

# Oversight Board for Redevelopment Agency Successor Agency (RASA)

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**Meeting Date:** 7/16/2012

**Report Type:** Consent

**Title:** Authorizing RASA Execution of Subordination Agreements for Crest Theatre Refinancing

**Recommendation:** Adopt a **Resolution:** authorizing RASA to execute subordination agreements with Historic Crest Commercial Center, LLC and Five Star Bank for the refinancing of existing indebtedness for the Crest Theatre.

Contact: Leslie Fritzsche, RASA staff person and Downtown Redevelopment Manager, City of Sacramento Economic Development Department, (916) 808-5450

**Presenter:** None

**Issue:** The current owners of the Crest Theater (located at 1023 K Street) assumed two Agency loans when they purchased the property in February 2011. On February 2, 2011, the Agency executed a subordination agreement which provided that the deed of trust dated October 26, 1995 securing repayment for the first Agency loan in the amount of \$600,000 was subordinated to the superior indebtedness in the form of a promissory note dated December 10, 2010 in the amount of \$1,787,374 (the "2010 Note"), the proceeds of which were used to purchase the property. On that same date, the Agency also executed a subordination agreement which provided that the deed of trust dated March 4, 2009 securing repayment for a second Agency loan in the amount of \$413,839 was subordinated to the superior indebtedness of \$1,787,374. These two subordination agreements are collectively referred to as the "2011 Agreements."

The owners of the Crest Theater are refinancing the 2010 loan and have requested RASA to execute subordination agreements for both Agency loans. The proposed subordination agreements include the same terms as the 2011 Agreement. Therefore, the security for repayment of the Agency loans will remain unchanged. No funds are being netted to the borrower from the transaction.

## Role of Oversight Board

Section 34180(a) does require Oversight Board approval for the establishment of new repayment terms for outstanding loans. Since the proposed subordination agreement does not change the terms of the existing Agency Crest Theater loans, Oversight Board

approval for RASA to execute the subordination agreement is not required. In addition, under the terms of the Agency loans, the Agency had an obligation to subordinate its loans, subject to certain conditions as set forth in the loan agreements, and RASA is obligated to comply with such loan requirements under AB1x26.

To provide some assurance that RASA nonetheless has the authority to execute the new subordination agreements, the Oversight Board delegated to RASA certain authority to enter into new agreements and to amend existing Agency agreements. Motion No. 2012-009, as set forth in the May 7, 2012 meeting minutes, allows RASA to enter into agreements and to implement obligations under existing Agency agreements, but subject to the limitations that: (i) the terms of the new agreement does not materially change the provisions in the existing Agency agreement, and (ii) the new agreement does not defer repayment of debt.

DOF has the right to review any action of the Oversight Board, but must request review within three business days after the board meeting. (see Section 34179(h)). This action of the Oversight Board delegating contracting authority to RASA was not called-up for review by DOF, so such board action is valid and RASA has this delegated contracting authority.

Though no additional approval of the Oversight Board is required because the subordination agreements are similar to the agreements already in place, Old Republic Insurance Company (the company issuing title insurance on the transaction) has informed us that they will not provide title insurance on the new loan without written authorization of the proposed transaction from both the Oversight Board and the state Department of Finance. Therefore, staff is seeking the Board's approval of these agreements.

**Attachments:**

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- 1 – Resolution
- Exhibit 1 – Subordination Agreements

## RESOLUTION NO. 2012-\_\_\_\_

Adopted by

Oversight Board for  
Redevelopment Agency Successor Agency

July 16, 2012

### **AUTHORIZING RASA TO EXECUTE SUBORDINATION AGREEMENTS FOR THE CREST THEATRE REFINANCING**

#### **BACKGROUND:**

- A. On January 31, 2012, by Resolution No. 2012-018, the City of Sacramento (City) elected to serve as the Redevelopment Agency Successor Agency (RASA) to the prior Redevelopment Agency of the City of Sacramento (Agency). AB1x26 (Blumenfield), which was enacted on June 28, 2011 as Chapter 5 of Statutes of 2011, was upheld by the ruling of the California Supreme Court in the case *California Redevelopment Association et al., v. Matosantos et al.*, issued on December 29, 2011. Section 34172(a)(1) was added to the Health and Safety Code under AB1X26 and it provides that the Agency was dissolved as a legal entity, and the effective date of such dissolution was set as February 1, 2012, per the ruling in the *Matosantos* case.
- B. The City, in its capacity as RASA, was granted certain rights and assigned certain duties under AB1x26. Section 34173(b) of the Health and Safety Code provides that: "... all authority, rights, powers, duties, and obligations previously vested with the former redevelopment agencies, under the Community Redevelopment Law, are hereby vested in the successor agencies."
- C. With regard to implementing outstanding Agency agreements, Section 34177(c) of the Health and Safety Code requires RASA to: "Perform obligations required pursuant to any enforceable obligations." Under Section 34171(d)(E) of the Health and Safety Code provides that an "enforceable obligation" includes: "Any legal binding and enforceable agreement or contract ..." Further, under AB 1484 enacted on June 27, 2012 as Chapter 26 Statutes of 2012, Section 34179.5(b)(2) of the Health and Safety Code further defined enforceable obligations as "contracts detailing specific work to be performed that were entered into by the

former redevelopment agency prior to June 28, 2011, with a third party that is other than the city, county, or city and county that created the former redevelopment agency...”

- D. At the May 7, 2012 meeting of the Oversight Board, the Board approved a resolution authorizing RASA to enter into contracts and amendments to existing contracts to implement RASA obligations under existing enforceable obligations and to undertake administrative tasks for debt management subject to the terms of the new agreement not materially changing the provisions of existing agreements.
- E. The owners of the Crest Theatre at 1023 K Street are desirous of refinancing their existing loan with a new loan and as part of that transaction have asked the Redevelopment Agency Successor Agency to subordinate the Agency’s existing loans. This new loan of \$1,775,000 is less than the 2011 loan of \$1,781,374 and is similar in terms.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE OVERSIGHT BOARD FOR THE REDEVELOPMENT AGENCY SUCCESSOR AGENCY RESOLVES AS FOLLOWS:**

Section 1: The Oversight Board authorizes RASA to execute a Subordination Agreement with Historic Crest Theatre, LLC, included herein as Exhibit 1, for the Agency loan of \$600,000 dated October 26, 1995, subordinating the Agency loan to a new first loan with Five Star Bank in the amount of \$1,775,000.

Section 2: The Oversight Board authorizes RASA to execute a Subordination Agreement with Historic Crest Theatre, LLC, included herein as Exhibit 2, for the Agency loan of \$413,839 dated March 4, 2009, subordinating the Agency loan to a new first loan with Five Star Bank in the amount of \$1,775,000.

Table of Contents:

Exhibit 1 - Subordination Agreement for 1995 loan

Exhibit 2 – Subordination Agreement for 2009 loan

**RECORDATION**

**REQUESTED BY:**

Five Star Bank  
Rocklin Office  
6810 Five Star Blvd., Suite  
100  
P.O. Box 779000  
Rocklin, CA 95677

**WHEN RECORDED MAIL**

**TO:**

Five Star Bank  
Rocklin Office  
6810 Five Star Blvd., Suite  
100  
P.O. Box 779000  
Rocklin, CA 95677

**SEND TAX NOTICES TO:**

Historic Crest Commercial  
Center, LLC  
C/O Collier International  
301 University Avenue,  
Suite 100  
Sacramento, CA 95825

FOR RECORDER'S USE ONLY

**NOTICE: THIS SUBORDINATION OF DEED OF TRUST RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.**

**SUBORDINATION OF DEED OF TRUST**

**THIS SUBORDINATION OF DEED OF TRUST dated June 8, 2012, is made and executed among the City of Sacramento in its capacity as the Redevelopment Agency Successor Agency; ("Beneficiary");; Historic Crest Commercial Center, LLC ("Borrower"); and Five Star Bank ("Lender").**

**SUBORDINATED INDEBTEDNESS.** Beneficiary has extended the following described financial accommodations, secured by the Real Property (the "Subordinated Indebtedness"):

A PROMISSORY NOTE DATED FEBRUARY 23, 1995 IN THE PRINCIPAL AMOUNT OF \$600,000.00.

**SUBORDINATED DEED OF TRUST.** The Subordinated Indebtedness is or will be secured by the Real Property and evidenced by a deed of trust from The Briggs Family Group ("Trustor"), North American Title Company ("Trustee") in favor of Redevelopment Agency of the City of Sacramento("Beneficiary") (the "Subordinated Deed of Trust") and recorded in Sacramento County, State of California as follows:

**Recorded October 26, 1995 in Book 19951026 of Official records, Page 0072.**

**REAL PROPERTY DESCRIPTION.** The Subordinated Deed of Trust covers the following described real property (the "Real Property") located in Sacramento County, State of California:

LOTS 6 AND 7, IN BLOCK BOUNDED BY 10<sup>TH</sup> AND 11<sup>TH</sup>, AND "J" AND "K" STREETS, OF THE CITY OF SACRAMENTO, ACCORDING TO THE OFFICIAL PLAT THEREOF.

The Real Property or its address is commonly known as 1011-1026 K Street, Sacramento, CA 95814. The Assessor's Parcel Number for the Real Property is 006-0103-011.

**SUPERIOR INDEBTEDNESS.** Lender has extended or has agreed to extend the following described financial accommodations to Borrower, secured by the Real Property (the "Superior Indebtedness"):

**A PROMISSORY NOTE DATED June 8, 2012 IN THE PRINCIPAL AMOUNT OF \$1,775,000.00 EXECUTED**

**BY BORROWER IN FAVOR OF LENDER.**

**LENDER'S LIEN.** The Superior Indebtedness is or will be secured by the Real Property and evidenced by a mortgage, deed of trust, or other lien instrument, dated June 8, 2012, from Borrower to Lender (the "Lender's Lien"). As a condition to the granting of the requested financial accommodations, Lender has required that the Lender's Lien be and remain superior to the Subordinated Deed of Trust.

**REQUESTED FINANCIAL ACCOMMODATIONS.** Trustor, who may or may not be the same person or entity as borrower, and Beneficiary each want Lender to provide financial accommodations to borrower in the form of the Superior Indebtedness. Trustor and Beneficiary each represent and acknowledge to Lender that Beneficiary will benefit as a result of these financial accommodations from Lender to borrower, and Beneficiary acknowledges receipt of valuable consideration for entering into this Subordination.

**NOW THEREFORE THE PARTIES TO THIS SUBORDINATION HEREBY AGREE AS FOLLOWS:**

**SUBORDINATION.** The Subordinated Deed of Trust and the Subordinated Indebtedness secured by the Subordinated Deed of Trust is and shall be subordinated in all respects to Lender's Lien and the Superior Indebtedness, and it is agreed that Lender's Lien shall be and remain, at all times, prior and superior to the lien of the Subordinated Deed of Trust. Beneficiary also subordinates to Lender's Lien all other Security Interests in the Real Property held by Beneficiary, whether now existing or hereafter acquired. The words "Security Interest" mean and include without limitation any type of collateral security, whether in the form of a lien, charge, mortgage, deed of trust, assignment, pledge, chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

**BENEFICIARY'S REPRESENTATIONS AND WARRANTIES.** Beneficiary represents and warrants to Lender that: (A) no representations or agreements of any kind have been made to Beneficiary which would limit or qualify in any way the terms of this Subordination; (B) this Subordination is executed at our request and not at the request of Lender; (C) Lender has made no representation to Beneficiary as to the creditworthiness of borrower; and (D) Beneficiary has established adequate means of obtaining from borrower on a continuing basis information regarding our financial condition. Beneficiary agrees to keep adequately informed from such means of any facts, events, or circumstances which might in any way affect Beneficiary's risks under this Subordination, and Beneficiary further agrees that Lender shall have no obligation to disclose to Beneficiary information or material acquired by Lender in the course of its relationship with Beneficiary.

**BENEFICIARY WAIVERS.** Beneficiary waives any right to require Lender: (A) to make, extend, renew, or modify any loan to borrower or to grant any other financial accommodations to borrower whatsoever; (B) to make any presentment, protest, demand, or notice of any kind, including notice of any nonpayment of any Superior Indebtedness secured by Lender's Lien, or notice of any action or nonaction on the part of borrower, Lender, any surety, endorser, or other guarantor in connection with the Superior Indebtedness, or in connection with the creation of new or additional indebtedness; (C) to resort for payment or to proceed directly or at once against any person, including borrower; (D) to proceed directly against or exhaust any collateral held by Lender from borrower, any other guarantor, or any other person; (E) to pursue any other remedy within Lender's power; or (F) to commit any act or omission of any kind, at any time, with respect to any matter whatsoever.

**LENDER'S RIGHTS.** Lender may take or omit any and all actions with respect to Lender's Lien without affecting whatsoever any of Lender's rights under this Subordination. In particular, without limitation, Lender may, without notice of any kind to Beneficiary, (A) make one or more additional secured or unsecured loans to borrower; (B) repeatedly alter, compromise, renew, extend, accelerate, or otherwise change the time for payment or other terms of the Superior Indebtedness or any part of it, including increases and decreases of the rate of interest on the Superior Indebtedness; extensions may be repeated and may be for longer than the original loan term; (C) take and hold collateral for the payment of the Superior Indebtedness, and exchange, enforce, waive, and release any such collateral, with or without the substitution of new collateral; (D) release, substitute, agree not to sue, or deal with any one or more of our sureties, endorsers, or guarantors on any terms or manner Lender chooses; (E) determine how, when and what application of payments and credits, shall be made on the Superior Indebtedness; (F) apply such security and direct the order or manner of sale of the security, as Lender in its discretion may determine; and (G) transfer this Subordination to another party.

**DEFAULT BY BORROWER.** If we become insolvent or bankrupt, this Subordination shall remain in full force and effect.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Subordination:

**Amendments.** This Subordination constitutes the entire understanding and agreement of the parties as to the matters set forth in this Subordination. No alteration of or amendment to this Subordination shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Attorneys' Fees; Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Subordination, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the

protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Beneficiary also will pay any court costs, in addition to all other sums provided by law.

**Authority.** The person who signs this Subordination as or on behalf of Beneficiary represents and warrants that he or she has authority to execute this Subordination and to subordinate the Subordinated Indebtedness and the Beneficiary's security interests in Beneficiary's property, if any.

**Caption Headings.** Caption headings in this Subordination are for convenience purposes only and are not to be used to interpret or define the provisions of this Subordination.

**Governing Law.** This Subordination will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of California without regard to its conflicts of law provisions. This Subordination has been accepted by Lender in the State of California.

**Choice of Venue.** If there is a lawsuit, Beneficiary agrees upon Lender's request to submit to the jurisdiction of the courts of Sacramento County, State of California.

**Successors.** This Subordination shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Subordination, and the covenants of Beneficiary herein in favor of Lender shall extend to, include, and be enforceable by any transferee or endorsee to whom Lender may transfer any or all of the Superior Indebtedness.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Subordination unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Subordination shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Subordination. No prior waiver by Lender, nor any course of dealing between Lender and Beneficiary, shall constitute a waiver of any of Lender's rights or of any of Beneficiary's obligations as to any future transactions. Whenever the consent of Lender is required under this Subordination, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN, A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.**

**EACH PARTY TO THIS SUBORDINATION ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS SUBORDINATION, AND EACH PARTY AGREES TO ITS TERMS. THIS SUBORDINATION IS DATED MAY 14, 2012.**

**BORROWER:**

**Historic Crest Commercial Center, LLC, A California limited Liability Company**

By: \_\_\_\_\_

**Robert Emerick, Managing Member**

**BENEFICIARY:**

**CITY OF SACRAMENTO IN IT'S CAPACITY AS THE REDEVELOPMENT AGENCY SUCCESSOR AGENCY**

X \_\_\_\_\_

**Authorized Signer**

X \_\_\_\_\_  
Authorized Signer

LENDER:

FIVE STAR BANK

X \_\_\_\_\_  
Authorized Officer

**RECORDATION**

**REQUESTED BY:**

Five Star Bank  
Rocklin Office  
6810 Five Star Blvd., Suite  
100  
P.O. Box 779000  
Rocklin, CA 95677

**WHEN RECORDED MAIL**

**TO:**

Five Star Bank  
Rocklin Office  
6810 Five Star Blvd., Suite  
100  
P.O. Box 779000  
Rocklin, CA 95677

**SEND TAX NOTICES TO:**

Historic Crest Commercial  
Center, LLC  
C/O Collier International  
301 University Avenue,  
Suite 100  
Sacramento, CA 95825

FOR RECORDER'S USE ONLY

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**SUBORDINATED INDEBTEDNESS.** Beneficiary has extended the following described financial accommodations, secured by the Real Property (the "Subordinated Indebtedness"):

A PROMISSORY NOTE DATED MARCH 24, 2009 IN THE PRINCIPAL AMOUNT OF \$413,839.

**SUBORDINATED DEED OF TRUST.** The Subordinated Indebtedness is or will be secured by the Real Property and evidenced by a deed of trust from The Briggs Family Group ("Trustor") North American Title Company ("Trustee") in favor of Redevelopment Agency of the City of Sacramento("Beneficiary") (the "Subordinated Deed of Trust") and recorded in Sacramento County, State of California as follows:

**Recorded April 30, 2009 in Book 20090430 of Official records, Page 1874.**

**REAL PROPERTY DESCRIPTION.** The Subordinated Deed of Trust covers the following described real property (the "Real Property") located in Sacramento County, State of California:

LOTS 6 AND 7, IN BLOCK BOUNDED BY 10<sup>TH</sup> AND 11<sup>TH</sup>, AND "J" AND "K" STREETS, OF THE CITY OF SACRAMENTO, ACCORDING TO THE OFFICIAL PLAT THEREOF.

The Real Property or its address is commonly known as 1011-1026 K Street, Sacramento, CA 95814. The Assessor's Parcel Number for the Real Property is 0060103011.

**SUPERIOR INDEBTEDNESS.** Lender has extended or has agreed to extend the following described financial accommodations to Borrower, secured by the Real Property (the "Superior Indebtedness"):

**A PROMISSORY NOTE DATED June 8, 2012 IN THE PRINCIPAL AMOUNT OF \$1,775,000.00 EXECUTED BY BORROWER IN FAVOR OF LENDER.**

**LENDER'S LIEN.** The Superior Indebtedness is or will be secured by the Real Property and evidenced by a mortgage, deed of trust, or other lien instrument, dated June 8, 2012, from Borrower to Lender (the "Lender's Lien"). As a condition to the granting of the requested financial accommodations, Lender has required that the Lender's Lien be and remain superior to the Subordinated Deed of Trust.

**REQUESTED FINANCIAL ACCOMMODATIONS.** Trustor, who may or may not be the same person or entity as borrower, and Beneficiary each want Lender to provide financial accommodations to borrower in the form of the Superior Indebtedness. Trustor and Beneficiary each represent and acknowledge to Lender that Beneficiary will benefit as a result of these financial accommodations from Lender to borrower, and Beneficiary acknowledges receipt of valuable consideration for entering into this Subordination.

**NOW THEREFORE THE PARTIES TO THIS SUBORDINATION HEREBY AGREE AS FOLLOWS:**

**SUBORDINATION.** The Subordinated Deed of Trust and the Subordinated Indebtedness secured by the Subordinated Deed of Trust is and shall be subordinated in all respects to Lender's Lien and the Superior Indebtedness, and it is agreed that Lender's Lien shall be and remain, at all times, prior and superior to the lien of the Subordinated Deed of Trust. Beneficiary also subordinates to Lender's Lien all other Security Interests in the Real Property held by Beneficiary, whether now existing or hereafter acquired. The words "Security Interest" mean and include without limitation any type of collateral security, whether in the form of a lien, charge, mortgage, deed of trust, assignment, pledge, chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

**BENEFICIARY'S REPRESENTATIONS AND WARRANTIES.** Beneficiary represents and warrants to Lender that: (A) no representations or agreements of any kind have been made to Beneficiary which would limit or qualify in any way the terms of this Subordination; (B) this Subordination is executed at our request and not at the request of Lender; (C) Lender has made no representation to Beneficiary as to the creditworthiness of borrower; and (D) Beneficiary has established adequate means of obtaining from borrower on a continuing basis information regarding our financial condition. Beneficiary agrees to keep adequately informed from such means of any facts, events, or circumstances which might in any way affect Beneficiary's risks under this Subordination, and Beneficiary further agrees that Lender shall have no obligation to disclose to Beneficiary information or material acquired by Lender in the course of its relationship with Beneficiary.

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**DEFAULT BY BORROWER.** If we become insolvent or bankrupt, this Subordination shall remain in full force and effect.

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**Attorneys' Fees; Expenses.** If Lender institutes any suit or action to enforce any of the terms of this Subordination, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or

injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Beneficiary also will pay any court costs, in addition to all other sums provided by law.

**Authority.** The person who signs this Subordination as or on behalf of Beneficiary represents and warrants that he or she has authority to execute this Subordination and to subordinate the Subordinated Indebtedness and the Beneficiary's security interests in Beneficiary's property, if any.

**Caption Headings.** Caption headings in this Subordination are for convenience purposes only and are not to be used to interpret or define the provisions of this Subordination.

**Governing Law.** This Subordination will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of California without regard to its conflicts of law provisions. This Subordination has been accepted by Lender in the State of California.

**Choice of Venue.** If there is a lawsuit, Beneficiary agrees upon Lender's request to submit to the jurisdiction of the courts of Sacramento County, State of California.

**Successors.** This Subordination shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Subordination, and the covenants of Beneficiary herein in favor of Lender shall extend to, include, and be enforceable by any transferee or endorsee to whom Lender may transfer any or all of the Superior Indebtedness.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Subordination unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Subordination shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Subordination. No prior waiver by Lender, nor any course of dealing between Lender and Beneficiary, shall constitute a waiver of any of Lender's rights or of any of Beneficiary's obligations as to any future transactions. Whenever the consent of Lender is required under this Subordination, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

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**EACH PARTY TO THIS SUBORDINATION ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS SUBORDINATION, AND EACH PARTY AGREES TO ITS TERMS. THIS SUBORDINATION IS DATED June 8, 2012.**