

**TRI-PARTY AGREEMENT**

This Tri-Party Agreement (the "**Agreement**") is entered into as of March \_\_\_\_, 2009 by and among WELLS FARGO BANK, NATIONAL ASSOCIATION ("**Bank**"), COUNTY OF SAN MATEO ("**Takeout Lender**"), and MP SAN MATEO TRANSIT ASSOCIATES, L.P., a California limited partnership ("**Borrower**").

**RECITALS**

This Agreement is entered into on the basis of the following facts and understandings of the parties.

A. Borrower has a fee simple interest in the real property described in Exhibit A hereto (the "**Property**").

B. Borrower proposes to construct 68 units of rental housing on the Property (such units, together with all appurtenances, fixtures, and improvements now or hereafter owned by Borrower and located on the Property, the "**Improvements**").

C. The construction of the Improvements and related costs and expenses will be financed in part by a loan in a maximum principal amount not to exceed \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_) to Borrower from Bank (the "**Bank Loan**") under the terms of the Construction/Permanent Loan Agreement. The Bank Loan will be evidenced by a Promissory Note and secured by a Construction and Permanent Deed of Trust With Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing made by Borrower for the benefit of Bank and such other security as is identified in the Construction/Permanent Loan Agreement.

D. Borrower has obtained and accepted from Takeout Lender a commitment to provide permanent financing for the construction of the Improvements in an amount not to exceed One Million and no/100ths Dollars (\$1,000,000.00) (the "**Takeout Loan**"), pursuant to the terms and conditions of that certain commitment between Borrower and Takeout Lender dated as of \_\_\_\_\_, 2009 (the "**Takeout Commitment**"), a copy of which is attached hereto as Exhibit B.

E. Bank has agreed to make the Bank Loan in reliance upon, among other things, the provisions of the Takeout Commitment and this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises of the parties and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**AGREEMENT**

1. Representations of Takeout Lender and Borrower. Takeout Lender and Borrower represent to Bank as of the date hereof as follows:

(a) Attached hereto as Exhibit B is a true, complete and correct copy of the Takeout Commitment entered into by and between Takeout Lender and Borrower.

(b) The Takeout Commitment, which contains all the terms and conditions to funding of the Takeout Loan, is in full force and effect, and is valid, binding and enforceable against Borrower, and has not been amended, modified or terminated.

(c) Borrower is not in default under the Takeout Commitment and has fully complied with all of the requirements of the Takeout Commitment to be performed or satisfied by it at or before the date of this Agreement.

(d) Neither Borrower nor Takeout Lender knows of any reason why the conditions to funding the Takeout Commitment will not be satisfied.

2. Borrower's Successors and Assigns. Takeout Lender covenants and agrees that in the event of foreclosure of the Bank Deed of Trust, whether by power of sale or by court action, or upon a transfer of the Property in lieu of foreclosure (the purchaser at foreclosure or the transferee in lieu of foreclosure, including Bank if it is purchaser or transferee, being herein called the "**New Owner**"), Takeout Lender will fund the Takeout Loan to New Owner provided that (i) New Owner agrees to be bound by the terms and provisions of the Takeout Loan Documents (as defined below), to cure any outstanding defaults under the Takeout Loan Documents, and to assume Borrower's obligations thereunder; (ii) all conditions of such funding set forth in this Agreement and the Takeout Commitment have been fulfilled or waived; (iii) Takeout Lender has received and reviewed all due diligence materials required by Takeout Lender in connection with the underwriting of the new credit to New Owner; and (iv) Takeout Lender has approved of such New Owner.

3. Defaults of Borrower Under the Takeout Commitment. The Takeout Lender agrees to give Bank and Borrower prompt written notice of any default(s) of Borrower under this Agreement or the Takeout Commitment. Bank and Borrower will each have ten (10) days after receipt of any such notice of default (or such longer period of time, if any, as may be permitted by the Takeout Commitment) to cure any monetary default. As to all non-monetary defaults, Bank and Borrower will each have ten (10) days after receipt of such notice of default (or such longer period of time, if any, as may be permitted by the Takeout Commitment) to advise Takeout Lender in writing (a "**Cure Notice**") that either or both of them will undertake to cure the defaults and thereafter promptly commence and diligently proceed to cure them within forty-five (45) days following receipt of the notice of default. In no event shall any cure period (whether for a monetary or nonmonetary default) extend the Takeout Commitment Expiration Date without the prior written consent of Takeout Lender. If a default set forth in any notice of default provided by the Takeout Lender is not cured, or a Cure Notice is not provided to Takeout Lender, within the times set forth in this Section 3, then Takeout Lender shall have the right to cancel and terminate the Takeout Commitment.

4. Amendments. No amendment, modification or extension of the Takeout Commitment will affect any obligations of the parties under this Agreement or will otherwise be effective, unless that amendment, modification or extension is approved in writing by all parties to this Agreement. This Agreement may be amended or modified only by a written instrument signed by all of the parties.

5. Notices. All notices, demands and requests hereunder shall be in writing and shall be deemed to have been duly and properly given if personally delivered at the time of such delivery, or delivered by a recognized overnight delivery service, or if mailed, forty-eight (48) hours after deposit in United States registered or certified mail, postage prepaid, and in any case, addressed to the parties as follows:

Borrower:

MP San Mateo Transit Associates, L.P., a California limited partnership  
303 Vintage Park Drive, Suite 250  
Foster City, CA 94404  
Attention: President

With a copy to:

Union Bank of California  
200 Pringle Avenue, Suite 355  
Walnut Creek, CA 94596  
Attention: James H. Francis

Takeout Lender:

County of San Mateo  
264 Harbor Boulevard, Building A  
Belmont, CA 94002  
Attention: Rosa Mendoza

Bank:

Wells Fargo Bank, National Association  
Commercial Real Estate Group  
420 Montgomery Street, 11<sup>th</sup> Floor  
MAC #A0101-11B  
San Francisco, CA 94104

Such addresses may be changed by notice to the other parties given in the manner provided above.

6. Counterparts. This Agreement may be executed in any number of counterparts by the parties hereto. Each of said counterparts shall be deemed to be an original, and all such counterparts shall constitute but one and the same instrument.

7. Attorneys' Fees. If any dispute arises between any of the parties regarding the interpretation or the enforcement of this Agreement, the prevailing party or parties shall recover from the losing party or parties all reasonable expenses, attorneys' fees and court costs incurred by the prevailing party or parties.

8. Binding Effect. The covenants, agreements, rights and options contained in this Agreement shall be binding upon and shall inure to the benefit of the respective heirs, executors, successors and assigns of the parties and all persons claiming by, through or under any of them. The Bank Loan and the rights of Bank under this Agreement shall not be assignable without the prior written consent of Takeout Lender, which consent shall not be unreasonably withheld, except that Bank may assign or grant a participation in portions of the Bank Loan and its rights thereunder if that assignee or participant shall agree in writing to be bound by all of the provisions of this agreement or shall irrevocably empower Bank to comply with such provisions on its behalf pursuant to the terms of a participation agreement. Any such assignment shall fully and forever relieve Bank of its obligations under this Agreement.

9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

10. Time. Time is of the essence hereof.

11. Waiver. Except as expressly provided in this Agreement, no waiver on the part of any party of any right it may have shall be implied from any failure to take action. One waiver shall not be interpreted as a waiver of the obligations to comply with the applicable or related provisions in the future.

12. No Joint and Several Liability. The liability of all persons and entities who are in any manner obligated under this Agreement shall be individual and several and not joint and several.

13. Exhibits. All exhibits described in and attached to this Agreement are incorporated by this reference.

14. Headings. The headings of the paragraphs of this Agreement are for convenience of reference only and shall not be used to limit or interpret the terms hereof.

15. Severability. If any provision of this Agreement or the application thereof to any parties or any circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

16. Termination. This Agreement shall terminate upon the earlier to occur of (i) the closing and funding of the Takeout Loan, or (ii) the Takeout Commitment Expiration Date, or (iii) the termination of the Takeout Commitment (subject to Borrower's and Lender's rights to cure), or (iv) the repayment in full of all amounts due and owing under the Bank Loan.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first indicated above.

**BORROWER:**

**MP SAN MATEO TRANSIT ASSOCIATES, L.P.,**  
a California limited partnership

By: MP Mezes, Inc.,  
a California nonprofit public benefit corporation,  
Its: General Partner

By: \_\_\_\_\_  
Matthew O. Franklin  
Assistant Secretary

**TAKEOUT LENDER:**

**COUNTY OF SAN MATEO**

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

**BANK:**

**WELLS FARGO BANK, NATIONAL ASSOCIATION**

By: \_\_\_\_\_  
Lori A. Saito  
Vice President

**EXHIBIT A**

Exhibit A to the Tri-Party Agreement between Wells Fargo Bank, National Association, County of San Mateo and MP San Mateo Transit Associates, L.P., a California limited partnership, dated as of March \_\_\_\_, 2009.

REAL PROPERTY IN THE CITY OF SAN MATEO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS;

[TO BE REVISED]

EXHIBIT B

Exhibit B to the Tri-Party Agreement between Wells Fargo Bank, National Association, San Mateo County Housing Start Fund and MP SAN MATEO TRANSIT ASSOCIATES, L.P., a California limited partnership, dated as of March \_\_\_\_, 2009.

(Takeout Commitment)