

Ent: 342362 - Pg 1 of 9
Date: 5/28/2010 3:17 PM
Fee: \$26.00 CREDIT CARD
Filed By: MC
CALLEN B PESHELL, Recorder
Tooele County Corporation
For: B&D TITLE CO

When recorded mail to:)
Rural Community Assistance Corporation)
3120 Freeboard Dr., Ste. 201)
West Sacramento, CA 95691)
Attn: Loan Fund Department)
Loan No. 6139-EA-01)
)

Space Above This Line For Recorder's Use

PARITY AGREEMENT

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PARITY AGREEMENT

THIS PARITY LIEN AGREEMENT (the "Agreement") is made and entered into effective as of the 24th day of May, 2010, by, between and among RURAL COMMUNITY ASSISTANCE CORPORATION ("RCAC"), a California nonprofit public benefit corporation and the UNITED STATES OF AMERICA, ACTING THROUGH THE RURAL HOUSING SERVICE, UNITED STATES DEPARTMENT OF AGRICULTURE (the "USDA").

RECITALS:

A. RCAC, has entered into that certain credit facility with Excelsior Academy, a Utah nonprofit corporation, as borrower, dated May 24, 2010, to evidence the credit facility borrower has executed a Promissory Note, Loan Agreement and that certain Deed of Trust with Assignment of Rents (the "RCAC Deed of Trust") dated May 24th, 2010, as Trustor, in favor of RCAC as Beneficiary, relating to the real property (the "Property") in Tooele County, State of Utah more particularly described on Exhibit "A" attached hereto.

B. The USDA has made a loan (the "USDA Loan") to Excelsior Academy, such USDA Loan is evidenced by a \$3,500,000 promissory note secured by that certain Real Estate Deed of Trust (the "USDA Deed of Trust") dated May 27, 2010, which was executed in favor of the USDA as Beneficiary, also relating to the Property, a Security Agreement and related Financing Statements.

C. The **RCAC loan and USDA Loan** relate to the same project being acquired by Excelsior Academy, and it is the intention of RCAC and the USDA that they shall share a proportionate parity security interest in the Property, revenues and income from the operation of the Project, notwithstanding the order in which the RCAC Deed of Trust and USDA Deed of Trust are recorded in the official records of the Tooele County Recorder.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Parity of Security Interest.** The parties hereto hereby agree that, notwithstanding the order in which the RCAC Deed of Trust and the USDA Deed of Trust are recorded in the official records of the Tooele County Recorder, the liens of and security interest created by the RCAC Deed of Trust and the USDA Deed of Trust, shall, as between RCAC and the USDA, be deemed to be on parity with each other. As used herein, parity shall mean equal rights with reference to the joint security, so that in the event of a default, RCAC and the USDA will be affected on a proportionate basis. In the

event adequate funds are not available to meet regular installments on the parity loans herein described, the funds available will be apportioned to RCAC and the USDA based up on the respective current installments of principal and interest due on the **Bonds** and promissory note.

2. **Cross-Default**. The parties hereto hereby agree that the occurrence of an event of default under the RCAC Deed of Trust and the USDA Deed of Trust shall be deemed to constitute an event of default under each of the other Deeds of Trust, whether or not an actual event of default has occurred under the terms of the other Deeds of Trust. If either RCAC or the USDA declares that an event of default has occurred, said party shall give written notice to the other, and both parties shall have the right to pursue its rights under its own Deed(s) of Trust and Security Agreement(s), including exercising the power of sale of the Property.

3. **Rights to Proceeds**. In the event of foreclosure, sale or liquidation of any of the secured property, fixed assets, or other security for obligations due to RCAC and the USDA pursuant to the respective **debt instruments**, RCAC and the USDA shall share their interest in the proceeds received from the foreclosure, sale or liquidation on a pro rata basis based upon (1) the unpaid principal and interest due and owing on the Notes, provided, however, that the maximum amount payable to either of said parties shall not exceed the amount payable to RCAC or the USDA pursuant to the terms of that party's Deed of Trust. However, if any protective advance(s) are made by RCAC and/or the USDA for the mutual protection of RCAC or the USDA said protective advances shall receive first priority in the apportionment of funds as herein described. For purposes of this agreement RCAC and the USDA agree that protective advances are payments made by one or both of the parties hereto for items such as insurance or taxes, for the purpose of protecting the security value of the property. If either RCAC or the USDA elects or wishes to make a protective advance, said party shall make an effort to obtain the concurrence of the other party prior to making the protective advance.

4. **No impact on Borrower's Obligations**. This Agreement is intended for the sole purpose of defining the respective security interests of RCAC and the USDA with respect to the Property and the revenues and income from the operation of the Project and shall not modify, reduce or otherwise affect the duties and obligation of the Trustor under the RCAC Deed of Trust, the USDA Deed of Trust, Security Agreement(s) or any of the documents or instruments secured by those Deeds of Trust and lien documents.

5. **Recording of Agreement**. The parties hereto agree that this agreement shall be recorded in the official records of the Tooele County Recorder.

6. Unless the parties otherwise agree in writing, any additional loans made to the Borrower by either Lender shall not share in the benefits of this Agreement and any liens securing additional loans encumbering the Property shall be subsequent and inferior to the joint and parity lien established herein.

7. This Agreement shall remain in full force and effect during the financing period and so long as either Lender has amounts due it by virtue of this Agreement. Neither Lender shall accept tender of final payment from the Borrower without first notifying the other Lender and ensuring that all requirements of this Agreement have first been met before, or simultaneously with, accepting said payment.

8. This Agreement shall be binding upon the parties, their heirs, successors and assigns.

9. This agreement is subject to applicable Federal Law and the laws of the State of Utah and said laws shall govern its interpretation, performance and enforcement.

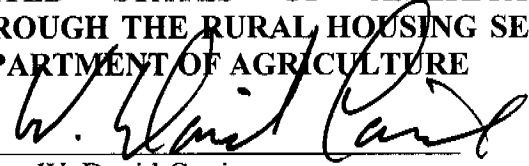
10. This Agreement may be executed and acknowledged in any number of counterparts and through the use of separate and/or duplicate signature pages and acknowledgements, and shall become binding upon each party when all parties necessary to bind such party have executed and, as appropriate, acknowledged this Agreement. Each of such counterparts and separate and/or duplicate signature pages and acknowledgements shall be deemed to be an original as against any party whose signature(s) appear(s) on it, and all such counterparts, pages and acknowledgements shall together constitute but one and the same Agreement

DATED effective as of the date first written above.

**RCAC:
RURAL COMMUNITY ASSISTANCE CORP.**

By: _____
Name: Michael D. Carroll
Title: Loan Fund Director

**USDA:
UNITED STATES OF AMERICA, ACTING
THROUGH THE RURAL HOUSING SERVICE, U.S.
DEPARTMENT OF AGRICULTURE**

By: 
Name: W. David Conine
Title: Utah State Director

7. This Agreement shall remain in full force and effect during the financing period and so long as either Lender has amounts due it by virtue of this Agreement. Neither Lender shall accept tender of final payment from the Borrower without first notifying the other Lender and ensuring that all requirements of this Agreement have first been met before, or simultaneously with, accepting said payment.


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DATED effective as of the date first written above.

**RCAC:
RURAL COMMUNITY ASSISTANCE
CORPORATION, A CALIFORNIA NONPROFIT
PUBLIC BENEFIT CORPORATION**

By: 
Name: Michael D. Carroll
Title: Loan Fund Director

**USDA:
UNITED STATES OF AMERICA, ACTING
THROUGH THE RURAL HOUSING SERVICE, U.S.
DEPARTMENT OF AGRICULTURE**

By: _____
Name: _____
Title: _____

**TRUSTOR:
EXCELSIOR ACADEMY**

By: _____
Name: _____
Title: _____

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledged that (s)he is _____ of RURAL COMMUNITY ASSISTANCE CORPORATION, and that (s)he, as _____ being authorized to do so, executed the foregoing on behalf of the association.

WITNESS my hand and official stamp or seal, this the ____ day of _____, 2010.
[SEAL]

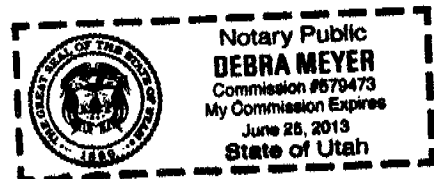
Notary Public
My Commission expires: _____

STATE OF UTAH
COUNTY OF SALT LAKE

I, Debra Meyer, a Notary Public of the County and State aforesaid, certify that W. David Conine personally came before me this day and acknowledged that (s)he is the State Director of RURAL HOUSING SERVICE of the U.S. DEPARTMENT OF AGRICULTURE, and that (s)he, as State Director being authorized to do so, executed the foregoing on behalf of the agency.

WITNESS my hand and official stamp or seal, this the 27th day of May, 2010.
[SEAL]

Debra Meyer
Notary Public
My Commission expires: 6-25-13



**TRUSTOR:
EXCELSIOR ACADEMY**

By: *Ann Gubler*
Name: Ann Gubler
Title: Board Chair

STATE OF CALIFORNIA
COUNTY OF YOLO

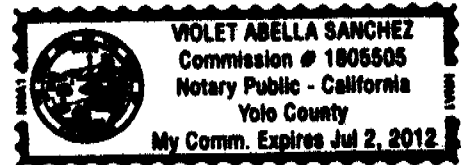
On 5/24/10 before me, *Violet Abella Sanchez* Notary Public
(insert name and title of officer)

personally appeared *Michael D. Carroll*,
who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose
names~~(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.

Violet Abella Sanchez (Seal)
Signature



STATE OF _____
COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledged that (s)he is _____ of RURAL HOUSING SERVICE of the U.S. DEPARTMENT OF AGRICULTURE, and that (s)he, as _____ being authorized to do so, executed the foregoing on behalf of the agency.

WITNESS my hand and official stamp or seal, this the _____ day of _____, 2010.
[SEAL]

Notary Public
My Commission expires: _____

STATE OF UTAH
COUNTY OF Joel

I, Glenda K. Loveless, a Notary Public of the County and State aforesaid, certify that Ann Gubler personally came before me this day and acknowledged that (s)he is Board Chair of Excelsior Academy, a Utah nonprofit corporation, and that (s)he, as Board Chair being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS my hand and official stamp or seal, this the 27 day of May, 2010.
[SEAL]

Glenda K. Loveless
Notary Public
My Commission expires: Dec 5, 2013

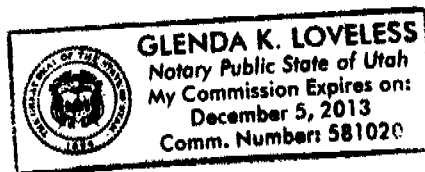


EXHIBIT "A"

Legal Description:

A PORTION OF THE EVAN COON MINOR SUBDIVISION DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN AN EXISTING FENCE LINE ON THE WEST LINE OF THE EVAN COON MINOR SUBDIVISION WHICH LIES SOUTH 01°09'00" EAST 7.00 FEET FROM THE NORTHWEST CORNER OF LOT 2 OF SAID EVAN COON MINOR SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF FOUND AS ENTRY NO. 126918, IN BOOK 555, AT PAGE 494 IN THE OFFICE OF THE TOOELE COUNTY RECORDER, SAID POINT ALSO LIES SOUTH 89°39'27" WEST 315.40 FEET, SOUTH 00°30'00" EAST 41.95 FEET, SOUTH 89°32'00" WEST 1719.22 FEET AND SOUTH 01°09'00" EAST 7.00 FEET FROM THE LOCATION ESTABLISHED BY THE TOOELE COUNTY DEPENDENT RESURVEY FOR THE EAST QUARTER CORNER OF SECTION 33, TOWNSHIP 2 SOUTH, RANGE 4 WEST, SALT LAKE BASE AND MERIDIAN (BASIS OF BEARING FOR THIS DESCRIPTION IS SOUTH 89°39'27" WEST ALONG THE TOOELE COUNTY DEPENDENT RESURVEY QUARTER SECTION LINE.); THENCE FROM SAID POINT OF BEGINNING, PARALLEL TO AND 7.00 FEET PERPENDICULARLY DISTANT SOUTHERLY FROM THE SOUTH LINE OF ERDA WAY, NORTH 89°32'00" EAST 429.00 FEET; THENCE SOUTH 514.00 FEET; THENCE SOUTH 89°32'00" WEST 418.68 FEET TO INTERSECT A SOUTHERLY EXTENSION OF A WESTERLY LINE OF SAID LOT 2; THENCE ALONG SAID SOUTHERLY EXTENSION AND SAID WESTERLY LINE OF SAID LOT 2, NORTH 01°09'00" WEST 514.02 FEET TO THE POINT OF BEGINNING

Tax ID #: 13-3-4