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RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

*and Prepared By:*  
RETURN TO: Paul Hastings LLP  
515 South Flower Street  
25th Floor  
Los Angeles, California 90071  
Attention: Kenneth Krug, Esq.  
(213) 683-6000



Doc ID: 025125170010 Type: GEN  
Kind: MORTGAGE  
Recorded: 09/16/2011 at 01:30:47 PM  
Fee Amt: \$52.00 Page 1 of 10  
Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2012-00019743

BK 13974 PG 81-90

Citi # 107041320

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**SUBORDINATION AND INTERCREDITOR AGREEMENT**  
**(Clubhouse Access and Cross Use Easement)**

**THIS SUBORDINATION AND INTERCREDITOR AGREEMENT** (this "Agreement") is dated for reference purposes only as of the 1st day of September, 2011, but will not be effective and binding on the parties hereto until the Closing Date, and is made by and between the **MEADOW VISTA PARKSIDE, LLC**, an Iowa limited liability company ("Easement Holder") and **CITIBANK, N.A.** ("Senior Lender") and acknowledged by **MEADOW VISTA SENIOR VILLAS, LLC**, an Iowa limited liability company ("Borrower"). As used herein, the term "Closing Date" shall mean September 16, 2011.

**RECITALS:**

A. Borrower has applied to Senior Lender for a loan (the "Senior Loan") in the maximum principal amount of \$6,600,000, for the acquisition, construction, rehabilitation, development, equipping and/or operation of a 50-unit multifamily residential project located in Altoona, Polk County, Iowa, known or to be known as Meadow Vista Senior Villas (the "Mortgaged Property").

B. The Senior Loan is evidenced by the Senior Note (as defined below), is secured by, among other things, that certain Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Filing (the "Senior Security Instrument"), dated as of the date hereof, encumbering the Property, and will be advanced to Borrower pursuant to the Loan Agreement (as defined herein).

C. Easement Holder is the owner of a single family residential project known as Meadow Vista Parkside (the "Dominant Estate") and located directly adjacent to the Mortgaged Property.

D. Borrower has authorized Easement Holder to have special rights related to the use of a 1,800 square foot common area clubhouse which lies within the Mortgaged Property (the

*Legal Description on Page Exhibit A*

“Clubhouse”). Said rights consist of an access and use of the Clubhouse, as those rights are more particularly set forth in that certain Clubhouse Access and Cross Use Easement, recorded in the Polk County Recorder’s Office on August 11, 2011 in Book 13937, page 795-799 (the “Initial Easement”) as amended by that certain Amended and Restated Access and Use Easement dated as of September 15, 2011 to be recorded concurrently herewith (together with Initial Easement, the “Easement”). The Easement specifies that the rights given thereunder shall be limited to those activities/uses directly related to the leasing and maintenance of, and delivery of property management services to the tenants occupying the residences on the Dominant Estate.

E. As a condition to the funding of the Senior Loan, Senior Lender requires that Easement Holder execute and deliver this Agreement prior to the first advance of funds under the Senior Loan.

NOW, THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce the making of the Senior Loan, Easement Holder hereby agrees as follows:

**1. Easement is Subordinate; Acts by Senior Lender do not Affect Subordination.**

(a) Easement Holder hereby covenants and agrees on behalf of itself and its successors and permitted assigns that the Easement is and shall at all times continue to be, subordinate, subject and inferior (in priority) to the prior payment in full of the Senior Loan, and that the liens, rights, and priority interests granted to Easement Holder in connection with the Easement are, and are hereby expressly acknowledged to be in all respects and at all times, subject, subordinate and inferior in all respects to the liens, rights, payment, priority and security interests granted to Senior Lender under the Senior Loan and the Senior Loan Documents and the terms, covenants, conditions, operations and effects thereof.

(b) The subordination of the Easement shall continue in the event that any payment under the Senior Loan Documents (whether by or on behalf of Borrower, as proceeds of security or enforcement of any right of set-off or otherwise) is for any reason repaid or returned to Borrower or its insolvent estate, or avoided, set aside or required to be paid to Borrower, a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law. In such event, the Senior Loan or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding to the extent of any repayment, return, or other action, as if such payment on account of the Senior Loan had not been made.

(c) Easement Holder hereby acknowledges and agrees that Senior Lender may, without the consent or approval of Easement Holder, agree with Borrower to extend, consolidate, modify, increase or amend any or all the Senior Loan Documents and otherwise act or fail to act with respect to any matter set forth in any Senior Loan Document (including, without limitation, the exercise of any rights or remedies, waiver, forbearance or delay in enforcing any rights or remedies, the declaration of acceleration, the declaration of defaults or events of default, the release, in whole or in part, of any

collateral or other property, and any consent, approval or waiver), and all such extensions, consolidations, modifications, amendments acts and omissions shall not release, impair or otherwise affect Easement Holder's obligations and agreements hereunder.

2. **Enforcement Costs.** In the event any legal action is filed to enforce or interpret this Agreement, then the prevailing party in such action shall be entitled to receive from the non-prevailing party the prevailing party's reasonable attorney's fees and other legal costs.

3. **Notices.** Any notice which any party hereto may be required or may desire to give hereunder shall be deemed to have been given and shall be effective only if it is in writing and (i) delivered personally, (ii) mailed, postage prepaid, by United States registered or certified mail, return receipts requested, or (iii) delivered by overnight express courier, in each instance addressed as follows:

If to the Borrower: Meadow Vista Senior Villas, LLC  
c/o Miller-Valentine Group  
9349 Waterstone Boulevard  
Cincinnati, Ohio 45249  
Attention: David Liette

and with a copy to: Dinsmore & Shohl LLP  
1100 Courthouse Plaza, SW  
10 N. Ludlow Street  
Dayton, Ohio 45402  
Attention: Fred Caspar

and a copy to: RBC Tax Credit Equity, LLC  
Tax Credit Equity Group  
600 Superior Avenue, Suite 2300  
Cleveland, Ohio 44114  
Attention: President and General Counsel

If to Senior Lender: 390 Greenwich Street, 2nd Floor  
New York, New York 10013  
Attention: Desk Head, Transaction Management Group  
Loan/Transaction/File # 107041320  
Facsimile: (212) 723-8642

AND

325 East Hillcrest Drive, Suite 160  
Thousand Oaks, California 91360  
Attention: Operations Manager/Asset Manager  
Loan/Transaction/File # 107041320

Facsimile: (805) 557-0924

with a copy to:

Account Specialist  
390 Greenwich Street, 2nd Floor  
New York, NY 10013  
Attention: Melissa Knight  
Loan/Transaction/File # 107041320  
Facsimile: (866) 461-9894

and a copy of any notices  
of default sent to:

388 Greenwich Street  
New York, New York 10013  
Attention: General Counsel's Office  
Loan/Transaction/File # 107041320  
Facsimile: (212) 723-8939

or at such other addresses or to the attention of such other persons as may from time to time be designated by the party to be addressed by written notice to the other in the manner herein provided. Notices, demands and requests given in the manner aforesaid shall be deemed sufficiently served or given for all purposes hereunder when received or when delivery is refused or when the same are returned to sender for failure to be called for.

4. **JURY TRIAL WAIVER.** TO THE EXTENT PERMITTED BY LAW, THE PARTIES HERETO HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL. IF FOR ANY REASON THIS WAIVER IS FOUND UNENFORCEABLE BY A COURT OF COMPETENT JURISDICTION, ALL DISPUTES ARISING HEREUNDER SHALL BE HEARD BY REFEREE IN ACCORDANCE WITH THE GENERAL REFERENCE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638 PURSUANT TO THE TERMS AND CONDITIONS SET FORTH IN THE SECURITY AGREEMENT.

5. **Term.** The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the Senior Loan Documents; or (ii) the acquisition by Senior Lender of Borrower's interest in the Mortgaged Property pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale contained in) the Senior Security Instrument.

6. **Miscellaneous.**

(a) Easement Holder shall give Senior Lender a concurrent copy of each notice of a violation, modification, or other material notice given by Easement Holder under the Easement.

(b) This Agreement shall bind and inure to the benefit of all successors and assigns of Easement Holder and Senior Lender. Senior Lender may assign its interest in the Senior Loan Documents without notice to or consent of Easement Holder. Easement Holder may only assign its rights and interests hereunder following the prior written consent of Senior Lender, which consent may be withheld or conditioned in its sole and absolute discretion.

(c) Senior Lender hereby consents to the Easement; provided, however, that this Agreement does not constitute an approval by Senior Lender of the terms of the Easement. Easement Holder hereby consents to the Senior Loan and the Senior Loan Documents; provided, however, that this Agreement does not constitute an approval by Easement Holder of the terms of the Senior Loan Documents.

(d) This Agreement may be executed in counterpart originals, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same instrument.

(e) IN ALL RESPECTS, INCLUDING, WITHOUT LIMITATION, MATTERS OF CONSTRUCTION AND PERFORMANCE OF THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER, THIS AGREEMENT HAS BEEN ENTERED INTO AND DELIVERED IN, AND SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY, THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED, WITHOUT GIVING EFFECT TO ANY PRINCIPLES OF CONFLICTS OF LAW.

(f) Time is of the essence in the performance of every covenant and agreement contained in this Agreement.

(g) If any provision or remedy set forth in this Agreement for any reason shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or remedy of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provision or remedy had never been set forth herein, but only to the extent of such invalidity, illegality or unenforceability.

(h) Each party hereto hereby represents and warrants that this Agreement has been duly authorized, executed and delivered by it and constitutes a legal, valid and binding agreement enforceable in all material respects in accordance with its terms.

(i) Borrower hereby acknowledges and consents to the execution of this Agreement, and agrees to be bound by the provisions hereof that are applicable to Borrower. Solely as between Senior Lender and Easement Holder, all of the signatories below hereby agree that to the extent of any conflict between the terms and provisions of this Agreement and the terms and provisions of the Senior Loan Documents and/or the Easement respectively, the terms and provisions of this Agreement shall govern and control. By executing this Agreement in the place provided below, Borrower hereby (i) acknowledges the provisions hereof, (ii) agrees not to take any action inconsistent with

Senior Lender's rights or Easement Holder's rights under this Agreement, (iii) waives and relinquishes to the maximum extent permitted by law any and all rights, defenses and claims now existing or hereinafter accruing relating to Easement Holder's forbearance from exercising any rights and remedies pursuant to this Agreement, including, without limitation, any defenses based on the statute of limitations or any equitable defenses, such as laches, and (iv) acknowledges and agrees that (A) this Agreement is entered into for the sole protection and benefit of Senior Lender and Easement Holder (and their respective successors, assigns and participants), and no other person (including Borrower) shall have any benefits, rights or remedies under or by reason of this Agreement, (B) nothing in this Agreement is intended, or shall be construed to, relieve or discharge the obligations or liabilities of any third party (including Borrower under the Senior Loan Documents and the Easement), (c) neither of them nor any of their affiliates shall be, or be deemed to be, beneficiaries of any of the provisions hereof or have any rights hereunder whatsoever, and (D) no provision of this Agreement is intended to, or shall be construed to, give any such third party (including Borrower) any right subrogating to the rights of, or action against, Senior Lender or Easement Holder.

(j) No amendment, supplement, modification, waiver or termination of this Agreement shall be effective against any party unless such amendment, supplement, modification, waiver or termination is contained in a writing signed by such party.

(k) No party other than Senior Lender and Easement Holder shall have any rights under, or be deemed a beneficiary of any of the provisions of, this Agreement.

(Remainder of page intentionally left blank.)

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Subordination and Intercreditor Agreement or caused this Subordination and Intercreditor Agreement to be duly executed and delivered by their respective authorized representatives as of the date first set forth above. The undersigned intend that this instrument shall be deemed to be signed and delivered as a sealed instrument.

**EASEMENT HOLDER:**

*TMP*

MEADOW VISTA PARKSIDE, LLC  
an Iowa limited liability company

By: MV Meadow Vista Parkside LLC  
an Ohio limited liability company

Its: Managing Member

By: Miller-Valentine Apartments III LLC  
an Ohio limited liability company

Its: Sole Member

By: [Signature]  
Name: Jack H. Goodwin  
Its: Authorized Signer

*DSJ*

By: [Signature]  
Name: David R. Liette  
Its: Authorized Signer

STATE OF OHIO            )  
  ) ss  
COUNTY OF WARREN )

This instrument was executed before me, a Notary Public in and for the State of Ohio, on this day 17<sup>th</sup> of September, 2011, by Jack H. Goodwin and David R. Liette, Authorized Signers of Miller-Valentine Apartments III LLC, an Ohio limited liability company, the sole member of MV Meadow Vista Parkside, LLC, an Ohio limited liability company, the managing member of Meadow Vista Parkside, LLC, an Iowa limited liability company, on behalf of whom this instrument was executed.



MARILEE F. BROWN, Notary Public  
In and for the State of Ohio  
My Commission Expires 12/12/15

[Signature]  
Notary Public in and for the State of Ohio

(signatures follow on subsequent pages)





**ACKNOWLEDGED AND AGREED AS OF THE DATE FIRST SET FORTH ABOVE:**

*TMP*  
MEADOW VISTA SENIOR VILLAS, LLC  
an Iowa limited liability company  
By: MV Meadow Vista Senior Villas LLC  
an Ohio limited liability company  
Its: Managing Member  
By: Miller-Valentine Apartments III LLC  
an Ohio limited liability company  
Its: Sole Member

By: [Signature]  
Name: Jack H. Godwin  
Its: Authorized Signer

[Signature]  
By: [Signature]  
Name: David R. Liette  
Its: Authorized Signer

STATE OF OHIO            )  
  ) ss  
COUNTY OF WARREN )

This instrument was executed before me, a Notary Public in and for the State of Ohio, on this day 15<sup>th</sup> of September, 2011, by Jack H. Godwin and David R. Liette, Authorized Signers of Miller-Valentine Apartments III LLC, an Ohio limited liability company, the sole member of MV Meadow Vista Senior Villas LLC, an Ohio limited liability company, the managing member of Meadow Vista Senior Villas, LLC, an Iowa limited liability company, on behalf of whom this instrument was executed.



MARILEE F. BROWN, Notary Public  
In and for the State of Ohio  
My Commission Expires 12/12/15

[Signature: M. Brown]  
Notary Public in and for the State of Ohio

**EXHIBIT A**

**LEGAL DESCRIPTION**

Lot 60, Meadow Vista South, an Official Plat, now included in and forming a part of the City of Altoona, Polk County, Iowa.