Investor has required that Lender provide certain assurances as to non-disturbance of Lessee’s rights under the Lease.

NOW, THEREFORE, in consideration of the forgoing, of mutual promises of the parties hereto and of other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereby agree as follows:

1. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Lease. In addition to the defined terms set forth in the Recitals to this Agreement, the following defined terms used herein shall have the meanings specified below:

“Disqualified Transferee” means any of the following:

(a) a tax exempt organization described in Section 50(b)(3) of the Code unless the Property is used by such organization predominantly in an unrelated trade or business the income of which is subject to tax under Section 511 of the Code;

(b) the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing;

(c) a foreign person or entity (as defined in Section 168(h)(2)(C) of the Code) unless more than 50 percent of the gross income derived by the foreign person or entity is subject to U.S. tax or included under Section 951 of the Code in the gross income of a United States shareholder for the taxable year with or within which ends the taxable year of the controlled foreign corporation in which such income was derived;

(d) a mutual savings bank, cooperative bank, or domestic building and loan association to which Section 593 of the Code applies;

(e) a regulated investment company or real estate investment trust subject to taxation under subchapter M, Chapter 1 of the Code (but not including a “taxable REIT subsidiary,” as defined in Section 856(1) of the Code; or

(f) a cooperative organization described in Section 1381(a) of the Code.

“Recapture Event” means any action, happening or event which would cause a recapture of the Historic Tax Credits under Section 50 of the Code.

“Recapture Period” means the period commencing as of the date hereof and ending on the next business day following the fifth (5th) anniversary of the date on which the last “qualified

rehabilitation expenditure” as defined in Section 47(c)(3) of the Code with respect to the Property is first placed in service.

“Transfer” means (a) the institution of any foreclosure, trustee’s sale or other like proceeding, (b) the appointment of a receiver for Owner or the Property, (c) the exercise of rights to collect rents under the Mortgage Loan Documents or an assignment of rents, (d) the recording by Lender or its successor or assignee of a deed in lieu of foreclosure for the Property, or (e) any transfer or abandonment of possession of the Property to Lender or its successor or assigns in connection with any proceedings affecting Owner under the Bankruptcy Code, 11 U.S.C. §101 et seq.

“Transferee” means Lender, its successors and assigns, any designee of Lender or any other party taking title to the Property in connection with a Transfer.

2. Lender Consent. Lender hereby consents to the Lease and to the acquisition by Investor of an interest in the Lessee and to the execution of the Lessee’s Operating Agreement and related documents, and agrees that the execution and delivery thereof by Owner and/or the Lessee, as the case may be, shall not constitute a default under the Mortgage Loan.

3. Subordination. The Mortgage is and shall unconditionally be and remain at all times a lien or charge upon the Property prior and superior to the Lease and all rights and privileges of Lessee thereunder, or any subtenant thereunder, and the Lease, and all rights and privileges of Lessee or any subtenant are hereby unconditionally subjected and made subordinate to the lien or charge of the Mortgage.

4. Lender’s Exercise of Remedies: Non-Disturbance.

(a) During the Recapture Period, Lender shall not terminate the Lease (even in the event of a default by the Lessee under the Lease) or exercise any remedy (at law or in equity) that would cause a Recapture Event, including without limitation permitting any Transfer to a Disqualified Transferee. This provision shall not preclude Lender from exercising its rights and remedies (i) to effectuate a Transfer or exercise any other right or remedy, provided such Transfer or exercise of such right or remedy does not cause a Recapture Event; or (ii) under any guarantees of the Mortgage Loan.

(b) Prior to commencing efforts to effectuate a Transfer during the Recapture Period, Lender shall provide written notice to Investor of its intention to effectuate a Transfer. Lender shall not effectuate such Transfer unless Lender shall have received either (i) the consent of Investor to such Transfer, which consent shall be given if the Transfer does not cause a Recapture Event; or (ii) an opinion of Investor’s counsel that such Transfer, in and of itself, more likely than not, will not cause a Recapture Event. Any attempted Transfer in violation of this Section 4(b) shall be void *ab initio*.

(c) After the Recapture Period, Lender may terminate the Lease solely if the Lessee is in default thereunder and may take any other action otherwise prohibited by Section 4(a). Prior to commencing any action to effect a termination of the Lease upon a default by Lessee thereunder, Lender shall first give written notice to Investor of its intention to terminate the Lease and Investor will have a period of time after the service of such notice upon it which is the

same period of time as is given under the Lease, to cause Lessee to cure any defect in Lessee's compliance with the Lease, such that upon such cure the Lessee would be entitled to the non-disturbance of the Lease.

(d) Nothing in the Mortgage Loan Documents or any replacement documents with any Transferee will preclude Investor's right to collect the Priority Return and the Asset Management Fee (as such terms are defined in the Lessee's Operating Agreement) from Owner, Piano Building Managing Member, LLC (the "Lessee's Managing Member") and/or any guarantor of such obligations to Investor. However, if at anytime during the Recapture Period Lessee is in default of its obligations to pay rent, additional rent or any other amounts due under the Lease, no distributions of cash flow may be made to any member of Lessee under Lessee's Operating Agreement and Lessee shall pay to Owner or Transferee, as applicable, all amounts of cash flow available from any source after the payment of reasonable and necessary operating expenses. Such amounts paid will be applied to Lessee's obligations under the Lease to pay rent, additional rent or any other amounts due under the Lease with any unsatisfied obligations accruing until Lessee has cash flow available to pay all such amounts due.

(e) No event of default under the Mortgage Loan Documents or any replacement documents with any Transferee will result from (i) the exercise of the "Put" or the "Call Option" as described in the Purchase Agreement of even date herewith between Investor and Lessee's Managing Member or (ii) the removal of the Lessee's Managing Member by Investor pursuant to the Lessee's Operating Agreement.

(f) After a Transfer, if Owner has not yet received approval of Part 3 of the Historic Preservation Certification Application – Request for Certification of Completed Work, Lender agrees to take all reasonable actions requested by Lessee and Investor to obtain such approval (at the sole expense of Lessee or Investor), including, without limitation, the execution of the Part 3 application and providing access to the Property for inspection by the National Parks Service and any similar state agency.

(g) The provisions of this Agreement binding on Lender shall also be binding on any Transferee.

5. Attornment.

(a) Lessee shall attorn to any Transferee, including Lender if Lender becomes a Transferee, as the landlord under the Lease, provided such Transfer complies with the provisions of this Agreement. Said attornment is subject to the limitation of Transferee's obligations set forth in Section 5(b) below and shall be effective and self-operative without the execution of any further instruments upon Transferee succeeding to the interest of the landlord under the Lease. Within ten (10) days after receipt of a written request therefor from a Transferee, Lessee agrees to provide such Transferee with a written confirmation of its attornment and any other matter set forth in this Agreement.

(b) Upon a Transfer of the Property to a Transferee, which Transfer complies with the provisions of this Agreement, the Lease will be recognized as a direct lease from Transferee to Lessee upon such Transfer for the balance of the term thereof. In the event that the Lease is recognized as a direct lease from a Transferee as aforesaid, then the liability of a Transferee

under the Lease shall exist only so long as such Transferee is the owner of the Property, and such liability shall not continue or survive with respect to claims accruing after further transfer of ownership. A Transferee shall not be: (i) liable for any act or omission of any prior landlord (including Owner), (ii) subject to any offsets or counterclaims which Lessee may have against a prior landlord (including Owner), unless expressly provided for herein, (iii) bound by any prepayment of Base Rent which Lessee may have made in excess of the amounts then due for the next succeeding month, unless specifically approved in writing by Lender, or be liable or responsible for any security deposit or other sums which Lessee may have paid under the Lease unless such deposit or other sums have been physically delivered to Transferee, (iv) bound by any notices given by Lessee to Owner of which it did not also receive notice, (v) required after a fire, casualty or condemnation of the Property to repair or rebuild the same to the extent that such repair or rebuilding requires funds in excess of the insurance or condemnation proceeds specifically allocable to the Property and arising out of such fire, casualty or condemnation which have actually been received by a Transferee, and then only to the extent required by the terms of the Lease, (vi) bound by any modification to the Lease made without Lender's consent, or (vii) required to undertake or complete any of Landlord's Work.

6. Notice and Cure Rights.

(a) Lessee and Owner each agrees, simultaneously with the giving of any notice under the Lease, to give a duplicate copy thereof to Lender. Should either Owner or Lessee default in respect of any of the provisions of the Lease, Lender shall have the right, but not the obligation, to cure such default, and either Lessee or Owner, as the case may be, shall accept performance by or on behalf of Lender as though, and with the same effect as if, it had been done or performed by the defaulting party. Lender will have a period of time after the service of such notice upon it within which to cure the default specified in such notice, or cause it to be cured, which is the same period for cure, if any, as is given under the Lease in respect of the specified default after the giving of any required notice thereunder.

(b) Lender and Owner each agrees, simultaneously with the giving of any notice with respect to the Mortgage Loan, to give a duplicate copy thereof to Lessee and to Investor. Should (i) Owner default in respect of any of the provisions of the Mortgage Loan or (ii) Owner or Lessee default in respect of any of the provisions of the Lease, Investor shall have the right, but not the obligation, to cure such default or cause it to be cured, and Lender and Owner, as the case may be, shall accept performance by or on behalf of Investor as though, and with the same effect as if it had been done or performed by Owner or Lessee, as the case may be. Lessee and Investor each will have a period of time (co-terminously) after the service of such notice upon it within which to cure or cause to be cured the default specified in such notice, or cause it to be cured, which is the same period for cure, if any, as is given under the Mortgage Loan Documents in respect of the specified default after the giving of any required notice thereunder.

7. Miscellaneous.

(a) This Agreement shall inure to the benefit of, and be binding upon, the parties hereto, their successors and assigns (including all Transferees); provided, however, that in the event of the assignment or transfer of the interest of a Transferee, all obligations and liabilities of such Transferee under this Agreement shall terminate, and thereupon all such obligations and

liabilities shall be the responsibility of the party to whom the Transferee's interest is assigned or transferred; and provided further that the interest of Lessee under this Agreement may not be assigned or transferred except to the extent the assignment of Lessee's interest in the Lease is permitted under the Lease.

(b) This Agreement is the whole and only agreement among the parties hereto with regard to the subordination of the Lease to the lien or charge of the Mortgage, and shall supersede and cancel all other subjection or subordination agreements, including, but not limited to, those provisions, if any, contained in the Lease that provide for the subjection or subordination of said Lease to a deed of trust or to a mortgage or mortgages, or other similar mortgage loan documents. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto.

(c) This Agreement shall be governed by, construed, applied and enforced in accordance with the laws of the State of Nebraska. The invalidity, legality or enforceability of any provision of this Agreement shall not affect or impair the validity, legality or enforceability of the remainder of this Agreement, and to this end, the provisions of this Agreement are declared to be severable.

(d) In the event any legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising out of, this Agreement, or to recover damages for the breach thereof, the party prevailing in any such action or proceeding shall be entitled to recover from the non-prevailing party all reasonable attorneys' fees, costs and expenses incurred by the prevailing party.

(e) The Lease may not be modified or amended so as to reduce the rent or other payments due Owner thereunder or shorten the Term provided thereunder or so as to adversely affect in any other respect to any material extent the rights of Lender, nor shall the Lease be canceled or surrendered, without the consent, in each instance, of Lender.

(f) Any notices required hereunder will be in writing and will be either given by U.S. registered or certified mail, return receipt requested, with postage prepaid (except in the event of a postal disruption, by strike or otherwise, in the United States), or sent by telex or facsimile promptly confirmed in writing, or sent by personal delivery by a nationally recognized courier service for next day delivery. The current addresses and telecopy numbers of the parties to which any notice provided for herein shall be sent, are as follows:

If to Owner:

Piano Building, LLC
4644 Dodge Street
Omaha, Nebraska 68132
Attention: Matt Dougherty
Facsimile: 866-861-6282

With a copy to:

Deborah L. Petersen, P.L.C.
The Creston House
215 South Main Street, Suite 301
P.O. Box 893
Council Bluffs, Iowa 51502-0893
Facsimile: 712-328-1562

If to Lessee:

Piano Building Master Tenant, LLC
c/o Piano Building Managing Member, LLC, Managing Member
4644 Dodge Street
Omaha, Nebraska 68132
Attention: Matt Dougherty
Facsimile: 866-861-6282

With a copy to:

Deborah L. Petersen, P.L.C.
The Creston House
215 South Main Street, Suite 301
P.O. Box 893
Council Bluffs, Iowa 51502-0893
Facsimile: 712-328-1562

and

Rushton, Stakely, Johnston & Garrett, PA
184 Commerce Street
Montgomery, Alabama 36104
Attention: William I. Eskridge
Facsimile: (334) 481-0805

If to Investor:

TCC Historic Tax Credit Fund 2011, LP
1527 Third Street
New Orleans, Louisiana 70130
Attention: John S. Bowman, Jr.
Fax Number: (504) 799-3199

With a copy to:

Rushton, Stakely, Johnston & Garrett, PA
184 Commerce Street
Montgomery, Alabama 36104
Attention: William I. Eskridge
Facsimile: (334) 481-0805

and

If to Lender:

Dundee Bank
5015 Underwood Avenue
Omaha, Nebraska 68132
Attention: Mr. Adrian Hernandez
Facsimile: (402) 504-1900

With a copy to:

Gross & Welch P.C.L.L.O.
1500 Omaha Tower
2120 South 72nd Street
Omaha, Nebraska 68124
Attention: David C. Nelson
Facsimile: (402) 392-8101

Any party may designate another addressee (and/or change its address or telecopy number) for notices hereunder by a notice given pursuant to this Section 7(f). Notices delivered personally or by facsimile will be effective upon delivery to an authorized representative of the party at the designated address; notices sent by mail in accordance with the above paragraph will be effective upon execution by the addressee of the return receipt requested.

(g) This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties have not signed the original or the same counterpart.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have hereunto set their signatures and seals to this Subordination, Non-Disturbance and Attornment Agreement as of the date first above written.

OWNER:

Piano Building, LLC, a Nebraska limited liability company

By: Piano Building Managing Member, LLC, a
Nebraska limited liability company

Its: Managing Member

By:


Matt Dougherty

Its Managing Member

LESSEE:

Piano Building Master Tenant, LLC, a Nebraska limited liability company

By: Piano Building Managing Member, LLC, a
Nebraska limited liability company

Its: Managing Member

By:


Matt Dougherty

Its Managing Member

LENDER:

Dundee Bank, a branch of Security State Bank

By:

Name: 
Adrian Hernandez

Its: Community Banking Officer

INVESTOR:

TCC Historic Tax Credit Fund 2011, LP,
a Virginia limited partnership

By: Tax Credit Capital Federal Fund, LLC

Its: General Partner

By: Tax Credit Capital, LLC

Its: Sole Member

**see attached*

By:

Name: John S. Bowman, Jr.

Its: Authorized Agent

IN WITNESS WHEREOF, the parties have hereunto set their signatures and seals to this Subordination, Non-Disturbance and Attornment Agreement as of the date first above written.

OWNER:

Piano Building, LLC, a Nebraska limited liability company

By: Piano Building Managing Member, LLC, a Nebraska limited liability company

Its: Managing Member

By: _____
Matt Dougherty
Its Managing Member

LESSEE:

Piano Building Master Tenant, LLC, a Nebraska limited liability company

By: Piano Building Managing Member, LLC, a Nebraska limited liability company

Its: Managing Member

By: _____
Matt Dougherty
Its Managing Member

LENDER:

Dundee Bank, a branch of Security State Bank

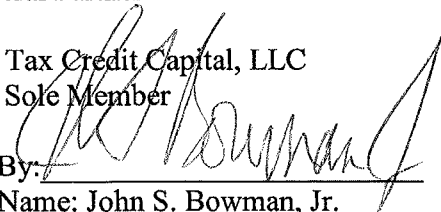
By: _____
Name: _____
Its: _____

INVESTOR:

TCC Historic Tax Credit Fund 2011, LP,
a Virginia limited partnership

By: Tax Credit Capital Federal Fund, LLC
Its: General Partner

By: Tax Credit Capital, LLC
Its: Sole Member

By: 
Name: John S. Bowman, Jr.
Its: Authorized Agent

STATE OF ~~NEBRASKA~~ IOWA)
) ss.
COUNTY OF POTTAWATTAMIE)

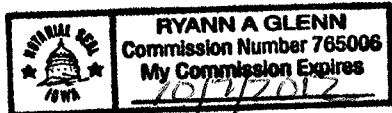
In said county and state, on this 17th day of October 2011, before me personally appeared the above-named Matt Dougherty, as Managing Member of Piano Building Managing Member, LLC, the managing member of Piano Building, LLC, as aforesaid, and acknowledged the foregoing instrument to be his/her free act and deed as Managing Member and the free act and deed of said limited liability companies.



Ryan A. Glenn
Notary Public
My Commission Expires: 10/7/2012

STATE OF ~~NEBRASKA~~ IOWA)
) ss.
COUNTY OF POTTAWATTAMIE)

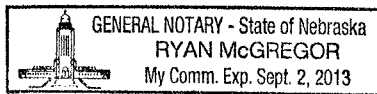
In said county and state, on this 17th day of October 2011, before me personally appeared the above-named Matt Dougherty, as Managing Member of Piano Building Managing Member, LLC, the managing member of Piano Building Master Tenant, LLC, as aforesaid, and acknowledged the foregoing instrument to be his/her free act and deed as Managing Member and the free act and deed of said limited liability companies.



Ryan A. Glenn
Notary Public
My Commission Expires: 10/7/2012

STATE OF Nebraska)
) ss.
COUNTY OF Douglas)

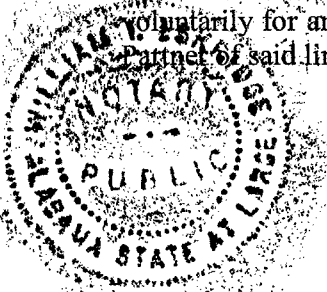
In said county and state, on this 17th day of October, 2011, before me personally appeared the above-named Adrian, Hernandez of Dundee Bank, as aforesaid, and acknowledged the foregoing instrument to be his/her free act and deed as Community Banking Officer of Dundee Bank and the free act and deed of said corporation.



Ryan McGregor
Notary Public
My Commission Expires: Sept. 2, 2013

STATE OF ALABAMA)
) ss.
COUNTY OF MONTGOMERY)

On this 17th day of October, 2011, I, the undersigned, a Notary Public in and for said County in said State, hereby certify that John S. Bowman, Jr., whose name as Authorized Agent of Tax Credit Capital, LLC, a Virginia limited liability company, as Sole Member of Tax Credit Capital Federal Fund, LLC, a Virginia limited liability company, as General Partner of TCC Historic Tax Credit Fund 2011, LP, a Virginia limited partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said limited liability company, acting in its capacity as General Partner of said limited partnership.



William J. Bowman
Notary Public
My Commission Expires: 8/29/15

Exhibit A

Lot 1, Dougherty Place, a Subdivision in Douglas County, Nebraska.