

**RECORDING REQUESTED BY
AND WHEN RECORDED, MAIL TO:**

Klein Hornig LLP
1325 G St NW, Suite 770
Washington, DC 20005
Attn: Eric Herrmann

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this “**Agreement**”), made and entered into as of _____, 2018, by and among the County of Contra Costa, a political subdivision of the State of California (“**Lender**”), Hercules Senior Housing Associates, a California limited partnership (“**Host Owner**”), BRIDGE Aggregate Solar Company LLC, a California limited liability company (“**Equipment Owner**”) (each, a “**Party**” and collectively, the “**Parties**”).

RECITALS

WHEREAS, Host Owner is the owner in fee simple of certain real property located at 100 Civic Drive, in Hercules, California, and improvements constructed thereon as more particularly described on **Exhibit A** (excluding, however, improvements constructed thereon by Equipment Owner and other property of Equipment Owner (the “**Premises**”).

WHEREAS, Host Owner has granted Equipment Owner a nonexclusive license and easement to use a portion of the Premises (the “**Site**”) to Equipment Owner pursuant to that certain Energy Services Agreement dated _____, 2018, by and between Host Owner and Equipment Owner (such agreement, together with all subsequent amendments, modifications, renewals and extensions thereof, is hereafter referred to as the “**ESA**”), pursuant to which Equipment Owner plans to develop, finance, install, own, operate, maintain and repair a solar energy facility on the Site (the “**Solar Facility**”), and pursuant to which Equipment Owner will deliver electrical energy produced by the Solar Facility for use by the Host Owner. A notice of said ESA is recorded herewith.

WHEREAS, Lender has made a loan to Host Owner, and Host Owner has executed and delivered, to Lender, a Deed of Trust and Security Agreement dated September 8, 1998, recorded with the land records of the County of Contra Costa, as Instrument # 98-0219719-00 (including any amendment, supplement, modification, renewal or replacement thereof, the “**Mortgage**”).

WHEREAS, pursuant to the ESA, Equipment Owner has required that Host Owner obtain this Agreement from Lender.

WHEREAS, Equipment Owner, Host Owner and Lender have agreed to the following as respects their mutual rights and obligations pursuant to the ESA and the Mortgage.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the Parties do hereby covenant and agree as follows:

1. CONSENT TO ESA; SUBORDINATION

(a) **Consent to ESA.** If and to the extent required by the Mortgage, Lender hereby consents to the ESA for purposes stated therein.

(b) **Acknowledgment of Deemed Approval.** Lender hereby agrees to provide Host Owner with any required approval or other response to any material changes to construction plans of the Solar Facility within fourteen (14) business days of Host Owner's request to Lender for such response and agrees that failure to do so will constitute deemed approval of such change.

(c) **Subordination.** The ESA shall be, and shall at all times remain, subject and subordinate to the Mortgage, the lien imposed by the Mortgage and all advances made under the Mortgage. Notwithstanding the foregoing, Lender acknowledges and agrees that title to the Solar Facility shall be held by Equipment Owner; that Equipment Owner is the exclusive owner of the Solar Facility, the electricity generated by the Solar Facility, and all the attributes related thereto; that Lender acknowledges and agrees that it has no lien, security interest or other encumbrance on the Solar Facility or any rents, profits, or proceeds therefrom; and that neither Lender nor any party that becomes owner of the Site as the result of a Host Owner default under the Mortgage shall directly or indirectly cause, create, incur, assume or suffer to exist any liens, security interests or other encumbrances on or with respect to the Solar Facility or any rents, profits or proceeds therefrom or any interest herein.

2. NON-DISTURBANCE, CONSENT AND ATTORNMENT

(a) **Non-Disturbance.** So long as Equipment Owner is not in default (beyond any period specified in the ESA for Equipment Owner to cure such default) in the payment of rent or additional rent or in the performance of any of the terms, covenants or conditions of the ESA on Equipment Owner's part to be performed, then: (a) Equipment Owner's use and possession of the Site and Equipment Owner's rights and privileges under the ESA, or any extensions or renewals thereof as provided for in the ESA, shall not be diminished or interfered with by Lender and Equipment Owner's occupancy of the Site shall not be disturbed by Lender for any reason whatsoever during the term of the ESA or any such extension or renewals thereof; and (b) the ESA and all of Equipment Owner's rights and interests under the ESA shall survive and not be disturbed, affected or impaired by any suit, action or proceeding upon the Mortgage or any obligation secured thereby, or by any foreclosure of, or forfeiture under, the Mortgage or any enforcement of any rights under the Mortgage or other documents held by Lender, or any deed in lieu of foreclosure.

(b) **Consent to Installation of Solar Facility; Waiver of Lien.** Lender hereby consents to the installation of the Solar Facility and agrees that the Solar Facility shall be and remain personal property owned by Equipment Owner (and not a fixture) and subject to the lien and security interest of any Equipment Lender (as defined below) notwithstanding the manner of such lien or security interest's annexation to the Site, such lien or security interest's adaptability to the uses and purposes for which the Site are used, or the intentions of the party making the annexation. So long as any loan from any Equipment Lender (as defined below) remains outstanding, Lender hereby waives, for the benefit of Equipment Owner and any Equipment Lender, any and all claims, rights or liens which Lender, or any of its trustees, successors or assigns may hereafter acquire on or in the Solar Facility, no matter how arising, including without limitation, all statutory and common law liens or security interests, and all rights to levy distraint, execute or sell the Solar Facility.

(c) **No Actions Against Equipment Owner.** Lender will not name or join Equipment Owner or any Equipment Lender (as defined below) as a party defendant in any action or proceeding to enforce any of Lender's rights or remedies under the Mortgage unless such joinder is necessary to foreclose the Mortgage. In the latter case, Lender may join Equipment Owner as a defendant in such foreclosure action only for such purpose and not to terminate the ESA or otherwise adversely affect Equipment Owner's rights under the ESA or in this Agreement in such action.

(d) **Attornment.** If the interests of Host Owner shall be transferred to and owned by Lender by reason of foreclosure or any other manner, and Lender succeeds to the interest of Host Owner under the ESA, Equipment Owner shall be bound to Lender and Lender shall be bound to Equipment Owner, under all of the terms, covenants and conditions of the ESA for the balance of the term thereof and any extensions or renewals as provided in the ESA, with the same force and effect as if Lender were the Host Owner under the ESA, and Equipment Owner does hereby attorn to Lender as its Host Owner, said attornment to be effective and self-operative immediately upon written notice from Lender to Equipment Owner (Lender hereby agreeing to provide a copy of such notice to Host Owner) to the effect Lender has succeeded to said interest of Host Owner, without the execution of any further instrument evidencing such attornment, and Equipment Owner shall thereafter pay all rent to Lender. The respective rights and obligations of Equipment Owner and Lender upon such attornment, to the extent of the then remaining balance of the term of the ESA and any such extensions and renewals, shall be and are the same as now set forth therein; it being the intention of the Parties for this purpose to incorporate the ESA in this Agreement by reference with the same force and effect as if set forth at length herein.

3. RIGHTS AND LIABILITIES OF LENDER AND EQUIPMENT OWNER

(a) **Equipment Owner's Right of Removal.** Notwithstanding anything herein to the contrary, Lender acknowledges and agrees that Equipment Owner shall be entitled to remove the Solar Facility from the Site in accordance with Equipment Owner's rights of removal under the ESA.

(b) **Liability of Lender.** If Lender shall succeed to the interest of Host Owner under the ESA, Lender shall not (i) be liable for any act or omission of Host Owner; (ii) be subject to any offsets or defenses against Host Owner with respect to defaults that have occurred and are continuing at the time

Lender succeeds to the interest of the Host Owner, if the Lender cures such Host Owner defaults pursuant to Section 3(c) hereof; or (iii) be bound by any amendment or modification of any material term of the ESA made after the date hereof without Lender's written consent. The provisions of clause (iii) of this Section 3(b) shall not be construed to render invalid or ineffective, as between Host Owner and Equipment Owner, any amendment or modification of the ESA made without Lender's written consent, or operate in any manner to invalidate this Agreement with respect to the terms of the ESA as the same are in effect as of the date of this Agreement.

(c) **Default by Host Owner.** In the event of a default by Host Owner under the ESA or an occurrence that would give rise to an offset against rent or claim against Host Owner under the ESA, Equipment Owner shall give Lender and Host Owner concurrent written notice of such default or occurrence at the respective addresses of Lender and Host Owner as set forth below and Lender may, at its option, cure such default or rectify such occurrence after receipt of such notice as provided in the ESA.

(d) **Facilities Lender.** Equipment Owner, and/or its successor(s), assignee(s) and/or designee(s) shall have the right to hypothecate, mortgage, pledge or alienate the Solar Facility and/or Equipment Owner's rights under the ESA and in and to the Site to one or more lenders or financing parties (an "**Equipment Lender**"). Such Equipment Lender shall be considered a third party beneficiary under this Agreement, provided such Equipment Lender shall have notified the Parties in writing of its name and address. Upon identification of the Equipment Lender, Host Owner and Lender hereby agree to execute an instrument acknowledging that such Equipment Lender shall be considered a party to this Agreement. Equipment Lender, and/or its successor(s), assignee(s) and/or designee(s) shall have the right to assign all of its interest in this Agreement and the ESA, as the case may be, to another person or entity, provided such transferee assumes the obligations of Equipment Owner or its successor(s), assignee(s) and/or designee(s) under this Agreement and the ESA, as the case may be. Upon such assignment, Equipment Lender (including its agents and employees) shall be released from any further liability thereunder to the extent of the interest assigned.

4. MISCELLANEOUS

(a) **Successors and Assigns.** Without prior consent of any other Party, Equipment Owner shall have the right to assign all of Equipment Owner's interest in this Agreement to any successor or assignee of Equipment Owner under the ESA. This Agreement and the covenants and agreements contained herein shall be binding and inure to the benefit of the Parties and their respective heirs, administrators, representatives, successors and permitted assigns. Each of the Parties agree to deliver a copy of this Agreement to their successors, permitted assignees and, in the case of Lender, its trustees and any services or administrator of the loan or indebtedness secured by the Mortgage, and to cooperate with Equipment Owner to ensure that each such successor, permitted assignee and trustee is aware of Equipment Owner's rights and Host Owner's and Lender's obligations hereunder.

(b) **Headings.** The headings of the various sections of this Agreement are for convenience only and are not to be construed as confined, or limiting, in any way, the scope or intent of the provisions

hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

(c) **Notices.** Any notice given under this Agreement shall be in writing, mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight air courier service, or personally delivered to a representative of the receiving Party, or sent by facsimile (provided an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this section). All such communications shall be mailed, sent or delivered, addressed to the Party for whom it is intended, at its address set forth below:

Notice to Lender shall be sent as follows:

Notice to Host Owner shall be sent as follows:

c/o BRIDGE Housing Corporation
600 California Street, Suite 900
San Francisco, CA 94108-2706
Attn: Katherine Fleming

Notice to Equipment Owner shall be sent as follows:

c/o BRIDGE Housing Corporation
600 California Street, Suite 900
San Francisco, CA 94108-2706
Attn: Katherine Fleming

(d) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

(e) **Disputes; Attorneys' Fees.** In the event of a dispute arising from or related to this Agreement, the prevailing Party in any proceeding to enforce this Agreement or to resolve the dispute shall be entitled to recover its expenses incurred in the proceeding, including reasonable attorneys' fees. Any dispute that is not settled to the mutual satisfaction of the Parties within the applicable notice or cure periods provided in this Agreement shall be brought in the courts of the United States or of the State of California and the parties hereto agrees that any action, claim, or dispute arising out of or related to this Agreement will be instituted exclusively in one of the above specified courts.

(f) **Choice of Law.** This Agreement shall be construed in accordance with the laws of the State of California without regard to its conflict of laws principles.

(g) **Interaction with ESA.** If this Agreement conflicts with the ESA, then this Agreement shall govern.

(h) **Amendments.** This Agreement may be amended, discharged or terminated only by a written instrument executed by all of the Parties, and any Equipment Lender that has notified the Parties in writing of its name and address.

(i) **Waiver.** No waiver of any provision of this Agreement shall be effective unless set forth in writing signed by the Party making such waiver, and any such waiver shall be effective only to the extent it is set forth in such writing. The waiver by any Party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein.

[Signature Pages Follow]

[Counterpart signature page to Subordination, Non-Disturbance and Attornment Agreement]

IN WITNESS WHEREOF, the Parties have each caused this Subordination, Non-Disturbance and Attornment Agreement to be executed on the day and year first above written.

LENDER:

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

By: _____

Its: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

CITY/COUNTY OF _____)
) ss
STATE/Commonwealth of _____)

On this ____ day of _____, 20____, before me, the undersigned notary public, personally appeared the aforesaid _____, the _____ of the County of Contra Costa, proved to me by satisfactory evidence of identification, being (check whichever applies): driver's license or other state or federal governmental document bearing a photographic image, oath or affirmation of a credible witness known to me who knows the above signatories, or my own personal knowledge of the identity of the signatories, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for said County of Contra Costa, for its stated purpose.

, Notary Public

My commission expires:

[Counterpart signature page to Subordination, Non-Disturbance and Attornment Agreement]

IN WITNESS WHEREOF, the Parties have each caused this Subordination, Non-Disturbance and Attornment Agreement to be executed on the day and year first above written.

HOST OWNER:

HERCULES SENIOR HOUSING ASSOCIATES,
a California limited partnership

By: BRIDGE HOUSING CORPORATION,
a California nonprofit public benefit corporation,
Its: General Partner

By: _____

Its: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

CITY/COUNTY OF _____)
) ss
STATE/COMMONWEALTH OF _____)

On this ___ day of _____, 20____, before me, the undersigned notary public, personally appeared the aforesaid _____, the _____ of BRIDGE Housing Corporation, a California nonprofit public benefit corporation, the general partner of Hercules Senior Housing Associates, proved to me by satisfactory evidence of identification, being (check whichever applies): driver's license or other state or federal governmental document bearing a photographic image, oath or affirmation of a credible witness known to me who knows the above signatories, or my own personal knowledge of the identity of the signatories, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for said Hercules Senior Housing Associates, for its stated purpose.

, Notary Public

My commission expires:

[Counterpart signature page to Subordination, Non-Disturbance and Attornment Agreement]

IN WITNESS WHEREOF, the Parties have each caused this Subordination, Non-Disturbance and Attornment Agreement to be executed on the day and year first above written.

EQUIPMENT OWNER:

BRIDGE AGGREGATE SOLAR COMPANY LLC,
a California limited liability company

By: BASC Manager LLC,
a California limited liability company,
Its: Manager

By: BRIDGE Housing Corporation,
a California nonprofit corporation,
Its: Manager

By: _____

Its: _____

[Notary on following page]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

CITY/COUNTY OF _____)
) ss
STATE/Commonwealth of _____)

On this ___ day of _____, 20____, before me, the undersigned notary public, personally appeared the aforesaid _____, the _____ of BRIDGE Housing Corporation, the manager of BASC Manager LLC, the manager of BRIDGE Aggregate Solar Company LLC, proved to me by satisfactory evidence of identification, being (check whichever applies): driver's license or other state or federal governmental document bearing a photographic image, oath or affirmation of a credible witness known to me who knows the above signatories, or my own personal knowledge of the identity of the signatories, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for said BRIDGE Aggregate Solar Company LLC, for its stated purpose.

, Notary Public

My commission expires:

Exhibit A

Legal Description

The land referred to is situated in the County of Contra Costa, City of Hercules, State of California, and is described as follows:

PARCEL ONE:

Parcel B of Parcel Map MS 477-98, filed September 4, 1998, in Book 175 of Parcel Maps, Pages 6, 7 and 8, Contra Costa County Records.

PARCEL TWO:

A non-exclusive access and utility easement appurtenant to Parcel One hereinabove, for the purposes of access, utilities, drainage, emergency vehicles, ingress and egress, over that portion of Parcel A, as shown on said Parcel Map designated as "Non-Exclusive Access and Utility Easement".

APN: 406-150-012