

#0131-6616327ala

RECORDING REQUESTED PURSUANT  
AND WHEN RECORDED MAIL TO:

County of Contra Costa  
651 Pine Street, 4th Floor North Wing  
Martinez, California 94553  
Attention: Deputy Director - Redevelopment

No fee for recording pursuant to  
Government Code Section 27383



CONTRA COSTA Co Recorder Office  
STEPHEN L. WEIR, Clerk-Recorder  
**DOC- 2009-0216915-00**

Acct 6-First American Title

Friday, SEP 11, 2009 08:00:00

FRE \$0.00:00

Ttl Pd \$0.00

Nbr-0000254216

cmb/R2/1-18

AMENDED AND RESTATED INTERCREDITOR AGREEMENT  
(2832 Giant Road)

This Amended and Restated Intercreditor Agreement (the "Agreement") is made as of July 15<sup>th</sup>, 2009, by and among the Redevelopment Agency of the City of San Pablo, a public body, corporate and politic (the "Agency"), the County of Contra Costa, a political subdivision of the State of California (the "County"), and Giant Development L. P., a California limited partnership (the "Borrower"), with reference to the following facts:

RECITALS

A. Borrower owns a 2.67 acre parcel of real property located at 2832 Giant Road in the City of San Pablo, County of Contra Costa, State of California, as more particularly described in Exhibit A attached hereto and incorporated herein (the "Property"). The Borrower has constructed eighty-six (86) units of housing affordable to very low and low income households, with the exception of two (2) manager's units on the Property (the "Development").

B. This Agreement, amends, restates, and replaces, in its entirety, that certain Intercreditor Agreement dated as of September 30, 2004, and recorded against the Property on September 30, 2004, as Instrument No. 2004-376351, as amended by that certain First Amendment to Intercreditor Agreement dated as of August 15, 2005, and recorded against the Property on August 18, 2005, as Instrument No. 2005-0311384, (collectively, the "Original Agreement") by and among, the Agency, the County, and East Bay Asian Local Development Corporation, a California nonprofit public benefit corporation ("EBALDC"). EBALDC has assigned, and the Borrower, has assumed all of EBALDC's rights, duties, and obligations under the Original Agreement pursuant to that certain Assignment and Assumption Agreement dated as of December 15, 2005.

C. Pursuant to that certain First Amended and Restated CDBG/HOME Loan Agreement (the "County Loan Agreement") entered into between the County and the Borrower dated as of December 15, 2005, the County agreed to loan One Million Seven Hundred Thousand Dollars (\$1,700,000) (the "County Loan") of CDBG and HOME funds for the acquisition of the Property and the construction of the Development. As more particularly described in the County Loan Agreement, the County Loan consists of one component of One

Million Two Hundred Thousand Dollars (\$1,200,000) (the "Long-Term Component") and one component of Five Hundred Thousand Dollars (\$500,000) (the "Short-Term Component"). The Long-Term Component is secured by that certain deed of trust dated September 30, 2004, and recorded against the Development as Instrument No. 2004-376349, and the Short-Term Component is secured by that certain deed of trust dated December 15, 2005, and recorded against the Development as Instrument No. 2005-490147 (collectively, such deeds of trust securing the Long-Term Component and the Short-Term Component are referred to as the "County Deed of Trust"). In addition to the County Loan Agreement, and the County Deed of Trust, the Borrower has executed a promissory note in favor of the County (the "County Promissory Note"), and the Borrower is subject to a regulatory agreement recorded against the Property (the "County Regulatory Agreement"). Collectively, the County Loan Agreement, the County Deed of Trust, the County Promissory Note, and the County Regulatory Agreement are referred to as the "County Loan Documents".

D. Pursuant to that certain Owner Participation Agreement dated September 28, 2004, as amended by that certain First Amendment to the Owner Participation Agreement dated August 16, 2005, between the Agency and EBALDC (collectively, the "OPA"), the Agency agreed to loan the Borrower a total amount of One Million Seven Hundred Thousand Dollars (\$1,700,000) (the "Agency Loan") for acquisition of the Property and construction of the Development, including certain predevelopment costs. The Agency Loan is evidenced by those certain promissory notes dated as of September 28, 2004, in the principal amount of \$500,000.00, and dated as of August 16, 2005, in the principal amount of \$1,200,000.00 (the "Agency Notes") secured by that certain deed of trust recorded against the Development on September 30, 2004, as Instrument No. 2004-376350, as modified by that certain First Modification to Deed of Trust dated August 16, 2005 (the "Agency Deed of Trust"). The OPA, the Agency Note, and the Agency Deed of Trust are collectively referred to as the "Agency Loan Documents." EBALDC has assigned, and the Borrower has assumed, all of the duties and obligations under the Agency Loan Documents.

E. The Borrower has obtained Multifamily Housing Program ("MHP") funding from the California Department of Housing and Community Development ("HCD") and shall receive a loan from HCD in the amount of Five Million Six Hundred Ninety-One Thousand Five Hundred Sixty-Five Dollars (\$5,691,565) of MHP funds.

F. The Agency, the County, and the Borrower (the "Parties") wish the Agency Deed of Trust and the County Deed of Trust (collectively, the "Deeds of Trust") to be equal in lien priority.

G. The Parties wish the Agency and the County to share certain Residual Receipts (as defined below) and proceeds derived from a foreclosure of any of the Deeds of Trust, as described below.

NOW, THEREFORE, the Parties agree as follows:

1. Definitions. The following definitions shall apply for purposes of this Agreement:

(a) "Annual Operating Expenses" with respect to a particular calendar year shall mean Operating Expenses as defined in 25 California Code of Regulations Section 8301(j), subject to the following: (i) partnership management fees and asset management fees, in any combination, shall not exceed a total of Twenty-Five Thousand Dollars (\$25,000) per year, (and only during the fifteen (15)-year compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986, as amended); (ii) debt service payments shall only include mandatory payments on loans associated with the Development and approved by the County and Agency; and (iii) property management fees and reimbursements shall not exceed fees and reimbursements which are standard in the industry and shall be pursuant to a management contract approved by the County and the Agency.

(b) "Borrower's Share of Residual Receipts" shall mean fifty percent (50%) of Residual Receipts.

(c) "Lenders' Share of Residual Receipts" shall mean fifty percent (50%) of Residual Receipts, which shall be shared among the County, the Agency and HCD to repay the County Loan, the Agency Loan, and the MHP Loan.

(d) "Local Lenders' Prorata Percentages" means, at any time any determination thereof is to be made, (i) for the Agency, the percentage resulting from dividing the Agency Loan funds disbursed to the Borrower in accordance with the OPA by the sum of such Agency Loan funds and County Loan funds disbursed to the Borrower in accordance with the County Loan Agreement, and (ii) for the County, the percentage resulting from dividing the County Loan funds disbursed to the Borrower in accordance with the County Loan Agreement by the sum of such County Loan funds and Agency Loan funds disbursed to the Borrower in accordance with the OPA. In calculating the Local Lenders' Prorata Percentages, Agency Loan funds and County Loan funds that have been repaid shall be deemed not to have ever been disbursed. If all Agency Loan funds and County Loan funds are disbursed as anticipated, the Agency's Local Lenders' Prorata Percentage will be fifty percent (50%) and the County's Local Lenders' Prorata Percentage will be fifty percent (50%), except as set forth in Section 3(c). Following the repayment of the County Loan and the Agency Loan in accordance with Section 3(a) and Section 3(b), the Agency's Local Lenders' Prorata Percentage will be twenty-nine and four-tenths percent (29.4%), and the County's Local Lenders' Prorata Percentage will be seventy and six-tenths percent (70.6%).

(e) "MHP Loan" shall mean the permanent loan of MHP funds from HCD in the amount of Five Million Six Hundred Ninety-One Thousand Five Hundred Sixty-Five Dollars (\$5,691,565).

(f) Intentionally Omitted.

(g) "Prorata Percentages" means, at any time any determination thereof is to be made, (i) for the Agency, the percentage resulting from dividing the Agency Loan funds disbursed to the Borrower in accordance with the OPA by the sum of such Agency Loan funds, County Loan funds, and MHP Loan funds disbursed to the Borrower in accordance with the applicable agreements, and (ii) for the County, the percentage resulting from dividing the County

Loan funds disbursed to the Borrower in accordance with the County Loan Agreement by the sum of such County Loan funds, Agency Loan funds, and MHP Loan funds disbursed to the Borrower in accordance with the applicable agreements, and (iii) for HCD, the percentage resulting from dividing the MHP Loan funds disbursed to the Borrower in accordance with the documents evidencing the MHP Loan (the "MHP Loan Documents") by the sum of such MHP Loan funds, Agency Loan funds, and County Loan funds disbursed to the Borrower in accordance with the applicable agreements. In calculating the Prorata Percentages, Agency Loan funds, County Loan funds, and MHP Loan funds that have been repaid shall be deemed not to have ever been disbursed. If all Agency Loan funds, County Loan funds, and MHP Loan Funds are disbursed as anticipated, MHP's Prorata Percentage will be seventy-seven percent (77%), the Agency's Prorata Percentage will be eleven and one-half percent (11.5%) and the County's Prorata Percentage will be eleven and one-half percent (11.5%), except as set forth in Section 3(c). Following the repayment of the County Loan and the Agency Loan in accordance with Section 3(a) and Section 3(b), the Agency's Prorata Percentage will be twenty-nine and four-tenths percent (29.4%), and the County's Prorata Percentage will be seventy and six-tenths percent (70.6%).

(h) "Residual Receipts" in a particular calendar year shall mean Operating Income (as defined in 25 California Code of Regulations Section 8301(k)) remaining after payment of: (i) Annual Operating Expenses; (ii) reserve deposits in amounts required by the MHP Loan and Borrower's partnership agreement (which is currently \$810/unit); (iii) payment of any previously unpaid portion of the developer fee due East Bay Asian Local Development Corporation (without interest), which shall not exceed a cumulative developer fee due East Bay Asian Local Development Corporation in the maximum amount set forth in the County Loan Agreement; and (iv) any extraordinary operating costs approved by the County and Agency.

2. Loans. The Agency shall make the Agency Loan to the Borrower in accordance with the OPA. The County shall make the County Loan to the Borrower in accordance with the County Loan Agreement.

3. Repayment of Agency Loan and County Loan.

(a) Repayment of Initial \$1,000,000. No later than May 1 of each calendar year, commencing on May 1, 2009, and continuing until such time as the Borrower has repaid the Agency and the County the cumulative amount of One Million Dollars (\$1,000,000), the Borrower shall pay the County and the Agency, respectively, their Prorata Percentages of the Lenders' Share of Residual Receipts, and their Local Lenders' Prorata Percentages of fifty percent (50%) of Borrower's Share of Residual Receipts. Payments to the County under this subsection shall be credited as repayments to the County Loan. Payments to the Agency under this subsection shall be credited as repayments of the Agency Loan.

(b) Repayment of Next \$700,000. Notwithstanding any provision herein to the contrary, following the repayment of the initial One Million Dollars (\$1,000,000) in accordance with Section 3(a) above, and continuing until such time as the outstanding principal balance of the Agency Loan is equal to Five Hundred Thousand Dollars (\$500,000), no later than May 1 of each calendar year, the Borrower shall pay one hundred percent (100%) of the County and the Agency Prorata Percentages of the Lenders' Share of Residual Receipts, and the Local

Lenders' Prorata Percentages of fifty percent (50%) of Borrower's Share of Residual Receipts to the Agency. Payments to the Agency under this subsection shall be credited as repayments of the Agency Loan. Other than the payments set forth in Section 3(a) above, until the principal balance of the Agency Loan is Five Hundred Thousand Dollars (\$500,000) no payment shall be credited to the County Loan.

(c) Repayment of Balance of Agency Loan and County Loan.

Notwithstanding any provision herein to the contrary, commencing at such time as the outstanding principal balance of the Agency Loan is equal to Five Hundred Thousand Dollars (\$500,000) and continuing until the full repayment of the Agency Loan and the County Loan, no later than May 1 of each calendar year, the Borrower shall pay the County and the Agency, respectively, their Prorata Percentages of the Lenders' Share of Residual Receipts, and their Local Lenders' Prorata Percentages of fifty percent (50%) of Borrower's Share of Residual Receipts. Payments to the County under this subsection shall be credited as repayments to the County Loan. Payments to the Agency under this subsection shall be credited as repayments of the Agency Loan.

(d) Agency Loan Repayments. The Agency Loan shall be repaid by the Borrower pursuant to the repayment terms in the OPA and the Agency Notes, subject to applicable notice and cure periods. Notwithstanding the foregoing, all outstanding principal and interest on the Agency Loan shall be due and payable on August 16, 2060. In the event of any conflict between the repayment terms and provisions of the OPA or the Agency Notes and this Agreement, the provisions of this Agreement shall apply. The Agency shall not consent to any amendment or waiver of such repayment terms that might reasonably be considered to impair the County's security under the County Loan without the County's prior written approval, which the County may withhold in its sole discretion.

(e) County Loan Repayments. The County Loan shall be repaid by the Borrower pursuant to the repayment terms in the County Loan Agreement and the County Note. Notwithstanding the foregoing, all outstanding principal and interest on the County Loan shall be due and payable on September 30, 2059. In the event of any conflict between the repayment term and provisions of the County Loan Agreement and this Agreement, the provisions of this Agreement shall apply. The County shall not consent to any amendment or waiver of such repayment terms that might reasonably be considered to impair the Agency's security under the Agency Loan without the Agency's prior written approval, which the Agency may withhold in its sole discretion.

(f) Conflict with MHP Loan Documents. In the event the MHP Loan Documents conflict with the provisions of this Agreement, the parties agree to enter into an amendment to this Agreement so that this Agreement no longer conflicts with MHP Loan Documents; provided that such amendment shall provide that the Agency and the County shall receive the maximum percentage of Residual Receipts permitted by HCD to be paid to the Agency and the County.

4. Intentionally Omitted.

5. Reports and Accounting of Residual Receipts.

(a) Audited Financial Statement. In connection with the annual repayment of the Agency Loan and the County Loan, the Borrower shall furnish to the Agency and the County an audited statement duly certified by an independent firm of certified public accountants approved by the Agency and the County, setting forth in reasonable detail the computation and amount of Residual Receipts during the preceding calendar year.

(b) Books and Records. The Borrower shall keep and maintain at Borrower's office, or elsewhere with the County's and Agency's written consent, full, complete and appropriate books, record and accounts relating to the Development, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail Borrower's calculation of Residual Receipts. Books, records and accounts relating to Borrower's compliance with the terms, provisions, covenants and conditions of this Agreement shall be kept and maintained in accordance with generally accepted accounting principles consistently applied, and shall be consistent with requirements of this Agreement which provide for the calculation of Residual Receipts on a cash basis. All such books, records, and accounts shall be open to and available for inspection by the County and the Agency. Their auditors or other authorized representatives at reasonable intervals during normal business hours. Copies of all tax returns and other reports that Borrower may be required to furnish any governmental agency shall at all reasonable times be open for inspection by the County and the Agency at the place that the books, records and accounts of the Borrower are kept. The Borrower shall preserve records on which any statement of Residual Receipts is based for a period of not less than five (5) years after such statement is rendered, and for any period during which there is an audit undertaken pursuant to subsection (c) below then pending.

(c) County and Agency Audits. The receipt by the County or the Agency of any statement pursuant to subsection (a) above or any payment by Borrower or acceptance by the County or the Agency of any loan repayment for any period shall not bind the County or the Agency as to the correctness of such statement or such payment. Within three (3) years after the receipt of any such statement, the County or the Agency or any designated agent or employee of the County and/or the Agency at any time shall be entitled to audit the Residual Receipts and all books, records, and accounts pertaining thereto. Such audit shall be conducted during normal business hours at the principal place of business of Borrower and other places where records are kept. Immediately after the completion of an audit, the County or the Agency shall deliver a copy of the results of such audit to Borrower. If it shall be determined as a result of such audit that there has been a deficiency in a loan repayment to the County and/or the Agency, then such deficiency shall become immediately due and payable with interest at the default rate set forth in the County Loan Agreement or OPA, as applicable, determined as of and accruing from the date that said payment should have been made. In addition, if Borrower's auditor's statement for any calendar year shall be found to have understated Residual Receipts by more than five percent (5%) and the County and/or the Agency are entitled to any additional County Loan and Agency Loan repayment as a result of said understatement, then Borrower shall pay, in addition to the interest charges referenced hereinabove, all of the County's and/or the Agency's reasonable costs and expenses connected with any audit or review of Borrower's accounts and records.

6. Deeds of Trust. The County shall secure the County Loan by recording the County Deed of Trust against the Property. The Agency shall secure the Agency Loan by

recording the Agency Deed of Trust against the Property. The County Deed of Trust shall be recorded in prior to the Agency Deed of Trust on the Property, but the two deeds of trust shall share co-equal lien priority, and the County and the Agency agree to share foreclosure, insurance, and condemnation proceeds in accordance with the Local Lenders' Prorata Percentages.

7. Notice of Default.

(a) The County and the Agency shall each notify the other promptly upon declaring a default or learning of the occurrence of any material event of default, or any event which with the lapse of time would become a material event of default, under the respective loan documents for the Agency Loan and/or the County Loan.

(b) Each of the Agency and the County agrees not to make a demand for payment from Borrower or accelerate the County Note or the Agency Note, as the case may be, or commence enforcement of any of the rights and remedies under the Agency Deed of Trust or County Deed of Trust, as the case may be, until the date which is five (5) business days following delivery of written notice by the Party enforcing its rights (the "Enforcing Party") to the other Party stating that a "Default" (as defined in the relevant Deed of Trust) has occurred and is continuing and that the Enforcing Party is requesting the other Party's assistance in foreclosure pursuant to Section 8.

8. Cooperation in Foreclosure.

(a) In the event of a default under the Agency Loan and/or the County Loan, after expiration of any applicable cure periods, the party who is the lender on the defaulted loan shall cooperate with the other party to coordinate any foreclosure proceedings or other appropriate remedies.

(b) Neither the County nor the Agency shall contest the validity, perfection priority or enforceability of the lien granted by the respective Deed of Trust to the other Party. Notwithstanding any failure of a party to perfect its lien on the Property or any other defect in the security interests or obligations owing to such Party, the priority and rights as between the Parties hereto shall be as set forth herein.

9. Foreclosure Proceeds. If there is a foreclosure, or any other action, judicial or nonjudicial, under either or both of the Deeds of Trust (including the giving of a deed in lieu of foreclosure), then the Agency and the County shall be entitled to share in any proceeds which shall ensue from such action, after any and all senior lienholders have been satisfied, and after payment of all reasonable expenses of both Parties incurred in connection with the action in accordance with the Local Lenders' Prorata Percentages.

10. Title to Property. If either of the Agency or the County is entitled to title to the Property as a consequence of the Borrower's default, then title shall be held in tenancy in common by both of them, with the percentage ownership of each based on the Local Lenders'

Prorata Percentages. Subsequent decisions to hold or sell the Property shall be made by joint decision of the Agency and the County.

11. Notices. Formal notices, demands, and communications between the Parties shall not be deemed given unless dispatched by certified mail, return receipt requested, or express delivery service with a delivery receipt, or personal delivery with a delivery receipt, to the principal office of the Parties as follows:

Agency:	Redevelopment Agency of the City of San Pablo One Alvarado Square San Pablo, CA 94806 Attention: Executive Director
County:	County of Contra Costa Community Development Department 651 Pine Street, 4th Floor North Wing Martinez, CA 94553 Attention: Deputy Director – Redevelopment
Borrower:	Giant Development, LP c/o East Bay Asian Local Development Corporation 310 Eighth Street, Suite 200 Oakland, CA 94607 Attention: Executive Director

Such written notices, demands, and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate as provided in this Section 11. Receipt shall be deemed to have occurred on the date marked on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

12. Titles. Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

13. California Law. This Agreement shall be interpreted under and pursuant to the laws of the State of California.

14. Severability. If any term of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, then the remaining terms shall continue in full force unless the rights and obligations of the Parties have been materially altered by such holding of invalidity.

15. Legal Actions. If any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach of this Agreement, then the Party prevailing in any such action shall be entitled to recover against the Party not prevailing all reasonable attorneys' fees and costs incurred in such action.



16. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the distribution of proceeds upon foreclosure of or other remedies under the Deeds of Trust.

17. Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

18. Amendments. This Agreement shall not be modified except by written instrument executed by and between the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

COUNTY OF CONTRA COSTA,  
a political subdivision of the State of California

By: James Kennedy  
James Kennedy  
Its: Deputy Director - Redevelopment

REDEVELOPMENT AGENCY OF THE CITY OF SAN PABLO,  
a public body, corporate and politic

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

Its: \_\_\_\_\_

GIANT DEVELOPMENT, L.P., a California limited partnership

By: Whistle Station, LLC, a California limited liability company  
its general partner

By: East Bay Asian Local Development Corporation, a  
California nonprofit public benefit corporation  
its sole member

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

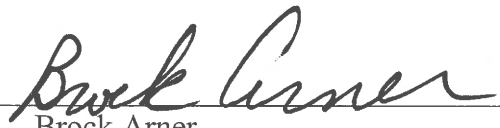
Its: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

COUNTY OF CONTRA COSTA,  
a political subdivision of the State of California

By: \_\_\_\_\_  
James Kennedy  
Its: Deputy Director - Redevelopment

REDEVELOPMENT AGENCY OF THE CITY OF SAN PABLO,  
a public body, corporate and politic

By:  \_\_\_\_\_  
Brock Arner  
Its: Executive Director

GIANT DEVELOPMENT, L.P., a California limited partnership

By: Whistle Station, LLC, a California limited liability company  
its general partner

By: East Bay Asian Local Development Corporation, a  
California nonprofit public benefit corporation  
its sole member

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

Its: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

COUNTY OF CONTRA COSTA,  
a political subdivision of the State of California

By: \_\_\_\_\_  
James Kennedy  
Its: Deputy Director - Redevelopment

REDEVELOPMENT AGENCY OF THE CITY OF SAN PABLO,  
a public body, corporate and politic

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

GIANT DEVELOPMENT, L.P., a California limited partnership

By: Whistle Station, LLC, a California limited liability company  
its general partner

By: East Bay Asian Local Development Corporation, a  
California nonprofit public benefit corporation  
its sole member

By: Sydney Jung Lee  
Its: Executive Director

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Contra Costa

On

June 11, 2009

Date

before me,

Jade A. Belscher, Notary Public

Here Insert Name and Title of the Officer

personally appeared

James Kennedy

Name(s) of Signer(s)



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

Jade A. Belscher

Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document:

Amended And Restated Intercreditor Agreement

Document Date:

Number of Pages:

Signer(s) Other Than Named Above:

### Capacity(ies) Claimed by Signer(s)

Signer's Name:

- ☐ Individual
- ☐ Corporate Officer — Title(s):
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other:

Signer Is Representing:

Signer's Name:

- ☐ Individual
- ☐ Corporate Officer — Title(s):
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other:

Signer Is Representing:

RIGHT THUMBPRINT  
OF SIGNER  
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RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

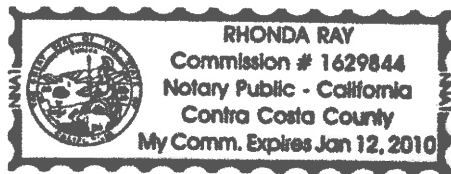
STATE OF CALIFORNIA )

COUNTY OF CONTRA COSTA )

On July 1, 2009, before me, Rhonda Ray, Notary Public,  
personally appeared Brook Winer, 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.



Rhonda Ray  
Notary Public

STATE OF CALIFORNIA )

COUNTY OF CONTRA COSTA )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
personally appeared \_\_\_\_\_, 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.

\_\_\_\_\_  
Notary Public

STATE OF CALIFORNIA )

COUNTY OF CONTRA COSTA )

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

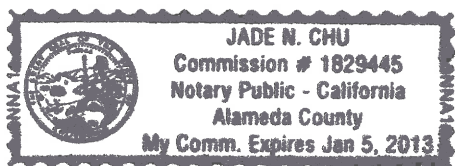
State of California

County of Alameda

On August 4, 2009 before me, Jade N. Chu, Notary Public

personally appeared Lynette Jung Lee

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 Jade N. Chu

Place Notary Seal Above

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: Amended and Restated Intercreditor Agreement

Document Date: 8/4/09 Number of Pages: ten

Signer(s) Other Than Named Above: none

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

EXHIBIT A  
LEGAL DESCRIPTION OF THE PROPERTY



### **Exhibit "A"**

Real property in the City of San Pablo, County of CONTRA COSTA, State of California, described as follows:

#### **PARCEL ONE:**

ALL THAT REAL PROPERTY BEING A PORTION OF PARCEL A AS SHOWN ON THE PARCEL MAP M.S. NO. 777-86, FILED APRIL 7, 1986 IN BOOK 122 OF PARCEL MAPS AT PAGE 7, LOCATED IN THE CITY OF SAN PABLO, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL A, SAID POINT BEING ON THE EASTERLY BOUNDARY OF THE ROAD RIGHT OF WAY KNOWN AS GIANT ROAD (COUNTY ROAD NO. 21); THENCE ALONG SAID EASTERLY BOUNDARY OF GIANT ROAD, SOUTH 12° 25' 00" WEST A DISTANCE OF 363.51 FEET;

THENCE SOUTH 77° 35' 00" EAST A DISTANCE OF 314.00 FEET;

THENCE NORTH 12° 25' 00" EAST A DISTANCE OF 273.74 FEET;

THENCE SOUTH 77° 35' 00" EAST A DISTANCE OF 26.00 FEET;

THENCE NORTH 12° 25' 00" EAST A DISTANCE OF 89.77 FEET;

THENCE NORTH 77° 35' 00" WEST A DISTANCE OF 340.00 FEET; TO THE POINT OF BEGINNING.

ALSO BEING LOT 1, AS SHOWN ON THE LOT LINE ADJUSTMENT PLAT ATTACHED TO THAT CERTAIN "CERTIFICATE OF COMPLIANCE FOR LOT LINE ADJUSTMENT LLA 04-35" RECORDED AUGUST 5, 2004 AS INSTRUMENT NO. 2004-302583 OF OFFICIAL RECORDS WHICH WAS CORRECTED IN THE CORRECTION DEED RECORDED SEPTEMBER 14, 2004 AS INSTRUMENT NO. 2004-353917 OF OFFICIAL RECORDS.

#### **PARCEL TWO:**

NONEXCLUSIVE EASEMENTS FOR ACCESS, DRAINAGE AND UTILITIES, CREATED AS AN APPURTENANCE TO PARCEL ONE ABOVE IN THE "EASEMENT AND MAINTENANCE AGREEMENT" EXECUTED BY AND BETWEEN PULTE HOME CORPORATION, A MICHIGAN CORPORATION AND GIANT DEVELOPMENT L.P., A CALIFORNIA LIMITED PARTNERSHIP RECORDED APRIL 14, 2006 AS INSTRUMENT NO. 2006-116461, OFFICIAL RECORDS, OVER, UNDER AND UPON THE FOLLOWING DESCRIBED LAND:

BEING A PORTION OF LOT "J" AS SAID LOT IS SHOWN ON THAT CERTAIN MAP ENTITLED "SUBDIVISION NO. 8921, FOR CONDOMINIUM PURPOSES, DEVON SQUARE IN THE CITY OF SAN PABLO", FILED FEBRUARY 1, 2006 IN BOOK 487 OF MAPS AT PAGES 7 TO 10 INCLUSIVE OF OFFICIAL RECORDS OF CONTRA COSTA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE MOSTLY WESTERLY LINE OF SAID SUBDIVISION NO. 8921, BEING THE SOUTHERLY TERMINUS OF THE LINE SHOWN AS "N 12° 25' 00" E 273.74'" ON THE LAST SAID MAP;

THENCE FROM SAID POINT OF BEGINNING, ALONG THE LAST SAID MOSTLY WESTERLY LINE, NORTH 12° 25' 00" EAST, 273.74 FEET TO A POINT ON THE NORTHERLY LINE OF THE LAST SAID SUBDIVISION;

THENCE ALONG THE LAST SAID NORTHERLY LINE, SOUTH 77° 35' 00" EAST, 24.00 FEET;

THENCE LEAVING THE LAST SAID NORTHERLY LINE, ALONG THE MOSTLY EASTERLY LINE OF SAID LOT J AND ITS NORTHERLY PRODUCTION, SOUTH 12° 25' 00" WEST, 127.75 FEET TO A TANGENT CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 10.00 FEET AND A CENTRAL ANGLE OF 90° 00' 00";

THENCE SOUTHERLY, SOUTHEASTERLY AND EASTERLY ALONG THE ARC OF SAID CURVE 15.71 FEET;

THENCE, SOUTH 12° 25' 00" WEST, 0.50 FEET;

THENCE LEAVING THE LAST SAID MOSTLY EASTERLY LINE OF SAID LOT J, SOUTH 12° 25' 00" WEST, 23.00 FEET TO A POINT ON THE LAST SAID MOSTLY EASTERLY LINE OF SAID LOT J;

THENCE ALONG THE MOSTLY EASTERLY LINE OF SAID LOT J;

THENCE ALONG THE MOSTLY EASTERLY LINE OF SAID LOT J, SOUTH 12° 25' 00" WEST, 0.50 FEET TO A POINT ON A NON-TANGENT CURVE, CONCAVE TO THE SOUTHEAST, HAVING A RADIAL WHICH BEARS NORTH 12° 25' 00" EAST, A RADIUS OF 10.00 FEET AND A CENTRAL ANGLE OF 90° 00' 00";

THENCE WESTERLY, SOUTHWESTERLY AND SOUTHERLY ALONG THE ARC OF SAID CURVE 15.71 FEET;

THENCE, SOUTH 12° 25' 00" WEST, 88.98 FEET TO A TANGENT CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 10.00 FEET AND A CENTRAL ANGLE OF 90° 00' 00";

THENCE SOUTHERLY, SOUTHEASTERLY AND EASTERLY ALONG THE ARC OF SAID CURVE 15.71 FEET;

THENCE, SOUTH 12° 25' 00" WEST, 0.50 FEET;

THENCE LEAVING THE LAST SAID MOSTLY EASTERLY LINE OF SAID LOT J, SOUTH 12° 25' 00" WEST, 2.85 FEET TO A POINT ON THE MOSTLY NORTHERLY LINE OF THE RIGHT OF WAY OF LAKE STREET AS SAID STREET IS SHOWN ON THE LAST SAID SUBDIVISION NO. 8921 AND BEING ALSO A NON-TANGENT CURVE, CONCAVE TO THE SOUTH, HAVING A RADIAL WHICH BEARS NORTH 21° 45' 12" EAST, A RADIUS OF 25.25 FEET AND A CENTRAL ANGLE OF 9° 29' 12";

THENCE WESTERLY ALONG THE ARC OF SAID CURVE, 4.28 FEET;

THENCE CONTINUING ALONG THE LAST SAID RIGHT OF WAY OF LAKE STREET, NORTH 77° 35' 00" WEST, 29.74 FEET TO THE POINT OF BEGINNING.

APN: 412-060-005-3

END OF DOCUMENT