AGENDA

Call to Order: March 10, 2016, 5:00 p.m.

Call of Roll

1. Call to Order.
2. Citizens’ Communications.
3. Approval of the minutes from the February 11 and February 16 special called meetings and the February 18 regular meeting.
4. Approval and acceptance of the Treasurer’s Report.
5. Presentation and discussion of Advisory Team report.
6. Discuss and consider approval of a Loan Agreement and related documents with Citibank, N.A. for the Reserve at Engel Road.
7. Discuss and consider approval of an amendment to the contract between the New Braunfels Industrial Development Corporation and TRG Customer Solutions, Inc. d/b/a Ibex Global Solutions.
8. Executive Session:
      Project Goose

      Following the discussion in Executive Session, the New Braunfels Industrial Development Corporation may decide to vote or take action on one or more items discussed in executive session after reconvening into open session.


CERTIFICATION

I hereby certify the above Notice of Meeting was posted on the Bulletin Board at the New Braunfels Municipal Building on March 7, 2016 at _________ A.M / P.M.

__________________________
Patrick Aten, City Secretary
Agenda Item Memorandum

March 10, 2016

TO: NBIDC Board

FROM: Jeff Jewell, Development Coordinator

RE: Agenda Item # 3 – Approval of minutes.

The minutes from the special called February 11 and February 16 meetings and the regular February 18 meeting are attached.

Fiscal Impact:

None

Attachments:

February 11, 2016 minutes
February 16, 2016 minutes
February 18, 2016 minutes
Minutes
New Braunfels Industrial Development Corporation
Special-Called Board Meeting
5:00 p.m., Thursday, February 11, 2016
Honors Hall – 390 S. Seguin Ave.

The meeting was called to order by President Hansmann at 5:00 p.m.

Present: President Stuart Hansmann, Vice President Ashley Davison, Secretary Jan Kennady, Director Bob Gray, Director Neal Linnartz, and Director Wes Stamps. Treasurer Jim Poage arrived at 5:05 p.m.

Chamber staff present: Michael Meek and Rusty Brockman.

City officials and staff present: Robert Camarena, Kristi Aday, Greg Malatek, Jeff Jewell, Martie Simpson, Mayor Barron Casteel, Chris Monceballez, Val Acevedo, and Travis Cochrane.

Media: Jared Meisinger representing New Braunfels Herald-Zeitung

Citizens: Allan Young representing Stream Realty

Hansmann introduced Item No. 2, Citizens’ Communications. There were none.

Item No. 3 was approval of minutes from the regular January 21, 2016 meeting and the special called February 4, 2016 meeting. Gray made the motion and Linnartz seconded to approve both sets of minutes. The motion was approved 6-0.

Item No. 4 was public hearing, discussion and possible action approving a project expenditure of up to $500,000 to USRLP I-35 Logistics, LLC, a Texas limited liability company for the creation of at least 50 primary jobs. Jewell introduced this item and gave a review of the project and introduced Allan Young who had presented to the NBIDC at the February 4, 2016 meeting. Hansmann opened for public comment. There was none. He closed public comment and opened up for Board questions. There was discussion and questions about the project and about how the contract would be prepared going forward if the Board were to approve the $500,000 incentive. Kennady moved and Linnartz seconded a motion to recommend approval of an incentive for USRLP I-35 Logistics, LLC via a payout of $100,000 per year based upon ten jobs per year for an amount not to exceed $500,000 in total. There being no other discussion, the motion was approved 7-0.

Item No. 5 was public hearing, discussion and possible action approving an expenditure of up to $62,200 to Magellan Advisors for a project to provide broadband internet services in New Braunfels. Assistant City Manager Aday presented this item. She reviewed the project from its inception indicating this was the next step in the broadband study process with Magellan Advisors. She discussed the estimated costs for the project initially was approximately $3 million. The current range after more investigation and more study is between $3 and $5 million. She explained the moving parts of this project being the underground placement of the fiber or if it went above ground, using poles owned by NBU. She indicated this request is to utilize Magellan for Phase 1 and Phase 2. Phase 1 would be to have Magellan create an RFI to solicit interest from internet providers, and Phase 2 would be to create a P3 partnership. Aday also indicated the stakeholder group made up of Chamber of Commerce representatives, City, NBU and 4B members have been meeting; and if approved, this group would meet in a workshop that would be scheduled soon after the approval of the contract with Magellan Advisors. Hansmann opened for public hearing. There was none. He closed the public hearing and opened up for discussion by Board. After discussion, a motion was made by Davison and seconded by Gray to approve Agenda Item No. 5. The motion was 7-0 approved.
Item No. 6 was Executive Session. Hansmann read the item and indicated Project Goose and Project Veramendi were both to be discussed in Executive Session. He closed open session at 5:35 p.m. At 7:29 p.m. the Executive Session was closed and the Board returned into open session. Hansmann announced there was no action to be taken. The meeting was adjourned at 7:29 p.m.

Approved by:

____________________
Stuart Hansmann
President

Attest:

____________________
Jan Kennady
Secretary
Minutes
New Braunfels Industrial Development Corporation
Special-Called Board Meeting
5:00 p.m., Thursday, February 16, 2016
City Hall – 424 S. Castell Ave.

The meeting was called to order by President Hansmann at 5:01 p.m.

Present: President Stuart Hansmann, Vice President Ashley Davison, Secretary Jan Kennady, Treasurer Jim Poage, Director Bob Gray, and Director Neal Linnartz. Director Wes Stamps arrived at 5:06 p.m.

Chamber staff present: Michael Meek and Rusty Brockman.

City officials and staff present: Val Acevedo, Robert Camarena, Mayor Barron Casteel, Jeff Jewell, Greg Malatek, a New Braunfels Police Department Officer, and Martie Simpson.

Media: Jared Meisinger representing New Braunfels Herald-Zeitung

Citizens: Doug Stoker, Tiffany Lacey from ASA Properties, James Bettersworth, Craig Hall and Mike Ybarra.

Item No. 2 was Citizens’ Communications. Hansmann introduced that item. No one spoke.

Item No. 3 was discussion of a proposed project expenditure to ASA Properties, subject to certain conditions for the construction of a portion of the street into the property known as the Veramendi Project. Jewell presented this item with a PowerPoint. He explained the NBIDC options, reviewed the conditions and limitations, and also indicated there would be a public hearing at a special-called NBIDC Board meeting on Thursday, February 18, 2016 at 5:00 p.m. at Honors Hall. At that time action could be taken and recommendations would be sent to the City Council meeting on February 22, 2016. Options of grants or loans and reimbursement were discussed. Some Board members supported a loan and recommended City staff work out the conditions for a loan agreement. That loan would be up to $1.6 million.

Item No. 4 was Executive Session. There was none. The meeting was adjourned at 5:32 p.m.

Approved by:

____________________
Stuart Hansmann
President

Attest:

____________________
Jan Kennady
Secretary
The meeting was called to order by President Hansmann at 5:00 p.m.

Present: President Stuart Hansmann, Vice President Ashley Davison, Secretary Jan Kennady, Treasurer Jim Poage, Director Bob Gray, Director Neal Linnartz, and Director Wes Stamps.

Chamber staff present: Michael Meek and Rusty Brockman.

City officials and staff present: Val Acevedo, Kristi Aday, Robert Camareno, Mayor Barron Casteel, Jeff Jewell, a New Braunfels Police Department Officer, and Martie Simpson.

Media: Jared Meisinger, New Braunfels Herald-Zeitung.

Citizens: Janice Washburn and Randy Moczygemba.

Item No. 2 was Citizens’ Communications. Hansmann announced this item, and there were no comments.

Item No. 3 was public hearing, discussion and possible action adopting a resolution approving a project expenditure of up to $1.6 million in the form of a loan to ASA Properties for the construction of a portion of a street into the Veramendi project subject to certain conditions and limitations. Jewell presented a PowerPoint and reviewed the information presented to the Board at their special meeting on Tuesday, February 16. He presented to the Board a redline version of the resolution they were being asked to consider. After the presentation, Hansmann opened for public comment. There was none. He closed the public comment session and opened for Board discussion. After discussion, the Board was advised by City Attorney Acevedo that the version of the resolution they were holding in their hands indicated it was for the City Council and had the signatures for City Council and City staff instead of NBIDC President Hansmann and Secretary Kennady to sign. They would be provided with the correct resolution indicating it was for the NBIDC. Jewell stated he would have both Hansmann and Kennady sign the correct version immediately following the meeting if the resolution was approved. There being no other discussion, motion was made by Stamps and seconded by Kennady to approve Agenda Item No. 3. Motion was approved 7-0.

The meeting was adjourned at 5:17 p.m.

Approved by:

____________________
Stuart Hansmann
President

Attest:

____________________
Jan Kennady
Secretary
To: Members of the Industrial Development Corporation Board  
From: Martie Simpson, Director of Finance  
Date: March 06, 2016  
Subject: FY 2015-16 December financial report

Attached is the financial report through the month of December for FY 2015-16 (Oct-Dec). Revenue received in December is representative of the sales tax payment received for October sales.

Expenditures in December 2016 included payments to the Chamber of Commerce, the City and the National Development Council for their annual contract(s).

**New funding**
The NBIDC and City Council approved the commitment of $500,000 for Stream Realty for the creation of at least 50 primary jobs and $600,000 for Titan Enterprises to offset the CGT's purchase price for the site in the Titan Industrial Park and funding to offset permitting fees. In addition, $1,600,000 was approved to ASA Properties for the construction of a portion of a street in the Comal County Water Improvement District No. 1 (Veramendi Project).

**Sales Tax**
The October - December sales tax payments are reflected in the financials. The City has received five monthly payments at this point. The net payment for the month of February from the state was up by $45,709 or 1.7% when compared to the same month last fiscal year and up $529,428 or 8.1% for the year when compared to the first three months of the prior year.
Five Year Forecast

The NBIDC and City Council have approved various projects that will be funded over future years. In the attached financial statement, revenues and expenses have been forecasted over the next five years to provide current and long range estimates to assist the board in future funding decisions. The graph below compares the estimated beginning and ending fund balance for the next five years.
## Current Projects/Incentives

<table>
<thead>
<tr>
<th>Project Description</th>
<th>Date Approved NBIDC</th>
<th>Date Approved Council</th>
<th>Original Amount</th>
<th>Approved Amount</th>
<th>Remaining Beginning of Fiscal YTD</th>
<th>Fiscal YTD</th>
<th>Balance Remaining</th>
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</thead>
<tbody>
<tr>
<td>Airport Utility Extensions - Hangar/Taxiway</td>
<td>October 22, 2015</td>
<td>November 9, 2015</td>
<td>2,400,000</td>
<td>2,400,000</td>
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<td>585,000</td>
<td>9,253</td>
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<td>Alamo Area Academies (2016-2019)</td>
<td>October 22, 2015</td>
<td>November 9, 2015</td>
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<td>208,500</td>
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<td>ASA Properties</td>
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<td>February 22, 2016</td>
<td>1,600,000</td>
<td>1,600,000</td>
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<td>CBE Companies, Inc.</td>
<td>July 31, 2014</td>
<td>September 8, 2014</td>
<td>650,000</td>
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<td>CTTC Expansion</td>
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<td>Golf Course Support</td>
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<td>June 25, 2012</td>
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<td>Magellan - Feasibility Study</td>
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<td>September 8, 2014</td>
<td>49,500</td>
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<td>Magellan - Feasibility Study (Phase 2)</td>
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<td>Nexus Medical Consulting, Inc.</td>
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<td>June 23, 2014</td>
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<td>148,571</td>
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<td>Titan Enterprises (Initial)</td>
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<td>Titan Enterprises (Secondary)</td>
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<td>VBM New Braunfels Acquisition Infrastructure</td>
<td>October 22, 2015</td>
<td>November 9, 2015</td>
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<td>Strategic Budget Initiatives</td>
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<td>Community Recreation Center - Aquatics and Improv</td>
<td>April 14, 2015</td>
<td>April 27, 2015</td>
<td>2,500,000</td>
<td>2,500,000</td>
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<td>April 27, 2015</td>
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<td>3,200,000</td>
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<tr>
<td>Community Recreation Center -Party Room and Improv</td>
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<td>April 27, 2015</td>
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<tr>
<td>Amateur Sports Complex Feasibility Study</td>
<td>August 3, 2015</td>
<td>August 10, 2015</td>
<td>50,000</td>
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<td>Masterplan Service for City Hall Property</td>
<td>October 17, 2015</td>
<td>November 9, 2015</td>
<td>299,425</td>
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<tr>
<td>County Line Trail Extension</td>
<td>September 17, 2015</td>
<td>October 12, 2015</td>
<td>50,000</td>
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<td>Downtown Parking Study</td>
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<tr>
<td>Pedestrian Improvements Downtown</td>
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<td>158,095</td>
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**Total Commitments**

<table>
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<tr>
<th>NBIDC</th>
<th>Council</th>
<th>Original Amount</th>
<th>Approved Amount</th>
<th>Remaining Beginning of Fiscal YTD</th>
<th>Fiscal YTD</th>
<th>Balance Remaining</th>
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<tr>
<td></td>
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<td>20,275,877</td>
<td>18,417,393</td>
<td>46,468</td>
<td>18,370,925</td>
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New Braunfels Industrial Development Corp.
Financial Statement
As of December 31, 2015

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<tr>
<td>Beginning Fund Balance</td>
<td>$17,495,418</td>
<td>$18,783,743</td>
<td>$18,783,743</td>
<td>$18,783,743</td>
<td>$13,852,308</td>
<td>$8,460,154</td>
<td>$12,329,420</td>
<td>$16,691,725</td>
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**Revenue:**
- Sales Tax $5,620,971
- Interest Income $30,000
- Loan Payments $64,000

Total Revenue $5,714,971

**Total Available Funds** $23,210,389

**Expenditures:**

**Administrative and Promotional Expenditures**
- City of New Braunfels Contract $137,500
- Chamber of Commerce Contract $436,928
- National Development Council Contract $72,000
- Downtown Parking Lease $18,000
- Miscellaneous - Annual License $2,000

**Program Expenditures**

**Current Projects/Incentives**
- Airport Utility Extensions - Hangar/Taxiway $2,400,000
- Airport Utility Extensions - Water/Sewer/Road $585,000
- Alamo Area Academies (2016-2019) $66,000
- ASA Properties $1,600,000
- CBE Companies, Inc. $250,000
- Center for Entrepreneurship - 2015-16 $109,157
- CTTC Expansion - Phase I $320,000
- CTTC Expansion - Phase II $484,000
- Mainstreet Partners - Landa Bridge $109,240
- Golf Course Support $176,000
- HEB $800,000
- IBEX $400,000
- Loop 337 Expansion $1,500,000
- Magellan - Feasibility Study $62
- Nexus Medical Consulting, Inc. $185,714
- Pedestrian Bridge over Comal River $338,000
- Rush Enterprises $800,000
- Stream Realty $500,000
- Titan Enterprises (Initial) $500,000
- Titan Enterprises (Secondary) $600,000
- VBM New Braunfels Acquisition Infrastructure $85,000
## Strategic Budget Initiatives

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<tr>
<td>Community Recreation Center - Aquatics</td>
<td>2,500,000</td>
<td>2,500,000</td>
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<td>2,500,000</td>
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<tr>
<td>Community Recreation Center - Gym</td>
<td>3,200,000</td>
<td>3,200,000</td>
<td>3,200,000</td>
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<td>3,200,000</td>
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<tr>
<td>Community Recreation Center - Party Room</td>
<td>100,000</td>
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<td>Pedestrian Improvements Downtown</td>
<td>158,095</td>
<td>158,095</td>
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<tr>
<td>Downtown Parking Study</td>
<td>160,000</td>
<td>160,000</td>
<td>47,000</td>
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<td>47,000</td>
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## New Project Allocation

## Debt Service Payments

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<td>Debt Service Reserve - Park Improv Proj</td>
<td>1,305,717</td>
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<td>567,738</td>
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<td>2006 Refunding</td>
<td>239,100</td>
<td>239,100</td>
<td>239,100</td>
<td>244,800</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2007 Certificates of Obligation</td>
<td>315,363</td>
<td>315,363</td>
<td>315,363</td>
<td>311,863</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2010 Refunding</td>
<td>7,228</td>
<td>7,228</td>
<td>7,228</td>
<td>7,228</td>
<td>252,228</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>2013 Refunding</td>
<td>428,175</td>
<td>428,175</td>
<td>428,175</td>
<td>431,275</td>
<td>449,925</td>
<td>455,175</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Expenditures</td>
<td>14,683,882</td>
<td>21,490,404</td>
<td>18,417,393</td>
<td>146,485</td>
<td>10,644,822</td>
<td>11,618,861</td>
<td>2,473,035</td>
<td>2,097,913</td>
<td>2,169,226</td>
</tr>
<tr>
<td>Ending Fund Balance</td>
<td>$ 8,526,507</td>
<td>$ 3,008,310</td>
<td>$ 18,872,005</td>
<td>$ 13,852,308</td>
<td>$ 8,460,154</td>
<td>$ 12,329,420</td>
<td>$ 16,691,725</td>
<td>$ 21,040,583</td>
<td></td>
</tr>
</tbody>
</table>
Agenda Item Memorandum

March 10, 2016

TO: NBIDC Board

FROM: Jeff Jewell, Development Coordinator

RE: Agenda Item # 6 – Discuss and consider approval of a Loan Agreement and related documents with Citibank, N.A. for the Reserve at Engel Road

In February 2015, the NBIDC and City Council approved a project expenditure of up to $833,000 as a loan for the Reserves at Engel. The Reserves at Engel is the name of a proposed 96 unit multi-family development on approximately 7.3 acres at the northeast corner of Engel Road and North Interstate 35. MV Residential Development, LLC., an affiliate of Miller-Valentine Group, is the entity charged with developing the project using Low Income Housing Tax Credits.

Low Income Housing Tax Credit (LIHTC)

The LIHTC Program is an indirect federal subsidy used to finance the development of affordable rental housing for low-income households. The program is financed by selling federal tax credits and transferring the cash raised from these sales to buy down a unit’s development cost. These LIHTCs are designed to increase the supply of affordable housing in communities and provide the private market with an incentive to invest in affordable rental housing.

The Internal Revenue Service allocates these housing tax credits to designated state agencies. In Texas, the Department of Housing and Community Affairs (TDHCA) oversaw approximately $61 million in tax credit allocations for 2016. The TDHCA must develop a Qualified Allocation Plan (QAP) for allocating the credits. The credits are awarded on a competitive basis, and a proposed affordable housing development earns points for credit allocations depending on how many of the criteria it fulfills as outlined in the QAP. The credit amount for a project is also calculated based on the costs of development and the number of qualified low-income units, and cannot exceed the amount needed to make the project feasible. Once awarded, developers sell the credits to investors to raise capital (or equity) for their project, which reduces the debt the developer would otherwise have to borrow. Because the debt is significantly lower than a traditionally financed project, a tax credit property can offer lower, more affordable rents for a product that would otherwise command market-rate rents. Provided the property maintains compliance with the program requirements, investors receive a dollar-for-dollar credit against their Federal tax liability each year over a period of 10 years. This creates a strong incentive for the equity investors and
developers to ensure their respective properties fulfill the state’s program compliance guidelines. The development must maintain compliance with HUD program requirements for a minimum period of 15 years.

**Reserve at Engel**

All of the units would be set aside for individuals earning 30%, 50%, and 60% of the average family median income. The Reserve at Engel will offer tenant services and amenities typical of projects receiving Housing Tax Credits and are detailed in Attachment A. The property is zoned M-1 and will not require a rezoning approval before development proceeds. It is located in Council District 4.

The unit breakdown and rent levels are as follows for this property:

<table>
<thead>
<tr>
<th>Bedrooms</th>
<th>30% AMI</th>
<th>50% AMI</th>
<th>60% AMI</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Units</td>
<td>Rents</td>
<td>Units</td>
</tr>
<tr>
<td>1</td>
<td>1</td>
<td>$265</td>
<td>4</td>
</tr>
<tr>
<td>2</td>
<td>5</td>
<td>$313</td>
<td>20</td>
</tr>
<tr>
<td>3</td>
<td>4</td>
<td>$358</td>
<td>15</td>
</tr>
</tbody>
</table>

**Match-Funded Loan**

At their meetings in February 2015, the NBIDC and City Council approved the project expenditure utilizing a concept staff had termed a “match-funded loan.” Many local governmental entities want to support the development of LIHTC developments but do not have the local resources to provide the total amount of local development funding needed for the applicant to maximize its points in this scoring category. To meet this challenge, some communities have developed a program to enable them to make a loan into the project without significant material risk. The typical method involves the local governmental entity (in this case, the NBIDC) obtaining a loan from a commercial bank (the developer’s construction and permanent financier) and using the loan to make the loan to the applicant (developer). The repayment terms of the bank loan to the governmental entity mirror the terms given to the developer (as described above). To secure the loan, the governmental entity requires the developer to collateralize the loan to the bank’s satisfaction and makes the loan non-recourse to the governmental entity (NBIDC). In the event the loan request is ultimately fulfilled, the local entity would enter into an arrangement whereby funds would be advanced to the local entity by a third party and then loaned to the development for costs associated with the project.

By providing collateral for the loan and making the loan non-recourse the borrowing entity (NBIDC),
the public entity can provide funding into the project without substantial material risk. This loan receives a 2\textsuperscript{nd} lien position by the bank.

The NBIDC will borrow $833,000 from Citibank and the proceeds will then be loaned to the project. The Project Owner (developer) will collateralize the loan and agree to pay the debt service on the loan on behalf of the NBIDC.

**Staff Recommendation:**
Staff recommends approval of the loan and related documentation. The loan documentation has been approved by attorneys at Norton Rose Fulbright, who were retained by the City to provide their review and recommended changes.

**Fiscal Impact:**
The NBIDC will borrow $833,000. The loan has a 15 year term at 3\% and amortizes over 35 years. An amortization schedule is below:

<table>
<thead>
<tr>
<th>Year</th>
<th>No Payment Period</th>
<th>Interest Only Period</th>
<th>Amortization</th>
<th>Payment</th>
<th>Principal</th>
<th>Interest</th>
<th>Managing Member Capital Refinance</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>-</td>
<td>-</td>
<td>9</td>
<td>28,852</td>
<td>10,211</td>
<td>18,641</td>
<td>-</td>
<td>833,000</td>
</tr>
<tr>
<td>2019</td>
<td>-</td>
<td>-</td>
<td>12</td>
<td>36,470</td>
<td>13,977</td>
<td>24,493</td>
<td>-</td>
<td>680,111</td>
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<td>2020</td>
<td>-</td>
<td>-</td>
<td>12</td>
<td>36,470</td>
<td>14,402</td>
<td>24,067</td>
<td>-</td>
<td>794,409</td>
</tr>
<tr>
<td>2021</td>
<td>-</td>
<td>-</td>
<td>12</td>
<td>36,470</td>
<td>14,640</td>
<td>23,828</td>
<td>-</td>
<td>779,569</td>
</tr>
<tr>
<td>2022</td>
<td>-</td>
<td>-</td>
<td>12</td>
<td>36,470</td>
<td>15,292</td>
<td>23,178</td>
<td>-</td>
<td>764,277</td>
</tr>
<tr>
<td>2023</td>
<td>-</td>
<td>-</td>
<td>12</td>
<td>36,470</td>
<td>15,757</td>
<td>22,713</td>
<td>-</td>
<td>746,520</td>
</tr>
<tr>
<td>2024</td>
<td>-</td>
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<td>12</td>
<td>36,470</td>
<td>16,238</td>
<td>22,234</td>
<td>-</td>
<td>732,284</td>
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<tr>
<td>2025</td>
<td>-</td>
<td>-</td>
<td>12</td>
<td>36,470</td>
<td>16,730</td>
<td>21,740</td>
<td>-</td>
<td>715,556</td>
</tr>
<tr>
<td>2026</td>
<td>-</td>
<td>-</td>
<td>12</td>
<td>36,470</td>
<td>17,239</td>
<td>21,231</td>
<td>-</td>
<td>696,316</td>
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<td>2027</td>
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<td>12</td>
<td>36,470</td>
<td>17,763</td>
<td>20,707</td>
<td>-</td>
<td>660,553</td>
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<td>2028</td>
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<td>-</td>
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<td>18,303</td>
<td>20,166</td>
<td>-</td>
<td>662,349</td>
</tr>
<tr>
<td>2029</td>
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<td>12</td>
<td>36,470</td>
<td>18,860</td>
<td>19,610</td>
<td>-</td>
<td>643,389</td>
</tr>
<tr>
<td>2030</td>
<td>-</td>
<td>-</td>
<td>12</td>
<td>36,470</td>
<td>19,434</td>
<td>18,036</td>
<td>-</td>
<td>623,956</td>
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<td>2031</td>
<td>-</td>
<td>-</td>
<td>12</td>
<td>36,470</td>
<td>20,025</td>
<td>16,445</td>
<td>-</td>
<td>603,931</td>
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<tr>
<td>2032</td>
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<td>-</td>
<td>12</td>
<td>36,470</td>
<td>20,634</td>
<td>17,836</td>
<td>-</td>
<td>563,297</td>
</tr>
<tr>
<td>2033</td>
<td>-</td>
<td>-</td>
<td>3</td>
<td>8,417</td>
<td>5,256</td>
<td>3,161</td>
<td>576,041</td>
<td>-</td>
</tr>
<tr>
<td>2034</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>
Attachments:
Loan Agreement
Collateral Assignment of Loan
Citi Note
Multifamily Permanent Subordinate Note
Subordinate Multifamily Deed of Trust
Financing Statement
Intercreditor and Subordination
Agreement of Environmental Indemnification
Exceptions to Non-Recourse Guaranty
LOAN AGREEMENT

AMONG

CITIBANK, N.A.,
AS LENDER,

AND

NEW BRAUNFELS HOUSING FINANCE INDUSTRIAL DEVELOPMENT CORPORATION,
AS BORROWER

AND

AS PROJECT OWNER

Dated as of February __, 2016
LOAN AGREEMENT

THIS LOAN AGREEMENT (this “Citi Loan Agreement”) is dated for reference purposes only as of the ___ day of February, 2016, but will not be effective and binding on the parties hereto until the Closing Date (as hereinafter defined), and is among NEW BRAUNFELS HOUSING—FINANCE INDUSTRIAL DEVELOPMENT CORPORATION, a Texas nonprofit industrial development corporation (together with its successors and assigns, the “Borrower”), _________________________, a Texas limited partnership (the “Project Owner”) and CITIBANK, N.A., a national banking association (together with its successors and assigns, the “Lender”).

WITNESSETH:

RECITALS

WHEREAS, Project Owner has applied to the Lender for a construction to permanent loan (“Senior Loan”) evidenced by that certain Construction Loan Agreement of even date herewith by and between Project Owner and Lender (the “Senior Loan Agreement”), for the acquisition, construction, rehabilitation, development, equipping and/or operation of a 96-unit multifamily residential project located in New Braunfels, _____________ County, Texas, known or to be known as Reserve at Engel Road (“Project”);

WHEREAS, the Borrower has also applied to the Lender for a loan (the “Citi Loan”) to further finance the acquisition, development, construction and/or rehabilitation of the Project. The Citi Loan is evidenced by that certain Citi Note dated February __, 2016, in the amount of $833,000.00 (“Citi Note”), and will be advanced to Borrower pursuant to this Citi Loan Agreement, the proceeds of which will then be loaned (the “Project Owner Subordinate Loan”) by Borrower to the Project Owner and will be evidenced by a Multifamily Permanent Subordinate Note in the amount of $833,000.00 (the “Project Owner Subordinate Note”) and secured by, among other things, that certain Subordinate Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (as amended, restated and/or supplemented from time to time, the “Subordinate Security Instrument”), encumbering the Mortgaged Property. As security for the Citi Loan, Borrower will collaterally assign the Project Owner Subordinate Loan pursuant to Collateral Assignment of Loan (the “Collateral Assignment”).

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the parties hereto do hereby agree as follows:

ARTICLE I

DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1. Specific Definitions; Principles of Construction. For all purposes of this Citi Loan Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) Unless specifically defined herein, all capitalized terms shall have the meanings ascribed thereto in the Subordinate Security Instrument, the Senior Loan Agreement or the Senior
Loan Documents, as such documents shall be amended, modified or supplemented from time to time and notwithstanding the repayment of the Senior Loan or the termination of any such documents.

(b) All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with GAAP.

(c) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.

(d) All references in this instrument to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

(e) Unless otherwise specified, (i) all references to sections and schedules are to those in this Citi Loan Agreement, (ii) the words “hereof,” “herein” and “hereunder” and words of similar import refer to this Citi Loan Agreement as a whole and not to any particular provision, (iii) all definitions are equally applicable to the singular and plural forms of the terms defined and (iv) the word “including” means “including but not limited to.”

Section 1.2. Definitions. The following terms, when used in this Citi Loan Agreement (including when used in the above recitals), shall have the following meanings:

“Borrower” shall have the meaning set forth in the recitals hereto.

“Borrower Subordinate Payment Obligations” shall mean all payment obligations of the Borrower under the Citi Loan Documents.

“Citi Loan” shall mean the loan made by the Lender to the Borrower pursuant to this Citi Loan Agreement, in the maximum principal amount of the Citi Loan Amount, as evidenced by the Citi Note.

“Citi Loan Amount” shall mean the maximum principal amount of $833,000.00.

“Citi Loan Documents” shall mean this Citi Loan Agreement, the Citi Note, and the Collateral Assignment.

“Citi Loan Payments” shall mean the loan payments payable pursuant to the Citi Note.

“Citi Loan Proceeds” shall mean proceeds of the Citi Loan, to be disbursed by Lender to Borrower in accordance with Article III of this Citi Loan Agreement.

“Citi Note” shall have the meaning set forth in the Recitals hereto.

“Closing Date” shall mean February __, 2016.
“Collateral Assignment” shall have the meaning set forth in the recitals hereto.

“Events of Default” shall have the meaning set forth in Section 5.1 hereof.

“Potential Default” shall mean the occurrence of an event, which, under this Citi Loan Agreement or any other Citi Loan Document, would, but for the giving of notice or passage of time, or both, be an Event of Default.

“Project” shall have the meaning set forth in the recitals hereto.

“Project Owner” shall have the meaning set forth in the recitals hereto.

“Project Owner Subordinate Loan” shall have the meaning set forth in the recitals hereto.

“Project Owner Subordinate Note” shall have the meaning set forth in the recitals hereto.

“Senior Loan” shall have the meaning set forth in the recitals hereto.

“Senior Loan Agreement” shall have the meaning set forth in the recitals hereto.

“Senior Loan Documents” means the Senior Loan Agreement and all of the documents executed in connection therewith evidencing or securing the Senior Loan.

“Subordinate Debt” shall mean all debt that is subordinate to the Senior Loan which is not the Project Owner Subordinate Loan.

ARTICLE II

GENERAL

Section 2.1. Citi Loan; Citi Note.

(a) On the Closing Date, the Lender shall make the Citi Loan to the Borrower pursuant to the terms hereof, which shall mature and be payable at the times and in the amounts required under the terms hereof and of the Citi Note. The Borrower hereby accepts the Citi Loan. As evidence of its obligation to repay the Citi Loan, simultaneously with the delivery of this Citi Loan Agreement to the Lender, the Borrower hereby agrees to execute and deliver the Citi Note.

(b) On the Closing Date, the Borrower shall make the Project Owner Subordinate Loan to the Project Owner pursuant to the terms hereof, which shall mature and be payable at the times and in the amounts required under the terms hereof and of the Project Owner Subordinate Note. The Project Owner hereby accepts the Project Owner Subordinate Loan. As evidence of its obligation to repay the Project Owner Subordinate Loan, simultaneously with the delivery of this Citi Loan Agreement to the Borrower, the Project Owner hereby agrees to execute and deliver the Project Owner Subordinate Note.
Section 2.2. Loan Payments.

(a) The Borrower shall make the Citi Loan Payments to the Lender in accordance with the Citi Note.

(b) The Project Owner shall make payments to the Borrower on the Project Owner Subordinate Note.

(c) All payments made by the Borrower and the Project Owner hereunder or under the other Citi Loan Documents and the Project Owner Subordinate Note shall be made irrespective of, and without any deduction for, any set-offs or counterclaims, but such payment shall not constitute a waiver of any such set offs or counterclaims.

Section 2.3. Additional Payments.

A. Borrower Obligations.

(a) The Borrower shall pay to the Lender on demand the following amounts:

(i) all fees, charges, costs, advances, indemnities and expenses, including agent and counsel fees, of the Lender incurred under the Citi Loan Documents; and

(ii) any late charge due and payable under the terms of the Citi Note and Section 2.4 herein.

(b) The Borrower shall pay to the party entitled thereto as expressly set forth in this Citi Loan Agreement, or the other Citi Loan Documents:

(i) all expenses incurred in connection with the enforcement of any rights under this Citi Loan Agreement, any other Citi Loan Document; and

(ii) all other payments of whatever nature that the Borrower has agreed to pay or assume under the provisions of this Citi Loan Agreement or any other Citi Loan Document; and

B. Project Owner Obligations.

(a) The Project Owner shall pay to the holder of the Project Owner Subordinate Note on demand the following amounts:

(i) all fees, charges, costs, advances, indemnities and expenses, including agent and counsel fees, of the holder of the Project Owner Subordinate Note incurred under and with respect to the loan evidenced by the Project Owner Subordinate Note, the Subordinate Security Instrument, and the Mortgaged Property, as and when the same become due;
(ii) all charges, costs, advances, indemnities and expenses, including agent and counsel fees, of the holder of the Project Owner Subordinated Note incurred by holder of the Project Owner Subordinated Note at any time in connection with the Project Owner Subordinate Loan, the Mortgaged Property or the Project, including, without limitation, reasonable counsel fees and expenses incurred in connection with the interpretation, performance, or amendment and all counsel fees and expenses relating to the enforcement of any document relating to the Project Owner Subordinate Loan or in connection with questions or other matters arising under such documents or in connection with any federal or state tax audit; and

(iii) any late charge due and payable under the terms of the Project Owner Subordinate Note.

(b) The Project Owner shall pay to the party entitled thereto as expressly set forth in this Citi Loan Agreement, the Project Owner Subordinate Note or the Subordinate Security Instrument:

(i) all expenses incurred in connection with the enforcement of any rights under this Citi Loan Agreement, the Project Owner Subordinate Note, or the Subordinate Security Instrument;

(ii) all other payments of whatever nature that the Project Owner has agreed to pay or assume under the provisions of this Citi Loan Agreement, the Project Owner Subordinate Note, or the Subordinate Security Instrument; and

(iii) all expenses, costs and fees relating to inspections of the Project or the Mortgaged Property required by the holder of the Project Owner Subordinate Note in accordance with this Citi Loan Agreement.

Section 2.4. Overdue Payments; Payments if Default. If any amount due under the Citi Loan Documents is not paid by or on behalf of the Borrower when due, the Borrower shall pay to the Servicer, a late charge in the amount and to the extent set forth in the Citi Note._

Section 2.5. Grant of Security Interest; Application of Funds.

(a) Borrower hereby grants to Lender, as security for the Borrower’s obligations, a security interest in, any and all deposits (general or special, including but not limited to debt evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other debt at any time held or owing by Lender to or for the credit or the account of Borrower (contingent on collateral) arising out of this Citi Loan Agreement or the other Citi Loan Documents.

(b) To the extent not inconsistent with the Subordinate Security Instrument and as security for the payment of all obligations under the Project Owner Subordinate Note and the
performance by the Project Owner of all other terms, conditions and provisions of the Project Owner Subordinate Note and the Subordinate Security Instrument, the Project Owner hereby pledges and assigns to the holder of the Project Owner Subordinate Loan, and grants to the holder of the Project Owner Subordinate Loan a security interest in, all its right, title and interest in and to all payments to or moneys held in the funds and accounts created and held by the holder of the Project Owner Subordinate Loan, such security interest being subject and subordinate to the security interest in favor of the holder of the Senior Loan or any other loan secured by a deed of trust or mortgage recorded prior to the Subordinate Security Instrument. This Citi Loan Agreement is, among other things, intended by the parties to be a security agreement for purposes of the UCC. Upon the occurrence and during the continuance of an Event of Default hereunder, the holder of the Project Owner Subordinate Loan shall apply or cause to be applied any sums held by the holder of the Project Owner Subordinate Loan in any manner and in any order determined by the holder of the Project Owner Subordinate Loan, in the holder of the Project Owner Subordinate Loan’s sole and absolute discretion.

Section 2.6. Marshalling: Payments Set Aside. Lender shall be under no obligation to marshal any assets in favor of Borrower or any other Person or against or in payment of any or all of the proceeds. To the extent that Borrower makes a payment or payments or transfers any assets to Lender, or Lender enforces its liens, and such payment or payments or transfers, or the proceeds of such enforcement or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party in connection with any insolvency proceeding, or otherwise, then: (i) any and all obligations owed to Lender and any and all remedies available to Lender under the terms of the Citi Loan Documents or in law or equity against Borrower shall be automatically revived and reinstated to the extent (and only to the extent) of any recovery permitted under clause (ii) below; and (ii) Lender shall be entitled to recover (and shall be entitled to file a proof of claim to obtain such recovery in any applicable bankruptcy, insolvency, receivership or fraudulent conveyance or fraudulent transfer proceeding) either: (x) the amount of payments or the value of the transfer or (y) if the transfer has been undone and the assets returned in whole or in part, the value of the consideration paid to or received by Borrower for the initial asset transfer, plus in each case any deferred interest from the date of the disgorgement to the date of distribution to Lender in any bankruptcy, insolvency, receivership or fraudulent conveyance or fraudulent transfer proceeding, and any costs and expenses due and owing, including, without limitation, any reasonable attorneys’ fees incurred by Lender in connection with the exercise by Lender of its rights under this Section 2.6.

ARTICLE III

DISBURSEMENT MATTERS

The proceeds of the Citi Loan shall be disbursed to Borrower and then loaned by Borrower to the Project Owner, as follows:

All of the conditions to Disbursement of the Senior Loan set forth in Article III of the Senior Loan Agreement (other than the provisions of Section 3.4 “Initial Disbursement”) are deemed to be incorporated by reference into this Citi Loan Agreement; provided, however, the
proceeds of the Citi Loan and the Project Owner Subordinate Loan will be payable in a single
disbursement concurrently with Conversion (and will fund upon satisfaction of all Conditions to
Conversion).

ARTICLE IV

[RESERVED].

ARTICLE V

DEFAULTS

Section 5.1. Events of Default. Each of the following events shall constitute an
“Event of Default”:

(a) (i) failure by the Borrower to pay any Citi Loan Payment in the manner and on the
date such payment is due in accordance with the terms and provisions of the Citi Note, or (ii)
failure by the Project Owner to pay when due any payment under the Project Owner Subordinate
Note.

(b) failure by or on behalf of the Borrower to pay when due any amount (other than as
provided in subsection (a) above or elsewhere in this Section 5.1) required to be paid by the
Borrower under this Citi Loan Agreement, the Citi Note, or any of the other Citi Loan
Documents, including a failure to repay any amounts that have been previously paid but are
recovered, attached or enjoined pursuant to any insolvency, receivership, liquidation or similar
proceedings, which default remains uncured for a period of five (5) days after Written Notice
thereof shall have been given to the Borrower;

(c) Failure by or on behalf of the Project Owner to pay any amount due under the
Subordinate Security Instrument, which default remains uncured for a period of five (5) days
after Written Notice thereof to Project Owner;

(d) an Event of Default, as defined by the Citi Note, the Subordinate Security
Instrument or any other Citi Loan Document, occurs (or to the extent an “Event of Default” is not
defined in any other Citi Loan Document, any default or breach by the Borrower of its
obligations, covenants, representations or warranties under such Citi Loan Document occurs and
any applicable notice and/or cure period has expired) or;

(e) an Event of Default, as defined in the Senior Loan Agreement or any Senior Loan
Document occurs (or to the extent an “Event of Default” is not defined in such other Senior Loan
Document, any default or breach by the Borrower of its obligations, covenants, representations or
warranties under such Senior Loan Document occurs and any applicable notice and/or cure
period has expired);

(f) an Event of Default, as defined in the loan documents evidencing any loan secured
by a lien on the Project occurs (or to the extent an “Event of Default” is not defined in such other
loan document, any default or breach by the Borrower of its obligations, covenants, representations or warranties under such loan document occurs and any applicable notice and/or cure period has expired and the holder of such loan has declared such default in writing);

(g) the Borrower or the Project Owner shall make a general assignment for the benefit of creditors, or shall generally not be paying its debts as they become due;

(h) Any Person who owns a Controlling Interest in Borrower shall make a general assignment for the benefit of creditors, or shall generally not be paying its debts as they become due, or an Act of Bankruptcy with respect to such Person shall occur, unless in all cases the Borrower replaces such Person with a substitute Person owning such Controlling Interest that is acceptable to the Lender; which, in the case of a non-profit Person, may be replaced within ninety (90) days of such event with another non-profit Person acceptable to the Lender, in which case no Event of Default shall be deemed to have occurred;

(i) Any Person who owns a Controlling Interest in Project Owner shall make a general assignment for the benefit of creditors, or shall generally not be paying its debts as they become due, or an Act of Bankruptcy with respect to such Person shall occur, unless in all cases the Project Owner replaces such Person with a substitute Person owning such Controlling Interest that satisfies the requirements of Section 21 of the Subordinate Security Instrument; which, in the case of a non-profit Person, may be replaced within ninety (90) days of such event with another non-profit Person acceptable to the Borrower, in which case no Event of Default shall be deemed to have occurred;

(j) a Bankruptcy Event shall occur with respect to Borrower;

(k) a Bankruptcy Event shall occur with respect to the Project Owner or any General Partner of the Project Owner, provided that any such Bankruptcy Event with respect to a General Partner of the Project Owner shall not constitute an Event of Default if Borrower replaces such General Partner of the Project Owner with a person or entity satisfying Lender’s mortgage credit standards for principals and is acceptable to Lender in its sole and absolute discretion within ninety (90) days after notice thereof from Lender; and

(l) all or any part of the property of Borrower is attached, levied upon or otherwise seized by legal process, and such attachment, levy or seizure is not quashed, stayed or released: (i) prior to completion of the construction or rehabilitation, as the case may be, of the Improvements within ninety (90) days of the date thereof.

Section 5.2. Remedies of Lender.

Section 5.2.1 Acceleration. Upon the occurrence of an Event of Default (other than an Event of Default described in paragraph (f), (h) or (i) of Section 5.1) and at any time and from time to time thereafter, as long as such Event of Default continues to exist, in addition to any other rights or remedies available to the Lender pursuant to the Citi Loan Documents or at law or in equity, the Lender may take such action, without notice or demand, as the Lender deems advisable to protect and enforce its rights against the Borrower and in and to the Mortgaged
Property, including declaring all amounts due hereunder to be immediately due and payable (including, interest on and all other amounts due on the Citi Note to be immediately due and payable), without notice or demand, and apply such payment in any manner and in any order determined by Lender, in Lender’s sole and absolute discretion; and upon any Event of Default described in paragraph (f), (h) or (i) of Section 5.1, all Borrower Subordinate Payment Obligations shall become immediately due and payable at the Lender’s election, in the Lender’s sole discretion (as the case may be), without notice or demand, and the Borrower hereby expressly waives any such notice or demand, anything contained in any Citi Loan Document to the contrary notwithstanding.

Section 5.2.2 Remedies Cumulative. Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to the Lender against the Borrower under the Citi Loan Documents or at law or in equity may be exercised by the Lender, at any time and from time to time, whether or not all or any of the obligation of Borrower hereunder shall be declared due and payable, and whether or not the Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Citi Loan Documents. Any such actions taken by the Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as the Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of the Lender permitted by law, equity or contract or as set forth in the Citi Loan Documents.

Notwithstanding any provision herein to the contrary, the Lender agrees that any cure of any default made or tendered by the Equity Investor shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

Section 5.2.3 Delay. No delay or omission to exercise any remedy, right, power accruing upon an Event of Default, or the granting of any indulgence or compromise by the Lender shall impair any such remedy, right or power hereunder or be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Potential Default or Event of Default shall not be construed to be a waiver of any subsequent Potential Default or Event of Default or to impair any remedy, right or power consequent thereon. Notwithstanding any other provision of this Citi Loan Agreement, the Lender reserves the right to seek a deficiency judgment or preserve a deficiency claim, in connection with the foreclosure of the Subordinate Security Instrument to the extent necessary to foreclose on other part of the Mortgaged Property, the Rents, the funds or any other collateral.

Section 5.2.4 Set Off; Waiver of Set Off. Upon the occurrence of an Event of Default, Lender may, at any time and from time to time, without notice to Borrower or any other Person (any such notice being expressly waived), set off and appropriate and apply (against and on account of any obligations and liabilities of Borrower to Lender arising under or connected with this Citi Loan Agreement and the other Citi Loan Documents, irrespective of whether or not Lender shall have made any demand therefor, and although such obligations and liabilities may be contingent or unmatured).
Section 5.2.5 [Reserved].

Section 5.2.6 Accounts Receivable. Upon the occurrence of an Event of Default, Lender shall have the right, to the extent permitted by law, to impound and take possession of books, records, notes and other documents evidencing the Project Owner’s accounts, accounts receivable and other claims for payment of money, arising in connection with the Mortgaged Property or the Project, and to make direct collections on such accounts, accounts receivable and claims for the benefit of Lender.

Section 5.2.7 Defaults under Other Documents. Lender shall have the right to cure any default under any of the Related Documents but shall have no obligation to do so.

Section 5.2.8 Compliance With QAP. It is the intent of the parties to strictly comport with the applicable provisions of the 2015 Qualified Allocation Plan, including that the Project Owner and the Guarantor provide collateral or guarantees only for the Project Owner Subordinate Loan to Borrower. Nothing herein shall create a direct obligation from the Project Owner to the Lender. Lender and Project Owner represent and warrant to Borrower that neither Project Owner nor any related Party of Project Owner has provided any collateral or guarantee to Lender for the Project Owner Subordinate Loan.

ARTICLE VI

MISCELLANEOUS

Section 6.1. Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Loan Document (a “notice”) shall be deemed to be given and made when delivered by hand, by recognized overnight delivery service, confirmed facsimile transmission (provided any telecopy or other electronic transmission received by any party after 4:00 p.m., local time, as evidenced by the time shown on such transmission, shall be deemed to have been received the following Business Day), or five (5) calendar days after deposited in the United States mail, registered or certified, postage prepaid, with return receipt requested, addressed as follows:

To Borrower: New Braunfels Housing Finance Industrial Development Corporation

With a copy to:
With a copy to: [TO BE ADDED]

If to Project Owner:
9349 WaterStone Blvd., Suite 200
Cincinnati, Ohio 45249

Attn: Michael Riechman and Elizabeth A. Mangan

With a copy to: [TO BE ADDED]

If to Lender: Citibank, N.A.
390 Greenwich Street, 2nd Floor
New York, New York 10013
Attention: Transaction Management Group
Deal ID #: __________
Facsimile: (212) 723-8209

And to: Citibank, N.A.
325 East Hillcrest Drive, Suite 160
Thousand Oaks, California 91360
Attention: Operations Manager/Asset Manager
Deal ID #: __________
Facsimile: (805) 557-0924

Prior to the Conversion Date, with a copy to:
Citibank, N.A.
390 Greenwich Street, 2nd Floor
New York, New York 10013
Attention: Account Specialist
Deal ID #: __________
Facsimile: (212) 723-8209
Following the Conversion
Date, with a copy to:
Citibank, N.A.
c/o Berkadia Commercial Servicing Department
323 Norristown Road, Suite 300
Ambler, PA 19002
Attention: Client Relations
Manager
Deal ID #: __________
Facsimile: (215) 328-0305

And a copy of any notices
of default sent to:
Citibank, N.A.
388 Greenwich Street
New York, New York 10013
Attention: General Counsel’s Office
Deal ID #: __________
Facsimile: (646) 291-5754

Any party may change such party’s address for the notice or demands required under this
Citi Loan Agreement by providing written notice of such change of address to the other parties
by written notice as provided herein.

Section 6.2. Brokers and Financial Advisors. The Borrower hereby represents that it
has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in
connection with the Citi Loan, other than those disclosed to the Lender and whose fees shall be
paid by the Borrower pursuant to separate agreements. The Borrower and the Lender shall
indemnify and hold the other harmless from and against any and all claims, liabilities, costs and
expenses of any kind in any way relating to or arising from a claim by any Person that such
Person acted on behalf of the indemnifying party in connection with the transactions
contemplated herein. The provisions of this Section 6.2 shall survive the expiration and
termination of this Citi Loan Agreement and the repayment of the Borrower Subordinate
Payment Obligations.

Section 6.3. Survival. This Citi Loan Agreement and all covenants, agreements,
representations and warranties made herein and in the certificates delivered pursuant hereto shall
survive the making by the Lender of the Citi Loan and the execution and delivery to the Lender
of the Citi Note, and shall continue in full force and effect so long as all or any of the Borrower
Subordinate Payment Obligations. All the Borrower’s covenants and agreements in this Citi
Loan Agreement shall inure to the benefit of the respective legal representatives, successors and
assigns of the Lender and the Servicer.
Section 6.4. Preferences. The Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by the Borrower to any portion of the Borrower Subordinate Payment Obligations. To the extent the Borrower makes a payment to the Lender or the Servicer, or the Lender or the Servicer receives proceeds of any collateral, which is in whole or part subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the Borrower Subordinate Payment Obligations or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by the Lender or the Servicer.

Section 6.5. [RESERVED].

Section 6.6. [RESERVED].

Section 6.7. Publicity. The Lender and the Servicer (and any Affiliates of either party) shall have the right to issue press releases, advertisements and other promotional materials describing the Lender’s or the Servicer’s participation in the making of the Citi Loan. All news releases, publicity or advertising by the Borrower or its Affiliates through any media intended to reach the general public, which refers to the Citi Loan Documents, the Citi Loan, or the Lender shall be subject to the prior Written Consent of the Lender or the Servicer, as applicable.

Section 6.8. Construction of Documents. The parties hereto acknowledge that they were represented by counsel in connection with the negotiation and drafting of the Citi Loan Documents and that the Citi Loan Documents shall not be subject to the principle of construing their meaning against the party that drafted them.

Section 6.9. No Third Party Beneficiaries. The Citi Loan Documents are solely for the benefit of the Lender, the Servicer and the Borrower and nothing contained in any Citi Loan Document shall be deemed to confer upon anyone other than the Lender, the Servicer, and the Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained therein.

Section 6.10. Assignment. The Citi Loan, the Subordinate Security Instrument, the Citi Loan Documents and all Lender’s rights, title, obligations and interests therein may be assigned by the Lender, at any time in its sole discretion, whether by operation of law (pursuant to a merger or other successor in interest) or otherwise. Upon such assignment, all references to Lender in this Citi Loan Agreement and in any Citi Loan Document shall be deemed to refer to such assignee or successor in interest and such assignee or successor in interest shall thereafter stand in the place of the Lender. Borrower shall accord full recognition to any such assignment, and all rights and remedies of Lender in connection with the interest so assigned shall be as fully enforceable by such assignee as they were by Lender before such assignment. In connection with any proposed assignment, Lender may disclose to the proposed assignee any information that Borrower has delivered, or caused to be delivered, to Lender with reference to Borrower, including information that Borrower is required to deliver to Lender pursuant to this Citi Loan Agreement, provided that such proposed assignee agrees to treat such information as
confidential. The Borrower may not assign its rights, interests or obligations under this Citi Loan Agreement or under any of the Citi Loan Documents, or Borrower’s interest in any moneys to be disbursed or advanced hereunder, except only as may be expressly permitted hereby.

Section 6.11. Lender and Servicer Not in Control; No Partnership. None of the covenants or other provisions contained in this Citi Loan Agreement shall, or shall be deemed to, give the Lender or the Servicer the right or power to exercise control over the affairs or management of the Borrower, the power of the Lender and the Servicer being limited to the rights to exercise the remedies referred to in the Citi Loan Documents. The relationship between the Borrower and the Lender and the Servicer is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of the Citi Loan Documents is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between the Borrower and the Lender or the Servicer. Neither the Lender nor the Servicer undertakes or assumes any responsibility or duty to the Borrower or to any other person with respect to the Citi Loan, except as expressly provided in the Citi Loan Documents; and notwithstanding any other provision of the Citi Loan Documents: (1) the Lender and the Servicer are not, and shall not be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of the Borrower or its stockholders, members, or partners and the Lender and the Servicer do not intend to ever assume such status; (2) the Lender and the Servicer shall in no event be liable for any the Borrower Subordinate Payment Obligations, expenses or losses incurred or sustained by the Borrower; and (3) the Lender and the Servicer shall not be deemed responsible for or a participant in any acts, omissions or decisions of the Borrower, the Borrower Controlling Entities or its stockholders, members, or partners. The Lender and the Servicer and the Borrower disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between the Lender, the Servicer and the Borrower, or any sharing of liabilities, losses, costs or expenses.

Section 6.12. Release. The Borrower hereby acknowledges that it is executing this Citi Loan Agreement and each of the Citi Loan Documents to which it is a party as its own voluntary act free from duress and undue influence.

Section 6.13. Term of Citi Loan Agreement. This Citi Loan Agreement shall be in full force and effect until all payment obligations of the Borrower hereunder have been paid in full or the payment thereof has been provided for; except that on and after payment in full of the Citi Note, this Citi Loan Agreement shall be terminated, without further action by the parties hereto.

Section 6.14. [Reserved].

Section 6.15. Relationships with Other Customers. From time to time, Lender may have business relationships with Borrower’s customers, suppliers, contractors, tenants, members, partners, shareholders, officers or directors, or with businesses offering products or services similar to those of Borrower, or with Persons seeking to invest in, borrow from or lend to Borrower. Borrower agrees that Lender may extend credit to such parties and may take any action it may deem necessary to collect the credit, regardless of the effect that such extension or collection of credit may have on Borrower’s financial condition or operations. Borrower further
agrees that in no event shall Lender be obligated to disclose to Borrower any information concerning any other customer.

**Section 6.16. Permitted Contests.** Notwithstanding anything to the contrary contained in this Citi Loan Agreement, Borrower shall have the right to contest or object in good faith to any claim, demand, levy or assessment (other than in respect of Debt or Contractual Obligations of Borrower under any Citi Loan Document or Related Document) by appropriate legal proceedings that are not prejudicial to Lender’s rights, but this shall not be deemed or construed as in any way relieving, modifying or providing any extension of time with respect to Borrower’s covenant to pay and comply with any such claim, demand, levy or assessment, unless Borrower shall have given prior written notice to Lender of Borrower’s intent to so contest or object thereto, and unless (i) Borrower has, in Lender’s judgment, a reasonable basis for such contest, (ii) Borrower pays when due any portion of the claim, demand, levy or assessment to which Borrower does not object, (iii) Borrower demonstrates to Lender’s satisfaction that such legal proceedings shall conclusively operate to prevent enforcement prior to final determination of such proceedings, (iv) Borrower furnishes such bond, surety, undertaking or other security in connection therewith as required by law, or as requested by and satisfactory to Lender, to stay such proceeding, which bond, surety, undertaking or other security shall be issued by a bonding company, insurer or surety company reasonably satisfactory to Lender and shall be sufficient to cause the claim, demand, levy or assessment to be insured against by the Title Company or removed as a lien against the Mortgaged Property, (v) Borrower at all times prosecutes the contest with due diligence, and (vi) Borrower pays, promptly following a determination of the amount of such claim, demand, levy or assessment due and owing by Borrower, the amount so determined to be due and owing by Borrower. In the event that Borrower does not make, promptly following a determination of the amount of such claim, demand, levy or assessment due and owing by Borrower, any payment required to be made pursuant to clause (vi) of the preceding sentence, an Event of Default shall have occurred, and Lender may draw or realize upon any bond or other security delivered to Lender in connection with the contest by Borrower, in order to make such payment.

**Section 6.17. Lender Approval of Instruments and Parties.** All proceedings taken in accordance with transactions provided for herein, and all documents required or contemplated by this Citi Loan Agreement and the persons responsible for the execution and preparation thereof, shall be satisfactory to and subject to approval by Lender. No such approval shall result in a waiver of any default of Borrower. In no event shall Lender’s approval be a representation of any kind with regard to the matter being approved.

**Section 6.18. Lender Determination of Facts.** Lender shall at all times be free to establish independently, to its reasonable satisfaction, the existence or nonexistence of any fact or facts, the existence or nonexistence of which is a condition of this Citi Loan Agreement.

**Section 6.19. Calendar Months.** With respect to any payment or obligation that is due or required to be performed within a specified number of Calendar Months after a specified date, such payment or obligation shall become due on the day in the last of such specified number of Calendar Months that corresponds numerically to the date so specified; provided, however, that with respect to any obligation as to which such specified date is the 29th, 30th or 31st day of any
Calendar Month: if the Calendar Month in which such payment or obligation would otherwise become due does not have a numerically corresponding date, such obligation shall become due on the first day of the next succeeding Calendar Month.

Section 6.20. Determinations by Lender. Except to the extent expressly set forth in this Citi Loan Agreement to the contrary, in any instance where the consent or approval of Lender may be given or is required, or where any determination, judgment or decision is to be rendered by Lender under this Citi Loan Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by Lender, as applicable (or its designated representative) at its sole and exclusive option and in its sole and absolute discretion.

Section 6.21. Governing Law. This Citi Loan Agreement shall be governed by and enforced in accordance with the laws of the Property Jurisdiction, without giving effect to the choice of law principles of the Property Jurisdiction that would require the application of the laws of a jurisdiction other than the Property Jurisdiction.

Section 6.22. Consent to Jurisdiction and Venue. Borrower and Lender agree that any controversy arising under or in relation to this Citi Loan Agreement shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Citi Loan Agreement. Borrower and Lender irrevocably consent to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

Section 6.23. Successors and Assigns. This Citi Loan Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate. The terms used to designate any of the parties herein shall be deemed to include the heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate, of such parties. References to a “person” or “persons” shall be deemed to include individuals and entities.

Section 6.24. Severability. The invalidity, illegality or unenforceability of any provision of this Citi Loan Agreement shall not affect the validity, legality or enforceability of any other provision, and all other provisions shall remain in full force and effect.

Section 6.25. Transfer of Mortgaged Property or Ownership Interests in Borrower. If a Transfer (as defined and permitted in the Subordinate Security Instrument) of all or part of the Mortgaged Property or of an ownership interest in Borrower, shall occur or be contemplated, which Transfer requires the prior written consent of Lender, the transferee(s) shall be required to assume Borrower’s duties and obligations under this Citi Loan Agreement and the other Citi Loan Documents and shall be required to execute and deliver to Lender such documents as Lender requires to effectuate such assumption of duties and obligations. No transfer and assumption shall relieve the transferor of any of its duties or obligations under this Citi Loan Agreement or any of the other Citi Loan Documents, unless the Borrower has obtained the prior written consent of Lender to the release of such duties and obligations.
Section 6.26. Entire Agreement; Amendment and Waiver. This Citi Loan Agreement contains the complete and entire understanding of the parties with respect to the matters covered. This Citi Loan Agreement may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by a written instrument signed by the party against whom enforcement of the waiver, amendment, change, or modification is sought, and then only to the extent set forth in that instrument. No specific waiver of any of the terms of this Citi Loan Agreement shall be considered as a general waiver. Without limiting the generality of the foregoing, no disbursement shall constitute a waiver of any conditions to Lender’s obligation to make further disbursements nor, in the event Borrower is unable to satisfy any such conditions, shall any such waiver have the effect of precluding Lender from thereafter declaring such inability to constitute a Potential Default or Event of Default under this Citi Loan Agreement.

Section 6.27. Counterparts. This Citi Loan Agreement may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

Section 6.28. Captions. The captions of the sections of this Citi Loan Agreement are for convenience only and shall be disregarded in construing this Citi Loan Agreement.

Section 6.29. Servicer. Borrower hereby acknowledges and agrees that, pursuant to the terms of the Subordinate Security Instrument: (a) from time to time, Lender may appoint a servicer to collect payments, escrows and deposits, to give and to receive notices under the Citi Note, this Citi Loan Agreement or the other Citi Loan Documents, and to otherwise service the Citi Loan and (b) unless Borrower receives written notice from Lender to the contrary, any action or right which shall or may be taken or exercised by Lender may be taken or exercised by such servicer with the same force and effect.

Section 6.30. Beneficiary Parties as Third Party Beneficiary. Each of the Beneficiary Parties shall be a third party beneficiary of this Citi Loan Agreement for all purposes.

Section 6.31. Waiver of Trial by Jury. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF BORROWER AND THE BENEFICIARY PARTIES (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS CITI LOAN AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL. IF THIS PROVISION IS DEEMED UNENFORCEABLE FOR ANY REASON ANY SUCH DISPUTES SHALL BE RESOLVED PURSUANT TO JUDICIAL REFERENCE ACCORDING TO THE PROVISIONS OF THE SUBORDINATE SECURITY INSTRUMENT.

Section 6.32. Time of the Essence. Time is of the essence with respect to this Citi Loan Agreement.
ARTICLE VII

LIMITATIONS ON LIABILITY

Section 7.1. Limitation on Liability. Notwithstanding anything to the contrary herein, the liability of the Borrower hereunder and under the other Citi Loan Documents shall be limited to the extent set forth in the Citi Note, which is incorporated by reference herein and made a part hereof.

Section 7.2. Limitation on Liability of Lender’s Officers, Employees, Etc.

(a) Borrower assumes all risks of the acts or omissions of Lender, provided, however, this assumption is not intended to, and shall not, preclude Borrower from pursuing such rights and remedies as it may have against Lender at law or under any other agreement. None of Lender, the other Beneficiary Parties, or any of their respective officers, directors, employees or agents shall be liable or responsible for (i) any acts or omissions of Lender; or (ii) the validity, sufficiency or genuineness of any documents, or endorsements, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged. In furtherance and not in limitation of the foregoing, Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, unless acceptance in light of such notice or information constitutes gross negligence or willful misconduct on the part of Lender.

(b) None of Lender, the other Beneficiary Parties, or any of their respective officers, directors, employees or agents shall be liable (i) to any contractor, subcontractor, supplier, laborer, architect, engineer or any other party for services performed or materials supplied in connection with the Mortgaged Property or the Project or (ii) for any debts or claims accruing in favor of any such parties against Borrower or others or against the Mortgaged Property or the Project. Borrower is not and shall not be an agent of Lender for any purpose. Lender is not a joint venture partner with Borrower in any manner whatsoever. Prior to default by Borrower under this Citi Loan Agreement and the exercise of remedies granted herein, Lender shall not be deemed to be in privity of contract with any contractor or provider of services to the Mortgaged Property or for the Project, nor shall any payment of funds directly to a contractor, subcontractor or provider of services be deemed to create any third party beneficiary status or recognition of same by Lender. Approvals granted by Lender for any matters covered under this Citi Loan Agreement shall be narrowly construed to cover only the parties and facts identified in any written approval or, if not in writing, such approvals shall be solely for the benefit of Borrower.

(c) Any obligation or liability whatsoever of the Lender that may arise at any time under this Citi Loan Agreement or any other Citi Loan Document shall be satisfied, if at all, out of the Lender’s assets only. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the Mortgaged Property or any of the Lender’s shareholders, directors, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.
Section 7.3. **Delivery of Reports, Etc.** The delivery of reports, information and documents to the Lender as provided herein is for informational purposes only and the Lender’s receipt of such shall not constitute constructive knowledge of any information contained therein or determinable from information contained therein. The Lender shall have no duties or responsibilities except those that are specifically set forth herein, and no other duties or obligations shall be implied in this Citi Loan Agreement against the Lender.

Section 7.4. **Loan Data.** All inspections, reports, appraisals, environmental studies or other data submitted to, commissioned for, conducted or produced by or for Lender are for its benefit and use and shall be the property of Lender. No right of inspection or approval contained in the Citi Loan Documents shall be deemed to impose upon Lender any duty or obligation whatsoever to take any action or to notify any person with respect thereto, and no liability shall be imposed upon any such party and no warranty shall be deemed or construed to arise by reason of any inspection undertaken or approval given by any such party, its agents, employees or representatives, any such inspections and approvals being made solely for the benefit of such party.

[Remainder of Page Intentionally Left Blank]
IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Citi Loan Agreement or caused this Citi Loan Agreement to be duly executed and delivered by its authorized representative as of the date first set forth above. The undersigned intends that this instrument shall be deemed to be signed and delivered as a sealed instrument.

BORROWER:

NEW BRAUNFELS HOUSING FINANCE INDUSTRIAL DEVELOPMENT CORPORATION

By: ________________________________
Name: ______________________________
Title: ______________________________

PROJECT OWNER:

[TO BE ADDED]

LENDER:

CITIBANK, N.A.

By: ________________________________
Name: ______________________________
Title: ______________________________
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**Legend:**
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AGREEMENT OF ENVIRONMENTAL INDEMNIFICATION

THIS AGREEMENT OF ENVIRONMENTAL INDEMNIFICATION (this “Agreement”) is entered into as of the ___ day of February, 2016, by ___________________, a ______________________ (“Borrower”), and MV RESIDENTIAL CONSTRUCTION INC., an Ohio corporation, and MV RESIDENTIAL PROPERTY MANAGEMENT, INC., an Ohio corporation (collectively, “Guarantor”, whether one or more); and together with Borrower, collectively the “Indemnitor”, for the benefit of Beneficiary Parties (as defined herein). The date of this Agreement as set forth above is for reference purposes only, and this Agreement will not be effective and binding until the Closing Date (as defined by the Loan Agreement).

RECITALS:

A. The Borrower has applied to the New Braunfels Housing Finance Industrial Development Corporation (the “Lender”) for a loan (the “Project Owner Subordinate Loan”) in the amount of $833,000.00, for the acquisition, construction, rehabilitation, development, equipping and/or operation of a 96-unit multifamily residential project located in New Braunfels, ___________ County, Texas, known or to be known as Reserve at Engel Road (the “Mortgaged Property”).

B. Simultaneously with the execution of this Agreement and as a part of the same transaction, the Borrower has executed and delivered to the Lender the Multifamily Permanent Subordinate Note (the “Project Owner Subordinate Note”) in the maximum principal amount of $833,000.00, together with the other Project Owner Subordinate Loan Documents (each as hereinafter defined), which are intended to evidence and secure the Project Owner Subordinate Loan.

C. The Project Owner Subordinate Loan is secured by, among other things, that certain Subordinate Multifamily Deed of Trust, Assignment of Rents, Security Agreement, and Fixture Filing (the “Subordinate Security Instrument”), dated as of the date hereof, encumbering the Mortgaged Property, and incorporated by reference herein, and will be advanced to Borrower pursuant to that certain Subordinate Loan Agreement (“Loan Agreement”) dated as of the date hereof between Lender, Citibank, N.A. (“Citi”), and Borrower (the Project Owner Subordinate Note, the Subordinate Security Instrument, the Loan Agreement and all other documents executed in connection with the Project Owner Subordinate Loan, including this Agreement, are collectively referred to as the “Project Owner Subordinate Loan Documents”).

D. The term “Beneficiary Parties” as used herein shall mean Lender, any Servicer and their respective successors and assigns. The term “Beneficiary Parties” shall also include any lawful owner, holder or pledgee of the Project Owner Subordinate Note.
Guarantor acknowledges that it will receive substantial economic and other benefits from the extension by Lender of the financing evidenced by the Project Owner Subordinate Note.

As a condition to the making of the Project Owner Subordinate Loan, each Indemnitor is required to enter into this Agreement.

NOW THEREFORE, in consideration for the making of the Project Owner Subordinate Loan, and in order to induce Beneficiary Parties to consummate said transactions, each Indemnitor agrees for the benefit of Beneficiary Parties as follows:

1. **Recitals.** The parties agree the recitals are true and correct, and are incorporated herein by reference.

2. **Certain Definitions.** Capitalized terms used but not defined in this Agreement shall have the meanings assigned to them in the Subordinate Security Instrument. The following terms, when used herein, shall have the following meanings:

   (a) “Hazardous Materials” means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls (“PCBs”) and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; radon; Mold; toxic or mycotoxin spores; any substance the presence of which on the Mortgaged Property is prohibited by any federal, state or local authority; any substance that requires special handling under any Hazardous Materials Law; and any other material or substance (whether or not naturally occurring) now or in the future that (i) is defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “solid waste,” “pesticide,” “contaminant,” or “pollutant” or otherwise classified as hazardous or toxic by or within the meaning of any Hazardous Materials Law, or (ii) is regulated in any way by or within the meaning of any Hazardous Materials Law.

   (b) “Hazardous Materials Law” means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, rules of common law (including without limitation nuisance and trespass), consent order, administrative rulings and court judgments and decrees or other government directive in effect now or in the future and including all amendments, that relate to Hazardous Materials or to the protection or conservation of the environment or human health and apply to any Indemnitor or to the Mortgaged Property, including without limitation those relating to industrial hygiene, or the use, analysis, generation, manufacture, storage, discharge, release, disposal, transportation, treatment, investigation or remediation of Hazardous Materials. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq.,
the Clean Water Act, 33 U.S.C. Section 1251, et seq., and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, et seq., the Superfund Amendments and Reauthorization Act, the Solid Waste Disposal Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, and their state analogs.

(c) “Indemnitees” for purposes of this Agreement, means collectively Beneficiary Parties and their successors, assigns, and transferees and the officers, directors, shareholders, partners, members, trustees, heirs, legal representatives, employees and agents of Beneficiary Parties and their successors, assigns and transferees.

(d) “Mold” means mold, fungus, microbial contamination or pathogenic organisms.

(e) “O&M Program” shall have the meaning set forth in Section 3(d) hereof.

3. **Prohibited Activities or Conditions.**

(a) Except for matters described in Section 3(b), no Indemnitor shall cause or permit any of the following:

(i) the presence, use, generation, release, treatment, processing, storage (including storage in above ground and underground storage tanks), handling, or disposal of any Hazardous Materials on or under the Mortgaged Property (whether as a result of activities on the Mortgaged Property or on surrounding properties) or any other property of any Indemnitor that is adjacent to the Mortgaged Property;

(ii) the transportation of any Hazardous Materials to, from, or across the Mortgaged Property (whether as a result of activities on the Mortgaged Property or on surrounding properties);

(iii) any occurrence or condition on the Mortgaged Property (whether as a result of activities on the Mortgaged Property or on surrounding properties) or any other property of any Indemnitor that is adjacent to the Mortgaged Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws;

(iv) any violation of or noncompliance with the terms of any Environmental Permit with respect to the Mortgaged Property or any property of any Indemnitor that is adjacent to the Mortgaged Property;

(v) the imposition of any environmental lien against the Mortgaged Property; or

(vi) any violation or noncompliance with the terms of any O&M Program.
The matters described in clauses (i) through (vi) above, except as otherwise provided in Section 3(b), are referred to collectively in this Agreement as “Prohibited Activities or Conditions”.

(b) Prohibited Activities or Conditions shall not include lawful conditions permitted by an O&M Program or the safe and lawful use and storage of quantities of (1) pre-packaged supplies, cleaning materials, petroleum products, household products, paints, solvents, lubricants and other materials customarily used in the construction, operation, maintenance or use of comparable multifamily properties, (2) cleaning materials, household products, personal grooming items and other items sold in pre-packaged containers for consumer use and used by tenants and occupants of residential dwelling units in the Mortgaged Property; and (3) petroleum products used in the operation and maintenance of motor vehicles from time to time located on the Mortgaged Property’s parking areas, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with Hazardous Materials Laws.

(c) Each Indemnitor shall take all commercially reasonable actions (including the inclusion of appropriate provisions in any Leases executed after the date hereof) to prevent its employees, agents, and contractors, and all tenants and other occupants from causing or permitting any Prohibited Activities or Conditions. Indemnitor shall not lease or allow the sublease or use of all or any portion of the Mortgaged Property to any tenant or subtenant for nonresidential use by any user that, in the ordinary course of its business, would cause or permit any Prohibited Activity or Condition.

(d) If and as reasonably required by Lender, Borrower shall also establish a written operations and maintenance program with respect to certain Hazardous Materials. Each such operations and maintenance program and any additional or revised operations and maintenance programs established for the Mortgaged Property pursuant to this Agreement must be approved by Lender, such approval not to be unreasonably delayed, withheld or conditioned, and shall be referred to herein as an “O&M Program.” Borrower shall comply in a timely manner with, and cause all of its employees, agents, and contractors and any other persons present on the Mortgaged Property to comply, in all material respects, with each O&M Program. Borrower shall pay all costs of performance of its obligations under any O&M Program, and any Beneficiary Party’s out-of-pocket costs incurred by such Beneficiary Party in connection with the monitoring and review of each O&M Program and Borrower’s performance shall be paid by Borrower upon demand by such Beneficiary Party.

(e) Without limitation of the foregoing, (1) Borrower hereby agrees to implement and maintain during the entire term of the Project Owner Subordinate Loan the moisture management program/microbial operations and maintenance program described in that certain Borrower’s Certificate and Agreement dated as of the date hereof, and (2) if asbestos-containing materials are found to exist at the Mortgaged Property, the O&M Program with respect thereto shall be undertaken consistent with the Guidelines for Controlling Asbestos-Containing Materials in Buildings (USEPA, 1985) and other relevant guidelines and applicable Hazardous Materials Laws.
With respect to any O&M Program, Lender may require (1) periodic notices or reports to Lender in form, substance and at such intervals as Lender may reasonably specify; (2) amendments to such O&M Program to address changing circumstances, laws or other matters, including without limitation variations in response to reports provided by environmental consultants; and (3) execution of an Operations and Maintenance Agreement relating to such O&M Program reasonably satisfactory to Lender.

4. **Representations and Warranties.** Each Indemnitor, on its own behalf, represents and warrants to Beneficiary Parties that, except as otherwise disclosed in the environmental reports described on Exhibit A (the “Environmental Reports”):

   (a) Indemnitor has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions;

   (b) to the best of Indemnitor’s knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed; and Indemnitor has provided Lender with copies of all reports and information acquired in such inquiries;

   (c) the Mortgaged Property (1) does not now contain any underground storage tanks, and, (2) to the best of Indemnitor’s knowledge, has not contained any underground storage tanks in the past. If there is an underground storage tank located on the Mortgaged Property which has been disclosed in the Environmental Reports, that tank complies with all requirements of Hazardous Materials Laws;

   (d) Indemnitor has complied with and will continue to comply with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials. Without limiting the generality of the foregoing, Indemnitor has obtained, or will timely obtain, all Environmental Permits required for the operation of the Mortgaged Property in accordance with Hazardous Materials Laws now in effect and all such Environmental Permits are, or will be when obtained as and when required by applicable law or in connection with the planned development of the Mortgaged Property, in full force and effect;

   (e) no event has occurred with respect to the Mortgaged Property that constitutes, or with the passing of time or the giving of notice would constitute, noncompliance with the terms of any Environmental Permit or Hazardous Materials Law;

   (f) there are no actions, suits, claims or proceedings pending or, to the best of Indemnitor’s knowledge after reasonable and diligent inquiry, threatened that involve the Mortgaged Property and allege, arise out of, or relate to any Prohibited Activity or Condition;

   (g) Indemnitor has not received any complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental,
health or safety matters affecting the Mortgaged Property or any other property of Indemnitor that is adjacent to the Mortgaged Property;

(h) no prior Remedial Work (as defined below) has been undertaken, and no Remedial Work is ongoing, with respect to the Mortgaged Property during Borrower’s ownership thereof or, to the best of Indemnitor’s knowledge after reasonable and diligent inquiry, at any time prior to Borrower’s ownership thereof, except as set forth in the Environmental Reports; and

(i) Indemnitor has disclosed herein all material facts known to Indemnitor or contained in Indemnitor’s records, the nondisclosure of which could cause any representation and warranty made herein or any statement made in the Environmental Report to be false or materially misleading.

The representations and warranties in this Agreement shall be continuing representations and warranties that shall be deemed to be made by each Indemnitor throughout the term of the Project Owner Subordinate Loan until the Indebtedness has been paid in full or otherwise discharged.

5. **Covenants of Indemnitor.** Each Indemnitor does hereby covenant and agree with Indemnitees that:

(a) Indemnitor shall promptly notify Lender in writing upon the occurrence of any of the following events:

   (i) Indemnitor’s discovery of any Prohibited Activity or Condition;

   (ii) Indemnitor’s receipt of or knowledge of any complaint, order, notice of violation or other communication from any tenant, management agent, Governmental Authority or other person with regard to present or future alleged Prohibited Activities or Conditions or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of any Indemnitor that is adjacent to the Mortgaged Property;

   (iii) Indemnitor’s receipt of or knowledge of any personal injury claim, proceeding or cause of action directly or indirectly arising as a result of the presence of asbestos or other Hazardous Materials on or from the Mortgaged Property;

   (iv) Indemnitor’s discovery that any representation or warranty in this Agreement has become adversely untrue after the date of this Agreement; and

   (v) Any Indemnitor’s breach of any of its obligations under this Agreement.

Any such notice given by Indemnitor shall not relieve Indemnitor of, or result in a waiver of, any obligation under this Agreement, or any Project Owner Subordinate Loan Document.
(b) Indemnitor shall pay promptly the costs of any environmental inspections, tests or audits ("Environmental Inspections") required by Lender or any Beneficiary Party in connection with any foreclosure or deed in lieu of foreclosure, or as a condition of Lender's consent to any Transfer, or required by Lender following a reasonable determination by Lender that Prohibited Activities or Conditions may exist. The results of all Environmental Inspections shall at all times remain the property of Lender, but upon Indemnitor’s request upon payment of the cost of an Environmental Inspection by or on behalf of Borrower, and Lender shall make available to Indemnitor such results or any other information obtained by Lender in connection with its Environmental Inspections. Lender hereby reserves the right, and Indemnitor hereby expressly authorizes Lender, to make available to any party, including any prospective bidder at a foreclosure sale of the Mortgaged Property, the results of any Environmental Inspections with respect to the Mortgaged Property. Indemnitor consents to Lender notifying any such party (either as part of a notice of sale or otherwise) of the results of any Environmental Inspections. Indemnitor acknowledges that Beneficiary Parties cannot control or otherwise ensure the truthfulness or accuracy of the results of any of the Environmental Inspections and that the release of such results to prospective bidders at a foreclosure sale of the Mortgaged Property may have a material and adverse effect upon the amount which a party may bid at such sale. Indemnitor agrees that no Beneficiary Party shall have any liability whatsoever as a result of delivering the results of any of the Environmental Inspections to any third party, and Indemnitor hereby releases and forever discharges Beneficiary Parties from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the results of, the delivery of any Environmental Inspections.

(c) If any investigation, site monitoring, containment, clean-up, restoration or other remedial work ("Remedial Work") is necessary to comply with or cure a violation of any Hazardous Materials Law or order of any Governmental Authority that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property under any Hazardous Materials Law, or is otherwise required by Lender as a consequence of any Prohibited Activity or Condition or to prevent the occurrence of a Prohibited Activity or Condition, Indemnitor shall, by the earlier of (1) the applicable deadline required by such Hazardous Materials Law or (2) thirty (30) days after notice from Lender, demanding such action, begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and shall in any event complete the work by the time required by such Hazardous Materials Law. Indemnitor shall promptly provide Lender with a cost estimate from an environmental consultant reasonably acceptable to Lender to complete any required Remedial Work. If required by Lender, Indemnitor shall promptly establish with Lender a reserve fund in the amount of such estimate. If, in Lender’s reasonable opinion, the amount reserved at any time during the Remedial Work is insufficient to cover the work remaining to complete the Remediation or achieve compliance, Indemnitor shall increase the amount reserved in compliance with Lender’s written request. All amounts so held in reserve, until disbursed, are pledged to Beneficiary Parties as security for payment of Indemnitor’s obligations under this Agreement. If Indemnitor fails to begin on a timely basis or diligently prosecute any required Remedial Work, Lender may, at its option, cause the Remedial Work to be completed, in which case Indemnitor shall reimburse Beneficiary Parties on demand for the cost of doing so.
(d) Indemnitor shall comply with all Hazardous Materials Laws applicable to the Mortgaged Property. Without limiting the generality of the previous sentence, Indemnitor shall (1) obtain and maintain all Environmental Permits required by Hazardous Materials Laws and comply with all conditions of such Environmental Permits; (2) cooperate with any inquiry by any Governmental Authority; and (3) comply with any governmental or judicial order that arises from any alleged Prohibited Activity or Condition.

6. **Indemnification.**

(a) **INDEMNITOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND INDEMNITEES FROM AND AGAINST ALL LOSSES, PROCEEDINGS, CLAIMS, DAMAGES, PENALTIES AND COSTS (WHETHER INITIATED OR SOUGHT BY GOVERNMENTAL AUTHORITIES OR PRIVATE PARTIES), INCLUDING, WITHOUT LIMITATION, FEES AND OUT-OF-POCKET EXPENSES OF ATTORNEYS AND EXPERT WITNESSES, ENGINEERING FEES, ENVIRONMENTAL CONSULTANT FEES, INVESTIGATORY FEES AND REMEDIATION COSTS (INCLUDING, WITHOUT LIMITATION, ANY FINANCIAL ASSURANCES REQUIRED TO BE POSTED FOR COMPLETION OF REMEDIAL WORK AND COSTS ASSOCIATED WITH ADMINISTRATIVE OVERSIGHT), AND OF ANY LIABILITIES OF WHATEVER KIND AND NATURE, WHETHER INCURRED IN CONNECTION WITH ANY JUDICIAL OR ADMINISTRATIVE PROCESS OR OTHERWISE, ARISING DIRECTLY OR INDIRECTLY FROM ANY OF THE FOLLOWING:

(i) ANY BREACH OF ANY REPRESENTATION OR WARRANTY OF ANY INDEMNITOR IN THIS AGREEMENT;

(ii) ANY FAILURE BY ANY INDEMNITOR TO PERFORM ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT;

(iii) THE EXISTENCE OR ALLEGED EXISTENCE OF ANY PROHIBITED ACTIVITY OR CONDITION;

(iv) THE PRESENCE OR ALLEGED PRESENCE OF HAZARDOUS MATERIALS ON OR UNDER THE MORTGAGED PROPERTY OR IN ANY OF THE IMPROVEMENTS OR ON OR UNDER ANY PROPERTY OF ANY INDEMNITOR THAT IS ADJACENT TO THE MORTGAGED PROPERTY;

(v) THE ACTUAL OR ALLEGED VIOLATION OF ANY HAZARDOUS MATERIALS LAW;

(vi) ANY LOSS OR DAMAGE RESULTING FROM A LOSS OF PRIORITY OF THE SUBORDINATE SECURITY INSTRUMENT OR ANY OTHER PROJECT OWNER SUBORDINATE LOAN DOCUMENT DUE TO AN IMPOSITION OF A LIEN AGAINST THE MORTGAGED PROPERTY; AND
(vii) ANY PERSONAL INJURY CLAIM, PROCEEDING OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY ARISING AS A RESULT OF THE PRESENCE OF ASBESTOS OR OTHER HAZARDOUS MATERIALS ON OR FROM THE MORTGAGED PROPERTY.

(b) COUNSEL SELECTED BY ANY INDEMNITOR TO DEFEND INDEMNITEES SHALL BE SUBJECT TO THE APPROVAL OF THOSE INDEMNITEES. IN ANY CIRCUMSTANCES IN WHICH THE INDEMNITY UNDER THIS AGREEMENT APPLIES, ANY BENEFICIARY PARTY MAY EMPLOY ITS OWN LEGAL COUNSEL AND CONSULTANTS TO PROSECUTE, DEFEND OR NEGOTIATE ANY CLAIM OR LEGAL OR ADMINISTRATIVE PROCEEDING AT INDEMNITOR’S EXPENSE, AND SUCH BENEFICIARY PARTY, WITH THE PRIOR WRITTEN CONSENT OF INDEMNITOR (WHICH SHALL NOT BE UNREASONABLY WITHHELD, DELAYED OR CONDITIONED) MAY SETTLE OR COMPROMISE ANY ACTION OR LEGAL OR ADMINISTRATIVE PROCEEDING. INDEMNITOR SHALL REIMBURSE SUCH BENEFICIARY PARTY UPON DEMAND FOR ALL COSTS AND EXPENSES INCURRED BY SUCH BENEFICIARY PARTY, INCLUDING, WITHOUT LIMITATION, ALL COSTS OF SETTLEMENTS ENTERED INTO IN GOOD FAITH AND THE FEES AND OUT-OF-POCKET EXPENSES OF SUCH ATTORNEYS AND CONSULTANTS.

(c) INDEMNITOR SHALL NOT, WITHOUT THE PRIOR WRITTEN CONSENT OF THOSE INDEMNITEES WHO ARE NAMED AS PARTIES TO A CLAIM OR LEGAL OR ADMINISTRATIVE PROCEEDING (A “CLAIM”), SETTLE OR COMPROMISE THE CLAIM IF THE SETTLEMENT (1) RESULTS IN THE ENTRY OF ANY JUDGMENT THAT DOES NOT INCLUDE AS AN UNCONDITIONAL TERM THE DELIVERY BY THE CLAIMANT OR PLAINTIFF TO BENEFICIARY PARTIES OF A WRITTEN RELEASE OF THOSE INDEMNITEES, SATISFACTORY IN FORM AND SUBSTANCE TO LENDER; OR (2) MAY MATERIALLY AND ADVERSELY AFFECT BENEFICIARY PARTIES, AS DETERMINED BY LENDER IN ITS DISCRETION.

(d) INDEMNITOR’S OBLIGATION TO INDEMNIFY THE INDEMNITEES SHALL NOT BE LIMITED OR IMPAIRED BY ANY OF THE FOLLOWING, OR BY ANY FAILURE OF ANY INDEMNITOR OR ANY GUARANTOR TO RECEIVE NOTICE OF OR CONSIDERATION FOR ANY OF THE FOLLOWING:

(i) ANY AMENDMENT OR MODIFICATION OF ANY PROJECT OWNER SUBORDINATE LOAN DOCUMENT;

(ii) ANY EXTENSIONS OF TIME FOR PERFORMANCE REQUIRED BY ANY PROJECT OWNER SUBORDINATE LOAN DOCUMENT;

(iii) ANY PROVISION IN ANY PROJECT OWNER SUBORDINATE LOAN DOCUMENT LIMITING BENEFICIARY PARTIES’ RECOURSE TO ANY PROPERTY SECURING THE INDEBTEDNESS, OR
LIMITING THE PERSONAL LIABILITY OF ANY INDEMNITOR OR ANY OTHER PARTY FOR PAYMENT OF ALL OR ANY PART OF THE INDEBTEDNESS;

(iv) THE ACCURACY OR INACCURACY OF ANY REPRESENTATIONS AND WARRANTIES MADE BY ANY INDEMNITOR UNDER THIS AGREEMENT OR ANY PROJECT OWNER SUBORDINATE LOAN DOCUMENT;

(v) THE RELEASE OF ANY INDEMNITOR OR ANY OTHER PERSON, BY BENEFICIARY PARTIES OR BY OPERATION OF LAW, FROM PERFORMANCE OF ANY OBLIGATION UNDER ANY PROJECT OWNER SUBORDINATE LOAN DOCUMENT;

(vi) THE RELEASE OR SUBSTITUTION IN WHOLE OR IN PART OF ANY SECURITY FOR THE INDEBTEDNESS; AND

(vii) FAILURE BY BENEFICIARY PARTIES TO PROPERLY PERFECT ANY LIEN OR SECURITY INTEREST GIVEN AS SECURITY FOR THE INDEBTEDNESS.

(e) INDEMNITOR SHALL, AT ITS OWN COST AND EXPENSE, DO ALL OF THE FOLLOWING:

(i) PAY OR SATISFY ANY JUDGMENT OR DECREE THAT MAY BE ENTERED AGAINST ANY INDEMNITEE OR INDEMNITEES IN ANY LEGAL OR ADMINISTRATIVE PROCEEDING INCIDENTAL TO ANY MATTERS AGAINST WHICH INDEMNITEES ARE ENTITLED TO BE INDEMNIFIED UNDER THIS AGREEMENT;

(ii) REIMBURSE INDEMNITEES FOR ANY AND ALL EXPENSES PAID OR INCURRED IN CONNECTION WITH ANY MATTERS AGAINST WHICH INDEMNITEES ARE ENTITLED TO BE INDEMNIFIED UNDER THIS AGREEMENT; AND

(iii) REIMBURSE INDEMNITEES FOR ANY AND ALL EXPENSES, INCLUDING, WITHOUT LIMITATION, FEES AND OUT-OF-POCKET EXPENSES OF ATTORNEYS AND EXPERT WITNESSES, PAID OR INCURRED IN CONNECTION WITH THE ENFORCEMENT BY INDEMNITEES OF THEIR RIGHTS UNDER THIS AGREEMENT, OR IN MONITORING AND PARTICIPATING IN ANY LEGAL OR ADMINISTRATIVE PROCEEDING.

(f) Notwithstanding anything herein to the contrary, (i) Indemnitor shall have no obligation hereunder to indemnify any Indemnitee for any liability under this Section 6 to the extent that the Prohibited Activity or Condition giving rise to such liability resulted solely from the gross negligence or willful misconduct of any Indemnitee, and (ii) Indemnitor’s liability under this Section 6 shall not extend to cover the violation of any
Hazardous Materials Laws or Prohibited Conditions that first arise, commence or occur as a result of actions of any Indemnitee or Beneficiary Parties or their successors, assigns or designees, after the satisfaction, discharge, release, assignment, termination or cancellation of the Subordinate Security Instrument following the payment in full of the Project Owner Subordinate Note and all other sums payable under the Project Owner Subordinate Loan Documents or after the actual dispossession from the entire Mortgaged Property of the Borrower and all entities which control, are controlled by, or are under common control with the Borrower or any other Indemnitor following foreclosure of the Subordinate Security Instrument or acquisition of the Mortgaged Property by a deed in lieu of foreclosure.

7. **Survival.** This Agreement shall survive the satisfaction or release of the Subordinate Security Instrument and the other Project Owner Subordinate Loan Documents by full and final payment of all obligations of Indemnitor to Beneficiary Parties, by foreclosure of Borrower’s equity of redemption in the Mortgaged Property (whether by power of sale or judicial proceedings), by deed in lieu of foreclosure or by any other comparable means and the conveyance or disposition of any Indemnitor’s interest in the Mortgaged Property, and shall continue in full force and effect forever, irrespective of any such foreclosure and/or satisfaction of the obligations of any Indemnitor in connection with the Project Owner Subordinate Loan.

8. **Conflicting Provisions.** Borrower acknowledges and agrees that its covenants and obligations hereunder are in addition to, and separate and distinct from, the obligations under the Subordinate Security Instrument.

9. **Joint and Several Liability.** If more than one person executes this Agreement, the obligations of those persons under this Agreement and any other Indemnitor (an “Other Indemnitor”) shall be joint and several. Beneficiary Parties, in their sole and absolute discretion, may (a) bring suit against Indemnitor, or any one or more of the persons constituting Indemnitor, and any Other Indemnitor, jointly and severally, or against any one or more of them; (b) compromise or settle with any one or more of the persons constituting Indemnitor or any Other Indemnitor for such consideration as Beneficiary Parties may deem proper; (c) release one or more of the persons constituting Indemnitor, or any Other Indemnitor, from liability; and/or (d) otherwise deal with Indemnitor and any Other Indemnitor, or any one or more of them, in any manner, and no such action shall impair the rights of Beneficiary Parties to collect from Indemnitor any amount owed by Indemnitor under this Agreement. Nothing contained in this paragraph shall in any way affect or impair the rights or obligations of Indemnitor with respect to any Other Indemnitor.

10. **[RESERVED].**

11. **Determinations by Lender.** Except to the extent expressly set forth in this Agreement to the contrary, in any instance where the consent or approval of Lender may be given or is required, or where any determination, judgment or decision is to be rendered by Lender under this Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by Lender, as applicable (or its designated representative) at its sole and exclusive option and in its sole and absolute discretion.
12. **Release; Indemnity.**

   (a) **Release.** Without limitation to the provisions of Section 6, Indemnitor covenants and agrees that, in performing any of their rights or duties under this Agreement, neither the Indemnitees, nor their agents or employees, shall be liable for any losses, claims, damages, liabilities and expenses that may be incurred by any of them as a result of such performance, except to the extent such liability for any losses, claims, damages, liabilities or expenses arises out of the willful misconduct or gross negligence of any Indemnitee.

   (b) **Indemnity.** Without limitation to the provisions of Section 6, Indemnitor hereby agrees to indemnify and hold harmless the Indemnitees and their respective agents and employees from and against any and all losses, claims, damages, liabilities and expenses including, without limitation, reasonable attorneys’ fees and costs and disbursements, which may be imposed or incurred by any of them in connection with this Agreement, except that no such party will be indemnified for any losses, claims, damages, liabilities or expenses arising out of the willful misconduct or gross negligence of any Indemnitee.

13. **Governing Law.** This Agreement shall be governed by and enforced in accordance with the laws of the Property Jurisdiction, without giving effect to the choice of law principles of the Property Jurisdiction that would require the application of the laws of a jurisdiction other than the Property Jurisdiction.

14. **Consent to Jurisdiction and Venue.** Indemnitor agrees that any controversy arising under or in relation to this Agreement shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Agreement. Indemnitor irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing herein is intended to limit Beneficiary Parties’ right to bring any suit, action or proceeding relating to matters arising under this Agreement against Indemnitor or any of Indemnitor’s assets in any court of any other jurisdiction.

15. **Successors and Assigns.** This Agreement shall be binding upon Indemnitor and its heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate, and shall inure to the benefit of the Beneficiary Parties and their respective successors, successors-in-interest and assigns. The terms used to designate any of the parties herein shall be deemed to include the heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate, of such parties. References to a “person” or “persons” shall be deemed to include individuals and entities. Indemnitor acknowledges and agrees that any Beneficiary Party, at its option, may assign its respective rights and interests under this Agreement and the other Project Owner Subordinate Loan Documents in whole or in part and upon such assignment all the terms and provisions of this Agreement or the other Project Owner Subordinate Loan Documents shall inure to the benefit of such assignee to the extent so assigned. Indemnitor may not assign or
delegate its rights, interests or obligations under this Agreement without first obtaining Lender’s prior written consent.

16. **Severability.** The invalidity, illegality or unenforceability of any provision of this Agreement shall not affect the validity, legality or enforceability of any other provision, and all other provisions shall remain in full force and effect.

17. **Expenses.** Indemnitor shall pay to the Beneficiary Parties, upon demand, the amount of any and all expenses, including, without limitation, reasonable attorneys’ fees (including reasonable time charges of attorneys who may be employees of Beneficiary Parties), which the Beneficiary Parties may incur in connection with (a) the exercise or enforcement of any of their rights hereunder, (b) the failure by Indemnitor to perform or observe any of the provisions hereof, or (c) the breach by Indemnitor of any representation or warranty of Indemnitor set forth herein. Such expenses, together with interest thereon computed at the Default Rate set forth in the Project Owner Subordinate Note from the date on which such expenses are incurred to the date of payment thereof, shall constitute indebtedness secured by the Subordinate Security Instrument.

18. **Remedies Cumulative.** In the event of Indemnitor’s default under this Agreement, the Beneficiary Parties may exercise all or any one or more of their rights and remedies available under this Agreement, at law or in equity. Such rights and remedies shall be cumulative and concurrent, and may be enforced separately, successively or together, and the exercise of any particular right or remedy shall not in any way prevent the Beneficiary Parties from exercising any other right or remedy available to the Beneficiary Parties. The Beneficiary Parties may exercise any such remedies from time to time as often as may be deemed necessary by the Beneficiary Parties.

19. **No Agency or Partnership.** Nothing contained in this Agreement shall constitute any Beneficiary Party as a joint venturer, partner or agent of Indemnitor, or render any Beneficiary Party liable for any debts, obligations, acts, omissions, representations or contracts of Indemnitor.

20. **Transfer of Mortgaged Property or Ownership Interests in Borrower.** If a Transfer (as defined in the Subordinate Security Instrument) of all or part of the Mortgaged Property or of an ownership interest in Borrower, shall occur or be contemplated, which Transfer requires the prior written consent of Lender, the transferee(s) shall be required to assume Borrower’s duties and obligations under this Agreement and the other Project Owner Subordinate Loan Documents and shall be required to execute and deliver to Lender such documents as Lender requires to effectuate such assumption of duties and obligations. No transfer and assumption shall relieve the transferor of any of its duties or obligations under this Agreement or any of the other Project Owner Subordinate Loan Documents, unless the Borrower has obtained the prior written consent of Lender to the release of such duties and obligations.

21. **Entire Agreement; Amendment and Waiver.** This Agreement contains the complete and entire understanding of the parties with respect to the matters covered herein. This Agreement may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by a written instrument signed by the party against whom enforcement
of the waiver, amendment, change, or modification is sought, and then only to the extent set forth in that instrument. No specific waiver of any of the terms of this Agreement shall be considered as a general waiver.

22. **Further Assurances.** Indemnitor shall at any time and from time to time, promptly execute and deliver all further instruments and documents, and take all further action that may be reasonably necessary or desirable, or that any Beneficiary Party may reasonably request, in order to protect any right or interest granted by this Agreement or to enable the Beneficiary Party to exercise and enforce its rights and remedies under this Agreement.

23. **No Amendment; Conflicts.** Nothing contained in this Agreement shall be construed to amend, modify, alter, change or supersede the terms and provisions of the Project Owner Subordinate Note, the Subordinate Security Instrument or the Loan Agreement; and, if there is a conflict between the terms and provisions of this Agreement and those of the Project Owner Subordinate Note, the Subordinate Security Instrument or the Loan Agreement, then the terms and provisions of the Project Owner Subordinate Note, the Subordinate Security Instrument or the Loan Agreement shall control.

24. **Notices.** All notices given under this Agreement shall be in writing and shall be sent to the respective addresses of the parties, in the manner set forth in the Subordinate Security Instrument.

25. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

26. **Captions.** The captions of the sections of this Agreement are for convenience only and shall be disregarded in construing this Agreement.

27. **Servicer.** Indemnitor hereby acknowledges and agrees that, pursuant to the terms of the Subordinate Security Instrument: (a) from time to time, Lender may appoint a servicer to collect payments, escrows and deposits, to give and to receive notices under the Project Owner Subordinate Note, this Agreement or the other Project Owner Subordinate Loan Documents, and to otherwise service the Project Owner Subordinate Loan and (b) unless Indemnitor receives written notice from Lender to the contrary, any action or right which shall or may be taken or exercised by Lender may be taken or exercised by such servicer with the same force and effect.

28. **Beneficiary Parties as Third Party Beneficiary.** Each of the Beneficiary Parties shall be a third party beneficiary of this Agreement for all purposes.

29. **Waiver of Trial by Jury.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF INDEMNITOR AND THE BENEFICIARY PARTIES (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS
WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

30. **Time of the Essence.** Time is of the essence with respect to this Agreement.

31. **Modifications.** All modifications (if any) to the terms of this Agreement ("Modifications") are set forth on Exhibit B attached to this Agreement. In the event of a Transfer under the terms of the Subordinate Security Instrument, some or all of the Modifications to this Agreement may be modified or rendered void by Lender at its option by notice to Indemnitor or such transferee.

32. **Attached Exhibits.** The following Exhibits are attached to this Agreement and are incorporated by reference herein as if more fully set forth in the text hereof:

   a) Exhibit A – Environmental Reports

   b) Exhibit B – Modifications to Agreement of Environmental Indemnification

The terms of this Agreement are modified and supplemented as set forth in said Exhibits. To the extent of any conflict or inconsistency between the terms of said Exhibits and the text of this Agreement, the terms of said Exhibits shall be controlling in all respects.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, each of the undersigned has duly executed and delivered this Agreement of Environmental Indemnification or caused this Agreement of Environmental Indemnification to be duly executed and delivered by its authorized representative as of the date first set forth above. Each of the undersigned intends that this instrument shall be deemed to be signed and delivered as a sealed instrument.

BORROWER:

[TO BE ADDED]

Address:

c/o Miller Valentine Group
9349 WaterStone Blvd., #200
Cincinnati, Ohio 45249

GUARANTOR:

MV RESIDENTIAL CONSTRUCTION, INC.,
an Ohio corporation

By: ________________________________
Name: ____________________________
Title: _____________________________

Address:

9349 WaterStone Blvd., #200
Cincinnati, Ohio 45249

MV RESIDENTIAL PROPERTY MANAGEMENT, INC.,
an Ohio corporation

By: ________________________________
Name: ____________________________
Title: _____________________________

Address:

9349 WaterStone Blvd., #200
Cincinnati, Ohio 45249
EXHIBIT A

ENVIRONMENTAL REPORTS
EXHIBIT B

MODIFICATIONS TO
AGREEMENT OF ENVIRONMENTAL INDEMNIFICATION

The following modifications are made to the text of the Agreement that precedes this Exhibit:

[None.]
Document comparison by Workshare Compare on Monday, February 29, 2016 9:31:01 AM

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FOR VALUE RECEIVED, the undersigned ("Borrower") promises to pay to the order of CITIBANK, N.A., a national banking association, the maximum principal sum of EIGHT HUNDRED THIRTY-THREE THOUSAND AND NO/100 DOLLARS $833,000.00, with interest on the unpaid principal balance from time to time outstanding at the annual rate as set forth on Schedule A. The terms of this Note incorporate the Modifications, if any, set forth on Schedule C to this Note.

1. Defined Terms. As used in this Note, the following terms shall have the following definitions:

(a) “Beneficiary Parties” shall have the meaning set forth in the Subordinate Security Instrument.

(b) “Business Day” means any day other than (i) a Saturday or a Sunday, or (ii) a day on which federally insured depository institutions in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

(c) “Citi Loan” means the loan evidenced by this Note.

(d) “Collateral Assignment of Loan” means the Collateral Assignment of Loan of even date herewith from Borrower to Lender.

(e) “Conversion Date” has the meaning assigned to that term in the Senior Loan Agreement.

(f) “Default Rate” shall have the meaning set forth in Section 8 of this Note.

(g) “First Payment Date” means the first day of the calendar month immediately following the calendar month in which the Conversion Date occurs.

(h) “Indebtedness” means the principal of, interest on, and any other amounts due at any time under, this Note and the Collateral Assignment of Loan.

(i) “Interest Rate” shall have the meaning set forth in Paragraph 1 of Schedule A to this Note.
(j) “Lender” means Citibank, N.A. and any subsequent holder of this Note.

(k) “Loan Agreement” means that certain Loan Agreement dated February __, 2016, among Project Owner, Borrower and Lender.

(l) “Loan Month” means the period commencing on a Loan Payment Date and ending on the day preceding the next succeeding Loan Payment Date (without adjustment in either case for Business Day conventions).

(m) “Loan Payment Date” means the first Business Day of each month, commencing on the First Payment Date.

(n) “Lock-Out Period” means the period commencing on the date of this Note and ending six (6) calendar months preceding on the fifteenth (15th) anniversary of the Conversion Date.

(o) “Maturity Date” means the earlier to occur of (i) the date which is fifteen (15) years following the Conversion Date, or (ii) any earlier date on which the unpaid principal balance of this Note becomes due and payable, by acceleration or otherwise.

(p) “Maximum Rate” means the maximum interest rate that may be paid on the Citi Loan under State law.

(q) “Note” means this Citi Note.

(r) “Note Interest” shall have the meaning set forth in Paragraph 1 of Schedule A to this Note.

(s) “Prepayment Premium Period” commencing on the date of this Note and ending six (6) calendar months preceding the fifteenth (15th) anniversary of the Conversion Date.

(t) “Project Owner” means _________________________, a Texas limited partnership.

(u) “Property Jurisdiction” shall have the meaning set forth in the Subordinate Security Instrument.

All other capitalized terms used but not defined in this Note shall have the meanings given to such terms in the Loan Agreement.

2. **Method of Payment.** All payments due under this Note shall be payable to Servicer, or, if there is no Servicer, to the Lender, or its successor. Each such payment shall be made by wire transfer of immediately available funds in accordance with wire transfer instructions that the Lender or Servicer shall supply by **Written** Notice to the Borrower from time to time.
3. **Payment of Principal and Interest.** Principal and interest shall be paid as follows:

(a)  Borrower shall pay all amounts due under this Note at the times and in the amounts set forth herein. Borrower shall make its payments under this Note in immediately available funds.

(b)  Borrower shall pay monthly payments of principal and interest as set forth on Schedule A attached hereto in successive monthly installments commencing on the First Payment Date and continuing on each Loan Payment Date thereafter until and including the Maturity Date. Such payments shall be made to the Lender or the Servicer by 2:00 p.m., New York City time, on each Loan Payment Date.

(c)  Any accrued interest remaining past due may, at Lender’s discretion, be added to and become part of the unpaid principal balance and shall bear interest at the rate or rates specified in this Note, and any reference below to “accrued interest” shall refer to accrued interest that has not become part of the unpaid principal balance.

(d)  Borrower shall pay all unpaid principal of and interest on this Note on the Maturity Date and any other amounts due under subsection 3(a) hereof.

(e)  Any regularly scheduled monthly installment of principal and interest that is received by Lender before the date it is due shall be deemed to have been received on the due date solely for the purpose of calculating interest due.

(f)  Borrower shall make all payments of principal and interest under this Note without relief from valuation and appraisement laws.

(g)  Borrower acknowledges that the calculation of all interest payments shall be made by the Lender and shall be final and conclusive, absent manifest error.

4. **Application of Payments.** If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, Lender may apply that payment to amounts then due and payable under this Note in any manner and in any order determined by Lender, in Lender’s discretion. Borrower agrees that neither Lender’s acceptance of a payment from Borrower in an amount that is less than all amounts then due and payable nor Lender’s application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. **Security.** The Indebtedness is secured by the grant of the security interest contained in the Loan Agreement and the Collateral Assignment of Loan and reference is made to the Collateral Assignment of Loan for other rights of Lender as to collateral for the Indebtedness.

6. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, the prepayment premium payable under Section
10, if any, and all other amounts payable under this Note and any other Citi Loan Document shall at once become due and payable, at the option of Lender, without any prior notice to Borrower (except if notice is required by applicable law, then after such notice). Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Late Charge.** If any amount payable under this Note or under the Subordinate Security Instrument or any other Citi Loan Document is not received by Lender when such amount is due (unless applicable law requires a longer period of time before a late charge may be imposed, in which event, such longer period shall be substituted), Borrower shall pay to Lender, immediately and without demand by Lender, a late charge equal to five percent (5.0%) of such amount (unless applicable law requires a lesser amount be charged, in which event such lesser amount shall be substituted). Notwithstanding the foregoing, with regard to each regularly scheduled monthly installment of principal and interest payable pursuant to this Note, such late charge shall not become due and payable to Lender so long as the Borrower makes such payment on or prior to the tenth (10th) calendar day following the date upon which such payment is due (or the Business Day immediately following such tenth (10th) calendar day if such tenth (10th) calendar day is not a Business Day). Any accrued but unpaid late charges shall be added to and become part of the unpaid principal balance of this Note, shall bear interest at the rate or rates specified in this Note, and shall be secured by the Collateral Assignment of Loan and the other applicable Citi Loan Documents. Borrower acknowledges that its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Citi Loan, and that it is extremely difficult and impractical to determine those additional expenses. Borrower agrees that the late charge payable pursuant to this Section represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Note, of the additional expenses Lender will incur by reason of such late payment, and such late charge shall be deemed liquidated damages and not additional interest or a penalty. The late charge is payable in addition to, and not in lieu of, any interest payable at the Default Rate pursuant to Section 8. Notwithstanding anything to the contrary in any other Citi Loan Document, if a Servicer has been appointed by Lender, any late charges payable hereunder shall not be remitted to Lender and shall instead be paid directly to Servicer, who shall apply such late charges in accordance with the terms of the applicable servicing agreement. Any action regarding the collection of a Late Charge will be without prejudice to any other rights, and shall not act as a waiver of any other rights, that the Servicer or the Lender may have as provided herein, in the other Citi Loan Documents, or at law or in equity.

8. **Default Rate.** So long as (a) any monthly installment under this Note remains past due, or (b) any other Event of Default has occurred and is continuing, interest under this Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at a rate per annum (the “Default Rate”) equal to the lesser of the Maximum Rate or a rate equal to the Interest Rate plus four percent (4%), in each case compounded monthly (computed in accordance with Schedule A in the same manner in which Note Interest is computed). If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date at the Default Rate. Borrower also acknowledges that its failure to make timely payments will cause
Lender to incur additional expenses in servicing and processing the Citi Loan, that, during the time that any monthly installment under this Note is delinquent, Lender will incur additional costs and expenses arising from its loss of the use of the money due and from the adverse impact on Lender’s ability to meet its other obligations and to take advantage of other investment opportunities, and that it is extremely difficult and impractical to determine those additional costs and expenses. Borrower also acknowledges that, during the time that any monthly installment under this Note is delinquent or any other Event of Default has occurred and is continuing, Lender’s risk of nonpayment of this Note will be materially increased and Lender is entitled to be compensated for such increased risk. Borrower agrees that the increase in the rate of interest payable under this Note to the Default Rate as provided above represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Note, of the additional costs and expenses Lender will incur by reason of Borrower’s delinquent payment and the additional compensation Lender is entitled to receive for the increased risks of nonpayment associated with a delinquent loan.

9. **Personal Liability of Borrower.**

(a) Notwithstanding anything to the contrary herein or the other Citi Loan Documents, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in this Note, the Collateral Assignment of Loan or the other Citi Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Lender may bring a foreclosure action, an action for specific performance of the Collateral Assignment of Loan or any other security document or any other appropriate action or proceeding to enable Lender to enforce and realize upon its interest under this Note, the Collateral Assignment of Loan, and the other Citi Loan Documents, or in the Mortgaged Property, or any other collateral given to Lender pursuant to the other Citi Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Project Owner Subordinate Loan, and Lender, by accepting this Note, the Collateral Assignment of Loan and the other Citi Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment or personal liability against Borrower in any such action or proceeding under or by reason of or under or in connection with this Note, the Collateral Assignment of Loan or the other Citi Loan Documents. The provisions of this paragraph shall not, however, (a) constitute a waiver, release or impairment of any obligation evidenced or secured by this Note, the Collateral Assignment of Loan or any of the other Citi Loan Documents; (b) impair the right of Lender to name Borrower as a party defendant in any action or suit for foreclosure and sale under the Collateral Assignment of Loan; or (c) impair the enforcement of the Collateral Assignment of Loan in connection herewith. Except as otherwise provided in this Section 9, neither Borrower, nor any of its sponsors, board members, and/or managers shall have any personal liability under this Note or the Collateral Assignment of Loan for the repayment of the Indebtedness or for the performance of any other obligations of Borrower. Lender’s only recourse for the satisfaction of the Indebtedness and the performance of such obligations shall be Lender’s exercise of its rights and remedies with respect to the Collateral.
Assignment of Loan and any other collateral held by Lender as security for the Indebtedness. This limitation on Borrower’s liability shall not limit or impair Lender’s enforcement of its rights against any guarantor of the Indebtedness or any guarantor of any obligations of Borrower. The obligations under the Note do not constitute, nor do they rise to an indebtedness, obligation, loan of credit, or a general or moral obligation of the Borrower except as specifically provided in the Collateral Assignment of Loan. The Borrower shall not be obligated to pay any fee, penalty, costs, or the principal and interest on the Citi Loan except from the proceeds of the Collateral Assignment of Loan or any other lien and security interest granted in connection with the Note or otherwise securing the Note. Neither the full faith and credit, nor the taxing power of the Borrower or the City of New Braunfels, Texas is pledged or available for the payment of the principal, interest, or other costs associated with the Note or any other lien and security interest granted in connection with the Note or otherwise securing the Note. Notwithstanding any other provision of the documents associated with the Citi Loan, this Note, or the Collateral Assignment of Loan, Borrower shall have no liability except from amounts received pursuant to the Multifamily Permanent Subordinate Note from Borrower dated March __, 2016 in the original principal amount of $833,000.00 and the Collateral Assignment of Loan or any other lien and security interest granted in connection with the Note or otherwise securing the Note.

(b) Nothing herein or in the other Citi Loan Documents shall be deemed to be a waiver of any right which the Lender or the Servicer may have under Sections 506(a), 506(b), 1111(b) or any other provision of the United States Bankruptcy Code, as such sections may be amended, or corresponding or superseding sections of the Bankruptcy Amendments and Federal Judgeship Act of 1984, to file a claim for the full amount due to the Lender and the Servicer hereunder and under the other Citi Loan Documents or to require that all collateral shall continue to secure the amounts due hereunder and under the other Citi Loan Documents.

10. Voluntary and Involuntary Prepayments.

(a) In connection with any prepayment (i.e., any receipt by Lender of principal, other than principal required to be paid in monthly installments pursuant to Section 3, prior to the Maturity Date) made under this Note, whether voluntary or involuntary, a prepayment premium shall be payable to the extent provided below.

(b) NO VOLUNTARY PREPAYMENTS OF THIS NOTE, IN WHOLE OR IN PART, SHALL BE PERMITTED DURING THE LOCK-OUT PERIOD. After the Lock-Out Period, Borrower may voluntarily prepay all (but not less than all) of the unpaid principal balance of this Note on any Loan Payment Date if: (i) Borrower has given Lender prior Written Notice of its intention to make such prepayment at least twenty (20) days prior to the proposed prepayment date (or such shorter time as agreed to by Lender in its sole discretion) and (ii) Borrower pays (A) the amount of principal being prepaid, (B) all accrued interest, (C) prior to the end of the Prepayment Premium Period, the prepayment premium calculated pursuant to Schedule B, and (D) all other sums due
Lender at the time of such prepayment. If Lender, in Lender’s sole and absolute discretion, agrees in writing to waive the foregoing provision and allow a prepayment during the Lock-Out Period, a prepayment premium calculated pursuant to Schedule B shall be due and payable by Borrower. In connection with any prepayment pursuant to this Section 10(b), the Borrower shall wire transfer the amount required hereunder in immediately available funds by 2:00 p.m., New York City time, on the date of prepayment. For all purposes including the accrual of interest, any prepayment received by Lender on any day other than the last calendar day of a Loan Month shall be deemed to have been received on the last calendar day of such Loan Month.

(c) Upon Lender’s exercise of any right of acceleration under this Note, Borrower shall pay to Lender, in addition to the entire unpaid principal balance of this Note outstanding at the time of the acceleration, (i) all accrued interest and all other sums due Lender, and (ii) if such acceleration occurs during the Prepayment Premium Period, the prepayment premium calculated pursuant to Schedule B.

(d) Any application by Lender of any collateral or other security to the repayment of any portion of the unpaid principal balance of this Note prior to the end of the Prepayment Premium Period and in the absence of acceleration shall be deemed to be a partial prepayment by Borrower, requiring the payment to Lender by Borrower of a prepayment premium, calculated pursuant to Schedule B.

(e) The Borrower shall prepay the outstanding principal balance of this Note at the direction of the Lender, in whole or in part, at a price equal to the outstanding principal balance of this Note, plus accrued interest plus any other amounts payable under this Note or the other Citi Loan Documents, upon the occurrence of any event or condition described below:

(1) in whole or in part, if the Mortgaged Property shall have been damaged or destroyed to the extent that it is not practicable or feasible to rebuild, repair or restore the damaged or destroyed property within the period and under the conditions described in the Subordinate Security Instrument following such event of damage or destruction; or

(2) in whole or in part, if title to, or the use of, all or a portion of the Mortgaged Property shall have been taken under the exercise of the power of eminent domain by any Governmental Authority which results in a prepayment of this Note under the conditions described in the Subordinate Security Instrument; or

(3) in whole or in part, to the extent that insurance proceeds or proceeds of any condemnation award with respect to the Mortgaged Property are not applied to restoration of the Mortgaged Property in accordance with the provisions of the Subordinate Security Instrument.
In connection with any such prepayment, the Borrower shall wire transfer immediately available funds by no later than 2:00 p.m., New York City time, on the date fixed by the Lender, which date shall be communicated by the Lender in writing to the Borrower. To the extent that the Borrower receives any insurance proceeds or condemnation awards that are to be applied to the prepayment of this Note, such amounts shall be applied to the prepayment of this Note. No prepayment premium shall be payable with respect to any prepayment required by this Section 10(e).

(f) Any permitted or required prepayment of less than the unpaid principal balance of this Note shall not extend or postpone the due date of any subsequent monthly installments or change the amount of such installments, unless Lender agrees otherwise in writing.

(g) Borrower recognizes that any prepayment of the unpaid principal balance of this Note, whether voluntary, involuntary or resulting from a default by Borrower, will result in Lender’s incurring loss, including reinvestment loss, additional expense and frustration or impairment of Lender’s ability to meet its commitments to third parties. Borrower agrees to pay to Lender upon demand damages for the detriment caused by any prepayment, and agrees that it is extremely difficult and impractical to ascertain the extent of such damages. Borrower therefore acknowledges and agrees that the formula for calculating prepayment premiums set forth on Schedule B represents a reasonable estimate of the damages Lender will incur because of a prepayment.

(h) Borrower further acknowledges that the lock-out and prepayment premium provisions of this Note are a material part of the consideration for the Citi Loan, and acknowledges that the terms of this Note are in other respects more favorable to Borrower as a result of Borrower’s voluntary agreement to the Lock-Out Period and the prepayment premium provisions.

(i) Any prepayment premium payable hereunder shall be remitted to Servicer, or if a Servicer has not been appointed by Lender, to Lender.

11. **Costs and Expenses.** Subject to Section 9 herein, to the fullest extent allowed by applicable law, Borrower shall pay all expenses and costs, including, without limitation, out-of-pocket expenses and reasonable fees of attorneys (including, without limitation, in-house attorneys) and expert witnesses and costs of investigation, incurred by Lender as a result of any default under this Note or in connection with efforts to collect any amount due under this Note, or to enforce the provisions of any of the other Citi Loan Documents, including those incurred in post-judgment collection efforts and in any bankruptcy proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding) or judicial or non-judicial foreclosure proceeding. For purposes of Section 9(e) and this Section 11, attorneys’ out of pocket expenses shall include, but are not limited to, support staff costs, costs of preparing for litigation, computerized research, telephone and facsimile transmission expenses, mileage, deposition costs, postage, duplicating, process service, videotaping and similar costs and expenses. Borrower’s obligation to pay the amounts under this Section is limited by Section 9.
12. **Forbearance.** Any forbearance by Lender in exercising any right or remedy under this Note, the Subordinate Security Instrument, or any other Citi Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender’s right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by Lender of any security for Borrower’s obligations under this Note shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right or remedy available to Lender.

13. **Waivers.** Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace, and diligence in collecting the Indebtedness are waived by Borrower and all endorsers and guarantors of this Note and all other third party obligors.

14. **Loan Charges.** Neither this Note nor any of the other Citi Loan Documents shall be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate greater than the maximum interest permitted to be charged under applicable law. If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower in connection with the Citi Loan is interpreted so that any interest or other charge provided for in any Citi Loan Document, whether considered separately or together with other charges provided for in any other Citi Loan Document, violates that law, and Borrower is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness that constitutes interest, as well as all other charges made in connection with the Indebtedness that constitute interest, shall be deemed to be allocated and spread ratably over the stated term of this Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Note.

15. **Obligations of the Borrower Absolute and Unconditional.** Subject to Section 9, the obligations of the Borrower to make all payments required under this Note and the other Citi Loan Documents on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder and under the other Citi Loan Documents shall be primary, absolute, unconditional and irrevocable, and shall be paid or performed strictly in accordance with the terms of this Note and the other Citi Loan Documents under any and all circumstances, without notice or demand (except as expressly required by the Citi Loan Documents), and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Project Owner’s title to the Mortgaged Property or to any part thereof is defective or nonexistent, and notwithstanding any damage due to loss, theft or destruction of the Mortgaged Property or any part thereof, any failure
of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Mortgaged Property, legal curtailment of the Project Owner’s use thereof, the eviction or constructive eviction of the Borrower, any change in the tax or other laws of the United States of America, the State or any political subdivision thereof, any change in the Lender’s legal organization or status, or any default of the Lender hereunder or under any other Citi Loan Document, and regardless of the invalidity of any action of the Lender or the invalidity of any portion of this Note or the other Citi Loan Documents. Provided further, the obligations of Borrower under this Note and the other Citi Loan Documents shall not be affected by:

(a) any lack of validity or enforceability of any Citi Loan Document or any of the Related Documents;

(b) any amendment of, or any waiver or consent with respect to, any of the Citi Loan Documents or Related Documents;

(c) the existence of any claim, set-off, defense or other rights which Borrower or Project Owner may have at any time against Lender (other than the defense of payment in accordance with the terms of this Note or the other Citi Loan Documents) or any other Person, whether in connection with this Note or any other Citi Loan Document, the Related Documents or any transaction contemplated thereby or any unrelated transaction;

(d) any breach of contract or other dispute between Borrower or Project Owner, and Lender; or

(e) any exchange, release or nonperfection of any lien or security interest in any collateral pledged or otherwise provided to secure any of the obligations contemplated herein, in any other Citi Loan Document or in any Related Document.

The Borrower hereby waives the application to it of the provisions of any statute or other law now or hereafter in effect contrary to any of its obligations, covenants or agreements under this Note or the other Citi Loan Documents or which releases or purports to release the Borrower therefrom. Nothing contained herein shall be construed as prohibiting the Borrower from pursuing any rights or remedies it may have against any Person in a separate legal proceeding.

16. Commercial Purpose. Borrower represents that the Indebtedness is being incurred by Borrower solely for the purpose of carrying on a business or commercial enterprise, and not for personal, family, household or agricultural purposes.

17. Counting of Days. Except where otherwise specifically provided, any reference in this Note to a period of “days” means calendar days, not Business Days.

18. Notices. All notices, demands and other communications required or permitted to be given by Lender to Borrower pursuant to this Note shall be in writing, addressed as set forth below, and shall include a reference to “Citi Loan 23676.” Each notice shall be deemed given on the earliest to occur of (a) the date when the notice is received by the addressee; (b) the first
Business Day after the notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (c) the third Business Day after the notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested.

To Borrower: New Braunfels Housing Finance Industrial Development Corporation

With a copy to:

If to Project Owner:

If to Lender: Citibank, N.A.
390 Greenwich Street, 2nd Floor
New York, New York 10013
Attention: Transaction Management Group
Deal ID #: 23676
Facsimile: (212) 723-8209
And to:  
Citibank, N.A.  
325 East Hillcrest Drive, Suite 160  
Thousand Oaks, California 91360  
Attention: Operations Manager/Asset Manager  
Deal ID #: 23676  
Facsimile: (805) 557-0924

Prior to the Conversion  
Date, with a copy to:  
Citibank, N.A.  
390 Greenwich Street, 2nd Floor  
New York, New York 10013  
Attention: Account Specialist  
Deal ID #: 23676  
Facsimile: (212) 723-8209

Following the Conversion  
Date, with a copy to:  
Citibank, N.A.  
c/o Berkadia Commercial Servicing Department  
323 Norristown Road, Suite 300  
Ambler, PA 19002  
Attention: Client Relations Manager  
Deal ID #: 23676  
Facsimile: (215) 328-0305

And a copy of any notices of default sent to:  
Citibank, N.A.  
388 Greenwich Street  
New York, New York 10013  
Attention: General Counsel’s Office  
Deal ID #: 23676  
Facsimile: (646) 291-5754

The Borrower or the Lender may change the address to which notices intended for it are to be directed by means of notice given to the other party in accordance with this Section 18. Each party agrees that it will not refuse or reject delivery of any notice given in accordance with this Section 18, that it will acknowledge, in writing, the receipt of any notice upon request by the other party and that any notice rejected or refused by it shall be deemed for purposes of this
Section 18 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

19. **Payments on Non-Business Day.** If the date for the making of any payment under this Note is not a Business Day, such payment shall be due and payable on the next succeeding Business Day.

20. **Terms of Note Governing Payment Matters Control in the Event of any Conflict.** In the event the provisions of the Loan Agreement or the other Citi Loan Documents (other than this Note) conflict with the provisions of this Note which govern the terms of repayment of the Citi Loan or the payment of other amounts due in connection with the Loan (including, without limitation, the provisions of this Note which govern the required payments of principal, interest and other amounts due in connection with the Citi Loan, the manner of payment, the calculation of interest, the payment of the Lender’s costs and expenses, the application of payments received by the Lender, the acceleration of amounts owed by the Borrower, late charges, default rates of interest, prepayments, prepayment premiums or maximum rates of interest or similar charges), the provisions of this Note shall govern and control.

21. **Other Agreements.** This Note is evidence of a single advance term loan which, if no Event of Default then exists, will be funded on the Conversion Date. The proceeds of this Note shall be used to fund the Project Owner Subordinate Loan, which will be secured by a second lien against the Project (such loan and second lien have been collateralized assigned to the Lender pursuant to the Subordinate Security Instrument). In connection with and as a condition for the advance under this Note on the Conversion Date, the Lender shall receive an endorsement, arranged for by the Project Owner in connection with that advance, to the second lien title policy insuring the second lien against the Project which shall have been provided to the Lender as a condition to its acceptance of this Note.

22. **Determinations by Lender.** Except to the extent expressly set forth in this Note to the contrary, in any instance where the consent or approval of Lender may be given or is required, or where any determination, judgment or decision is to be rendered by Lender under this Note, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by Lender, as applicable (or its designated representative) at its sole and exclusive option and in its sole and absolute discretion.

23. **Release; Indemnity.**

(a) **Release.** Borrower covenants and agrees that, in performing any of its rights or duties under this Note, neither the Lender, nor its agents or employees, shall be liable for any losses, claims, damages, liabilities and expenses that may be incurred by any of them as a result of such performance, except to the extent such liability for any losses, claims, damages, liabilities or expenses arises out of the willful misconduct or gross negligence of such party.
(b) **Indemnity.** Borrower hereby agrees to indemnify and hold harmless the Lender and its agents and employees from and against any and all losses, claims, damages, liabilities and expenses including, without limitation, reasonable attorneys’ fees and costs and disbursements, which may be imposed or incurred by any of them in connection with this Note, except that no such party will be indemnified for any losses, claims, damages, liabilities or expenses arising out of the willful misconduct or gross negligence of such party. The foregoing shall be limited by Section 9.

24. **Governing Law.** This Note shall be governed by and enforced in accordance with the laws of the Property Jurisdiction, without giving effect to the choice of law principles of the Property Jurisdiction that would require the application of the laws of a jurisdiction other than the Property Jurisdiction.

25. **Consent to Jurisdiction and Venue.** Borrower and Lender agree that any controversy arising under or in relation to this Note shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Note. Borrower and Lender irrevocably consent to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

26. **Severability.** The invalidity, illegality or unenforceability of any provision of this Note shall not affect the validity, legality or enforceability of any other provision, and all other provisions shall remain in full force and effect.

27. **Remedies Cumulative.** In the event of Borrower’s default under this Note, the Lender may exercise all or any one or more of its rights and remedies available under this Note, at law or in equity. Such rights and remedies shall be cumulative and concurrent, and may be enforced separately, successively or together, and the exercise of any particular right or remedy shall not in any way prevent the Lender from exercising any other right or remedy available to the Lender. The Lender may exercise any such remedies from time to time as often as may be deemed necessary by the Lender.

28. **No Agency or Partnership.** Nothing contained in this Note shall constitute Lender as a joint venturer, partner or agent of Borrower, or render Lender liable for any debts, obligations, acts, omissions, representations or contracts of Borrower.

29. **Entire Agreement; Amendment and Waiver.** This Note contains the complete and entire understanding of the parties with respect to the matters covered. This Note may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by a written instrument signed by the party against whom enforcement of the waiver, amendment, change, or modification is sought, and then only to the extent set forth in that instrument. No specific waiver of any of the terms of this Note shall be considered as a general waiver.
30. **Further Assurances.** Borrower shall at any time and from time to time, promptly execute and deliver all further instruments and documents, and take all further action that may be reasonably necessary or desirable, or that Lender may reasonably request, in order to protect any right or interest granted by this Note or to enable Lender to exercise and enforce its rights and remedies under this Note.

31. **Captions.** The captions of the sections of this Note are for convenience only and shall be disregarded in construing this Note.

32. **Servicer.** Borrower hereby acknowledges and agrees that, pursuant to the terms of the Subordinate Security Instrument: (a) from time to time, Lender may appoint a servicer to collect payments, escrows and deposits, to give and to receive notices under this Note or the other Citi Loan Documents, and to otherwise service the Citi Loan and (b) unless Borrower receives written notice from Lender to the contrary, any action or right which shall or may be taken or exercised by Lender may be taken or exercised by such servicer with the same force and effect.

33. **Waiver of Trial by Jury.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF BORROWER AND LENDER (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS NOTE OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

34. **Time of the Essence.** Time is of the essence with respect to this Note.

35. **Modifications.** All modifications (if any) to the terms of this Note ("Modifications") are set forth on Schedule C attached to this Note. In the event of a Transfer under the terms of the Subordinate Security Instrument, some or all of the Modifications to this Note may be modified or rendered void by Lender at its option by notice to Borrower or such transferee.

36. **Attached Schedules.** The following Schedules are attached to this Note and are incorporated by reference herein as if more fully set forth in the text hereof:

- **Schedule A – Interest Rate**
- **Schedule B – Prepayment Premium**
- **Schedule C – Modifications to Multifamily Permanent Note**
The terms of this Note are modified and supplemented as set forth in said Schedules. To the extent of any conflict or inconsistency between the terms of said Schedules and the text of this Note, the terms of said Schedules shall be controlling in all respects.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Multifamily Permanent Note or caused this Multifamily Permanent Note to be duly executed and delivered by its authorized representative as of the date first set forth above. The undersigned intends that this instrument shall be deemed to be signed and delivered as a sealed instrument.

BORROWER:

NEW BRAUNFELS HOUSING FINANCE INDUSTRIAL DEVELOPMENT CORPORATION, a Texas nonprofit industrial development corporation

By: ________________________________
Name: ______________________________
Title: ________________________________
SCHEDULE A

PRINCIPAL AND INTEREST PAYMENTS

1. **Interest Rate.** Except as provided in Paragraphs 8 and 14 of this Note, interest ("Note Interest") shall accrue on the unpaid principal of this Note from, and including, the date of this Note until paid in full at an annual rate (the "Interest Rate") as follows:

   (a) **Fixed Rate.** Interest shall accrue at annual rate of three percent (3%).

   (b) **Maximum Rate.** Notwithstanding any other provision of this Note to the contrary, Note Interest shall not exceed the Maximum Rate, as the Maximum Rate may change in accordance with this Note.

   (c) **Interest Accrual.** Note Interest shall be computed on the basis of a 360-day year comprised of twelve 30-day months.

2. **Monthly Principal and Interest Payments.** Commencing on the First Payment Date and on each Loan Payment Date thereafter until and including the Maturity Date, consecutive monthly installments of principal and interest in the amount of $______________ (based upon a thirty-five year amortization schedule assuming a 360-day year comprised of twelve 30-day months), shall be payable on each Loan Payment Date until the entire unpaid principal balance evidenced by this Note is fully paid. Any remaining principal and interest, if not sooner paid, shall be due and payable on the Maturity Date.
SCHEDULE B

PREPAYMENT PREMIUM

YIELD MAINTENANCE OPTION:

Any prepayment premium payable under Paragraph 10 of this Note shall be computed as follows:

(a) If the prepayment is made at any time after the date of this Note and before ______________, 203__ (the “Yield Maintenance Period End Date”) the prepayment premium shall be the greater of:

(i) 1% of the amount of principal being prepaid; or

(ii) The product obtained by multiplying:

(A) the amount of principal being prepaid,

by

(B) the difference obtained by subtracting from the Interest Rate on this Note the Yield Rate (as defined below), on the twenty-fifth Business Day preceding (x) the date upon which any voluntary prepayment will be made, determined in accordance with Section 10 of this Note, or (y) the date Lender accelerates the Citi Loan or otherwise accepts a prepayment pursuant to Paragraph 10(c) or Paragraph 10(d) of this Note,

by

(C) the present value factor calculated using the following formula:

\[
\frac{1 - (1 + r)^{-n/12}}{r}
\]

\[r = \text{Yield Rate}\]

\[n = \text{the number of months remaining between (1) either of the following: (x) in the case of a voluntary prepayment, the last calendar day of the month during which the prepayment is made, or (y) in any other case, the date on which Lender accelerates the unpaid principal balance of this Note and (2) the Yield Maintenance Period End Date]}


For purposes of this clause (ii), the “Yield Rate” means the yield calculated by interpolating the yields for the immediately shorter and longer term U.S. “Treasury constant maturities” (as reported in the Federal Reserve Statistical Release H.15 Selected Interest Rates (the "Fed Release") under the heading "U.S. government securities") closest to the remaining term of the Prepayment Premium Period, as follows (rounded to three decimal places):

\[
\{ ( (a - b) \div (x - y) ) \times (z - y) \} + b
\]

\[
a = \text{the yield for the longer U.S. Treasury constant maturity}
\]

\[
b = \text{the yield for the shorter U.S. Treasury constant maturity}
\]

\[
x = \text{the term of the longer U.S. Treasury constant maturity}
\]

\[
y = \text{the term of the shorter U.S. Treasury constant maturity}
\]

\[
z = \text{“n” (as defined in the present value factor calculation above) divided by 12.}
\]

Notwithstanding any provision to the contrary, if “z” equals a term reported under the U.S. “Treasury constant maturities” subheading in the Fed Release, the yield for such term shall be used, and interpolation shall not be necessary. If publication of the Fed Release is discontinued by the Federal Reserve Board, Lender shall determine the Yield Rate from another source selected by Lender. Any determination of the Yield Rate by Lender will be binding absent manifest error.]

(b) Notwithstanding the provisions of Paragraph 10 of this Note, no prepayment premium shall be payable with respect to any prepayment made on or after the Yield Maintenance Period End Date.
SCHEDULE C
MODIFICATIONS TO MULTIFAMILY PERMANENT NOTE

The following modifications are made to the text of the Note that preceded this Schedule:

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COLLATERAL ASSIGNMENT OF LOAN
(the "Collateral Assignment")

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF COMAL

THAT NEW BRAUNFELS HOUSING FINANCE INDUSTRIAL DEVELOPMENT CORPORATION, a Texas non-profit industrial development corporation ("Assignor"), has ENDORSED, TRANSFERRED, ASSIGNED, SOLD, SET OVER, CONVEYED, and DELIVERED, and by these presents does hereby ENDORSE, TRANSFER, ASSIGN, SELL, SET OVER, CONVEY and DELIVER unto CITIBANK, N.A., a national banking association ("Lender"), and Assignor hereby grants and assigns a security interest (the "Security Interest") in, all right, title and interest of Assignor in and to (a) the that certain Multifamily Permanent Subordinate Note ("Note") dated February __, 2016, in the face amount of $833,000.00 listed on Exhibit "A" attached hereto (collectively, the "Collateral Note" with all renewals, increases, modifications, replacements, rearrangements, substitutions, restatements, and extensions now or hereafter executed in connection therewith, the "Collateral Note", whether one or more), (b) the Loan Agreement of even date herewith between Assignor and Lender (the "Collateral Loan Agreement") and all other documents and instruments securing or otherwise pertaining to the Collateral Note (collectively, the "Collateral Loan Documents"), listed on Exhibit "A" attached hereto, and (c) all of the liens and security interests granted in the Collateral Loan Documents or otherwise securing the Collateral Note (collectively, the "Collateral Liens"); and Assignor hereby BARGAINS, SELLS, TRANSFERS, ASSIGNS, SETS OVER, CONVEYS and DELIVERS unto Lender all of the rights, privileges, securities, equities, powers, benefits, claims, priorities, demands, titles, or interests now owned or held by Assignor in and to the Collateral Note, the Collateral Loan Documents, and the Collateral Liens.

TO HAVE AND TO HOLD the Collateral Note, the Collateral Loan Documents, and Collateral Liens, together with all and singular the rights, titles, interests, privileges, securities, equities, powers, benefits, claims, priorities, and demands thereunto in anywise belonging unto Lender, its successors and assigns forever.

This Collateral Assignment is made to secure payment and performance of Assignor's obligations under and pursuant to (i) that certain Multifamily Permanent Subordinate Note ("Note") dated February __, 2016, in the face amount of $833,000.00, executed by Assignor to the order of Lender (collectively with all renewals, increases, modifications, replacements, rearrangements, substitutions, restatements, and extensions now or hereafter executed in connection therewith, the "Note"), and (ii) all documents and instruments now or hereafter securing or pertaining to the Note (collectively with the Note and all amendments, modifications, and restatements now or hereafter executed in connection therewith, the "Loan Documents"), and (ii) the Collateral Loan Documents.
Assignor represents and warrants to Lender that (A) Assignor is the sole legal and equitable owner and holder of the Collateral Note and the indebtedness evidenced thereby, (B) Assignor has not assigned, mortgaged, or hypothecated the Collateral Note, any indebtedness evidenced thereby, or any of the Collateral Liens to any party other than Lender, (C) to Assignor’s current actual knowledge, the Collateral Note is in all respects current and in good standing and is not overdue or subject to any credits or offsets, (D) to Assignor’s current actual knowledge, no maker of the Collateral Note, nor any surety or guarantor of the Collateral Note, has raised any counterclaim, defense, allowance, adjustments, dispute, objection, or complaint regarding their respective liability on the Collateral Note or under any Collateral Loan Document, (E) the Collateral Note and the Collateral Loan Documents have not been amended, altered, or modified since the date of the execution thereof; (F) to Assignor’s current actual knowledge, no default, or event which with notice, lapse of time, or both would constitute a default, under any of the Collateral Note or the Collateral Loan Documents has occurred, and (G) Assignor has the full right and authority to sell, assign, pledge, and grant a security interest in and to each of the Collateral Note, and the liens and security interests securing same.

During the continuance of an Event of Default under and, as defined in the Collateral Note, Lender shall, in addition to the rights and remedies provided for in the Collateral Note and the other Collateral Loan Documents, have the right to sell the Collateral Note in any manner afforded to Lender under the laws of the State of Texas. The proceeds of the sale shall be applied first to the reasonable expenses of the sale and then toward the payment of interest, principal, and attorneys’ fees due and unpaid upon the Collateral Note, rendering the balance, if any, and surplus, if any, to Assignor; but if there be any deficiency, Borrower shall remain liable therefor. Lender shall have the right to purchase (by credit against the Obligations) at any public sale in which it is the highest bidder.

Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code as from time to time in effect in the State of Texas (the “UCC”), and Lender shall be entitled to avail itself of all such other rights and remedies as may now or hereafter exist at law or in equity for the collection of the indebtedness evidenced by the Collateral Note. The foreclosure of the Security Interest created hereby and the resort to any remedy provided hereunder or provided by the UCC or any other law of the State of Texas shall not prevent the concurrent employment of any other appropriate remedy or remedies.

The requirement of notice to Assignor of the time and place of any public sale of the Collateral Note, or of the time after which any private sale or any other intended disposition thereof is to be made, shall be met if such notice is mailed, postage prepaid, to Assignor at 9349 WaterStone Blvd., Suite 200, Cincinnati, Ohio 45249, or such other address provided to Lender by Assignor in writing, at least five days before the date of any public sale or at least five days before the time after which any private sale or disposition is to be made, unless a longer period of time is required pursuant to the UCC, in which case, applicable provisions of the UCC shall control.

The Security Interest created herein shall not be affected by or affect any other security taken for the Collateral Note, and any extensions may be made for the payment of
the Collateral Note, without affecting the priority of the Security Interest or the validity thereof with reference to any third party, and the holder or holders of the Collateral Note shall not be limited by election of remedies if the holder or holders choose to foreclose this Security Interest by suit. The right to sell the Collateral Note under the terms thereof shall also exist cumulative with such suit, and one method of foreclosure shall not bar the other, but both may be exercised at the same or different times, nor shall one be a defense to the other.

Assignor authorizes Lender, at the option of Lender, to give notice to the maker of the Collateral Note of the existence of this Collateral Assignment and to instruct such makers, whether or not a default has occurred under the Collateral Note, any document securing the Collateral Note, or under this Collateral Assignment, to direct all payments due and payable under the Collateral Note to Lender.

Assignor authorizes Lender, at the option of Lender, to collect and receive any and all sums becoming due upon the Collateral Note, such sums to be held by Lender without liability for interest thereon and applied towards the payment of the Collateral Note. Except as otherwise expressly provided herein, Lender shall hold and have the full control of the Collateral Note until the Collateral Note is fully paid, including without limitation, the right to foreclose any or all Collateral Liens, without the necessity of consent by Assignor (and without the necessity of the prior foreclosure of the Collateral Note), and to release the Collateral Liens upon the full and final payment of such Collateral Note to Lender. Notwithstanding the foregoing, Lender is under no obligation to make or enforce the collection of the Collateral Note, and the failure of Lender from any cause to make or enforce the collection thereof shall not in any way prejudice the right of Lender to thereafter make or enforce collection thereof or in any way affect the Collateral Note. Further, nothing in the Collateral Loan Agreement shall limit or impair the right of Lender to enforce or otherwise proceed with respect to the Collateral Note if Lender were to become the holder thereof.

Lender shall, once the Collateral Note has been paid in full to Lender, remit all proceeds, if any, received by it under the Collateral Note, if any, that remain after the Collateral Note has been paid in full, to Assignor.

This Collateral Assignment shall in no manner impair or affect any of the other liens granted by Assignor to Lender, and no security hereafter taken therefor shall in any manner impair or affect the security hereby given, it being agreed that all such present and future security shall be cumulative security and that Lender may foreclose under any of such security, as Lender may elect, without waiving the other.

Upon the occurrence and during the continuance of an Event of Default, as that term is defined by the Collateral Loan Documents (until such Event of Default has been cured), in addition to the other rights of Lender hereunder, Lender may, but shall not be obligated to, renew, extend, or rearrange the time and manner of payment of any of the Collateral Note, in its own name or in the name of Assignor with or without the joinder or consent of Assignor, without incurring responsibility or liability to Assignor or discharging, impairing or otherwise affecting
any liability or obligation of Assignor, including, without limitation, Assignor’s liability for the payment of the Collateral Note.

In the event that Assignor hereafter becomes the owner of any of the property covered by the Collateral Loan Documents prior to the date that Lender executes a written release of this Collateral Assignment, Lender shall automatically have a lien and security interest in and against such property to secure the payment of the Collateral Note, and Assignor does hereby grant Lender a lien and security interest in and against such property, and Assignor shall immediately, at Assignor’s sole cost and expense, execute and deliver, and file in the appropriate public records with all filing fees paid, appropriate documents, in form and substance reasonably satisfactory to Lender, further evidencing the granting of such lien and security interest. The foregoing provisions shall not be deemed to constitute consent or authorization by Lender to the transfer, sale or other disposition of any of the property covered by the Collateral Loan Documents to or by Assignor.

Assignor shall pay to Lender all reasonable expenditures and expenses, including, without limitation, reasonable attorneys’ fees, incurred by Lender in exercising, protecting or enforcing Lender’s interests, rights, and remedies under this Collateral Assignment, plus interest thereon at the Past Due Rate, as defined in the Collateral Note. Assignor shall further do, make, procure, execute and deliver all acts, things, writings and assurances as Lender may at any time reasonably request to protect, assure or enforce Lender’s interests, rights and remedies under this Collateral Assignment.

Notwithstanding anything to the contrary in any of the Collateral Loan Documents, or herein, neither Assignor, nor any of its sponsors, board members, and/or managers shall have any personal liability under this Collateral Note or this Collateral Assignment for the repayment of the Collateral Liens or for the performance of any other obligations of Assignor. Lender’s only recourse for the satisfaction of the Collateral Liens and the performance of such obligations shall be Lender’s exercise of its rights and remedies with respect to this Collateral Assignment and any other collateral held by Lender as security for the Collateral Liens. This limitation on Assignor’s liability shall not limit or impair Lender’s enforcement of its rights against any guarantor of the Collateral Liens or any guarantor of any obligations of Assignor. The obligations under the Collateral Note do not constitute, nor do they rise to an indebtedness, obligation, loan of credit, or a general or moral obligation of the Assignor except as specifically provided in this Collateral Assignment. The Assignor shall not be obligated to pay any fee, penalty, costs, or the principal and interest on the Collateral Note except from the proceeds of this Collateral Assignment and the Collateral Liens. Neither the full faith and credit, nor the taxing power of the Assignor or the City of New Braunfels, Texas is pledged or available for the payment of the principal, interest, or other costs associated with the Collateral Note or any other lien and security interest granted in connection with the Collateral Note or otherwise securing the Collateral Note. Notwithstanding any other provision of the documents associated with the Collateral Note, the Collateral Liens, or this Collateral Assignment, Assignor shall have no liability except from amounts received pursuant to the Collateral Note and this Collateral Assignment and the Collateral Liens.
THIS COLLATERAL ASSIGNMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES HERETO WITH RESPECT TO THE SUBJECT HEREOF AND SHALL SUPERSEDE ANY PRIOR AGREEMENT BETWEEN THE PARTIES HERETO, WHETHER WRITTEN OR ORAL, RELATING TO THE SUBJECT HEREOF. FURTHERMORE, IN THIS REGARD, THIS AGREEMENT AND THE OTHER WRITTEN, COLLABORATIVE LOAN DOCUMENTS REPRESENT, COLLECTIVELY, THE FINAL AGREEMENT AMONG THE PARTIES HERETO AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENT OF SUCH PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

EXECUTED as of February __, 2016.

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NEW BRAUNFELS HOUSING
FINANCE INDUSTRIAL DEVELOPMENT
CORPORATION, 
a Texas non-profit industrial development corporation

By: ___
Name: __________________________
Title: ___

THE STATE OF TEXAS §

COUNTY OF _________ §

This instrument was acknowledged before me on the ___ day of 
____________, 2016, by _________, the __________ of NEW BRAUNFELS HOUSING
FINANCE INDUSTRIAL DEVELOPMENT CORPORATION, a Texas non-profit industrial development corporation, on behalf of and as the act and deed of said corporation.

__________________________
Notary Public, State of Texas
AGREED TO AND ACCEPTED THIS
___ DAY OF ________________, 2016:

CITIBANK, N.A.

By: ______________________________
Name: ______________________________
Title: ______________________________

STATE OF FLORIDA §

COUNTY OF PALM BEACH §

This instrument was acknowledged before me on the _____ day of ____________ , 2016, by Barry Krinsky, Vice President of CITIBANK, N.A., a national banking association, on behalf of said banking association. Barry (check one) □ is personally known to me or □ has produced a valid driver’s license as identification.

Notary Public, State of __________________________
Name: ______________________________
My Commission Expires: ______________________
My Commission Number is: ________________
1. Multifamily Permanent Subordinate Note dated on or about February __, 2016, in the face amount of $833,000.00, executed by Reserve at Engel Road, LLC to the order of New Braunfels Housing Finance Industrial Development Corporation.

2. Subordinate Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated February __, 2016, from Reserve at Engel Road, LLC for the benefit of New Braunfels Housing Finance Industrial Development Corporation.

3. Agreement of Environmental Indemnification dated February __, 2016, from Reserve at Engel Road, LLC for the benefit of New Braunfels Housing Finance Industrial Development Corporation.

4. Loan Agreement dated February __, 2016, among Reserve at Engel Road, LLC, New Braunfels Housing Finance Industrial Development Corporation and Citibank, N.A.
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EXCEPTIONS TO NON-RECOURSE GUARANTY
(Project Owner Subordinate Loan)

THIS EXCEPTIONS TO NON-RECOURSE GUARANTY (this “Guaranty”) is entered into as of the ___ day of February, 2016, by MV RESIDENTIAL CONSTRUCTION INC., an Ohio corporation, and MV RESIDENTIAL PROPERTY MANAGEMENT, INC., an Ohio corporation (collectively, “Guarantor”, whether one or more), for the benefit of Beneficiary Parties (as defined below). The date of this Guaranty as set forth above is for reference purposes only, and this Guaranty will not be effective and binding until the Closing Date (as defined by the Loan Agreement).

RECITALS:

A. __________, a Texas limited partnership (the “Borrower”) has applied to the New Braunfels Housing Finance Industrial Development Corporation (the “Lender”) for a loan (the “Project Owner Subordinate Loan”) for the acquisition, construction, rehabilitation, development, equipping and/or operation of a 96-unit multifamily residential project located in New Braunfels, __________ County, Texas, known or to be known as Reserve at Engel Road (the “Mortgaged Property”).

B. Simultaneously with the execution of this Guaranty and as a part of the same transaction, the Borrower has executed and delivered to the Lender the Multifamily Permanent Subordinate Note (the “Project Owner Subordinate Note”) in the maximum principal amount of $833,000.00, together with the other Project Owner Subordinate Loan Documents (each as hereinafter defined), which are intended to evidence and secure the Project Owner Subordinate Loan.

C. The Project Owner Subordinate Loan is secured by, among other things, that certain Multifamily Deed of Trust, Assignment of Rents, Security Agreement, and Fixture Filing (the “Security Instrument”), dated as of the date hereof, encumbering the property described on Exhibit A attached thereto, and incorporated by reference herein.

D. Lender has collaterally assigned the Project Owner Subordinate Loan to CitiBank, N.A. (“Citi”).

E. The Project Owner Subordinate Loan will be advanced to Borrower as provided for in that certain Subordinate Loan Agreement (“Loan Agreement”) dated as of the date hereof between Lender and Citi, and joined in by Borrower (the Project Owner Subordinate Note, the Subordinate Citi Security Instrument, the Loan Agreement and all other documents executed in connection with the Project Owner Subordinate Loan, including this Guaranty, are collectively referred to as the “Project Owner Subordinate Loan Documents”).

F. The term “Beneficiary Parties” as used herein shall mean Lender, any Servicer and their respective successors and assigns. The term “Beneficiary Parties” shall also include any lawful owner, holder or pledgee of the Project Owner Subordinate Note.
G. As a condition to the making of the Project Owner Subordinate Loan, Beneficiary Parties require that Guarantor execute this Guaranty.

H. Guarantor will directly or indirectly derive a material financial benefit from the making of the Project Owner Subordinate Loan.

NOW, THEREFORE, in order to induce Lender to make the Project Owner Subordinate Loan to Borrower, and in consideration thereof, Guarantor agrees as follows:

1. **Defined Terms.** Capitalized terms used but not defined in this Guaranty shall have the meanings assigned to them in the Subordinate Citi Security Instrument.

2. **Scope of Guaranty.** Guarantor represents to Beneficiary Parties that Guarantor has a direct or indirect ownership in Borrower and/or will otherwise derive a material financial benefit from the making of the Project Owner Subordinate Loan. Guarantor hereby does jointly, severally and unconditionally guaranty to Beneficiary Parties the full and prompt payment when due, whether at maturity or earlier, by reason of acceleration or otherwise, and at all times thereafter, and the full and prompt performance when due, of all of the following (collectively, the “Guaranteed Obligations”):

   (a) All amounts for which Borrower is personally liable under the Project Owner Subordinate Note, including, without limitation, all amounts under Section 9 of the Project Owner Subordinate Note.

   (b) The payment and performance of all of Borrower’s obligations under Section 18 of the Subordinate Citi Security Instrument (the “Environmental Provisions”) and under that certain Agreement of Environmental Indemnification dated as of the date hereof from Borrower for the benefit of Beneficiary Parties (the “Environmental Agreement”).

   (c) All costs and expenses, including out of pocket expenses and reasonable fees of attorneys and expert witnesses, incurred by Beneficiary Parties in enforcing their rights under this Guaranty.

For purposes of determining Guarantor’s liability under this Guaranty, all payments made by Borrower with respect to the Indebtedness and all amounts received by Beneficiary Parties from the enforcement of their rights under the Subordinate Citi Security Instrument or the other Project Owner Subordinate Loan Documents shall be applied first to the portion of the Indebtedness for which neither Borrower nor Guarantor has personal liability.

3. **Guarantor’s Obligations Survive Foreclosure.** The obligations of Guarantor under this Guaranty shall survive any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the Subordinate Citi Security Instrument or the other Project Owner Subordinate Loan Documents, and, in addition, the obligations of Guarantor relating to Borrower’s obligations under Section 18 of the Subordinate Citi Security Instrument (Environmental Hazards) and under Section 6 of the Environmental Agreement shall survive any repayment or discharge of the Indebtedness.
4. **Guaranty of Payment and Performance.** Guarantor’s obligations under this Guaranty constitute an unconditional and continuing guaranty of payment and performance and not merely a guaranty of collection. Guarantor hereby irrevocably and unconditionally covenants and agrees that Guarantor is liable for the Guaranteed Obligations as a primary obligor. The Guaranteed Obligations and this Guaranty are separate, distinct and in addition to any liability and/or obligations that Borrower or Guarantor may have under any other guaranty or indemnity executed by Borrower or Guarantor in connection with the Project Owner Subordinate Loan, and no other agreement, guaranty or indemnity executed in connection with the Project Owner Subordinate Loan shall act to reduce or set off any of Guarantor’s liability hereunder.

5. **Unconditional Guaranty.** The obligations of Guarantor under this Guaranty shall be performed without demand by Beneficiary Parties and shall be unconditional irrespective of the genuineness, validity, regularity or enforceability, in whole or in part, of the Guaranteed Obligations, the Project Owner Subordinate Note, the Subordinate Citi Security Instrument or any other Project Owner Subordinate Loan Document, and without regard to any other circumstance which might otherwise constitute a legal or equitable discharge of a surety, a guarantor, a borrower or a mortgagor. Guarantor hereby waives the benefit of all principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms of this Guaranty and agrees that Guarantor’s obligations shall not be affected by any circumstances, whether or not referred to in this Guaranty, which might otherwise constitute a legal or equitable discharge of a surety, a guarantor, a borrower or a mortgagor. Guarantor hereby waives the benefits of any right of discharge under any and all statutes or other laws relating to a guarantor, a surety, a borrower or a mortgagor, and any other rights of a guarantor, a surety, a borrower or a mortgagor, hereunder. Without limiting the generality of the foregoing, Guarantor hereby waives, to the fullest extent permitted by law, diligence in collecting the Indebtedness, presentment, demand for payment, protest, all notices with respect to the Project Owner Subordinate Note and this Guaranty which may be required by statute, rule of law or otherwise to preserve Beneficiary Parties’ rights against Guarantor under this Guaranty, including, but not limited to, notice of acceptance, notice of any amendment of the Project Owner Subordinate Loan Documents, notice of the occurrence of any default or Event of Default, notice of intent to accelerate, notice of acceleration, notice of dishonor, notice of foreclosure, notice of protest, and notice of the incurring by Borrower of any obligation or indebtedness. Guarantor also waives, to the fullest extent permitted by law, all rights to require Beneficiary Parties to (a) proceed against Borrower or any other guarantor of Borrower’s payment or performance with respect to the Indebtedness (an “Other Guarantor”), (b) if Borrower or any Other Guarantor is a partnership, proceed against any general partner of Borrower or the Other Guarantor, (c) proceed against or exhaust any collateral held by Beneficiary Parties to secure the repayment of the Indebtedness, (d) pursue any other remedy it may now or hereafter have against Borrower, or, if Borrower is a partnership, any general partner of Borrower, or (e) record the Subordinate Citi Security Instrument or to file any financing statement or to otherwise enforce, perfect, protect, secure or insure any lien or security interest given as security in connection with the Security Documents. Guarantor further waives, to the fullest extent permitted by applicable law, (a) any right to revoke this Guaranty as to any future advances under the Subordinate Citi Security Instrument or the other Project Owner Subordinate Loan Documents, (b) any defenses that could arise with respect to an amendment or modification of the Guaranteed Obligations by operation of law, action of any court or the amendment of any of the Project Owner Subordinate Loan Documents, (c) any

Exceptions to Non-Recourse Guaranty
HOU 408443573v1
defense that Beneficiary Parties have waived any Guaranteed Obligation by failing to enforce any right or remedy hereunder, or to promptly enforce any such right or remedy and (d) any other event or circumstance that may constitute a defense of Borrower or Guarantor to payment of the Guaranteed Obligations.

6. **Modification of Project Owner Subordinate Loan Documents.** At any time or from time to time and any number of times, without notice to Guarantor and without affecting the liability of Guarantor, (a) the time for payment of the principal of or interest on the Indebtedness may be extended or the Indebtedness may be renewed in whole or in part; (b) the time for Borrower’s performance of or compliance with any covenant or agreement contained in the Project Owner Subordinate Note, the Subordinate Citi Security Instrument or any other Project Owner Subordinate Loan Document, whether presently existing or hereinafter entered into, may be extended or such performance or compliance may be waived; (c) the maturity of the Indebtedness may be accelerated as provided in the Project Owner Subordinate Note, the Subordinate Citi Security Instrument, or any other Project Owner Subordinate Loan Document; (d) the Project Owner Subordinate Note, the Subordinate Citi Security Instrument, or any other Project Owner Subordinate Loan Document may be modified or amended by Beneficiary Parties and Borrower in any respect, including, but not limited to, an increase in the principal amount; and (e) any security for the Indebtedness may be modified, exchanged, surrendered or otherwise dealt with or additional security may be pledged or mortgaged for the Indebtedness.

7. **Joint and Several Liability.** If more than one person executes this Guaranty, the obligations of those persons under this Guaranty and any Other Guarantor shall be joint and several. Beneficiary Parties, in their sole and absolute discretion, may (a) bring suit against Guarantor, or any one or more of the persons constituting Guarantor, and any Other Guarantor, jointly and severally, or against any one or more of them; (b) compromise or settle with any one or more of the persons constituting Guarantor or any Other Guarantor for such consideration as Beneficiary Parties may deem proper; (c) release one or more of the persons constituting Guarantor, or any Other Guarantor, from liability; and/or (d) otherwise deal with Guarantor and any Other Guarantor, or any one or more of them, in any manner, and no such action shall impair the rights of Beneficiary Parties to collect from Guarantor any amount guaranteed by Guarantor under this Guaranty. Nothing contained in this paragraph shall in any way affect or impair the rights or obligations of Guarantor with respect to any Other Guarantor.

8. **Subordination of Borrower’s Indebtedness to Guarantor.** Any indebtedness of Borrower held by Guarantor now or in the future is and shall be subordinated to the Indebtedness of Borrower to Beneficiary Parties under the Project Owner Subordinate Loan Documents. After the occurrence and during the continuance of an Event of Default or the occurrence and during the continuance of an event which would, with the giving of notice or the passage of time, or both, constitute an Event of Default, Guarantor shall not receive or collect, directly or indirectly, from Borrower or any other party any amount of such indebtedness until the Guaranteed Obligations are paid in full. To the extent that Guarantor receives payment of any of the indebtedness of Borrower in violation of the preceding sentence, the same shall be collected, enforced and received by Guarantor, as trustee for Beneficiary Parties, but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guaranty.

Exceptions to Non-Recourse Guaranty
HOU 408443573v1
9. **Waiver of Subrogation.** Guarantor agrees to withhold the exercise of any and all subrogation and reimbursement rights against Borrower, against any other person, and against any collateral or security for the Indebtedness and Guarantor shall have no right of, and hereby waives any claim for, subrogation or reimbursement against Borrower or any managing member or general partner of Borrower by reason of any payment by Guarantor under this Guaranty, whether such right or claim arises at law or in equity or under any contract or statute, until (a) the Indebtedness has been indefeasibly paid and satisfied in full, (b) all obligations owed to Beneficiary Parties have been fully performed, (c) there has expired the maximum possible period thereafter during which any payment made by Borrower to Beneficiary Parties with respect to the Indebtedness, could be deemed a preference under the United States Bankruptcy Code and (d) each of Beneficiary Parties has released, transferred or disposed of all its right, title and interest in such collateral or security.

10. **Preference.** If any payment by Borrower is held to constitute a preference under any applicable bankruptcy, insolvency, or similar laws, or if for any other reason any of Beneficiary Parties is required to refund any sums to Borrower, such refund shall not constitute a release of any liability of Guarantor under this Guaranty. It is the intention of Beneficiary Parties and Guarantor that Guarantor’s obligations under this Guaranty shall not be discharged except by Guarantor’s performance of such obligations and then only to the extent of such performance.

11. **Reinstatement.** If at any time any payment of any amounts due under the Project Owner Subordinate Loan Documents by Borrower, Guarantor or any other Person is rescinded or must otherwise restored or returned upon the insolvency, bankruptcy or reorganization of Borrower or Guarantor or otherwise, Guarantor’s obligations hereunder with respect to such payment shall be reinstated as though such payment has been due but not made at such time.

12. **Guarantor’s Financial Condition.**

   (a) Guarantor hereby represents and warrants to Beneficiary Parties that as of the date hereof and throughout the term of the Project Owner Subordinate Loan, and after giving effect to this Guaranty and the contingent obligation evidenced hereby, Guarantor is and will be solvent and has and will have (i) assets which, fairly valued, exceed its obligations, liabilities (including contingent liabilities) and debts, and (ii) property and assets sufficient to satisfy and repay its obligations and liabilities. Guarantor hereby covenants and agrees that during the term of the Project Owner Subordinate Loan, except for the payment of employee salaries and benefits and dividends in the ordinary course of business, it shall not sell, pledge, mortgage or otherwise transfer any of its assets, or any interest therein, on terms materially less favorable than would be obtained in an arms-length transaction for fair consideration.

   (b) Guarantor hereby represents and warrants to Beneficiary Parties that all financial statements and other financial data previously delivered to Lender in connection with the application for the Project Owner Subordinate Loan and/or this Guaranty relating to the Guarantor are true, correct and complete in all material respects. Such financial statements fairly present the financial positions of all Persons who are the subjects thereof as of the respective dates thereof. Guarantor further represents and warrants to Beneficiary Parties that, except as previously disclosed to Lender in writing, no material
adverse change has occurred as of the date hereof and no material change shall have occurred as of the date of each advance of the Project Owner Subordinate Loan, in such financial position, or in the business, operations, assets, management, ownership, condition (financial or otherwise) or prospects of Guarantor, since the respective dates of such financial statements and financial data. Except as otherwise previously disclosed to Lender in writing, Guarantor has no knowledge of any material contractual obligations of Guarantor which might have a material adverse effect upon the ability of Guarantor to perform Guarantor’s obligations under this Guaranty.

(c) Guarantor shall furnish or cause to be furnished to Lender: (i) within ten (10) days of Lender’s request, a copy of the most recent year’s federal tax return for such Guarantor, and (ii) as soon as available and in any event within one hundred twenty (120) days after the end of each fiscal year of Guarantor, copies of the following financial statements of Guarantor for such fiscal year, prepared, and audited by an independent certified public accountant acceptable to Lender, in accordance with generally accepted accounting principles: (A) a balance sheet as of the end of such fiscal year (including supporting schedules), and (B) a statement of income and capital accounts for such fiscal year.

(d) Guarantor shall from time to time, upon request by Lender, deliver to Lender such other financial statements as Lender may reasonably require.

13. Marital and Residency Status.

Each Guarantor represents and warrants that as of the date hereof (check one of the following statements):

☐ Guarantor is an unmarried individual.

☐ Guarantor is a married individual; neither Guarantor nor Guarantor’s spouse resides in a community property state (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, Wisconsin and Puerto Rico).

☐ Guarantor is a married individual; Guarantor and/or Guarantor’s spouse resides in a community property state (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, Wisconsin or Puerto Rico). Guarantor will deliver the executed Spousal Consent and Waiver from his or her spouse in the form attached hereto as Exhibit B on or before the Closing Date.

Each Guarantor agrees to notify Lender of any change in Guarantor’s marital or residency status specified above within ten (10) Business Days after such change of occurs and, if required by Lender, agrees to provide a Spousal Consent and Waiver in the form required by Lender.
14. **(RESERVED).**

15. **Determinations by Lender.** Except to the extent expressly set forth in this Guaranty to the contrary, in any instance where the consent or approval of Lender may be given or is required, or where any determination, judgment or decision is to be rendered by Lender under this Guaranty, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by Lender, as applicable (or its designated representative) at its sole and exclusive option and in its sole and absolute discretion.

16. **Governing Law.** This Guaranty shall be governed by and enforced in accordance with the laws of the Property Jurisdiction, without giving effect to the choice of law principles of the Property Jurisdiction that would require the application of the laws of a jurisdiction other than the Property Jurisdiction.

17. **Consent to Jurisdiction and Venue.** Guarantor agrees that any controversy arising under or in relation to this Guaranty shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Guaranty. Guarantor irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing herein is intended to limit Beneficiary Parties’ right to bring any suit, action or proceeding relating to matters arising under this Guaranty against Guarantor or any of Guarantor’s assets in any court of any other jurisdiction.

18. **Successors and Assigns.** This Guaranty shall be binding upon Guarantor and its heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate, and shall inure to the benefit of the Beneficiary Parties and their respective successors, successors-in-interest and assigns. The terms used to designate any of the parties herein shall be deemed to include the heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate, of such parties. References to a “person” or “persons” shall be deemed to include individuals and entities. Guarantor acknowledges and agrees that any Beneficiary Party, at its option, may assign its respective rights and interests under this Guaranty and the other Project Owner Subordinate Loan Documents in whole or in part and upon such assignment all the terms and provisions of this Guaranty or the other Project Owner Subordinate Loan Documents shall inure to the benefit of such assignee to the extent so assigned. Guarantor may not assign or delegate its rights, interests or obligations under this Guaranty without first obtaining Lender’s prior written consent.

19. **Severability.** The invalidity, illegality or unenforceability of any provision of this Guaranty shall not affect the validity, legality or enforceability of any other provision, and all other provisions shall remain in full force and effect.

20. **Expenses.** Guarantor shall pay to the Beneficiary Parties, upon demand, the amount of any and all expenses, including, without limitation, reasonable attorneys’ fees (including reasonable time charges of attorneys who may be employees of Beneficiary Parties),
which the Beneficiary Parties may incur in connection with (a) the exercise or enforcement of any of their rights hereunder, (b) the failure by Guarantor to perform or observe any of the provisions hereof, or (c) the breach by Guarantor of any representation or warranty of Guarantor set forth herein. Guarantor shall also pay to the Beneficiary Party who incurs any such expenses, interest on such expenses computed at the Default Rate set forth in the Project Owner Subordinate Note from the date on which such expenses are incurred to the date of payment thereof.

21. **Remedies Cumulative.** In the event of Guarantor’s default under this Guaranty, the Beneficiary Parties may exercise all or any one or more of their rights and remedies available under this Guaranty, at law or in equity. Such rights and remedies shall be cumulative and concurrent, and may be enforced separately, successively or together, and the exercise of any particular right or remedy shall not in any way prevent the Beneficiary Parties from exercising any other right or remedy available to the Beneficiary Parties. The Beneficiary Parties may exercise any such remedies from time to time as often as may be deemed necessary by the Beneficiary Parties.

22. **No Agency or Partnership.** Nothing contained in this Guaranty shall constitute any Beneficiary Party as a joint venturer, partner or agent of Guarantor, or render any Beneficiary Party liable for any debts, obligations, acts, omissions, representations or contracts of Guarantor.

23. **Entire Agreement; Amendment and Waiver.** This Guaranty contains the complete and entire understanding of the parties with respect to the matters covered herein. Guarantor acknowledges that Guarantor has received copies of the Project Owner Subordinate Note, the Environmental Agreement and all other Project Owner Subordinate Loan Documents. This Guaranty may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by a written instrument signed by the party against whom enforcement of the waiver, amendment, change, or modification is sought, and then only to the extent set forth in that instrument. No specific waiver of any of the terms of this Guaranty shall be considered as a general waiver.

24. **Further Assurances.** Guarantor shall at any time and from time to time, promptly execute and deliver all further instruments and documents, and take all further action that may be reasonably necessary or desirable, or that any Beneficiary Party may reasonably request, in order to protect any right or interest granted by this Guaranty or to enable the Beneficiary Party to exercise and enforce its rights and remedies under this Guaranty.

25. **Notices; Change of Guarantor’s Address.** All notices given under this Guaranty shall be by writing and shall be sent to the respective addresses of the parties, in the manner set forth in the Subordinate Citi Security Instrument. Notices to Guarantor may be sent to the address of Borrower set forth in the Subordinate Citi Security Instrument. Guarantor agrees to notify Lender (in the manner for giving notices provided in the Subordinate Citi Security Instrument) of any change in Guarantor’s address within ten (10) Business Days after such change of address occurs.
26. **Counterparts.** To the extent Guarantor consists of more than one party, this Guaranty may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

27. **Captions.** The captions of the sections of this Guaranty are for convenience only and shall be disregarded in construing this Guaranty.

28. **Servicer.** Guarantor hereby acknowledges and agrees that, pursuant to the terms of the Subordinate Citi Security Instrument: (a) from time to time, Lender may appoint a servicer to collect payments, escrows and deposits, to give and to receive notices under the Project Owner Subordinate Note, this Guaranty or the other Project Owner Subordinate Loan Documents, and to otherwise service the Project Owner Subordinate Loan and (b) unless Borrower receives written notice from Lender to the contrary, any action or right which shall or may be taken or exercised by Lender may be taken or exercised by such servicer with the same force and effect.

29. **Beneficiary Parties as Third Party Beneficiary.** Each of the Beneficiary Parties shall be a third party beneficiary of this Guaranty for all purposes.

30. **Waiver of Trial by Jury.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF GUARANTOR AND THE BENEFICIARY PARTIES (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS GUARANTY OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

31. **Time of the Essence.** Time is of the essence with respect to this Guaranty.

32. **Modifications.** All modifications (if any) to the terms of this Guaranty (“Modifications”) are set forth on Exhibit A attached to this Guaranty. In the event of a Transfer under the terms of the Subordinate Citi Security Instrument, some or all of the Modifications to this Guaranty may be modified or rendered void by Lender at its option by notice to Guarantor.

33. **Attached Exhibits.** The following Exhibits are attached to this Guaranty and are incorporated by reference herein as if more fully set forth in the text hereof:

   **Exhibit A – Modifications to Exceptions to Non-Recourse Guaranty**

   **Exhibit B – [RESERVED]**

The terms of this Guaranty are modified and supplemented as set forth in said Exhibits. To the extent of any conflict or inconsistency between the terms of said Exhibits and the text of this Guaranty, the terms of said Exhibits shall be controlling in all respects.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Exceptions to Non-Recourse Guaranty or caused this Exceptions to Non-Recourse Guaranty to be duly executed and delivered by its authorized representative as of the date first set forth above. The undersigned intends that this instrument shall be deemed to be signed and delivered as a sealed instrument.

GUARANTOR:

MV RESIDENTIAL CONSTRUCTION, INC.,
an Ohio corporation

By: ________________________________
Name: ______________________________
Title: ______________________________

MV RESIDENTIAL PROPERTY MANAGEMENT, INC.,
an Ohio corporation

By: ________________________________
Name: ______________________________
Title: ______________________________

Address:

9349 WaterStone Blvd., #200
Cincinnati, Ohio 45249

Exceptions to Non-Recourse Guaranty
HOU 408443573v1
This instrument was acknowledged before me on this ___ day of _____________, 2016, by __________________________, Authorized Signer of MV RESIDENTIAL CONSTRUCTION, INC., an Ohio corporation, on behalf of said corporation.

________________________________________
Notary Public, State of Ohio

This instrument was acknowledged before me on this ___ day of _____________, 2016, by __________________________, Authorized Signer of MV RESIDENTIAL PROPERTY MANAGEMENT, INC., an Ohio corporation, on behalf of said corporation.

________________________________________
Notary Public, State of Ohio

(acknowledgment follows on subsequent page)
EXHIBIT A

Modifications to Exceptions to Non-Recourse Guaranty

The following modifications are made to the text of the Guaranty that precedes this Exhibit:

[NONE.]
Document comparison by Workshare Compare on Monday, February 29, 2016 9:30:13 AM

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FINANCING STATEMENT

This Financing Statement is presented to a Filing Officer for filing pursuant to the Uniform Commercial Code.

1. The name and address of the debtor ("Debtor") is:

NEW BRAUNFELS HOUSING—FINANCE INDUSTRIAL DEVELOPMENT CORPORATION, a Texas non-profit industrial development corporation

2. The name and address of secured party ("Secured Party") is:

CITIBANK, N.A.,
a national banking association
390 Greenwich Street, 2nd Floor
New York, New York 10013

3. This Financing Statement covers the following collateral:

(a) The Multifamily Permanent Subordinate Note listed on Schedule “A” attached hereto (the “Collateral Note”, whether one or more);

(b) All documents and instruments securing or otherwise pertaining to the Collateral Note (collectively, the “Collateral Loan Documents”), including, without limitation, the instruments and agreements listed on Schedule “A”;

(c) All of the liens and security interests granted in the Collateral Loan Documents or otherwise securing the Collateral Note (collectively, the “Collateral Liens”); and

(d) All proceeds of any of the foregoing.
DEBTOR:

NEW BRAUNFELS HOUSING FINANCE INDUSTRIAL DEVELOPMENT CORPORATION,
a Texas non-profit industrial development corporation

By: _________________________________
Name: _______________________________
Title: _______________________________
Schedule “A”

1. Multifamily Permanent Subordinate Note dated on or about February ____, 2016, in the face amount of $833,000.00, executed by ____________ to the order of New Braunfels Housing FinanceIndustrial Development Corporation.

2. Subordinate Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated February ____, 2016, from ____________ for the benefit of New Braunfels Housing FinanceIndustrial Development Corporation.

3. Agreement of Environmental Indemnification dated February ____, 2016, from ____________ for the benefit of New Braunfels Housing FinanceIndustrial Development Corporation.

4. Loan Agreement dated February ____, 2016, among ____________, New Braunfels Housing FinanceIndustrial Development Corporation and Citibank, N.A.
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INTERCREDITOR AND SUBORDINATION AGREEMENT

This Intercreditor and Subordination Agreement (this "Agreement") is entered into as of February ___, 2016, by and among CITIBANK, N.A., a national banking association (the "Bank"), NEW BRAUNFELS HOUSING FINANCE INDUSTRIAL DEVELOPMENT CORPORATION, a Texas non-profit industrial development corporation ("HFCIDC"), and ____________, a Texas limited liability company (the "Borrower").

RECITALS:

A. The Borrower is the owner of a 96-unit affordable housing apartment project to be constructed in New Braunfels, __________ County, Texas on the property which is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "Project").

B. As provided for in the Loan Agreement of even date herewith, among HFCIDC, Borrower, and Bank (the "HFCIDC Loan Agreement"), HFCIDC has committed to fund a loan of funds ("HFCIDC Loan") to the Borrower for the Project, in the aggregate amount of $833,000.00 (such funding is referred to herein as the "HFCIDC Funds").

C. Pursuant to a Credit Support and Funding Agreement (the "Bank Loan Agreement") of even date herewith, the Bank has agreed to make a loan in an amount not to exceed $14,250,000.00 (the "Bank Loan") to provide permanent financing for the Project. The Bank Loan is evidenced by a promissory note in the amount of $14,250,000.00, and is more fully described in and secured by a Multifamily Leasehold Construction and Permanent Deed of Trust, Assignment of Rents and Security Agreement and Fixture Filing, of even date with such promissory note, and covering the Project to be recorded in the Official Public Records of Real Property of __________ County, Texas.

D. HFCIDC and the Bank wish to enter into this Agreement to fully set forth their agreement regarding the relationship of the HFCIDC Loan to the Bank Loan and other matters of mutual interest to HFCIDC and the Bank with respect to the construction of the Project.

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

1. Definitions. In addition to the defined terms set forth elsewhere herein, the following term shall have the meaning set forth below:

"HFCIDC Loan Documents" means the HFCIDC Loan Agreement, the promissory note evidencing the HFCIDC Loan and the subordinate lien deed of trust covering the Project and securing the HFCIDC Loan, and all other
documents and agreements governing, pertaining to, and securing the HFC IDC Loan.

2. Acknowledgments, Representations, and Consents. HFC IDC represents to the Bank that (i) once issued, and assuming no changes in any material respect in applicable law, as it exists on the date hereof, the HFC IDC Loan Documents will be in full force and effect, and (ii) the HFC IDC Loan Documents will constitute a commitment by HFC IDC to make the HFC IDC Loan Funds available to the Borrower for the Project as hereafter provided subject to the terms and conditions of the HFC IDC Loan Documents.

3. Subordination by HFC IDC. HFC IDC agrees that to the extent any voluntary or involuntary liens, claims, and security interests, against the Project, whether by agreement, at law, or in equity, of HFC IDC (or any other entity claiming by, through, or under HFC IDC) now or hereafter secure the payment and/or performance of the Borrower's obligations under and with respect to the HFC IDC Loan and the HFC IDC Loan Documents (including, without limitation, the liens granted in any deed of trust against the Project, executed by the Borrower to HFC IDC pursuant to the HFC IDC Loan), the same are and shall forever remain junior, subordinate, and inferior, to the liens and security interests of the Bank against the Project, securing payment of the Bank Loan and, by its execution hereof, HFC IDC hereby evidences said subordination. HFC IDC has and does hereby subordiante its right to payment of the HFC IDC Loan to the right of Bank to be paid on the Bank Loan; provided that until Borrower receives written notice from Bank of the occurrence of an Event of Default under and with respect to the Bank Loan, Borrower may make regularly scheduled payments (but not prepayments) on the HFC IDC Loan (no payments shall be made or accepted on the HFC IDC Loan after receipt of any such notice of default until written notice by Bank is received that that portion of default has been cured or waived).

4. Cross Default. (a) If a default or an event of default occurs under the HFC IDC Loan Documents, that default or event of default shall constitute an Event of Default under the Bank Loan Agreement.

(b) In the event of any receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization or arrangement with creditors, whether or not pursuant to bankruptcy laws, sale of all or substantially all of the assets, dissolutions, liquidations or any other marshaling of the assets and liabilities of the Borrower, HFC IDC and the Bank agree that the Bank Loan will be paid prior to the HFC IDC Loan. HFC IDC agrees to file at the expense of the Borrower, any claim, or other instrument of similar character necessary to enforce the obligations of the Borrower under the HFC IDC Loan Documents, and will hold in trust for the Bank and immediately pay over to the Bank, in the form received (except for HFC IDC’s endorsement or assignment which HFC IDC agrees to provide upon the Bank's request) to be applied on the Bank Loan, any and all moneys, dividends, or other assets received in any such proceeding on account of the HFC IDC Loan, unless and until the Bank Loan shall be paid in full.
5. **Notices.** Any notice by one party to the others hereunder shall be in writing and shall be delivered in person, via overnight courier or by United States Mail, postage prepaid, certified, return receipt requested. Notice shall be deemed delivered on the date delivered, or if mailed, three business days after deposit in the U.S. Mail. All notices shall be delivered to the following addresses:

**To the Bank:**

**Prior to the Conversion**
- **Date:**
- **Citibank, N.A.**
- 390 Greenwich Street, 2nd Floor
- New York, New York 10013
- **Attention:** Account Specialist
- **Deal ID # ________**
- **Facsimile:** (212) 723-8209

**Following the Conversion**
- **Date:**
- **Citibank, N.A.**
- c/o Berkadia Commercial Servicing Department
- 323 Norristown Road, Suite 300
- Amber, PA 19002
- **Attention:** Client Relations Manager
- **Deal ID # ________**
- **Facsimile:** (215) 328-0305

**And a copy of any notices of default sent to:**
- **Citibank, N.A.**
- 388 Greenwich Street
- New York, New York 10013
- **Attention:** General Counsel’s Office
- **Deal ID No. ________**
- **Facsimile:** (646) 291-5754

**To Borrower:**
- MV AFFORDABLE HOUSING LLC
- 9349 WaterStone Blvd., Suite 200
- Cincinnati, Ohio 45249
- **Attention:** Michael Riechman and Elizabeth A. Mangan

**To HFC IDC:**
- New Braunfels HOUSING—FINANCE INDUSTRIAL DEVELOPMENT CORPORATION

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3
The parties may change their addresses for purposes of notice by giving the other parties ten (10) days' written notice of the address change in the manner hereinabove stated.

6. Miscellaneous.

(a) This Agreement constitutes the entire agreement of the three parties hereto with respect to the subject matter hereof, and all other prior and contemporaneous written or oral agreements. Any amendment hereto must be in writing executed by the Borrower, HECIDC, and the Bank.

(b) Time is of the essence in the performance of the parties' obligations hereunder.

(c) **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND APPLICABLE UNITED STATES FEDERAL LAW.**

(d) This Agreement shall be enforceable by and binding upon all successors and assigns of the Bank.

(e) This Agreement shall remain in full force and effect until the Bank Loan has been fully and finally paid and the Borrower has no further obligations under the Bank Loan Agreement.

(f) This Agreement may be executed in two or more counterparts, and it shall not be necessary that any one counterpart be executed by all of the parties hereto. Each fully or partially executed counterpart shall be deemed an original, but all such counterparts taken together shall constitute but one and the same instrument.

(g) Capitalized terms used in this Agreement without definition shall have the meanings given to those terms in the Bank Loan Agreement.

(h) HECIDC and Borrower, that notwithstanding anything in the HECIDC Loan Documents to the contrary, the HECIDC shall be fully funded prior to the Conversion Date (as such term is defined by the________________________Agreement) on terms and in a manner satisfactory to the Bank to pay budgeted items.
IN WITNESS WHEREOF, the undersigned have affixed their signatures hereto on the respective dates set forth in the acknowledgment below to be effective as of the date first above written.

"BORROWER"

[TO BE ADDED]

STATE OF __________ $§
COUNTY OF__________ §

[TO BE ADDED]

NOTARY PUBLIC, State of ______________________
NEW BRAUNFELS HOUSING FINANCE INDUSTRIAL DEVELOPMENT CORPORATION, a Texas non-profit industrial development corporation

By: ________________________________
Name: ______________________________
Title: ______________________________

THE STATE OF TEXAS §

COUNTY OF __________ §

This instrument was acknowledged before me on this _____ day of __________, 2016, by ____________________________ of NEW BRAUNFELS HOUSING FINANCE INDUSTRIAL DEVELOPMENT CORPORATION, a non-profit Texas industrial development corporation, on behalf of said corporation.

Notary Public, State of Texas
My Commission Expires: ____________
"BANK"

CITIBANK, N.A.,
a national banking association

By: ________________________________
Name: ______________________________
Title: ______________________________

THE STATE OF ________

COUNTY OF ________

KNOW ALL MEN BY THESE PRESENTS

This instrument was acknowledged before me on this _____ day of ________, 2016, by
__________________________ of CITIBANK, N.A., a national banking
association, on behalf of said banking association.

________________________________
NOTARY PUBLIC, State of ________

My Commission Expires: ______________________
EXHIBIT "A"

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FOR VALUE RECEIVED, the undersigned (“Borrower”) promises to pay to the order of NEW BRAUNFELS HOUSING FINANCE INDUSTRIAL DEVELOPMENT CORPORATION, a Texas nonprofit industrial development corporation, the maximum principal sum of EIGHT HUNDRED THIRTY-THREE THOUSAND AND NO/100 DOLLARS ($833,000.00), with interest on the unpaid principal balance from time to time outstanding at the annual rate as set forth on Schedule A. The terms of this Note incorporate the Modifications, if any, set forth on Schedule C to this Note.

1. Defined Terms. As used in this Note, the following terms shall have the following definitions:

(a) “Beneficiary Parties” shall have the meaning set forth in the Subordinate Security Instrument.

(b) “Business Day” means any day other than (i) a Saturday or a Sunday, or (ii) a day on which federally insured depository institutions in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

(c) “Conversion Date” has the meaning assigned to that term in the Senior Loan Agreement.

(d) “Default Rate” shall have the meaning set forth in Section 8 of this Note.

(e) “First Payment Date” means the first day of the calendar month immediately following the calendar month in which the Conversion Date occurs.

(f) “Indebtedness” means the principal of, interest on, and any other amounts due at any time under, this Note and the Subordinate Security Instrument, including prepayment premiums, late charges, default interest, and advances to protect the security of the Subordinate Security Instrument as described in Section 12 of the Subordinate Security Instrument.

(g) “Interest Rate” shall have the meaning set forth in Paragraph 1 of Schedule A to this Note.
(h) “Lender” means New Braunfels Housing Finance Industrial Development Corporation and any subsequent holder of this Note (including, without limitation, CitiBank, N.A., as the collateral assignee of this Note).

(i) “Loan” means the loan evidenced by this Note.

(j) “Loan Agreement” means that certain Loan Agreement dated February __, 2016, among Borrower, Lender and Citibank, N.A.

(k) “Loan Month” means the period commencing on a Loan Payment Date and ending on the day preceding the next succeeding Loan Payment Date (without adjustment in either case for Business Day conventions).

(l) “Loan Payment Date” means the first Business Day of each month, commencing on the First Payment Date.

(m) “Lock-Out Period” means the period commencing on the date of this Note and ending six (6) calendar months preceding the fifteenth (15th) anniversary of the Conversion Date.

(n) “Maturity Date” means the earlier to occur of (i) the date which is fifteen (15) years following the Conversion Date, or (ii) any earlier date on which the unpaid principal balance of this Note becomes due and payable, by acceleration or otherwise.

(o) “Maximum Rate” means the maximum interest rate that may be paid on the Loan under State law.

(p) “Note” means this Multifamily Permanent Subordinate Note.

(q) “Note Interest” shall have the meaning set forth in Paragraph 1 of Schedule A to this Note.

(r) “Prepayment Premium Period” commencing on the date of this Note and ending six (6) calendar months preceding the fifteenth (15th) anniversary of the Conversion Date.

(s) “Property Jurisdiction” shall have the meaning set forth in the Subordinate Security Instrument.

All other capitalized terms used but not defined in this Note shall have the meanings given to such terms in the Loan Agreement.

2. **Method of Payment.** All payments due under this Note shall be payable to Servicer, or, if there is no Servicer, to the Lender, or its successor. Each such payment shall be made by wire transfer of immediately available funds in accordance with wire transfer
instructions that the Lender or Servicer shall supply by Written Notice to the Borrower from time to time.

3. Payment of Principal and Interest. Principal and interest shall be paid as follows:

(a) Borrower shall pay all amounts due under this Note at the times and in the amounts set forth herein. Borrower shall make its payments under this Note in immediately available funds.

(b) Borrower shall pay monthly payments of principal and interest as set forth on Schedule A attached hereto in successive monthly installments commencing on the First Payment Date and continuing on each Loan Payment Date thereafter until and including the Maturity Date. Such payments shall be made to the Lender or the Servicer by 2:00 p.m., New York City time, on each Loan Payment Date.

(c) Any accrued interest remaining past due may, at Lender’s discretion, be added to and become part of the unpaid principal balance and shall bear interest at the rate or rates specified in this Note, and any reference below to “accrued interest” shall refer to accrued interest that has not become part of the unpaid principal balance.

(d) Borrower shall pay all unpaid principal of and interest on this Note on the Maturity Date and any other amounts due under subsection 3(a) hereof.

(e) Any regularly scheduled monthly installment of principal and interest that is received by Lender before the date it is due shall be deemed to have been received on the due date solely for the purpose of calculating interest due.

(f) Borrower shall make all payments of principal and interest under this Note without relief from valuation and appraisement laws.

(g) Borrower acknowledges that the calculation of all interest payments shall be made by the Lender and shall be final and conclusive, absent manifest error.

4. Application of Payments. If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, Lender may apply that payment to amounts then due and payable under this Note in any manner and in any order determined by Lender, in Lender’s discretion. Borrower agrees that neither Lender’s acceptance of a payment from Borrower in an amount that is less than all amounts then due and payable nor Lender’s application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. Security. The Indebtedness is secured by, among other things, the Security Instrument and reference is made to the Subordinate Security Instrument for other rights of Lender as to collateral for the Indebtedness.
6. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, the prepayment premium payable under Section 10, if any, and all other amounts payable under this Note and the Subordinate Security Instrument shall at once become due and payable, at the option of Lender, without any prior notice to Borrower (except if notice is required by applicable law, then after such notice). Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Late Charge.** If any amount payable under this Note or under the Subordinate Security Instrument is not received by Lender when such amount is due (unless applicable law requires a longer period of time before a late charge may be imposed, in which event, such longer period shall be substituted), Borrower shall pay to Lender, immediately and without demand by Lender, a late charge equal to five percent (5.0%) of such amount (unless applicable law requires a lesser amount be charged, in which event such lesser amount shall be substituted). Notwithstanding the foregoing, with regard to each regularly scheduled monthly installment of principal and interest payable pursuant to this Note, such late charge shall not become due and payable to Lender so long as the Borrower makes such payment on or prior to the tenth (10th) calendar day following the date upon which such payment is due (or the Business Day immediately following such tenth (10th) calendar day if such tenth (10th) calendar day is not a Business Day). Any accrued but unpaid late charges shall be added to and become part of the unpaid principal balance of this Note, shall bear interest at the rate or rates specified in this Note, and shall be secured by the Subordinate Security Instrument. Borrower acknowledges that its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Loan, and that it is extremely difficult and impractical to determine those additional expenses. Borrower agrees that the late charge payable pursuant to this Section represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Note, of the additional expenses Lender will incur by reason of such late payment, and such late charge shall be deemed liquidated damages and not additional interest or a penalty. The late charge is payable in addition to, and not in lieu of, any interest payable at the Default Rate pursuant to Section 8. Notwithstanding anything to the contrary in the Subordinate Security Instrument, if a Servicer has been appointed by Lender, any late charges payable hereunder shall not be remitted to Lender and shall instead be paid directly to Servicer, who shall apply such late charges in accordance with the terms of the applicable servicing agreement. Any action regarding the collection of a Late Charge will be without prejudice to any other rights, and shall not act as a waiver of any other rights, that the Servicer or the Lender may have as provided herein, in the Subordinate Security Instrument, or at law or in equity.

8. **Default Rate.** So long as (a) any monthly installment under this Note remains past due, or (b) any other Event of Default has occurred and is continuing, interest under this Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at a rate per annum (the “Default Rate”) equal to the lesser of the Maximum Rate or a rate equal to the Interest Rate plus four percent (4%), in each case compounded monthly (computed in accordance with Schedule A in the same manner in which Note Interest is computed). If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date at the
Default Rate. Borrower also acknowledges that its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Loan, that, during the time that any monthly installment under this Note is delinquent, Lender will incur additional costs and expenses arising from its loss of the use of the money due and from the adverse impact on Lender’s ability to meet its other obligations and to take advantage of other investment opportunities, and that it is extremely difficult and impractical to determine those additional costs and expenses. Borrower also acknowledges that, during the time that any monthly installment under this Note is delinquent or any other Event of Default has occurred and is continuing, Lender’s risk of nonpayment of this Note will be materially increased and Lender is entitled to be compensated for such increased risk. Borrower agrees that the increase in the rate of interest payable under this Note to the Default Rate as provided above represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Note, of the additional costs and expenses Lender will incur by reason of Borrower’s delinquent payment and the additional compensation Lender is entitled to receive for the increased risks of nonpayment associated with a delinquent loan.

9. **Personal Liability of Borrower.**

(a) Except as otherwise provided in this Section 9, neither Borrower nor any of its partners, members and/or managers shall have any personal liability under this Note or the Subordinate Security Instrument for the repayment of the Indebtedness or for the performance of any other obligations of Borrower under the Subordinate Security Instrument, and Lender’s only recourse for the satisfaction of the Indebtedness and the performance of such obligations shall be Lender’s exercise of its rights and remedies with respect to the Mortgaged Property and any other collateral held by Lender as security for the Indebtedness (in no event shall a limited partner of Borrower be obligated under this Note by virtue of it being a limited partner). This limitation on Borrower’s liability shall not limit or impair Lender’s enforcement of its rights against any guarantor of the Indebtedness or any guarantor of any obligations of Borrower.

(b) Borrower shall be personally liable to Lender for the repayment of a portion of the Indebtedness equal to any loss or damage suffered by Lender (the “Losses”) as a result of (1) failure of Borrower to pay to Lender upon demand after an Event of Default all Rents to which Lender is entitled under Section 3(a) of the Subordinate Security Instrument and the amount of all security deposits collected by Borrower from tenants then in residence; (2) failure of Borrower to apply all insurance proceeds and condemnation proceeds as required by the Subordinate Security Instrument; (3) failure of Borrower to comply with Section 14(d) or (e) of the Subordinate Security Instrument relating to the delivery of books and records, statements, schedules, and reports; (4) fraud or material misrepresentation by Borrower or any general partner, managing member, manager, officer, director, partner, member, agent or employee of Borrower in connection with the application for or creation of the Indebtedness or any request for any action or consent by or on behalf of Lender; (5) failure to apply Rents, first, to the payment of reasonable operating expenses (other than property management fees that are not currently payable pursuant to the terms of an Assignment of Management Agreement or
the Subordinate Security Instrument) and then to amounts ("Debt Service Amounts") payable under this Note or the Subordinate Security Instrument (except that Borrower will not be personally liable (i) to the extent that Borrower lacks the legal right to direct the disbursement of such sums because of a bankruptcy, receivership or similar judicial proceeding, or (ii) with respect to Rents that are distributed on account of any calendar year if Borrower has paid all operating expenses and Debt Service Amounts for that calendar year; (6) failure of Borrower to comply with the provisions of Section 17(a) of the Subordinate Security Instrument prohibiting the commission of waste or allowing the impairment or deterioration of the Mortgaged Property; or (7) failure of Borrower to obtain and maintain any local real estate tax abatement or exemption required under the Subordinate Security Instrument, or the reduction, revocation, cancellation or other termination of such abatement or exemption, as a result of any act or omission by or on behalf of Borrower, Borrower or any of their respective partners, members, managers, directors, officers, agents, employees or representatives.

(c) For purposes of determining Borrower’s personal liability under this Section 9, all payments made by Borrower or any guarantor of this Note with respect to the Indebtedness and all amounts received by Lender from the enforcement of its rights under the Subordinate Security Instrument shall be applied first to the portion of the Indebtedness for which Borrower has no personal liability.

(d) Borrower shall become personally liable to Lender for the repayment of all of the Indebtedness upon the occurrence of any of the following Events of Default: (1) Borrower’s acquisition of any property or operation of any business not permitted by Section 32 of the Subordinate Security Instrument; or (2) a Transfer (including, but not limited to, a lien or encumbrance) that is an Event of Default under Section 21 of the Subordinate Security Instrument, other than a Transfer consisting solely of the involuntary removal or involuntary withdrawal of a general partner in a limited partnership or a manager in a limited liability company; or (3) a Bankruptcy Event, as defined by the Subordinate Security Instrument (but only if the Bankruptcy Event occurs with the consent or active participation of Borrower, its General Partner or any Borrower Affiliate (as defined by the Subordinate Security Instrument).

(e) In addition to any personal liability for the Indebtedness, Borrower shall be personally liable to Lender for (1) the performance of all of Borrower’s obligations under Section 18 of the Subordinate Security Instrument (relating to environmental matters) and the Agreement of Environmental Indemnification dated of even date with the Loan Agreement; (2) the costs of any audit under Section 14(d) of the Subordinate Security Instrument; and (3) any costs and expenses incurred by Lender in connection with the collection of any amount for which Borrower is personally liable under this Section 9, including out of pocket expenses and reasonable fees of attorneys and expert witnesses and the costs of conducting any independent audit of Borrower’s or Borrower’s books and records to determine the amount for which Borrower has personal liability.
(f) To the extent that Borrower has personal liability under this Section 9, Lender may exercise its rights against Borrower personally without regard to whether Lender has exercised any rights against the Mortgaged Property or any other security, or pursued any rights against any guarantor, or pursued any other rights available to Lender under this Note or the Subordinate Security Instrument or applicable law. For purposes of this Section 9, the term “Mortgaged Property” shall not include any funds that (1) have been applied by Borrower as required or permitted by the Subordinate Security Instrument prior to the occurrence of an Event of Default or (2) Borrower was unable to apply as required or permitted by the Subordinate Security Instrument because of a bankruptcy, receivership, or similar judicial proceeding. To the fullest extent permitted by applicable law, in any action to enforce Borrower’s personal liability under this Section 9, Borrower waives any right to set off the value of the Mortgaged Property against such personal liability.

(g) Nothing herein or in the Subordinate Security Instrument shall be deemed to be a waiver of any right which the Lender or the Servicer may have under Sections 506(a), 506(b), 1111(b) or any other provision of the United States Bankruptcy Code, as such sections may be amended, or corresponding or superseding sections of the Bankruptcy Amendments and Federal Judgeship Act of 1984, to file a claim for the full amount due to the Lender and the Servicer hereunder and under the Subordinate Security Instrument or to require that all collateral shall continue to secure the amounts due hereunder and under the Subordinate Security Instrument.

10. **Voluntary and Involuntary Prepayments.**

(a) In connection with any prepayment (i.e., any receipt by Lender of principal, other than principal required to be paid in monthly installments pursuant to Section 3, prior to the Maturity Date) made under this Note, whether voluntary or involuntary, a prepayment premium shall be payable to the extent provided below.

(b) **NO VOLUNTARY PREPAYMENTS OF THIS NOTE, IN WHOLE OR IN PART, SHALL BE PERMITTED DURING THE LOCK-OUT PERIOD.** After the Lock-Out Period, Borrower may voluntarily prepay all (but not less than all) of the unpaid principal balance of this Note on any Loan Payment Date if: (i) Borrower has given Lender prior Written Notice of its intention to make such prepayment at least twenty (20) days prior to the proposed prepayment date (or such shorter time as agreed to by Lender in its sole discretion) and (ii) Borrower pays (A) the amount of principal being prepaid, (B) all accrued interest, (C) prior to the end of the Repayment Premium Period, the prepayment premium calculated pursuant to Schedule B, and (D) all other sums due Lender at the time of such prepayment. If Lender, in Lender’s sole and absolute discretion, agrees in writing to waive the foregoing provision and allow a prepayment during the Lock-Out Period, a prepayment premium calculated pursuant to Schedule B shall be due and payable by Borrower. In connection with any prepayment pursuant to this Section 10(b), the Borrower shall wire transfer the amount required hereunder in immediately available funds by 2:00 p.m., New York City time, on the date of
prepayment. For all purposes including the accrual of interest, any prepayment received by Lender on any day other than the last calendar day of a Loan Month shall be deemed to have been received on the last calendar day of such Loan Month.

(c) Upon Lender’s exercise of any right of acceleration under this Note, Borrower shall pay to Lender, in addition to the entire unpaid principal balance of this Note outstanding at the time of the acceleration, (i) all accrued interest and all other sums due Lender, and (ii) if such acceleration occurs during the Prepayment Premium Period, the prepayment premium calculated pursuant to Schedule B.

(d) Any application by Lender of any collateral or other security to the repayment of any portion of the unpaid principal balance of this Note prior to the end of the Prepayment Premium Period and in the absence of acceleration shall be deemed to be a partial prepayment by Borrower, requiring the payment to Lender by Borrower of a prepayment premium, calculated pursuant to Schedule B.

(e) The Borrower shall prepay the outstanding principal balance of this Note at the direction of the Lender, in whole or in part, at a price equal to the outstanding principal balance of this Note, plus accrued interest plus any other amounts payable under this Note or the Subordinate Security Instrument, upon the occurrence of any event or condition described below:

1. in whole or in part, if the Mortgaged Property shall have been damaged or destroyed to the extent that it is not practicable or feasible to rebuild, repair or restore the damaged or destroyed property within the period and under the conditions described in the Subordinate Security Instrument following such event of damage or destruction; or

2. in whole or in part, if title to, or the use of, all or a portion of the Mortgaged Property shall have been taken under the exercise of the power of eminent domain by any Governmental Authority which results in a prepayment of this Note under the conditions described in the Subordinate Security Instrument; or

3. in whole or in part, to the extent that insurance proceeds or proceeds of any condemnation award with respect to the Mortgaged Property are not applied to restoration of the Mortgaged Property in accordance with the provisions of the Subordinate Security Instrument.

In connection with any such prepayment, the Borrower shall wire transfer immediately available funds by no later than 2:00 p.m., New York City time, on the date fixed by the Lender, which date shall be communicated by the Lender in writing to the Borrower. To the extent that the Borrower receives any insurance proceeds or condemnation awards that are to be applied to the prepayment of this Note, such amounts shall be applied to the prepayment of this Note. No prepayment premium shall be payable with respect to any prepayment required by this Section 10(e).
(f) Any permitted or required prepayment of less than the unpaid principal balance of this Note shall not extend or postpone the due date of any subsequent monthly installments or change the amount of such installments, unless Lender agrees otherwise in writing.

(g) Borrower recognizes that any prepayment of the unpaid principal balance of this Note, whether voluntary, involuntary or resulting from a default by Borrower, will result in Lender’s incurring loss, including reinvestment loss, additional expense and frustration or impairment of Lender’s ability to meet its commitments to third parties. Borrower agrees to pay to Lender upon demand damages for the detriment caused by any prepayment, and agrees that it is extremely difficult and impractical to ascertain the extent of such damages. Borrower therefore acknowledges and agrees that the formula for calculating prepayment premiums set forth on Schedule B represents a reasonable estimate of the damages Lender will incur because of a prepayment.

(h) Borrower further acknowledges that the lock-out and prepayment premium provisions of this Note are a material part of the consideration for the Loan, and acknowledges that the terms of this Note are in other respects more favorable to Borrower as a result of Borrower’s voluntary agreement to the Lock-Out Period and the prepayment premium provisions.

(i) Any prepayment premium payable hereunder shall be remitted to Servicer, or if a Servicer has not been appointed by Lender, to Lender.

11. **Costs and Expenses.** To the fullest extent allowed by applicable law, Borrower shall pay all expenses and costs, including, without limitation, out-of-pocket expenses and reasonable fees of attorneys (including, without limitation, in-house attorneys) and expert witnesses and costs of investigation, incurred by Lender as a result of any default under this Note or in connection with efforts to collect any amount due under this Note, or to enforce the provisions of the Subordinate Security Instrument, including those incurred in post-judgment collection efforts and in any bankruptcy proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding) or judicial or non-judicial foreclosure proceeding. For purposes of Section 9(e) and this Section 11, attorneys’ out of pocket expenses shall include, but are not limited to, support staff costs, costs of preparing for litigation, computerized research, telephone and facsimile transmission expenses, mileage, deposition costs, postage, duplicating, process service, videotaping and similar costs and expenses.

12. **Forbearance.** Any forbearance by Lender in exercising any right or remedy under this Note or the Subordinate Security Instrument or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender’s right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by Lender of any security for Borrower’s
obligations under this Note shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right or remedy available to Lender.

13. **Waivers.** Except as expressly required by the Subordinate Security Instrument, presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace, and diligence in collecting the Indebtedness are waived by Borrower and all endorsers and guarantors of this Note and all other third party obligors.

14. **Loan Charges.** Neither this Note nor the Subordinate Security Instrument shall be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate greater than the maximum interest permitted to be charged under applicable law. If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower in connection with the Loan is interpreted so that any interest or other charge provided for in the Subordinate Security Instrument, whether considered separately or together with other charges provided for in the Subordinate Security Instrument, violates that law, and Borrower is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness that constitutes interest, as well as all other charges made in connection with the Indebtedness that constitute interest, shall be deemed to be allocated and spread ratably over the stated term of this Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Note.

15. **Obligations of the Borrower Absolute and Unconditional.** Subject to Section 9, the obligations of the Borrower to make all payments required under this Note and the Subordinate Security Instrument on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder and under the Subordinate Security Instrument shall be primary, absolute, unconditional and irrevocable, and shall be paid or performed strictly in accordance with the terms of this Note and the Subordinate Security Instrument under any and all circumstances, without notice or demand (except as expressly required by the Subordinate Security Instrument), and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Borrower's title to the Mortgaged Property or to any part thereof is defective or nonexistent, and notwithstanding any damage due to loss, theft or destruction of the Mortgaged Property or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Mortgaged Property, legal curtailment of the Borrower's use thereof, the eviction or constructive eviction of the Borrower, any change in the tax or other laws of the United States of America, the State or any political subdivision thereof, any change in the Lender's legal organization or status, or any default of the Lender hereunder or under the Subordinate Security Instrument, and regardless of
the invalidity of any action of the Lender or the invalidity of any portion of this Note or the Subordinate Security Instrument. Provided further, the obligations of Borrower under this Note and the Subordinate Security Instrument shall not be affected by:

(a) any lack of validity or enforceability of the Subordinate Security Instrument or any of the Related Documents;

(b) any amendment of, or any waiver or consent with respect to, the Subordinate Security Instrument or Related Documents;

(c) the existence of any claim, set-off, defense or other rights which Borrower may have at any time against Lender (other than the defense of payment in accordance with the terms of this Note or the Subordinate Security Instrument) or any other Person, whether in connection with this Note or the Subordinate Security Instrument, the Related Documents or any transaction contemplated thereby or any unrelated transaction;

(d) any breach of contract or other dispute between Borrower and Lender; or

(e) any exchange, release or nonperfection of any lien or security interest in any collateral pledged or otherwise provided to secure any of the obligations contemplated herein, in the Subordinate Security Instrument or in any Related Document.

To the extent permitted by law, the Borrower hereby waives the application to it of the provisions of any statute or other law now or hereafter in effect contrary to any of its obligations, covenants or agreements under this Note or the Subordinate Security Instrument or which releases or purports to release the Borrower therefrom. Nothing contained herein shall be construed as prohibiting the Borrower from pursuing any rights or remedies it may have against any Person in a separate legal proceeding.

16. Commercial Purpose. Borrower represents that the Indebtedness is being incurred by Borrower solely for the purpose of carrying on a business or commercial enterprise, and not for personal, family, household or agricultural purposes.

17. Counting of Days. Except where otherwise specifically provided, any reference in this Note to a period of “days” means calendar days, not Business Days.

18. Notices. All notices, demands and other communications required or permitted to be given by Lender to Borrower pursuant to this Note shall be in writing, addressed as set forth below, and shall include a reference to “Citi Loan # ________.” Each notice shall be deemed given on the earliest to occur of (a) the date when the notice is received by the addressee; (b) the first Business Day after the notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (c) the third Business Day after the notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested.

To Borrower: ________________________________
9349 WaterStone Blvd., Suite 200
Cincinnati, Ohio 45249
Attn: Michael Riechman and Elizabeth A. Mangan, Esq.

With a copy to:

________________________________
________________________________
________________________________

If to Lender: New Braunfels Housing Finance Industrial Development Corporation

With a copy to: [TO BE ADDED]
And to: Citibank, N.A.
390 Greenwich Street, 2nd Floor
New York, New York 10013
Attention: Transaction Management Group
Deal ID #: __________
Facsimile: (212) 723-8209

And to: Citibank, N.A.
325 East Hillcrest Drive, Suite 160
Thousand Oaks, California 91360
Attention: Operations Manager/Asset Manager
Deal ID #: __________
Facsimile: (805) 557-0924

Prior to the Conversion
Date, with a copy to:

Citibank, N.A.
390 Greenwich Street, 2nd Floor
New York, New York 10013
Attention: Account Specialist
Deal ID #: __________
Facsimile: (212) 723-8209

Following the Conversion
Date, with a copy to:

Citibank, N.A.
c/o Berkadia Commercial Servicing Department
323 Norristown Road, Suite 300
Ambler, PA 19002
Attention: Client Relations Manager
Deal ID #: __________
Facsimile: (215) 328-0305

And a copy of any notices of default sent to:

Citibank, N.A.
388 Greenwich Street
New York, New York 10013
Attention: General Counsel’s Office
Deal ID #: __________
Facsimile: (646) 291-5754
The Borrower or the Lender may change the address to which notices intended for it are to be directed by means of notice given to the other party in accordance with this Section 18. Each party agrees that it will not refuse or reject delivery of any notice given in accordance with this Section 18, that it will acknowledge, in writing, the receipt of any notice upon request by the other party and that any notice rejected or refused by it shall be deemed for purposes of this Section 18 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

19. **Payments on Non-Business Day.** If the date for the making of any payment under this Note is not a Business Day, such payment shall be due and payable on the next succeeding Business Day.

20. **Terms of Note Governing Payment Matters Control in the Event of any Conflict.** In the event the provisions of the Loan Agreement or the Subordinate Security Instrument (other than this Note) conflict with the provisions of this Note which govern the terms of repayment of the Loan or the payment of other amounts due in connection with the Loan (including, without limitation, the provisions of this Note which govern the required payments of principal, interest and other amounts due in connection with the Loan, the manner of payment, the calculation of interest, the payment of the Lender’s costs and expenses, the application of payments received by the Lender, the acceleration of amounts owed by the Borrower, late charges, default rates of interest, prepayments, prepayment premiums or maximum rates of interest or similar charges), the provisions of this Note shall govern and control.

21. **Other Agreements.** This Note is evidence of a single advance term loan which will be funded exclusively with the proceeds of the Citi Loan (simultaneously with the funding thereof). In connection therewith, this Note will be collaterally assigned to CitiBank, N.A. as security for the Citi Note and as the collateral assignee, Borrower acknowledges CitiBank, N.A. shall be entitled to the payment made on this Note and to enforce all rights and remedies of the holder of this Note (including enforcing the Subordinate Security Instrument).

22. **Determination by Lender.** Except to the extent expressly set forth in this Note to the contrary, in any instance where the consent or approval of Lender may be given or is required, or where any determination, judgment or decision is to be rendered by Lender under this Note, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by Lender, as applicable (or its designated representative) at its sole and exclusive option and in its sole and absolute discretion.

23. **Release; Indemnity.**

   (a) **Release.** Borrower covenants and agrees that, in performing any of its rights or duties under this Note, neither the Lender, nor its agents or employees, shall be liable for any losses, claims, damages, liabilities and expenses that may be incurred by any of them as a result of such performance, except to the extent such liability for any
losses, claims, damages, liabilities or expenses arises out of the willful misconduct or gross negligence of such party.

(b) **Indemnity.** Borrower hereby agrees to indemnify and hold harmless the Lender and its agents and employees from and against any and all losses, claims, damages, liabilities and expenses including, without limitation, reasonable attorneys’ fees and costs and disbursements, which may be imposed or incurred by any of them in connection with this Note, except that no such party will be indemnified for any losses, claims, damages, liabilities or expenses arising out of the willful misconduct or gross negligence of such party.

24. **Governing Law.** This Note shall be governed by and enforced in accordance with the laws of the Property Jurisdiction, without giving effect to the choice of law principles of the Property Jurisdiction that would require the application of the laws of a jurisdiction other than the Property Jurisdiction.

25. **Consent to Jurisdiction and Venue.** Borrower agrees that any controversy arising under or in relation to this Note shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Note. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing herein is intended to limit Lender’ right to bring any suit, action or proceeding relating to matters arising under this Note against Borrower or any of Borrower’s assets in any court of any other jurisdiction.

26. **Severability.** The invalidity, illegality or unenforceability of any provision of this Note shall not affect the validity, legality or enforceability of any other provision, and all other provisions shall remain in full force and effect.

27. **Remedies Cumulative.** In the event of Borrower’s default under this Note, the Lender may exercise all or any one or more of its rights and remedies available under this Note, at law or in equity. Such rights and remedies shall be cumulative and concurrent, and may be enforced separately, successively or together, and the exercise of any particular right or remedy shall not in any way prevent the Lender from exercising any other right or remedy available to the Lender. The Lender may exercise any such remedies from time to time as often as may be deemed necessary by the Lender.

28. **No Agency or Partnership.** Nothing contained in this Note shall constitute Lender as a joint venturer, partner or agent of Borrower, or render Lender liable for any debts, obligations, acts, omissions, representations or contracts of Borrower.

29. **Entire Agreement; Amendment and Waiver.** This Note contains the complete and entire understanding of the parties with respect to the matters covered. This Note may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except
by a written instrument signed by the party against whom enforcement of the waiver, amendment, change, or modification is sought, and then only to the extent set forth in that instrument. No specific waiver of any of the terms of this Note shall be considered as a general waiver.

30. **Further Assurances.** Borrower shall at any time and from time to time, promptly execute and deliver all further instruments and documents, and take all further action that may be reasonably necessary or desirable, or that Lender may reasonably request, in order to protect any right or interest granted by this Note or to enable Lender to exercise and enforce its rights and remedies under this Note.

31. **Captions.** The captions of the sections of this Note are for convenience only and shall be disregarded in construing this Note.

32. **Servicer.** Borrower hereby acknowledges and agrees that, pursuant to the terms of the Subordinate Security Instrument: (a) from time to time, Lender may appoint a servicer to collect payments, escrows and deposits, to give and to receive notices under this Note or the Subordinate Security Instrument, and to otherwise service the Loan and (b) unless Borrower receives written notice from Lender to the contrary, any action or right which shall or may be taken or exercised by Lender may be taken or exercised by such servicer with the same force and effect.

33. **Waiver of Trial by Jury.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF BORROWER AND LENDER (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS NOTE OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

34. **Time of the Essence.** Time is of the essence with respect to this Note.

35. **Modifications.** All modifications (if any) to the terms of this Note ("Modifications") are set forth on Schedule C attached to this Note. In the event of a Transfer under the terms of the Subordinate Security Instrument, some or all of the Modifications to this Note may be modified or rendered void by Lender at its option by notice to Borrower or such transferee.

36. **Attached Schedules.** The following Schedules are attached to this Note and are incorporated by reference herein as if more fully set forth in the text hereof:

**Schedule A – Interest Rate**

**Schedule B – Prepayment Premium**
Schedule C – Modifications to Multifamily Permanent Note

The terms of this Note are modified and supplemented as set forth in said Schedules. To the extent of any conflict or inconsistency between the terms of said Schedules and the text of this Note, the terms of said Schedules shall be controlling in all respects.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Note or caused this Note to be duly executed and delivered by its authorized representative as of the date first set forth above.

BORROWER:

[TO BE ADDED]
SCHEDULE A

PRINCIPAL AND INTEREST PAYMENTS

1. **Interest Rate.** Except as provided in Paragraphs 8 and 14 of this Note, interest ("Note Interest") shall accrue on the unpaid principal of this Note from, and including, the date of this Note until paid in full at an annual rate (the "Interest Rate") as follows:

   (a) **Fixed Rate.** Interest shall accrue at an annual rate of three percent (3%).

   (b) **Maximum Rate.** Notwithstanding any other provision of this Note to the contrary, Note Interest shall not exceed the Maximum Rate, as the Maximum Rate may change in accordance with this Note.

   (c) **Interest Accrual.** Note Interest shall be computed on the basis of a 360-day year comprised of twelve 30-day months.

2. **Monthly Principal and Interest Payments.** Commencing on the First Payment Date and on each Loan Payment Date thereafter until and including the Maturity Date, consecutive monthly installments of principal and interest in the amount of $__________ (based upon a 35 year amortization schedule assuming a 360-day year comprised of twelve 30-day months), shall be payable on each Loan Payment Date until the entire unpaid principal balance evidenced by this Note is fully paid. Any remaining principal and interest, if not sooner paid, shall be due and payable on the Maturity Date.
SCHEDULE B

PREPAYMENT PREMIUM

YIELD MAINTENANCE OPTION:

Any prepayment premium payable under Paragraph 10 of this Note shall be computed as follows:

(a) If the prepayment is made at any time after the date of this Note and before ______________________, 203__ (the “Yield Maintenance Period End Date”) the prepayment premium shall be the greater of:

(i) 1% of the amount of principal being prepaid; or

(ii) The product obtained by multiplying:

(A) the amount of principal being prepaid,

by

(B) the difference obtained by subtracting from the Interest Rate on this Note the Yield Rate (as defined below), on the twenty-fifth Business Day preceding (x) the date upon which any voluntary prepayment will be made, determined in accordance with Section 10 of this Note, or (y) the date Lender accelerates the Loan or otherwise accepts a prepayment pursuant to Paragraph 10(c) or Paragraph 10(d) of this Note,

by

(C) the present value factor calculated using the following formula:

\[ \frac{1 - (1 + r)^{-n/12}}{r} \]

\[ r = \text{Yield Rate} \]

\[ n = \text{the number of months remaining between (1) either of the following: (x) in the case of a voluntary prepayment, the last calendar day of the month during which the prepayment is made, or (y) in any other case, the date on which Lender accelerates the unpaid principal balance of this Note and (2) the Yield Maintenance Period End Date] \]
For purposes of this clause (ii), the “Yield Rate” means the yield calculated by interpolating the yields for the immediately shorter and longer term U.S. “Treasury constant maturities” (as reported in the Federal Reserve Statistical Release H.15 Selected Interest Rates (the "Fed Release") under the heading "U.S. government securities") closest to the remaining term of the Prepayment Premium Period, as follows (rounded to three decimal places):

\[
\left\{ \left( \frac{a - b}{x - y} \right) \times (z - y) \right\} + b
\]

- \(a\) = the yield for the longer U.S. Treasury constant maturity
- \(b\) = the yield for the shorter U.S. Treasury constant maturity
- \(x\) = the term of the longer U.S. Treasury constant maturity
- \(y\) = the term of the shorter U.S. Treasury constant maturity
- \(z\) = “n” (as defined in the present value factor calculation above) divided by 12.

Notwithstanding any provision to the contrary, if “z” equals a term reported under the U.S. “Treasury constant maturities” subheading in the Fed Release, the yield for such term shall be used, and interpolation shall not be necessary. If publication of the Fed Release is discontinued by the Federal Reserve Board, Lender shall determine the Yield Rate from another source selected by Lender. Any determination of the Yield Rate by Lender will be binding absent manifest error.

(b) Notwithstanding the provisions of Paragraph 10 of this Note, no prepayment premium shall be payable with respect to any prepayment made on or after the Yield Maintenance Period End Date.
SCHEDULE C

MODIFICATIONS TO MULTIFAMILY PERMANENT NOTE

The following modifications are made to the text of the Note that precedes this Schedule:

The following new clause (4) is hereby added to Section 9(d) of the Note “or (4) any failure by Borrower to comply with the provisions of Sections 63, 65, 66, 69 or 70 of the Subordinate Security Instrument.”
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RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Citibank, N.A.
Citi Loan Closing Document Coordinator Address
Attention: Citi Loan Closing Document Coordinator Name

Citi # ______________

SUBORDINATE MULTIFAMILY DEED OF TRUST,
ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING
(TEXAS)

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON,
YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING
INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN
REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS:
YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.
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EXHIBITS

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SUBORDINATE MULTIFAMILY DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING
(TEXAS)

This SUBORDINATE MULTIFAMILY DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this “Instrument”) is dated for reference purposes only as of the ___ day of February, 2016, but will not be effective and binding on the parties hereto until the Closing Date (as hereinafter defined), by ________________________, a Texas limited partnership, whose address is 9349 WaterStone Boulevard, Suite 200, Cincinnati, Ohio 45249, ____________________________, as grantor (“Borrower”) to Kathy Millhouse ________________, having an address at 325 East Hillcrest Drive, Suite 160, Thousand Oaks, California 91360, ____________________________, as trustee (“Trustee”), for the benefit of NEW BRAUNFELS HOUSING FINANCE INDUSTRIAL DEVELOPMENT CORPORATION, a Texas nonprofit industrial development corporation, whose address is __________________________, as beneficiary, and its successors and assigns (“Lender”). Borrower’s organizational identification number is ________________.

The Loan is made and the Indebtedness is evidenced by the Subordinate Collateral Note in the maximum principal amount of EIGHT HUNDRED THIRTY-THREE THOUSAND AND NO/100 DOLLARS ($833,000.00), maturing fifteen years after the Conversion Date (“Maturity Date”), and is secured by this Instrument. The Conversion Date is as defined in the Senior Loan Agreement (as defined in the Subordinate Citi Loan Agreement and hereafter used) which will occur upon and subject to the Borrower’s satisfaction of the Conditions to Conversion in accordance with the Senior Loan Agreement.

NOW THEREFORE:

Granting Clause. Borrower, in consideration of the Indebtedness and the trust created by this Instrument, irrevocably grants, conveys and assigns to Trustee, in trust, with power of sale, the Mortgaged Property, including its leasehold interest in the Land located in New Braunfels, ___________ County, Texas, and described in Exhibit A attached to this Instrument, to have and to hold the Mortgaged Property unto Trustee, Trustee’s successor in trust and Trustee’s assigns forever.

TO SECURE TO LENDER and its successors and assigns the repayment of the Indebtedness evidenced by the Subordinate Collateral Note executed by Borrower and maturing on the Maturity Date, and all renewals, extensions and modifications of the Indebtedness, including, without limitation, the payment of all sums advanced by or on behalf of Lender to protect the security of this Instrument under Section 12 and the performance of the covenants and agreements of Borrower contained in the Subordinate Collateral Loan Documents.

Borrower represents and warrants that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to grant, convey and assign the Mortgaged Property, and that the Mortgaged Property is unencumbered except for the Permitted
Encumbrances. Borrower covenants that Borrower will warrant and defend generally the title to
the Mortgaged Property against all claims and demands, subject to any Permitted Encumbrances.

This Instrument is also a financing statement and a fixture filing under the Uniform Commercial Code of the Property Jurisdiction and the information set forth on Exhibit C is included for that purpose.

Covenants. Borrower and Lender covenant and agree as follows:

1. DEFINITIONS. The following terms, when used in this Instrument (including when used in the above recitals), shall have the following meanings:

(a) “Affiliate” means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person. The term “control” for these purposes means, with respect to any Person, either (i) ownership directly or through other entities of more than 50% of all beneficial equity interest in such Person, or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through the ownership of voting securities, by contract or otherwise.

(b) “Bankruptcy Event” means any one or more of the following:

(i) (A) the commencement of a voluntary case under one or more of the Insolvency Laws by the Borrower; (B) the acknowledgment in writing by the Borrower that it is unable to pay its debts generally as they mature; (C) the making of a general assignment for the benefit of creditors by the Borrower; (D) the commencement of an involuntary case under one or more Insolvency Laws against the Borrower; or (E) the appointment of a receiver, liquidator, custodian, sequestrator, trustee or other similar officer who exercises control over the Borrower or any substantial part of the assets of the Borrower provided that any proceeding or case under (D) or (E) above is not dismissed within 90 days after filing; or

(ii) Both (A) an involuntary petition under any one or more of the Insolvency Laws is filed against Borrower or Borrower directly or indirectly becomes the subject of any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction, or in equity, and (B) Borrower or any Affiliate of Borrower has acted in concert or conspired with such creditors of Borrower (other than Lender) to cause the filing thereof with the intent to interfere with enforcement rights of Lender after the occurrence of an Event of Default.
(c) “Beneficiary Parties” means Lender, Servicer and their respective successors and assigns, together with any lawful owner, holder or pledgee of the Subordinate Collateral Note.

(d) “Borrower” means all persons or entities identified as “Borrower” in the first paragraph of this Instrument, together with their successors and assigns.

(e) “Borrower’s Certificate and Agreement” means that certain Borrower’s Certificate and Agreement dated as of the date hereof by Borrower for the benefit of Beneficiary Parties identified therein in connection with the Senior Loan.

(f) “Borrower’s Organizational Documents” means, collectively: (i) the certificate of limited partnership, certificate or articles of formation or certificate or articles of organization of Borrower filed with the Office of the Secretary of State of Texas on ________________, as the same may be amended and/or restated from time to time; and (ii) the partnership agreement of Borrower dated as of February __, 2016, as the same may be amended and/or restated from time to time.

(g) “Business Day” means any day other than (i) a Saturday or a Sunday, or (ii) a day on which federally insured depository institutions in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

(h) “Closing Date” has the meaning ascribed thereto in the Subordinate Collateral Loan Agreement.

(i) “Controlling Interest” means (i) greater than 50% of the ownership interests in an entity, or (ii) a percentage ownership interest in an entity of 50% or less if the owner(s) of that interest actually direct(s) the business and affairs of the entity without requirement of consent of any other party.

(j) “Conversion”, “Conversion Date” and “Outside Conversion Date” shall have the respective meanings ascribed thereto in the Senior Loan Agreement.

(k) “Credit Enhancer” means a government sponsored enterprise that at any time, directly or indirectly, purchases the Loan or provides credit enhancement with respect to the Loan.

(l) “Credit Enhancer Insurance Standards” means the insurance standards and requirements set forth in the multifamily underwriting guidelines generated by the Credit Enhancer, as in effect from time to time.

(m) “Environmental Agreement” means that certain Agreement of Environmental Indemnification dated as of the date hereof made by Borrower and Guarantor (as defined in the Senior Loan Agreement) for the benefit of Beneficiary Parties identified therein in connection with the Senior Loan.
(n) “Environmental Permit” means any permit, license, or other authorization issued under any Hazardous Materials Law with respect to any activities or businesses conducted on or in relation to the Mortgaged Property.

(o) “Event of Default” means the occurrence of any event listed in Section 22.

(p) “Fixtures” means all property which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment.

(q) “Governmental Authority” means any board, commission, department or body of any municipal, county, state or federal governmental unit, or any subdivision of any of them, that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property.

(r) “Hazardous Materials” means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls (“PCBs”) and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; radon; Mold; toxic or mycotoxin spores; any substance the presence of which on the Mortgaged Property is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance (whether or not naturally occurring) now or in the future that (i) is defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “solid waste”, “pesticide”, “contaminant,” or “pollutant”, or otherwise classified as hazardous or toxic by or within the meaning of any Hazardous Materials Law, or (ii) is regulated in any way by or within the meaning of any Hazardous Materials Law.

(s) “Hazardous Materials Laws” means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, rule of common law (including, without limitation, nuisance and trespass), consent order, administrative rulings and court judgments and decrees or other
government directive in effect now or in the future and including all amendments, that relate to Hazardous Materials or to the protection or conservation of the environment or human health and apply to Borrower or to the Mortgaged Property, including, without limitation, those relating to industrial hygiene, or the use, analysis, generation, manufacture, storage, discharge, release, disposal, transportation, treatment, investigation, or remediation of Hazardous Materials. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Toxic Substance Control Act, 15 U.S.C. Section 1251, et seq., and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, et seq., the Superfund Amendments and Reauthorization Act, the Solid Waste Disposal Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, and their state analogs.

(t) “Imposition Deposits” shall have the meaning ascribed to such term in the Senior Loan Documents.

(u) “Impositions” means (i) the premiums for fire and other hazard insurance, rental loss insurance and such other insurance as Lender may require under Section 19 and (ii) Taxes.

(v) “Improvements” means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.

(w) “Indebtedness” means collectively, the principal of, interest on, and all other amounts due at any time under, the Subordinate Collateral Note, this Instrument or any other Subordinate Collateral Loan Document, including prepayment premiums, late charges, default interest, and advances as provided in Section 12 to protect the security of this Instrument, and any fees or expenses paid by Lender on behalf of Borrower to Lender, or any other party for the Loan or other amounts relating to the Subordinate Collateral Loan Documents which are paid by Lender;

(x) “Initial Owners” means, with respect to Borrower or any other entity, the persons or entities who on the date of the Subordinate Collateral Note, directly or indirectly, own in the aggregate 100% of the ownership interests in Borrower or that entity.

(y) “Insolvency Laws” means the United States Bankruptcy Code, 11 U.S.C. § 101, et seq., together with any other federal or state law affecting debtor and creditor rights or relating to the bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding, as amended from time to time, to the extent applicable to the Borrower.

(z) “Land” means the land described in Exhibit A.
“Leases” means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals—(but excluding the Ground Lease).

“Lender” means the entity identified as “Lender” in the first paragraph of this Instrument, or any subsequent holder of the Subordinate Collateral Note.

“Loan” means the loan made by Lender to Borrower in an amount not to exceed the original principal amount of the Subordinate Collateral Note, which loan is evidenced by the Subordinate Collateral Note and secured by, among other things, this Instrument.

“Material Property Agreements” means any agreement which, in Lender’s sole discretion, acting in good faith, materially affects the Mortgaged Property, the use thereof or otherwise materially affects the rights of Borrower or Beneficiary Parties in, to, and with respect to the Mortgaged Property or the proceeds therefrom, including, without limitation, each of the following: (i) any agreement regarding the payment in lieu of taxes (“PILOT”), (ii) all covenants, conditions and restrictions, including, without limitation, any declaration subjecting the Mortgaged Property to an association of owners or other community governance, (iii) any agreement regarding the abatement or exemption of real estate taxes, (iv) any easement pursuant to which the Mortgaged Property is granted access to a public right of way, (v) any material lease of all or any portion of the Mortgaged Property, (vi) any operating agreements relating to the Land or the Improvements, and (vii) any regulatory agreements, declarations, land use restriction agreements or similar instruments affecting the Mortgaged Property including the operation or use thereof.

“Maturity Date” has the meaning ascribed thereto in the recitals to this Instrument.

“MMP” means an operations and maintenance plan, moisture management program and/or microbial operations and maintenance program approved by Lender to control water intrusion and prevent the development of Mold or moisture at the Mortgaged Property throughout the term of this Instrument. If required by Lender, the MMP shall contain a provision for (i) staff training, (ii) information to be provided to tenants, (iii) documentation of the plan, (iv) the appropriate protocol for incident response and remediation and (v) routine, scheduled inspections of common space and unit interiors.

“Mold” means mold, fungus, microbial contamination or pathogenic organisms.
“Mortgaged Property” means all of Borrower’s present and future right, title and interest in and to all of the following:

(i) the Land;

(ii) the Improvements;

(iii) the Fixtures;

(iv) the Personalty;

(v) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;

(vi) all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender’s requirements;

(vii) all awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;

(viii) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;

(ix) all Rents and Leases;

(x) all earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, whether the foregoing are now due, past due, or to become due, all undisbursed proceeds of the loan secured by this
Instrument, deposits forfeited by tenants, and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;

(xi) all refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Instrument is dated);

(xii) all tenant security deposits which have not been forfeited by any tenant under any Lease and any bond or other security in lieu of such deposits;

(xiii) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property;

(xiv) all documents, writings, books, files, records and other documents arising from or relating to any of the foregoing, whether now existing or hereafter created; and

(xv) all proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds, and all other cash and non-cash proceeds and products of any of the foregoing.

(ii) “O&M Program” has the meaning ascribed thereto in Section 18(d).

(jj) “Permitted Encumbrances” means any easements, encumbrances or restrictions listed on the schedule of exceptions in the title insurance policy issued to Lender as of the date of recordation of this Instrument insuring Lender’s interest in the Mortgaged Property, including, without limitation, the liens securing the Senior Loan.

(kk) “Permitted Transfer” has the meaning ascribed thereto in Section 21(b).

(ll) “Person” shall mean any individual, corporation, limited liability company, partnership, joint venture, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

(mm) “Personalty” means all:

(i) accounts (including deposit accounts) of Borrower related to the Mortgaged Property;

(ii) Imposition Deposits;
equipment, goods, supplies and inventory owned by Borrower that are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements (other than Fixtures), including furniture, furnishings, machinery, building materials, tools, books, records (whether in written or electronic form), computer equipment (hardware and software);

other tangible personal property owned by Borrower which are used now or in the future in connection with the ownership, management or operation of the Land or Improvements or are located on the Land or in the Improvements (other than Fixtures), including ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances;

any operating agreements relating to the Land or the Improvements;

any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements;

documents, instruments, chattel paper, claims, deposits, deposit accounts, payment intangibles, other intangible property, general intangibles, and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land and including subsidy or similar payments received from any sources, including a governmental authority; and

any rights of Borrower in or under letters of credit.

“Project” means that 96 unit multifamily project known as Reserve at Engel Road and located in New Braunfels, __________ County, Texas.

“Property Jurisdiction” means the State of Texas.

“Rents” means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, including subsidy payments received from any sources (including, but not limited to payments under any Housing Assistance Payments Contract or similar agreements), parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants.
(qq) “Senior Lender” means the holder of the Senior Loan.

(rr) “Senior Loan” means that certain loan from Citibank, N.A. to Borrower secured by a first lien on the Mortgaged Property.

(ss) “Senior Loan Documents” means the Senior Loan Agreement, as defined by the Subordinate Collateral Loan Agreement, and all of the documents executed in connection therewith evidencing or securing the Senior Loan.

(tt) “Servicer” means the servicing party that is designated by Lender (or Senior Lender, as its collateral assignee) to service the Loan, together with its successors in such capacity.

(uu) “Subordinate Collateral Loan Agreement” means that certain Loan Agreement dated as of the date hereof among Senior Lender, Borrower and Lender relating to the Loan and the Citi Loan (as defined therein), as the same may be amended, modified or supplemented from time to time.

(vv) “Subordinate Collateral Loan Documents” means collectively, the Subordinate Collateral Loan Agreement, the Subordinate Collateral Note, this Instrument, all guaranties, all indemnity agreements, all O&M Programs, the MMP, and any other documents now or in the future executed by Borrower, or any other person in connection with the Loan, as such documents may be amended from time to time.

(ww) “Subordinate Collateral Note” means the Multifamily Subordinate Note, dated the Closing Date, executed by Borrower in favor of Lender.

(xx) “Subordinate Debt” has the meaning ascribed to that term in the Subordinate Collateral Loan Agreement.

(yy) “Taxes” means, collectively, all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a lien, on the Land or the Improvements.

(zz) “Transfer” means (i) a sale, assignment, transfer, or other disposition (whether voluntary, involuntary or by operation of law); (ii) the grant, creation, or attachment of a lien, encumbrance, or security interest (whether voluntary, involuntary or by operation of law); (iii) the issuance or other creation of a direct or indirect ownership interest; or (iv) the withdrawal, retirement, removal or involuntary resignation of any owner or manager of a legal entity.

2. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.

(a) This Instrument is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subjected to a security interest under the Uniform Commercial Code, whether such Mortgaged Property is owned now or acquired in the future, and all products and cash and non-cash proceeds thereof (collectively, “UCC Collateral”), and Borrower hereby grants to Lender a security interest in the UCC Collateral. Borrower hereby authorizes Lender to prepare and file any and all financing statements, continuation statements and financing statement amendments, in such form as Lender may require to perfect or continue the perfection of this security interest without execution by Borrower. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements and/or amendments that Lender may require. Without the prior written consent of Lender, Borrower shall not create or permit to exist any other lien or security interest in any of the UCC Collateral other than liens securing the Senior Loan or other Permitted Encumbrances. If an Event of Default has occurred and is continuing, Lender shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Instrument or existing under applicable law. In exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender’s other remedies. This Instrument constitutes a financing statement with respect to any part of the Mortgaged Property which is or may become a Fixture.

(b) Unless Borrower gives at least thirty (30) days’ prior written notice to Lender and subject to Section 21 hereof, Borrower shall not: (i) change its name, identity, or structure of organization; (ii) change its state of organization through dissolution, merger, transfer of assets or otherwise; (iii) change its principal place of business (or chief executive office if more than one place of business); or (iv) add to or change any location at which any of the Mortgaged Property is stored, held or located. Such notice shall be accompanied by new financing statements and/or financing statement amendments in the same form as the financing statements delivered to Lender on the date hereof. Without limiting the foregoing, Borrower hereby authorizes and irrevocably appoints Lender and each of its officers attorneys-in-fact for Borrower to execute, deliver, and file, as applicable, such financing statements, continuation statements or amendments deemed necessary by Lender in its sole discretion for and on behalf of Borrower, without execution by Borrower. Borrower shall also execute and deliver to Lender modifications or supplements of this Instrument as Lender may require in connection with any change described in this Section.

3. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all Rents. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all
Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower. Promptly upon request by Lender, Borrower agrees to execute and deliver such further assignments of Rents as Lender may from time to time require. Borrower and Lender intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents shall not be deemed to be a part of the Mortgaged Property. However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property Jurisdiction, then the Rents shall be included as a part of the Mortgaged Property and it is the intention of Borrower that in this circumstance this Instrument creates and perfects a lien on Rents in favor of Lender, which lien shall be effective as of the date of this Instrument.

(b) Borrower represents and warrants to Lender that Borrower has not executed any prior assignment of Rents (other than an assignment of Rents securing indebtedness that will be paid off and discharged with the proceeds of the Loan), that Borrower has not performed, and Borrower covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any instrument which would prevent Lender from exercising its rights under this Section 3, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any Rents for more than two months prior to the due dates of such Rents (other than a security deposit not in excess of one month’s rent). Borrower shall not collect or accept payment of any Rents more than two months prior to the due dates of such Rents (other than a security deposit not in excess of one month’s rent).

(c) If an Event of Default has occurred and is continuing, Lender may, but shall in no event be required, regardless of the adequacy of Lender’s security or the solvency of Borrower and even in the absence of waste, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Instrument, or for such other purposes as Lender in its discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender’s security, without regard to Borrower’s solvency and without the necessity of giving prior notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Borrower, by its execution of this Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver ex parte if permitted by applicable law. Lender or the receiver, as the case may
be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon Lender’s entering upon and taking possession and control of the Mortgaged Property, Borrower shall surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and shall deliver to Lender or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents. In the event Lender takes possession and control of the Mortgaged Property, Lender may exclude Borrower and its representatives from the Mortgaged Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 3 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

(d) If Lender enters the Mortgaged Property, Lender shall be liable to account only to Borrower and only for those Rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under this Section 3, and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law, except for the gross negligence or willful misconduct of Lender or its agents.

(e) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall become an additional part of the Indebtedness as provided in Section 12.

(f) Any entering upon and taking of control of the Mortgaged Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this Instrument shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Instrument.

4. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY.

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all of Borrower’s right, title and interest in, to and under the Leases, including Borrower’s right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Borrower’s right, title and interest in, to and under the Leases. Borrower and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the “Mortgaged Property” as
that term is defined in Section 1. However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then the Leases shall be included as a part of the Mortgaged Property and it is the intention of Borrower that in this circumstance this Instrument creates and perfects a lien on the Leases in favor of Lender, which lien shall be effective as of the date of this Instrument.

(b) Unless an Event of Default has occurred and is continuing, Borrower shall have all rights, power and authority granted to Borrower under any Lease (except as otherwise limited by this Section or any other provision of this Instrument), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. During the continuance of an Event of Default, the permission given to Borrower pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Borrower shall comply with and observe Borrower’s obligations under all Leases, including Borrower’s obligations pertaining to the maintenance and disposition of tenant security deposits.

(c) Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this Section 4 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and the Improvements. The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) shall not at any time or in any event obligate Lender to take any action under this Instrument or to expend any money or to incur any expenses. Lender shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Mortgaged Property, except to the extent arising from the gross negligence or willful misconduct of Lender. Prior to Lender’s actual entry into and taking possession of the Mortgaged Property, Lender shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (iii) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Instrument by Borrower shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Borrower, prior to such actual entry and taking of possession.

(d) Upon delivery of notice by Lender to Borrower of Lender’s exercise of Lender’s rights under this Section 4 at any time during the continuance of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Lender immediately shall have all rights, powers and authority granted to Borrower under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.
(e) Borrower shall, promptly upon Lender’s request, deliver to Lender an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall (i) be on forms approved by Lender, (ii) be for initial terms of at least six (6) months and not more than two (2) years, (iii) not include options to purchase, (iv) be legally valid, binding, and enforceable obligations of the tenants, (v) contain language expressly stating that such Lease is subordinate to the lien of this Instrument and (vi) comply with all applicable laws.

(f) Except for laundry facilities and cable television services for tenants on market terms and conditions, Borrower shall not lease any portion of the Mortgaged Property for non-residential use except with the prior written consent of Lender and Lender’s prior written approval of the Lease agreement. Borrower shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Instrument) without the prior written consent of Lender. Borrower shall, without request by Lender, deliver an executed copy of each non-residential Lease to Lender promptly after such Lease is signed. All non-residential Leases, including renewals or extensions of existing Leases, shall specifically provide that (i) such Leases are subordinate to the lien of this Instrument; (ii) the tenant shall attorn to Lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Lender in any manner; (iii) the tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a foreclosure sale may from time to time request; (iv) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (v) after a foreclosure sale of the Mortgaged Property, Lender or any other purchaser at such foreclosure sale may, at Lender’s or such purchaser’s option, accept or terminate such Lease; and (vi) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Lender, pay all Rents payable under the Lease to Lender.

(g) Borrower shall not receive or accept Rent under any Lease (whether residential or non-residential) for more than two months in advance (other than a security deposit not in excess of one month’s rent).

5. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER SUBORDINATE COLLATERAL LOAN DOCUMENTS; PREPAYMENT PREMIUM. Borrower shall pay the Indebtedness when due in accordance with the terms of the Subordinate Collateral Note and the other Subordinate Collateral Loan Documents and shall perform, observe and comply with all other provisions of the Subordinate Collateral Note and the other Subordinate Collateral Loan Documents.

6. EXCULPATION. The personal liability of Borrower for payment of the Subordinate Collateral Note and for performance of the other obligations to be performed by Borrower under this Instrument is limited in the manner, and to the extent, provided in the Subordinate Collateral Note.
7. RESERVED

8. RESERVED

9. APPLICATION OF PAYMENTS. If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, then Lender may apply that payment to amounts then due and payable in any manner and in any order determined by Lender, in Lender’s discretion. Neither Lender’s acceptance of an amount that is less than all amounts then due and payable nor Lender’s application of such payment in the manner authorized shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such amount to the Indebtedness, Borrower’s obligations under this Instrument and the Subordinate Collateral Note shall remain unchanged.

10. COMPLIANCE WITH LAWS. Borrower shall comply with all laws, ordinances, regulations and requirements of any Governmental Authority and all recorded lawful covenants and agreements relating to or affecting the Mortgaged Property, including all laws, ordinances, regulations, requirements and covenants pertaining to health and safety, construction of improvements on the Mortgaged Property, fair housing, disability accommodation, zoning and land use, and Leases. Borrower also shall comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits. Borrower shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 10. Borrower shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise materially impair the lien created by this Instrument or Lender’s interest in the Mortgaged Property. Borrower represents and warrants to Lender that no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

11. USE OF PROPERTY. Unless required by applicable law, Borrower shall not (a) allow changes in the use for which all or any part of the Mortgaged Property is being used at the time this Instrument was executed, except for any change in use approved by Lender, (b) convert any individual dwelling units or common areas to commercial use, (c) initiate a change in the zoning classification of the Mortgaged Property or acquiesce in a change in the zoning classification of the Mortgaged Property, (d) establish any condominium or cooperative regime with respect to the Mortgaged Property; (e) combine all or any part of the Mortgaged Property with all or any part of a tax parcel which is not part of the Mortgaged Property, or (f) subdivide or otherwise split any tax parcel constituting all or any part of the Mortgaged Property without the prior consent of Lender.

12. PROTECTION OF LENDER’S SECURITY; INSTRUMENT SECURES FUTURE ADVANCES.

(a) If Borrower fails to perform any of its obligations under this Instrument or any other Subordinate Collateral Loan Document after the expiration of any applicable
notice and cure period, or if any action or proceeding (including a Bankruptcy Event) is commenced which purports to affect the Mortgaged Property, Lender’s security or Lender’s rights under this Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender’s option may make such appearances, file such documents, disburse such sums and take such actions as Lender deems necessary to perform such obligations of Borrower and to protect Lender’s interest, including (i) payment of fees, expenses and reasonable fees of attorneys, accountants, inspectors and consultants, (ii) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (iii) procurement of the insurance required by Section 19 (specifically including, without limitation, flood insurance if required by Section 19), and (iv) payment of amounts which Borrower has failed to pay under Sections 15 and 17.

(b) Any amounts disbursed by Lender under this Section 12, or under any other provision of this Instrument that treats such disbursement as being made under this Section 12, shall be secured by this Instrument, shall be added to, and become part of, the principal component of the Indebtedness, shall be immediately due and payable and shall bear interest from the date of disbursement until paid at the “Default Rate”, as defined in the Subordinate Collateral Note.

(c) If the Lender shall elect to pay any sum due with reference to the Project or the Mortgaged Property, the Lender may do so in reliance on any bill, statement or assessment procured from the appropriate Governmental Authority or other issuer thereof without inquiring into the accuracy or validity thereof. Similarly, in making any payments to protect the security intended to be created by this Instrument and/or the other Subordinate Collateral Loan Documents, the Lender shall not be bound to inquire into the validity of any apparent or threatened adverse title, lien, encumbrance, claim or charge before making an advance for the purpose of preventing or removing the same.

(d) Nothing in this Section 12 shall require Lender to incur any expense or take any action.

13. INSPECTION.

(a) Lender and its agents, representatives, and designees may make or cause to be made entries upon and inspections of the Mortgaged Property (including environmental inspections and tests to the extent permitted under Section 18) during normal business hours, or at any other reasonable time, upon reasonable notice to Borrower if the inspection is to include occupied residential units (which notice need not be in writing). Notice to Borrower shall not be required in the case of an emergency, as determined in Lender’s discretion, or when an Event of Default has occurred and is continuing.
(b) If Lender determines that Mold has developed as a result of a water intrusion event or leak, Lender, at Lender’s discretion, may require that a professional inspector inspect the Mortgaged Property as frequently as Lender determines is necessary until any issue with Mold and its cause(s) are resolved to Lender’s satisfaction. Such inspection shall be limited to a visual and olfactory inspection of the area that has experienced the Mold, water intrusion event or leak. Borrower shall be responsible for the cost of such professional inspection and any remediation deemed to be necessary as a result of the professional inspection. After any issue with Mold, water intrusion or leaks is remedied to Lender’s satisfaction, Lender shall not require a professional inspection any more frequently than once every three years unless Lender is otherwise aware of Mold as a result of a subsequent water intrusion event or leak.

(c) If Lender determines not to conduct an annual inspection of the Mortgaged Property, and in lieu thereof Lender requests a certification, Borrower shall be prepared to provide and must actually provide to Lender a factually correct certification each year that the annual inspection is waived to the following effect: that Borrower represents and warrants that Borrower has not received any written complaint, notice, letter or other written communication from tenants, management agent or governmental authorities regarding odors, indoor air quality, Mold or any activity, condition, event or omission that causes or facilitates the growth of Mold on or in any part of the Mortgaged Property, or if Borrower has received any such written complaint, notice, letter or other written communication, that Borrower has investigated and determined that no Mold activity, condition or event exists or alternatively has fully and properly remediated such activity, condition, event or omission in compliance with the MMP for the Mortgaged Property. If Borrower is unwilling or unable to provide such certification, Lender may require a professional inspection of the Mortgaged Property at Borrower’s expense.

14. BOOKS AND RECORDS; FINANCIAL REPORTING.

(a) Borrower shall keep and maintain at all times at the Mortgaged Property or the management agent’s offices, and upon Lender’s request shall make available at the Mortgaged Property, complete and accurate books of account and records (including copies of supporting bills and invoices) adequate to reflect correctly the operation of the Mortgaged Property, and copies of all written contracts, Leases, and other instruments which affect the Mortgaged Property. The books, records, contracts, Leases and other instruments shall be subject to examination and inspection at any reasonable time by Lender upon reasonable advance oral notice.

(b) Borrower shall furnish to Lender all of the following:

(i) (1) except as provided in clause (2) below, within 45 days after the end of each fiscal quarter of Borrower, a statement of income and expenses for Borrower’s operation of the Mortgaged Property on a year-to-date basis as of the end of each fiscal quarter, (2) within 120 days after the end of each fiscal year of Borrower, (A) a
statement of income and expenses for Borrower’s operation of the Mortgaged Property for such fiscal year, (B) a statement of changes in financial position of Borrower relating to the Mortgaged Property for such fiscal year, and (C) when requested by Lender, a balance sheet showing all assets and liabilities of Borrower relating to the Mortgaged Property as of the end of such fiscal year; and (3) any of the foregoing at any other time upon Lender’s request;

(ii) Within 45 days after the end of each fiscal year of Borrower, and at any other time upon Lender’s request, a rent schedule for the Mortgaged Property showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid, and any related information requested by Lender;

(iii) within 120 days after the end of each fiscal year of Borrower, and at any other time upon Lender’s request, an accounting of all security deposits held pursuant to all Leases, including the name of the institution (if any) and the names and identification numbers of the accounts (if any) in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for Lender to access information regarding such accounts;

(iv) within 120 days after the end of each fiscal year of Borrower, and at any other time upon Lender’s request, a statement that identifies all owners of any interest in Borrower and the interest held by each, if Borrower is a corporation, all officers and directors of Borrower, and if Borrower is a limited liability company, all managers who are not members;

(v) upon Lender’s request, a monthly property management report for the Mortgaged Property, showing the number of inquiries made and rental applications received from tenants or prospective tenants and deposits received from tenants and any other information requested by Lender;

(vi) upon Lender’s request, a balance sheet, a statement of income and expenses for Borrower and a statement of changes in financial position of Borrower for Borrower’s most recent fiscal year;

(vii) annually, if applicable, within 60 days of the date required for submission by the agency in the Property Jurisdiction responsible for monitoring the low income housing tax credit program, a low
income housing tax credit compliance report in form and substance acceptable to Lender; and

(viii) if required by Lender, within 30 days of the end of each calendar month, a monthly statement of income and expenses for such calendar month on a year-to-date basis for Borrower’s operation of the Mortgaged Property.

(c) Each of the statements, schedules and reports required by Section 14(b) shall be certified to be complete and accurate by an individual having authority to bind Borrower and shall be in such form and contain such detail as Lender may require. Lender also may require that any statements, schedules or reports be audited at Borrower’s expense by independent certified public accountants acceptable to Lender.

(d) If Borrower fails to provide in a timely manner the statements, schedules and reports required by Section 14(b), Lender shall have the right to have Borrower’s books and records audited, at Borrower’s expense, by independent certified public accountants selected by Lender in order to obtain such statements, schedules and reports, and all related costs and expenses of Lender shall become immediately due and payable and shall become an additional part of the Indebtedness as provided in Section 12.

(e) If an Event of Default has occurred and is continuing, Borrower shall deliver to Lender upon written demand all books and records relating to the Mortgaged Property or its operation.

(f) Borrower authorizes Lender to obtain a credit report on Borrower at any time.

15. TAXES; OPERATING EXPENSES.

(a) Subject to the provisions of Section 15(d), Borrower shall pay, or cause to be paid, all Taxes when due and before the imposition of any interest, fine, penalty or cost for nonpayment.

(b) Borrower shall pay (i) the expenses of operating, managing, maintaining and repairing the Mortgaged Property (including insurance premiums, utilities, repairs and replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added, and (ii) insurance premiums at least 30 days prior to the expiration date of each policy of insurance, unless applicable law specifies some lesser period.

(c) Reserved

(d) Borrower, at its own expense, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Taxes or other utility or similar charges that could become a lien on the Mortgaged Property...
(“Impositions”), other than insurance premiums, if (i) Borrower notifies Lender of the commencement or expected commencement of such proceedings, (ii) the Mortgaged Property is not in danger of being sold or forfeited, (iii) Borrower deposits with Lender reserves sufficient to pay the contested amount, if requested by Lender, and (iv) Borrower furnishes whatever additional security is required in the proceedings or is requested by Lender, which may include the delivery to Lender of the reserves established by Borrower to pay the contested amount.

(e) Borrower shall promptly deliver to Lender copies of all notices of, and invoices for, Impositions, and if Borrower pays any Imposition directly, Borrower shall promptly furnish to Lender on or before the date this Instrument requires such Impositions to be paid, copies of receipts evidencing that such payments were made.

(f) All payments made by Borrower to Lender pursuant to this Instrument or any of the Subordinate Collateral Loan Documents shall be free and clear of any and all tax liabilities whatsoever (other than United States federal income taxation payable by Lender) and, to the extent Lender is required to pay any such tax liabilities, Borrower shall reimburse Lender in respect of any such payment of taxes and, immediately upon request from Lender, shall deliver to Lender copies of receipts evidencing the payment of such taxes.

16. LIENS; ENCUMBRANCES. Borrower acknowledges that, to the extent provided in Section 21, the grant, creation or existence of any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance (a “Lien”) on the Mortgaged Property (other than the lien of this Instrument and the Permitted Encumbrances) or on certain ownership interests in Borrower, whether voluntary, involuntary or by operation of law, and whether or not such Lien has priority over the lien of this Instrument, is a “Transfer” which constitutes an Event of Default and subjects Borrower to personal liability under the Subordinate Collateral Note. Borrower shall maintain the lien created by this Instrument as a subordinate mortgage lien upon the Mortgaged Property, subject to no other Liens or encumbrances other than Permitted Encumbrances.

17. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY.

(a) Borrower shall not commit waste or permit impairment or deterioration of the Mortgaged Property.

(b) Borrower shall not abandon the Mortgaged Property.

(c) Borrower shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, whether or not insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair.
(d) Borrower shall keep the Mortgaged Property in good repair (normal wear and tear excepted), including the replacement of Personalty and Fixtures with items of equal or better function and quality.

(e) Borrower shall provide for professional management of the Mortgaged Property by a residential rental property manager satisfactory to Lender at all times, under a contract approved by Lender, in writing, which contract must be terminable upon not more than thirty (30) days notice without the necessity of establishing cause and without payment of a penalty or termination fee by Borrower or its successors. There shall be no change in the property manager or any contract for the management of the Mortgaged Property without Lender’s prior written approval. Lender shall have the right to require that Borrower and any new property manager enter into an Assignment of Management Agreement on a form approved by Lender. If required by Lender (whether before or after an Event of Default), Borrower will cause any Affiliate of Borrower to whom fees are payable for the management of the Mortgaged Property to enter into an agreement with Lender, in a form approved by Lender, providing for subordination of those fees and such other provisions as Lender may require. “Affiliate of Borrower” means any Person controlled by, under common control with, or which controls Borrower (the term “control” for these purposes means the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests).

(f) Borrower shall give notice to Lender of and, unless otherwise directed in writing by Lender, shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Lender’s security or Lender’s rights under this Instrument. Borrower shall not (and shall not permit any tenant or other person to) remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property, including any removal, demolition or alteration occurring in connection with a rehabilitation of all or part of the Mortgaged Property, except (i) in connection with the replacement of tangible Personalty and (ii) repairs and replacements in connection with making an individual unit ready for a new occupant.

(g) Unless otherwise waived by Lender in writing, Borrower must have or must establish and must adhere to the MMP. If Borrower is required to have an MMP, Borrower must keep all MMP documentation at the Mortgaged Property or at the management agent’s office and available for Lender or its agents to review during any annual assessment or inspection of the Mortgaged Property that is required by Lender.
18. ENVIRONMENTAL HAZARDS.

(a) Except for matters described in Section 18(b), Borrower shall not cause or permit any of the following:

(i) the presence, use, generation, release, treatment, processing, storage (including storage in above ground and underground storage tanks), handling, or disposal of any Hazardous Materials on or under the Mortgaged Property (whether as a result of activities on the Mortgaged Property or on surrounding properties) or any other property of Borrower that is adjacent to the Mortgaged Property;

(ii) the transportation of any Hazardous Materials to, from, or across the Mortgaged Property (whether as a result of activities on the Mortgaged Property or on surrounding properties);

(iii) any occurrence or condition on the Mortgaged Property (whether as a result of activities on the Mortgaged Property or on surrounding properties) or any other property of Borrower that is adjacent to the Mortgaged Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws;

(iv) any violation of or noncompliance with the terms of any Environmental Permit with respect to the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property;

(v) the imposition of any environmental lien against the Mortgaged Property; or

(vi) any violation or noncompliance with the terms of any O&M Program.

The matters described in clauses (i) through (vi) above, except as otherwise provided in Section 18(b), are referred to collectively in this Section 18 as “Prohibited Activities or Conditions”.

(b) Prohibited Activities or Conditions shall not include lawful conditions permitted by an O&M Program or the safe and lawful use and storage of quantities of (i) pre-packaged supplies, cleaning materials, petroleum products, household products, paints, solvents, lubricants and other materials customarily used in the construction, renovation, operation, maintenance or use of comparable multifamily properties, (ii) cleaning materials, household products, personal grooming items and other items sold in pre-packaged containers for consumer use and used by tenants and occupants of residential dwelling units in the Mortgaged Property; and (iii) petroleum products used in
the operation and maintenance of motor vehicles from time to time located on the Mortgaged Property’s parking areas, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with Hazardous Materials Laws.

(c) Borrower shall take all commercially reasonable actions (including the inclusion of appropriate provisions in any Leases executed after the date of this Instrument) to prevent its employees, agents, and contractors, and all tenants and other occupants from causing or permitting any Prohibited Activities or Conditions. Borrower shall not lease or allow the sublease or use of all or any portion of the Mortgaged Property to any tenant or subtenant for nonresidential use by any user that, in the ordinary course of its business, would cause or permit any Prohibited Activity or Condition.

(d) If and as required by Lender, Borrower shall also establish a written operations and maintenance program with respect to certain Hazardous Materials. Each such operations and maintenance program and any additional or revised operations and maintenance programs established for the Mortgaged Property pursuant to this Instrument must be approved by Lender and shall be referred to herein as an “O&M Program.” Borrower shall comply in a timely manner with, and cause all employees, agents, and contractors of Borrower and any other persons present on the Mortgaged Property to comply with each O&M Program. Borrower shall pay all costs of performance of Borrower’s obligations under any O&M Program, and any Beneficiary Party’s out-of-pocket costs incurred by such Beneficiary Party in connection with the monitoring and review of each O&M Program and Borrower’s performance shall be paid by Borrower upon demand by such Beneficiary Party. Any such out-of-pocket costs of such Beneficiary Party which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 12.

(e) Without limitation of the foregoing, (i) Borrower hereby agrees to implement and maintain during the entire term of the Loan the O&M Program(s) required by Lender, and (ii) if asbestos-containing materials are found to exist at the Mortgaged Property, the O&M Program with respect thereto shall be undertaken consistent with the Guidelines for Controlling Asbestos-Containing Materials in Buildings (USEPA, 1985) and other relevant guidelines and applicable Hazardous Materials Laws.

(f) With respect to any O&M Program, Lender may require (i) periodic notices or reports to Lender in form, substance and at such intervals as Lender may specify; (ii) amendments to such O&M Program to address changing circumstances, laws or other matters, including, without limitation, variations in response to reports provided by environmental consultants; and (iii) execution of an Operations and Maintenance Agreement relating to such O&M Program satisfactory to Lender.

(g) Borrower represents and warrants to Beneficiary Parties that, except as otherwise disclosed in the Environmental Reports (as defined in the Environmental Agreement):

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(i) Borrower has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions;

(ii) to the best of Borrower’s knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed, and Borrower has provided Lender with copies of all reports and information acquired in such inquiries;

(iii) the Mortgaged Property does not now contain any underground storage tanks, and, the Mortgaged Property has not contained any underground storage tanks in the past. If there is an underground storage tank located on the Mortgaged Property that has been disclosed in Exhibit A to the Environmental Agreement, that tank complies with all requirements of Hazardous Materials Laws;

(iv) Borrower has complied with and will continue to comply with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials. Without limiting the generality of the foregoing, Borrower has obtained all Environmental Permits required for the operation of the Mortgaged Property in accordance with Hazardous Materials Laws now in effect and all such Environmental Permits are in full force and effect;

(v) no event has occurred with respect to the Mortgaged Property that constitutes, or with the passing of time or the giving of notice would constitute, noncompliance with the terms of any Environmental Permit or Hazardous Materials Law;

(vi) there are no actions, suits, claims or proceedings pending or, to the best of Borrower’s knowledge after reasonable and diligent inquiry, threatened that involve the Mortgaged Property and allege, arise out of, or relate to any Prohibited Activity or Condition;

(vii) Borrower has not received any complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property; and

(viii) no prior Remedial Work (as defined below) has been undertaken, and no Remedial Work is ongoing, with respect to the Mortgaged Property during Borrower’s ownership thereof or, to the best of Borrower’s knowledge, at any time prior to Borrower’s ownership thereof; and
Borrower has disclosed in the Environmental Agreement all material facts known to Borrower or contained in Borrower’s records the nondisclosure of which could cause any representation or warranty made herein or any statement made in the Environmental Agreement to be false or materially misleading.

The representations and warranties in this Section 18 shall be continuing representations and warranties that shall be deemed to be made by Borrower throughout the term of the Loan, until the Indebtedness has been paid in full or otherwise discharged.

(h) Borrower shall promptly notify Lender in writing upon the occurrence of any of the following events:

(i) Borrower’s discovery of any Prohibited Activity or Condition;

(ii) Borrower’s receipt of or knowledge of any complaint, order, notice of violation or other communication from any tenant, management agent, Governmental Authority or other person with regard to present or future alleged Prohibited Activities or Conditions or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property;

(iii) Borrower’s receipt of or knowledge of any personal injury claim, proceeding or cause of action directly or indirectly arising as a result of the presence of asbestos or other Hazardous Materials on or from the Mortgaged Property;

(iv) Borrower’s discovery that any representation or warranty in this Section 18 has become untrue after the date of this Instrument; and

(v) Borrower’s breach of any of its obligations under this Section 18.

Any such notice given by Borrower shall not relieve Borrower of, or result in a waiver of, any obligation under this Instrument, the Subordinate Collateral Note, or any other Subordinate Collateral Loan Document.

(i) Borrower shall pay promptly the costs of any environmental inspections, tests or audits (“Environmental Inspections”) required by Lender or any Beneficiary Party in connection with any foreclosure or deed in lieu of foreclosure, or as a condition of Lender’s consent to any Transfer under Section 21, or required by Lender following a determination by Lender that Prohibited Activities or Conditions may exist. Any such costs incurred by Lender (including, without limitation, fees and expenses of attorneys, expert witnesses, engineers, technical consultants and investigatory fees, whether incurred in connection with any judicial or administrative process or otherwise) that Borrower fails
to pay promptly shall become an additional part of the Indebtedness as provided in Section 12. The results of all Environmental Inspections made by Lender shall at all times remain the property of Lender and Lender shall have no obligation to disclose or otherwise make available to Borrower or any other party such results or any other information obtained by Lender in connection with such Environmental Inspections. Lender hereby reserves the right, and Borrower hereby expressly authorizes Lender, to make available to any party, including any prospective bidder at a foreclosure sale of the Mortgaged Property, the results of any Environmental Inspections made by Lender with respect to the Mortgaged Property. Borrower consents to Lender notifying any party (either as part of a notice of sale or otherwise) of the results of any of Lender’s Environmental Inspections. Borrower acknowledges that Lender cannot control or otherwise assure the truthfulness or accuracy of the results of any of its Environmental Inspections and that the release of such results to prospective bidders at a foreclosure sale of the Mortgaged Property may have a material and adverse effect upon the amount which a party may bid at such sale. Borrower agrees that Lender shall have no liability whatsoever as a result of delivering the results of any of its Environmental Inspections to any third party, and Borrower hereby releases and forever discharges Lender from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the results of, the delivery of any of Lender’s Environmental Inspections.

(j) If any investigation, site monitoring, containment, clean-up, restoration or other remedial work (“Remedial Work”) is necessary to comply with or cure a violation of any Hazardous Materials Law or order of any Governmental Authority that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property under any Hazardous Materials Law, or is otherwise required by Lender as a consequence of any Prohibited Activity or Condition or to prevent the occurrence of a Prohibited Activity or Condition, Borrower shall, by the earlier of (i) the applicable deadline required by such Hazardous Materials Law or (ii) thirty (30) days after notice from Lender demanding such action, begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and shall in any event complete the work by the time required by such Hazardous Materials Law. Borrower shall promptly provide Lender with a cost estimate from an environmental consultant acceptable to Lender to complete any required Remedial Work. If required by Lender, Borrower shall promptly establish with Lender a reserve fund in the amount of such estimate. If in Lender’s opinion the amount reserved at any time during the Remedial Work is insufficient to cover the work remaining to complete the Remediation or achieve compliance, Borrower shall increase the amount reserved in compliance with Lender’s written request. All amounts so held in reserve, until disbursed, are hereby pledged to Lender as security for payment of Borrower’s obligations under this Instrument. If Borrower fails to begin on a timely basis or diligently prosecute any required Remedial Work, Lender may, at its option, cause the Remedial Work to be completed, in which case Borrower shall reimburse Lender on demand for the cost of doing so. Any reimbursement due from Borrower to Lender shall become part of the Indebtedness as provided in Section 12.
(k) Borrower shall comply with all Hazardous Materials Laws applicable to the Mortgaged Property. Without limiting the generality of the previous sentence, Borrower shall (i) obtain and maintain all Environmental Permits required by Hazardous Materials Laws and comply with all conditions of such Environmental Permits; (ii) cooperate with any inquiry by any Governmental Authority; and (iii) comply with any governmental or judicial order that arises from any alleged Prohibited Activity or Condition.

(l) BORROWER SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND BENEFICIARY PARTIES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, EMPLOYEES, AGENTS, ATTORNEYS, TRUSTEES, HEIRS AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE “INDEMNITEES”) FROM AND AGAINST ALL LOSSES, PROCEEDINGS, CLAIMS, DAMAGES, PENALTIES AND COSTS (WHETHER INITIATED OR SOUGHT BY GOVERNMENTAL AUTHORITIES OR PRIVATE PARTIES), INCLUDING, WITHOUT LIMITATION, FEES AND OUT-OF-POCKET EXPENSES OF ATTORNEYS AND EXPERT WITNESSES, ENGINEERING FEES, ENVIRONMENTAL CONSULTANT FEES, INVESTIGATORY FEES, AND REMEDIATION COSTS (INCLUDING, WITHOUT LIMITATION, ANY FINANCIAL ASSURANCES REQUIRED TO BE POSTED FOR COMPLETION OF REMEDIAL WORK AND COSTS ASSOCIATED WITH ADMINISTRATIVE OVERSIGHT), AND ANY OTHER LIABILITIES OF WHATEVER KIND AND WHATEVER NATURE, WHETHER INCURRED IN CONNECTION WITH ANY JUDICIAL OR ADMINISTRATIVE PROCESS OR OTHERWISE, ARISING DIRECTLY OR INDIRECTLY FROM ANY OF THE FOLLOWING:

(i) ANY BREACH OF ANY REPRESENTATION OR WARRANTY OF BORROWER IN THIS SECTION 18;

(ii) ANY FAILURE BY BORROWER TO PERFORM ANY OF ITS OBLIGATIONS UNDER THIS SECTION 18;

(iii) THE EXISTENCE OR ALLEGED EXISTENCE OF ANY PROHIBITED ACTIVITY OR CONDITION;

(iv) THE PRESENCE OR ALLEGED PRESENCE OF HAZARDOUS MATERIALS ON OR UNDER THE MORTGAGED PROPERTY (WHETHER AS A RESULT OF ACTIVITIES ON THE MORTGAGED PROPERTY OR ON SURROUNDING PROPERTIES) OR IN ANY OF THE IMPROVEMENTS OR ON OR UNDER ANY PROPERTY OF BORROWER THAT IS ADJACENT TO THE MORTGAGED PROPERTY;

(v) THE ACTUAL OR ALLEGED VIOLATION OF ANY HAZARDOUS MATERIALS LAW;
(vi) ANY LOSS OR DAMAGE RESULTING FROM A LOSS OF PRIORITY OF THIS INSTRUMENT OR ANY OTHER SUBORDINATE COLLATERAL LOAN DOCUMENT DUE TO AN IMPOSITION OF AN ENVIRONMENTAL LIEN AGAINST THE MORTGAGED PROPERTY; AND

(vii) ANY PERSONAL INJURY CLAIM, PROCEEDING OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY ARISING AS A RESULT OF THE PRESENCE OF ASBESTOS OR OTHER HAZARDOUS MATERIALS ON OR FROM THE MORTGAGED PROPERTY.

(m) COUNSEL SELECTED BY BORROWER TO DEFEND INDEMNITEES SHALL BE SUBJECT TO THE APPROVAL OF THOSE INDEMNITEES. IN ANY CIRCUMSTANCES IN WHICH THE INDEMNITY UNDER THIS SECTION 18 APPLIES, ANY BENEFICIARY PARTY MAY EMPLOY ITS OWN LEGAL COUNSEL AND CONSULTANTS TO PROSECUTE, DEFEND OR NEGOTIATE ANY CLAIM OR LEGAL OR ADMINISTRATIVE PROCEEDING AT BORROWER’S EXPENSE, AND SUCH BENEFICIARY PARTY, WITH THE PRIOR WRITTEN CONSENT OF BORROWER (WHICH SHALL NOT BE UNREASONABLY WITHHELD, DELAYED OR CONDITIONED) MAY SETTLE OR COMPROMISE ANY ACTION OR LEGAL OR ADMINISTRATIVE PROCEEDING. BORROWER SHALL REIMBURSE SUCH BENEFICIARY PARTY UPON DEMAND FOR ALL COSTS AND EXPENSES INCURRED BY SUCH BENEFICIARY PARTY, INCLUDING, WITHOUT LIMITATION, ALL COSTS OF SETTLEMENTS ENTERED INTO IN GOOD FAITH, AND THE FEES AND OUT OF POCKET EXPENSES OF SUCH ATTORNEYS AND CONSULTANTS.

(n) BORROWER SHALL NOT, WITHOUT THE PRIOR WRITTEN CONSENT OF THOSE INDEMNITEES WHO ARE NAMED AS PARTIES TO A CLAIM OR LEGAL OR ADMINISTRATIVE PROCEEDING (A “CLAIM”), SETTLE OR COMPROMISE THE CLAIM IF THE SETTLEMENT (1) RESULTS IN THE ENTRY OF ANY JUDGMENT THAT DOES NOT INCLUDE AS AN UNCONDITIONAL TERM THE DELIVERY BY THE CLAIMANT OR PLAINTIFF TO BENEFICIARY PARTIES OF A WRITTEN RELEASE OF THOSE INDEMNITEES, SATISFACTORY IN FORM AND SUBSTANCE TO LENDER; OR (2) MAY MATERIALLY AND ADVERSELY AFFECT BENEFICIARY PARTIES, AS DETERMINED BY LENDER IN ITS DISCRETION.

(o) BORROWER’S OBLIGATION TO INDEMNIFY THE INDEMNITEES SHALL NOT BE LIMITED OR IMPAIRED BY ANY OF THE FOLLOWING, OR BY ANY FAILURE OF BORROWER TO RECEIVE NOTICE OF OR CONSIDERATION FOR ANY OF THE FOLLOWING:
(i) ANY AMENDMENT OR MODIFICATION OF ANY SUBORDINATE COLLATERAL LOAN DOCUMENT;

(ii) ANY EXTENSIONS OF TIME FOR PERFORMANCE REQUIRED BY ANY SUBORDINATE COLLATERAL LOAN DOCUMENT;

(iii) ANY PROVISION IN ANY SUBORDINATE COLLATERAL LOAN DOCUMENT LIMITING BENEFICIARY PARTIES’ RECOURSE TO PROPERTY SECURING THE INDEBTEDNESS, OR LIMITING THE PERSONAL LIABILITY OF BORROWER OR ANY OTHER PARTY FOR PAYMENT OF ALL OR ANY PART OF THE INDEBTEDNESS;

(iv) THE ACCURACY OR INACCURACY OF ANY REPRESENTATIONS AND WARRANTIES MADE BY BORROWER UNDER THIS INSTRUMENT OR ANY OTHER SUBORDINATE COLLATERAL LOAN DOCUMENT;

(v) THE RELEASE OF BORROWER OR ANY OTHER PERSON, BY BENEFICIARY PARTIES OR BY OPERATION OF LAW, FROM PERFORMANCE OF ANY OBLIGATION UNDER ANY SUBORDINATE COLLATERAL LOAN DOCUMENT;

(vi) THE RELEASE OR SUBSTITUTION IN WHOLE OR IN PART OF ANY SECURITY FOR THE INDEBTEDNESS; AND

(vii) FAILURE BY BENEFICIARY PARTIES TO PROPERLY PERFECT ANY LIEN OR SECURITY INTEREST GIVEN AS SECURITY FOR THE INDEBTEDNESS.

(p) BORROWER SHALL, AT ITS OWN COST AND EXPENSE, DO ALL OF THE FOLLOWING:

(i) PAY OR SATISFY ANY JUDGMENT OR DECREE THAT MAY BE ENTERED AGAINST ANY INDEMNITEE OR INDEMNITEES IN ANY LEGAL OR ADMINISTRATIVE PROCEEDING INCIDENT TO ANY MATTERS AGAINST WHICH INDEMNITEES ARE ENTITLED TO BE INDEMNIFIED UNDER THIS SECTION 18;

(ii) REIMBURSE INDEMNITEES FOR ANY AND ALL EXPENSES PAID OR INCURRED IN CONNECTION WITH ANY MATTERS AGAINST WHICH INDEMNITEES ARE ENTITLED TO BE INDEMNIFIED UNDER THIS SECTION 18; AND
(iii) REIMBURSE INDEMNITEES FOR ANY AND ALL EXPENSES, INCLUDING, WITHOUT LIMITATION, FEES AND OUT OF POCKET EXPENSES OF ATTORNEYS AND EXPERT WITNESSES, PAID OR INCURRED IN CONNECTION WITH THE ENFORCEMENT BY INDEMNITEES OF THEIR RIGHTS UNDER THIS SECTION 18, OR IN MONITORING AND PARTICIPATING IN ANY LEGAL OR ADMINISTRATIVE PROCEEDING.

(q) THE PROVISIONS OF THIS SECTION 18 SHALL BE IN ADDITION TO ANY AND ALL OTHER OBLIGATIONS AND LIABILITIES THAT BORROWER MAY HAVE UNDER APPLICABLE LAW OR UNDER ANY OTHER SUBORDINATE COLLATERAL LOAN DOCUMENT, AND EACH INDEMNITEE SHALL BE ENTITLED TO INDEMNIFICATION UNDER THIS SECTION 18 WITHOUT REGARD TO WHETHER ANY OTHER BENEFICIARY PARTY OR THAT INDEMNITEE HAS EXERCISED ANY RIGHTS AGAINST THE MORTGAGED PROPERTY OR ANY OTHER SECURITY, OR PURSUED ANY OTHER RIGHTS AVAILABLE UNDER THE SUBORDINATE COLLATERAL LOAN DOCUMENTS OR APPLICABLE LAW. IF BORROWER CONSISTS OF MORE THAN ONE PERSON OR ENTITY, THE OBLIGATION OF THOSE PERSONS OR ENTITIES TO INDEMNIFY THE INDEMNITEES UNDER THIS SECTION 18 SHALL BE JOINT AND SEVERAL. THE OBLIGATION OF BORROWER TO INDEMNIFY THE INDEMNITEES UNDER THIS SECTION 18 SHALL SURVIVE ANY REPAYMENT OR DISCHARGE OF THE INDEBTEDNESS, ANY FORECLOSURE PROCEEDING, ANY FORECLOSURE SALE, ANY DELIVERY OF ANY DEED IN LIEU OF FORECLOSURE, AND ANY RELEASE OF RECORD OF THE LIEN OF THIS INSTRUMENT.

(r) Notwithstanding anything herein to the contrary, (i) Borrower shall have no obligation hereunder to indemnify any Indemnitee for any liability under this Section 18 to the extent that the Prohibited Activity or Condition giving rise to such liability resulted solely from the gross negligence or willful misconduct of such Indemnitee, and (ii) Borrower’s liability under this Section 18 shall not extend to cover the violation of any Hazardous Materials Laws or Prohibited Activities or Conditions that first arise, commence or occur as a result of actions of Lender, its successors, assigns or designees, after the satisfaction, discharge, release, assignment, termination or cancellation of this Instrument following the payment in full of the Subordinate Collateral Note and all other sums payable under the Subordinate Collateral Loan Documents or after the actual dispossession from the entire Mortgaged Property of Borrower and all entities which control, are controlled by, or are under common control with Borrower following foreclosure of this Instrument or acquisition of the Mortgaged Property by a deed in lieu of foreclosure.

19. PROPERTY AND LIABILITY INSURANCE.
(a) Borrower shall keep the Improvements insured at all times against such hazards as Lender may from time to time require, which insurance shall include but not be limited to coverage against loss by fire and allied perils, general boiler and machinery coverage, business income coverage and extra expense insurance, coverage against acts of terrorism, mold and earthquake coverage. Borrower acknowledges and agrees that Lender’s insurance requirements may change from time to time throughout the term of the Indebtedness. If Lender so requires, such insurance shall also include sinkhole insurance, mine subsidence insurance, earthquake insurance, and, if the Mortgaged Property does not conform to applicable zoning or land use laws, building ordinance or law coverage. If any portion of the Improvements is at any time located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area now or hereafter having special flood hazards, and if flood insurance is available in that area, Borrower shall insure such Improvements against loss by flood in an amount equal to the maximum amount available under the National Flood Insurance Program or any successor thereto.

(b) All premiums on insurance policies required under Section 19(a) shall be paid on or prior to the date such premium is due. All such policies shall also be in a form approved by Lender. All policies of property damage insurance shall include a non-contributing, non-reporting mortgage clause in favor of, and in a form approved by, Lender. Subject to the rights of the Senior Lender or any other holder of a loan secured by a deed of trust or mortgage recorded prior to the Subordinate Collateral Security Instrument, Lender shall have the right to hold the original policies or duplicate original policies of all insurance required by Section 19(a). Borrower shall promptly deliver to Lender a copy of all renewal and other notices received by Borrower with respect to the policies and all receipts for paid premiums. At least 30 days prior to the expiration date of a policy, Borrower shall deliver to Lender the original (or a duplicate original) of a renewal policy in form satisfactory to Lender.

(c) All insurance policies and renewals of insurance policies required by this Section 19 shall be in such amounts and for such periods as Lender may from time to time require consistent with Lender’s then current practices and standards, and shall be issued by insurance companies satisfactory to Lender.

(d) During any period of construction and/or rehabilitation, and at all times prior to occupancy of the Project by any tenants following the completion of the construction and/or rehabilitation of the Project in accordance with the Subordinate Collateral Loan Agreement, the following provisions shall apply, in addition to the other provisions of this Section 19 and without limiting the generality of the other provisions of this Section 19:

(i) Borrower shall provide (or cause to be provided), maintain and keep in force, the following insurance coverage:
(A) Builder’s “all risk” insurance or the equivalent coverage, including theft, to insure all buildings, machinery, equipment, materials, supplies, temporary structures and all other property of any nature on-site, off-site and while in transit which is to be used in fabrication, erection, installation and construction and/or rehabilitation of the Project, and to remain in effect until the entire Project has been completed and accepted by Borrower and is first occupied by any tenants (provided that in any event, such coverage shall remain in effect until such time as Borrower has provided Lender with evidence of property insurance covering the Improvements and meeting the requirements of this Section 19). Such insurance shall be provided on a replacement cost value basis and shall include foundations, other underground property, tenant improvements and personal property. If tenant improvements and personal property are not included in the above coverage, they may be insured separately by Borrower provided coverage is acceptable to Lender. Builders “all risk” insurance shall (i) be on a nonreporting, completed value form, (ii) cover soft costs, debris removal expense (including removal of pollutants), resulting loss and damage to property due to faulty or defective workmanship or materials and error in design or specification, loss while the property is in the care, custody and control of others to whom the property may be entrusted, (iii) provide that Borrower can complete and occupy the Mortgaged Property without further written consent from the insurer, and (iv) cover loss of income resulting from delay in occupancy and use of the Mortgaged Property due to loss. During the initial construction and/or rehabilitation of the Project and until such time as the Project is first occupied by any tenants, the Borrower shall not be required to maintain property insurance as required by this Section 19 for so long as Builder’s “all risk” insurance or equivalent coverage is maintained in accordance with this paragraph.

(B) If any portion of the Mortgaged Property is or becomes located in an area identified by the United States Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973, as amended, Borrower shall also keep the improvements and the equipment located thereon insured against loss by flood in an amount at least equal to the principal amount of the Loan or the maximum limits of coverage available with respect to the Mortgaged Property, whichever is less. All such insurance shall also cover continuing expenses not directly involved in the direct cost of construction, rehabilitation or renovation, including interest
on money borrowed to finance construction, rehabilitation or renovation, continuing interest on the Loan, advertising, promotion, real estate taxes and other assessments, the cost of renegotiating leases, and other expenses incurred as the result of property loss or destruction by the insured peril. Such coverage shall not contain any monthly limitation.

(ii) If Lender fails to receive proof and evidence of the insurance required hereunder, Lender shall have the right, but not the obligation, to obtain or cause to be obtained current coverage and in its sole discretion, advance funds to pay the premiums for it. If Lender makes an advance for such purpose, Borrower shall repay such advance immediately on demand and such advance shall be considered to be a demand loan to Borrower bearing interest at the Default Rate (as defined by the Subordinate Collateral Note) and secured by the Mortgaged Property.

(e) Borrower shall maintain at all times commercial general liability insurance, workers’ compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender may from time to time require, consistent with Lender’s then current practices and standards (and from and after the Conversion Date, any applicable Credit Enhancer Insurance Standards).

(f) Borrower shall comply with all insurance requirements and shall not permit any condition to exist on the Mortgaged Property that would invalidate any part of any insurance coverage that this Instrument requires Borrower to maintain.

(g) In the event of loss, Borrower shall give immediate written notice to the insurance carrier and to Lender. Subject to the rights of the Senior Lender or any other holder of a loan secured by a deed of trust or mortgage recorded prior to the Subordinate Collateral Security Instrument, Borrower hereby authorizes and appoints Lender as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claims under policies of property damage insurance, to appear in and prosecute any action arising from such property damage insurance policies, to collect and receive the proceeds of property damage insurance, and to deduct from such proceeds Lender’s expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 19 shall require Lender to incur any expense or take any action. Lender may, at Lender’s option, (i) hold the balance of such proceeds to be used to reimburse Borrower for the cost of restoring and repairing the Mortgaged Property to the equivalent of its original condition or to a condition approved by Lender (the “Restoration”), or (ii) apply the balance of such proceeds to the payment of the Indebtedness, whether or not then due. To the extent Lender determines to apply insurance proceeds to Restoration, Lender shall apply the proceeds in accordance with Lender’s then-current policies relating to the restoration of casualty damage on similar multifamily properties.

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(h) Lender shall not exercise its option to apply insurance proceeds to the payment of the Indebtedness if all of the following conditions are met: (i) no Event of Default (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (ii) Lender determines, in its reasonable discretion, that there will be sufficient funds to complete the Restoration (and complete construction of the Project in accordance with the Subordinate Collateral Loan Agreement and the Plans and Specifications, as defined in the Senior Loan Documents, if such construction has not been completed at such time); (iii) Lender determines, in its discretion, that the net operating income generated by the Mortgaged Property after completion of the Restoration will be sufficient to meet all operating costs and other expenses, Imposition Deposits, deposits to reserves and loan repayment obligations relating to the Mortgaged Property; (iv) Lender determines, in its discretion, that the Restoration will be completed before the earlier of (A) one year before the maturity date of the Subordinate Collateral Note (or one year before the Outside Conversion Date, if Conversion has not yet occurred) or (B) one year after the date of the loss or casualty; and (v) upon Lender’s request, Borrower provides Lender evidence of the availability during and after the Restoration of the insurance required to be maintained pursuant to this Instrument.

(i) If the Mortgaged Property is sold at a foreclosure sale or Lender acquires title to the Mortgaged Property, Lender shall automatically succeed to all rights of Borrower in and to any insurance policies and unearned insurance premiums and in and to the proceeds resulting from any damage to the Mortgaged Property prior to such sale or acquisition.

(j) Unless Lender otherwise agrees in writing, any application of any insurance proceeds to the Indebtedness shall not extend or postpone the due date of any annual installments referred to in the Subordinate Collateral Note or change the amount of such installments, except as provided in the Subordinate Collateral Note.

(k) Borrower agrees to execute such further evidence of assignment of any insurance proceeds as Lender may require.

(l) Borrower further agrees that to the extent that Borrower obtains any form of property damage insurance for the Mortgaged Property or any portion thereof that insures perils not required to be insured against by Lender, such policy of property damage insurance shall include a standard mortgagee clause and shall name Lender as loss payee and, within ten (10) days following Borrower’s purchase of such additional insurance, Borrower shall cause to be delivered to Lender a duplicate original policy of insurance with respect to such policy. Any insurance proceeds payable to Borrower under such policy shall be additional security for the Indebtedness and Lender shall have the same rights to such policy and proceeds as it has with respect to insurance policies required by Lender pursuant to this Section 19 (except that Lender shall not require that the premium for such additional insurance be included among the Imposition Deposits).
20. CONDEMNATION.

(a) Borrower shall promptly notify Lender in writing of any action or proceeding or notice relating to any proposed or actual condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect (a “Condemnation”), and shall deliver to the Lender copies of any and all papers served in connection with such Condemnation. Borrower shall appear in and prosecute or defend any action or proceeding relating to any Condemnation unless otherwise directed by Lender in writing. Borrower authorizes and appoints Lender as attorney-in-fact for Borrower to commence, appear in and prosecute, in Lender’s or Borrower’s name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 20 shall require Lender to incur any expense or take any action. Borrower hereby transfers and assigns to Lender all right, title and interest of Borrower in and to any award or payment with respect to (i) any Condemnation, or any conveyance in lieu of Condemnation, and (ii) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation.

(b) Subject to the rights of the Senior Lender or any other holder of a loan secured by a deed of trust or mortgage recorded prior to the Subordinate Collateral Security Instrument, Lender may apply such awards or proceeds, after the deduction of Lender’s expenses incurred in the collection of such amounts (including, without limitation, fees and out-of-pocket expenses of attorneys and expert witnesses, investigatory fees, whether incurred in connection with any judicial or administrative process or otherwise), at Lender’s option, to the restoration or repair of the Mortgaged Property or to the payment of the Indebtedness in accordance with the provisions of the Subordinate Collateral Note as to application of payments to the Indebtedness, with the balance, if any, to Borrower. Unless Lender otherwise agrees in writing, any application of any awards or proceeds to the Indebtedness shall not extend or postpone the due date of payments due under the Subordinate Collateral Note or change the amount of such payments, except as otherwise provided in the Subordinate Collateral Note. Borrower agrees to execute such further evidence of assignment of any awards or proceeds as Lender may require.

Borrower covenants that it shall comply with all applicable legal requirements or internal requirements of Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect. Without limiting the foregoing, Borrower shall not take any action, or permit any action to be taken, that would cause Borrower’s representations and warranties in this Section 20 to become untrue or inaccurate at any time during the term of the Loan. Upon Lender’s request from time to time during the term of the Loan, Borrower shall certify in writing to Lender that Borrower’s representations, warranties and obligations under this Section 20 remain true and correct and have not been breached, and in addition, upon request of Lender, Borrower covenants to provide all information required to satisfy requesting Lender’s obligations under all applicable legal requirements or internal requirements of Lender relating to
money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect, during the term of the Loan. Borrower shall immediately notify Lender in writing of Borrower’s actual knowledge that any of such representations, warranties or covenants are no longer true and have been breached or if Borrower has a reasonable basis to believe that they may no longer be true or have been breached or that any other violation of the applicable legal requirements or internal requirements of Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect, has occurred or is being investigated by Governmental Authorities. In connection with such an event, Borrower shall comply with all applicable legal requirements or internal requirements of Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect and directives of Governmental Authorities and, at Lender’s request, provide to Lender copies of all notices, reports and other communications exchanged with, or received from, Governmental Authorities relating to such an event. Borrower shall also reimburse Lender for any expense incurred by Lender in evaluating the effect of such an event on the Loan and Lender’s interest in the collateral for the Loan, in obtaining necessary license from Governmental Authorities as may be necessary for Lender to enforce its rights under the Loan Documents, and in complying with all applicable legal requirements or internal requirements of Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect applicable to Lender as a result of the existence of such an event and for any penalties or fines imposed upon Lender as a result thereof.

21. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER.

(a) The occurrence of any of the following events shall constitute an Event of Default under this Instrument:

(i) other than the lien of this Instrument and the Permitted Encumbrances, a Transfer of all or any part of the Mortgaged Property or any interest in the Mortgaged Property;

(ii) a Transfer of a Controlling Interest in Borrower;

(iii) a Transfer of a Controlling Interest in any entity which owns, directly or indirectly through one or more intermediate entities, a Controlling Interest in Borrower;

(iv) if Borrower is a trust, the termination or revocation of such trust; unless the trust is terminated as a result of the death of an individual trustor, in which event Lender must be notified and such Borrower must be replaced with an individual or entity acceptable to Lender, in accordance with the provisions of Section 21(c) hereof, within 90 days of such death (provided however that no property inspection shall be required and a 1% transfer fee will not be charged);
(v) the merger, dissolution, liquidation, or consolidation of (i) Borrower, or (ii) any legal entity holding, directly or indirectly, a Controlling Interest in Borrower;

(vi) a conversion of Borrower from one type of legal entity into another type of legal entity (including the conversion of a general partnership into a limited partnership and the conversion of a limited partnership into a limited liability company), whether or not there is a Transfer; if such conversion results in a change in any assets, liabilities, legal rights or obligations of Borrower (or of any general partner of Borrower, as applicable), by operation of law or otherwise;

(vii) a Transfer of the economic benefits or right to cash flows attributable to the ownership interests in Borrower, separate from the Transfer of the underlying ownership interests, unless the Transfer of the underlying ownership interests would otherwise not be prohibited by this Instrument; and

(viii) the filing, recording, or consent to filing or recording of any plat or map subdividing, replatting or otherwise affecting the Mortgaged Property or any other replat or subdivision of the Mortgaged Property, whether or not any such action affects the priority of the lien of this Instrument.

Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default in order to exercise any of its remedies with respect to an Event of Default under this Section 21.

(b) The occurrence of any of the following events shall not constitute an Event of Default under this Instrument, notwithstanding any provision of Section 21(a) to the contrary (each, a “Permitted Transfer”):

(i) a Transfer to which Lender has consented;

(ii) except as provided in Section 21(a)(vi) and (vii), a Transfer that occurs by devise, descent, pursuant to the provisions of a trust, or by operation of law upon the death of a natural person;

(iii) the grant of a leasehold interest in an individual dwelling unit for a term of two years or less not containing an option to purchase;

(iv) a Transfer of obsolete or worn out Personalty or Fixtures that are contemporaneously replaced by items of equal or better function and quality, which are free of liens, encumbrances and security
interests other than those created by or permitted pursuant to the Subordinate Collateral Loan Documents or consented to by Lender;

(v) the grant of an easement, servitude, or restrictive covenant if, before the grant, Lender determines that the easement, servitude, or restrictive covenant will not materially affect the operation or value of the Mortgaged Property or Lender’s interest in the Mortgaged Property, and Borrower pays to Lender, upon demand, all costs and expenses incurred by Lender in connection with reviewing Borrower’s request;

(vi) the creation of a mechanic’s, materialman’s, or judgment lien against the Mortgaged Property which is released of record or otherwise remedied to Lender’s satisfaction within 45 days after Borrower has actual or constructive notice of the existence of such lien; and

(vii) the conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Instrument.

(c) Lender shall consent to a Transfer that would otherwise violate this Section 21 if, prior to the Transfer, Borrower has satisfied each of the following requirements:

(i) the submission to Lender of all information required by Lender to make the determination required by this Section 21(c);

(ii) the absence of any Event of Default;

(iii) the transferee meets all of the eligibility, credit, management, and other standards (including any standards with respect to previous relationships between Lender and the transferee and the organization of the transferee) customarily applied by Lender at the time of the proposed Transfer to the approval of borrowers in connection with the origination or purchase of similar mortgage finance structures on similar multifamily properties, unless partially waived by Lender in exchange for such additional conditions as Lender may require;

(iv) the Mortgaged Property, at the time of the proposed Transfer, meets all standards as to its physical condition that are customarily applied by Lender at the time of the proposed Transfer to the approval of properties in connection with the origination or purchase of similar mortgage finance structures on similar multifamily properties, unless partially waived by Lender in exchange for such additional conditions as Lender may require;
if transferor or any other person has obligations under any Subordinate Collateral Loan Document, the execution by the transferee or one or more individuals or entities acceptable to Lender of an assumption agreement that is acceptable to Lender and that, among other things, requires the transferee to perform all obligations of transferor or such person set forth in such Subordinate Collateral Loan Document, and may require that the transferee comply with any provisions of this Instrument or any other Subordinate Collateral Loan Document which previously may have been waived by Lender;

(vi) Lender’s receipt of all of the following:

(A) a non refundable review fee in the amount of $3,000 and a transfer fee equal to 1 percent of the outstanding Indebtedness immediately prior to the Transfer; and

(B) Borrower’s reimbursement of all of Lender’s out-of-pocket costs (including reasonable attorneys’ fees) incurred in reviewing the Transfer request, to the extent such expenses exceed $3,000; and

(vii) Borrower has agreed to Lender’s conditions to approve such Transfer, which may include, but are not limited to (A) providing additional collateral, guaranties, or other credit support to mitigate any risks concerning the proposed transferee or the performance or condition of the Mortgaged Property, and (B) amending the Subordinate Collateral Loan Documents to (i) delete any specially negotiated terms or provisions previously granted for the exclusive benefit of transferor and (ii) restore to original provisions of the standard Lender’s form multifamily loan documents, to the extent such provisions were previously modified.

(d) For purposes of this Section, the following terms shall have the meanings set forth below:

(i) A Transfer of a “Controlling Interest” shall mean:

(A) with respect to any entity, the following:

(1) if such entity is a general partnership or a joint venture, a Transfer of any general partnership interest or joint venture interest which would cause the Initial Owners to own less than 51% of all general partnership or joint venture interests in such entity;
(2) if such entity is a limited partnership, (A) a Transfer of any general partnership interest, or (B) a Transfer of any partnership interests which would cause the Initial Owners to own less than 51% of all limited partnership interests in such entity;

(3) if such entity is a limited liability company or a limited liability partnership, (A) a Transfer of any membership or other ownership interest which would cause the Initial Owners to own less than 51% of all membership or other ownership interests in such entity, (B) a Transfer of any membership, or other interest of a manager, in such entity that results in a change of manager, or (C) a change of the non-member manager;

(4) if such entity is a corporation (other than a Publicly-Held Corporation) with only one class of voting stock, a Transfer of any voting stock which would cause the Initial Owners to own less than 51% of voting stock in such corporation;

(5) if such entity is a corporation (other than a Publicly-Held Corporation) with more than one class of voting stock, a Transfer of any voting stock which would cause the Initial Owners to own less than a sufficient number of shares of voting stock having the power to elect the majority of directors of such corporation; and

(6) if such entity is a trust (other than a Publicly-Held Trust), the removal, appointment or substitution of a trustee of such trust other than (A) in the case of a land trust, or (B) if the trustee of such trust after such removal, appointment, or substitution is a trustee identified in the trust agreement approved by Lender; and/or

(B) any agreement (including provisions contained in the organizational and/or governing documents of Borrower) or Transfer not specified in clause (A), the effect of which, either immediately or after the passage of time or occurrence of a specified event or condition, including the failure of a specified event or condition to occur or be satisfied, would (i) cause a change in or replacement of the Person that controls the management and operations of the Borrower or (ii) limit or otherwise modify the extent of such Person’s control over the management and operations of Borrower.
(ii) “Publicly-Held Corporation” shall mean a corporation the outstanding voting stock of which is registered under Section 12(b) or 12(g) of the Securities and Exchange Act of 1934, as amended.

(iii) “Publicly-Held Trust” shall mean a real estate investment trust the outstanding voting shares or beneficial interests of which are registered under Section 12(b) or 12(g) of the Securities Exchange Act of 1934, as amended.

(e) Lender shall be provided with written notice of all Transfers under this Section 21, whether or not such Transfers are permitted under Section 21(b) or approved by Lender under Section 21(c), no later than 10 days prior to the date of the Transfer.

22. EVENTS OF DEFAULT. The occurrence of any one or more of the following shall constitute an Event of Default under this Instrument:

(a) (i) any failure by Borrower to pay or deposit any payment of principal, interest, any payment with a specified due date, or any other scheduled payment or deposit required by the Subordinate Collateral Note, this Instrument or any other Subordinate Collateral Loan Document when such payment or deposit is due or (ii) any failure by Borrower to pay or deposit any unscheduled payment or deposit, or other payment or deposit without a specified due date, required by the Subordinate Collateral Note, this Instrument or any other Subordinate Collateral Loan Document, within five (5) days after written notice from Lender;

(b) any failure by Borrower to maintain the insurance coverage required by Section 19;

(c) any failure by Borrower to comply with the provisions of Section 32;

(d) fraud or material misrepresentation or material omission by Borrower, or any of its respective officers, directors, trustees, general partners, managing members, managers, agents or representatives in connection with (i) the application for the Loan, (ii) any financial statement, rent roll, or other report or information provided to Lender during the term of the Indebtedness, or (iii) any request for Lender’s consent to any proposed action;

(e) any of Borrower’s representations and warranties in this Instrument is false or misleading in any material respect;

(f) any Event of Default under Section 21;

(g) the commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Lender’s judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Instrument or Lender’s interest in the Mortgaged Property;
(h) any failure by Borrower to perform or comply with any of its obligations under this Instrument (other than those specified in this Section 22), as and when required, which continues for a period of thirty (30) days after written notice of such failure by Lender to Borrower; provided, however, if such failure is susceptible of cure but cannot reasonably be cured within such thirty (30) day period, and the Borrower shall have commenced to cure such failure within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for an additional period of time as is reasonably necessary for the Borrower in the exercise of due diligence to cure such failure, such additional period not to exceed sixty (60) days. However, no such notice or grace period shall apply to the extent such failure could, in Lender’s judgment, absent immediate exercise by Lender of a right or remedy under this Instrument, result in harm to Lender, impairment of the Subordinate Collateral Note or this Instrument or any other security given under any other Subordinate Collateral Loan Document;

(i) any failure by Borrower to perform any of its obligations as and when required under any Subordinate Collateral Loan Document other than this Instrument which continues beyond the applicable cure period, if any, specified in that Subordinate Collateral Loan Document;

(j) any exercise by the holder of any debt instrument secured by a mortgage, deed of trust or deed to secure debt on the Mortgaged Property of a right to declare all amounts due under that debt instrument immediately due and payable;

(k) the occurrence of a Bankruptcy Event;

(l) any Event of Default (as defined in any of the Subordinate Collateral Loan Documents), which continues beyond the expiration of any applicable cure period;

(m) any breach of, or event of default under, any other document or agreement relating to the Loan or the provision of low income housing tax credits to the Mortgaged Property to which Borrower is a party, which continues beyond the expiration of any applicable cure period thereunder;

(n) any amendment, modification, waiver or termination of any of the provisions of Borrower’s Organizational Documents without the prior written consent of Lender, other than (i) modifications necessary to reflect the occurrence of a Permitted Transfer or (ii) modifications that do not: (A) impose any additional or greater obligations on Borrower or any of the partners, managers or members of Borrower, (B) reduce or relieve Borrower or any of the partners, managers or members of Borrower of any of their obligations, (C) modify the timing, amounts, number, conditions or other terms of the installments or other payment obligations of the partners or members of Borrower or (D) impair the collateral for the Loan; provided, however, that Borrower shall promptly provide to Lender a copy of any modifications to Borrower’s Organizational Documents that do not require Lender’s consent;
(o) (i) any breach of any Material Property Agreement by Borrower or its officers, directors, employees, agents or tenants that continues beyond any applicable notice and cure period; or (ii) any failure by Borrower or its officers, directors, employees or agents or any other party to deliver concurrently (in case of notices given) or promptly (in case of notices received) copies of any and all notices received or given thereby to Lender with respect to any Material Property Agreement;

(p) if Borrower is a trust, the termination or revocation of any such trust; unless the trust is terminated as a result of the death of an individual trustor, in which event Lender must be notified and such Borrower must be replaced with an individual or entity acceptable to Lender, in accordance with the provisions of Section 21(c) hereof, within 90 days of such death (provided however that no property inspection shall be required and a 1% transfer fee will not be charged); or

23. REMEDIES CUMULATIVE. Each right and remedy provided in this Instrument is distinct from all other rights or remedies under this Instrument or any other Subordinate Collateral Loan Document or afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.

24. FORBEARANCE.

(a) Lender may (but shall not be obligated to) agree with Borrower, from time to time, and without giving notice to, or obtaining the consent of, or having any effect upon the obligations of, any third party obligor, to take any of the following actions: extend the time for payment of all or any part of the Indebtedness; reduce the payments due under this Instrument, the Subordinate Collateral Note, or any other Subordinate Collateral Loan Document; release anyone liable for the payment of any amounts under this Instrument, the Subordinate Collateral Note, or any other Subordinate Collateral Loan Document; accept a renewal of the Subordinate Collateral Note; modify the terms and time of payment of the Indebtedness; join in any extension or subordination agreement; release any Mortgaged Property; take or release other or additional security; modify the rate of interest or period of amortization of the Subordinate Collateral Note or change the amount of the monthly installments payable under the Subordinate Collateral Note; and otherwise modify this Instrument, the Subordinate Collateral Note, or any other Subordinate Collateral Loan Document.

(b) Any forbearance by Lender in exercising any right or remedy under the Subordinate Collateral Note, this Instrument, or any other Subordinate Collateral Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any other right or remedy, or the subsequent exercise of any right or remedy. The acceptance by Lender of payment of all or any part of the Indebtedness after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender’s right to require prompt payment when due of all other payments on account of the Indebtedness or to exercise any remedies for any failure to make prompt payment. Enforcement by Lender of any security for the Indebtedness shall
not constitute an election by Lender of remedies so as to preclude the exercise of any other right available to Lender. Lender’s receipt of any awards or proceeds under Sections 19 and 20 shall not operate to cure or waive any Event of Default.

25. **WAIVER OF STATUTE OF LIMITATIONS.** BORROWER HEREBY WAIVES THE RIGHT TO ASSERT ANY STATUTE OF LIMITATIONS AS A BAR TO THE ENFORCEMENT OF THE LIEN OF THIS INSTRUMENT OR TO ANY ACTION BROUGHT TO ENFORCE ANY SUBORDINATE COLLATERAL LOAN DOCUMENT.

26. **WAIVER OF MARSHALLING.** Notwithstanding the existence of any other security interests in the Mortgaged Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided in this Instrument, the Subordinate Collateral Note, any other Subordinate Collateral Loan Document or applicable law. Lender shall have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies. Borrower and any party who now or in the future acquires a security interest in the Mortgaged Property and who has actual or constructive notice of this Instrument waives any and all right to require the marshalling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Instrument.

27. **FURTHER ASSURANCES.** Borrower shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements or amendments, transfers and assurances as Lender may require from time to time in order to better assure, grant, and convey to Lender the rights intended to be granted, now or in the future, to Lender under this Instrument and the Subordinate Collateral Loan Documents. In furtherance thereof, on the request of Lender, Borrower shall re-execute or ratify any of the Subordinate Collateral Loan Documents or execute any other documents or take such other actions as may be necessary to effect the assignment, pledge or other transfer of the Loan to any party that may purchase, insure, credit enhance or otherwise finance all or any part of the Loan, including, without limitation, any Credit Enhancer (including Freddie Mac or Fannie Mae), the U.S. Department of Housing and Urban Development, or any insurance company, conduit lender or any other lender or investor.

28. **ESTOPPEL CERTIFICATE.** Within 10 days after a request from Lender, Borrower shall deliver to Lender a written statement, signed and acknowledged by Borrower, certifying to Lender or any person designated by Lender, as of the date of such statement, (i) that the Subordinate Collateral Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that the Subordinate Collateral Loan Documents are in full force and effect as modified and setting forth such modifications); (ii) the unpaid principal balance of the Subordinate Collateral Note; (iii) the date to which interest under the Subordinate Collateral Note has been paid; (iv) that Borrower is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Instrument or any of the other Subordinate Collateral Loan Documents (or, if Borrower is in default, describing
such default in reasonable detail); (v) whether or not there are then existing any setoffs or defenses known to Borrower against the enforcement of any right or remedy of Lender under the Subordinate Collateral Loan Documents; and (vi) any additional facts requested by Lender.

29. **GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.**

(a) This Instrument, and any Subordinate Collateral Loan Document which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the Property Jurisdiction.

(b) Borrower agrees that any controversy arising under or in relation to the Subordinate Collateral Note, this Instrument, or any other Subordinate Collateral Loan Document may be litigated in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have jurisdiction over all controversies that shall arise under or in relation to the Subordinate Collateral Note, any security for the Indebtedness, or any other Subordinate Collateral Loan Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing in this Section 29 is intended to limit Lender’s right to bring any suit, action or proceeding relating to matters under this Instrument in any court of any other jurisdiction.

30. **NOTICE.**

(a) All notices, demands and other communications required or permitted to be given by Lender to Borrower pursuant to this Instrument shall be in writing, addressed as set forth below, and shall include a reference to “Citi Deal ID # ________.” Each notice shall be deemed given on the earliest to occur of (a) the date when the notice is received by the addressee; (b) the first Business Day after the notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (c) the third Business Day after the notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested.

To Borrower:

9349 WaterStone Blvd.
Cincinnati, Ohio 45249
Attn: Michael Riechman and Elizabeth A. Mangan, Esq.

With a copy to:

________________________________
________________________________
________________________________
If to Lender: New Braunfels Housing Finance Industrial Development Corporation

With a copy to: [TO BE ADDED]

And to: Citibank, N.A.
390 Greenwich Street, 2nd Floor
New York, New York 10013
Attention: Transaction Management Group
Deal ID #: ________
Facsimile: (212) 723-8209

And to: Citibank, N.A.
325 East Hillcrest Drive, Suite 160
Thousand Oaks, California 91360
Attention: Operations Manager/Asset Manager
Deal ID #: ________
Facsimile: (805) 557-0924

Prior to the Conversion Date, with a copy to:

Citibank, N.A.
390 Greenwich Street, 2nd Floor
New York, New York 10013
Attention: Account Specialist
Deal ID #: ________
Facsimile: (212) 723-8209
Following the Conversion Date, with a copy to:

Citibank, N.A.
c/o Berkadia Commercial Servicing Department
323 Norristown Road, Suite 300
Ambler, PA 19002
Attention: Client Relations
Manager
Deal ID #: ________
Facsimile: (215) 328-0305

And a copy of any notices of default sent to:

Citibank, N.A.
388 Greenwich Street
New York, New York 10013
Attention: General Counsel’s Office
Deal ID #: ________
Facsimile: (646) 291-5754

Any party may change such party’s address for the notice or demands required under this Instrument by providing written notice of such change of address to the other parties by written notice as provided herein.

(b) Any notice under the Subordinate Collateral Note and any other Subordinate Collateral Loan Document that does not specify how notices are to be given shall be given in accordance with this Section 30.

31. CHANGE IN SERVICER. If there is a change of the Servicer, Borrower will be given notice of the change.

32. SINGLE ASSET BORROWER. Until the Indebtedness is paid in full, Borrower (a) shall not acquire any real or personal property other than the Mortgaged Property and personal property related to the operation and maintenance of the Mortgaged Property; (b) shall not operate any business other than the management and operation of the Mortgaged Property; and (c) shall not maintain its assets in a way difficult to segregate and identify.

33. SUCCESSORS AND ASSIGNS BOUND. This Instrument shall bind, and the rights granted by this Instrument shall inure to, the successors and assigns of Lender and the permitted successors and assigns of Borrower.

34. JOINT AND SEVERAL LIABILITY. If more than one person or entity signs this Instrument as Borrower, the obligations of such persons and entities shall be joint and several.

35. RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY.
(a) The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Instrument shall create any other relationship between Lender and Borrower.

(b) No creditor of any party to this Instrument and no other person (other than a holder of the Subordinate Collateral Note and Servicer) shall be a third party beneficiary of this Instrument or any other Subordinate Collateral Loan Document. Without limiting the generality of the preceding sentence, (i) any arrangement (a “Servicing Arrangement”) between Lender and any Servicer for loss sharing or interim advancement of funds shall constitute a contractual obligation of such Servicer that is independent of the obligation of Borrower for the payment of the Indebtedness, (ii) Borrower shall not be a third party beneficiary of any Servicing Arrangement, and (iii) no payment by Servicer under any Servicing Arrangement will reduce the amount of the Indebtedness.

36. SEVERABILITY; AMENDMENTS. The invalidity or unenforceability of any provision of this Instrument shall not affect the validity or enforceability of any other provision, and all other provisions shall remain in full force and effect. This Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Instrument. This Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought; provided, however, that in the event of a Transfer (other than a Permitted Transfer), any or some or all of the Modifications to Instrument set forth in Exhibit B (if any) may be modified or rendered void by Lender at Lender’s option by notice to Borrower or such transferee.

37. CONSTRUCTION. The captions and headings of the sections of this Instrument are for convenience only and shall be disregarded in construing this Instrument. Any reference in this Instrument to an “Exhibit” or a “Section” shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Instrument or to a Section of this Instrument. All Exhibits attached to or referred to in this Instrument are incorporated by reference into this Instrument. Any reference in this Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this Instrument includes the plural and use of the plural includes the singular. As used in this Instrument, the term “including” means “including, but not limited to.”

38. SERVICER.

(a) Borrower further acknowledges that Lender may from time to time and in accordance with the terms of the Subordinate Collateral Loan Agreement, appoint a Servicer or a replacement servicer to collect payments, escrows and deposits, to give and receive notices under the Subordinate Collateral Note, this Instrument, or the other Subordinate Collateral Loan Documents, and to otherwise service the Loan. Borrower hereby acknowledges and agrees that, unless Borrower receives written notice from Lender to the contrary, any action or right which shall or may be taken or exercised by Lender may be taken or exercised by Servicer with the same force and effect, including, without limitation, the collection of payments, the giving of notice, the holding of
escrows, inspection of the Mortgaged Property, inspections of books and records, the request for documents or information, and the granting of consents and approvals. Borrower further agrees that, unless Lender instructs Borrower to the contrary in writing, (i) any notices, books or records, or other documents or information to be delivered under this Instrument, the Subordinate Collateral Note, or any other Subordinate Collateral Loan Document shall also be simultaneously delivered to the Servicer at the address provided for notices to Servicer pursuant to Section 30 hereof, (ii) any payments to be made under the Subordinate Collateral Note or for escrows under Section 7 of this Instrument or under any of the other Subordinate Collateral Loan Documents shall be made to Servicer. In the event Borrower receives conflicting notices regarding the identity of the Servicer or any other subject, any such notice from Lender shall govern.

(b) Borrower further acknowledges and agrees that, for the purpose of determining whether a security interest is created or perfected under the Uniform Commercial Code of the Property Jurisdiction, any escrows or other funds held by Servicer pursuant to the Subordinate Collateral Loan Documents shall be deemed to be held by Lender.

39. DISCLOSURE OF INFORMATION. Lender may furnish information regarding Borrower or the Mortgaged Property to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase or securitization of the Indebtedness, including but not limited to trustees, master servicers, special servicers, rating agencies, and organizations maintaining databases on the underwriting and performance of multifamily mortgage loans. Without limiting the generality of the foregoing, without notice to or the consent of Borrower, Lender may disclose to any title insurance company which insures any interest of Lender under this Instrument (whether as primary insurer, coinsurer or reinsurer) any information, data or material in its possession relating to Borrower, the Loan, the Improvements or the Mortgaged Property. Borrower irrevocably waives any and all rights it may have under applicable law to prohibit such disclosure, including but not limited to any right of privacy.

40. NO CHANGE IN FACTS OR CIRCUMSTANCES. Borrower warrants that all information in Borrower’s application for the Loan and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with Borrower’s application for the Loan are complete and accurate in all material respects. There has been no material adverse change in any fact or circumstance that would make any such information incomplete or inaccurate.

41. SUBROGATION. If, and to the extent that, the proceeds of the Loan are used to pay, satisfy or discharge any obligation of Borrower for the payment of money that is secured by a pre-existing mortgage, deed of trust or other lien encumbering the Mortgaged Property (a “Prior Lien”), such loan proceeds shall be deemed to have been advanced by Lender at Borrower’s request, and Lender shall automatically, and without further action on its part, be subrogated to the rights, including lien priority, of the owner or holder of the obligation secured by the Prior Lien, whether or not the Prior Lien is released.
42. **FINANCING STATEMENT.** As provided in Section 2, this Instrument constitutes a financing statement with respect to any part of the Mortgaged Property which is or may become a Fixture and for the purposes of such financing statement: (a) the Debtor shall be Borrower and the Secured Party shall be Lender; (b) the addresses of Borrower as Debtor and of Lender as Secured Party are as specified above in the first paragraph of this Instrument; (c) the name of the record owner is Borrower; (d) the types or items of collateral consist of any part of the Mortgaged Property which is or may become a Fixture; and (e) the organizational identification number of Borrower (if any) as Debtor is set forth on Exhibit C.

43. **STATE SPECIFIC PROVISIONS (CALIFORNIA).**

(a) **ACCELERATION; REMEDIES.** If an Event of Default has occurred and is continuing, Lender, at Lender’s option, may declare the Indebtedness to be immediately due and payable without further demand, and may invoke the power of sale and any other remedies permitted by California law or provided in this Instrument or in any other Subordinate Collateral Loan Document. The provisions of this Section 43 shall not limit the remedies available to Lender pursuant to the remaining provisions of this Instrument and pursuant to the other Subordinate Collateral Loan Documents. Borrower acknowledges that the power of sale granted in this Instrument may be exercised by Lender without prior judicial hearing. Lender shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including attorneys’ fees, costs of documentary evidence, abstracts and title reports.

If the power of sale is invoked, Lender shall execute a written notice of the occurrence of an Event of Default and of Lender’s election to cause the Mortgaged Property to be sold and shall cause the notice to be recorded in each county in which the Mortgaged Property or some part of the Mortgaged Property is located. Trustee shall give notice of default and notice of sale and shall sell the Mortgaged Property according to California law. Trustee may sell the Mortgaged Property at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone the sale of all or any part of the Mortgaged Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender’s designee may purchase the Mortgaged Property at any sale.

At any sale, Lender shall be entitled to credit bid, or to instruct Trustee on behalf of Lender to credit bid, up to and including the entire amount of the Indebtedness plus Trustee’s fees and expenses. Trustee shall deliver to the purchaser at the sale, within a reasonable time after the sale, a deed conveying the Mortgaged Property so sold without any express or implied covenant or warranty. The recitals in Trustee’s deed shall be prima facie evidence of the truth of the statements made in those recitals. Trustee shall apply the proceeds of the sale in the following order: (a) to all costs and expenses of the sale, including Trustee’s fees not to exceed 5% of the gross sales price, attorneys’ fees and costs of title evidence; (b) to the Indebtedness in such order as Lender, in Lender’s discretion, directs; and (c) the excess, if any, to the person or persons legally entitled to the excess.
(b) **RECONVEYANCE.** Upon payment of the Indebtedness, Lender shall request Trustee to reconvey the Mortgaged Property and shall surrender this Instrument and the Subordinate Collateral Note to Trustee. Trustee shall reconvey the Mortgaged Property without warranty to the person or persons legally entitled to the Mortgaged Property. Such person or persons shall pay Trustee’s reasonable costs incurred in so reconveying the Mortgaged Property.

(c) **SUBSTITUTE TRUSTEE.** Lender, at Lender’s option, may from time to time, by a written instrument, appoint a successor trustee, which instrument, when executed and acknowledged by Lender and recorded in the office of the Recorder of the county or counties where the Mortgaged Property is situated, shall be conclusive proof of proper substitution of the successor trustee. The successor trustee shall, without conveyance of the Mortgaged Property, succeed to all the title, power and duties conferred upon the Trustee in this Instrument and by California law. The instrument of substitution shall contain the name of the original Lender, Trustee and Borrower under this Instrument, the book and page where this Instrument is recorded, and the name and address of the successor trustee. If notice of default has been recorded, this power of substitution cannot be exercised until after the costs, fees and expenses of the then acting Trustee have been paid to such Trustee, who shall endorse receipt of those costs, fees and expenses upon the instrument of substitution. The procedure provided for substitution of trustee in this Instrument shall govern to the exclusion of all other provisions for substitution, statutory or otherwise.

(d) **STATEMENT OF OBLIGATION.** Lender may collect a fee not to exceed the maximum allowed by applicable law for furnishing the statement of obligation as provided in Section 2943 of the Civil Code of California.

(e) **SPOUSE’S SEPARATE PROPERTY.** Each Borrower who is a married person expressly agrees that recourse may be had against his or her community property and separate property.

(f) **FIXTURE FILING.** This Instrument is also a fixture filing under the Uniform Commercial Code of California.

(g) **WAIVER OF MARSHALLING; OTHER WAIVERS.** To the extent permitted by law, Borrower waives (i) the benefit of all present or future laws providing for any appraisement before sale of any portion of the Mortgaged Property, (ii) all rights of redemption, valuation, appraisement, stay of execution, notice of election to mature or declare due the whole of the Indebtedness and marshalling in the event of foreclosure of the lien created by this Instrument, (iii) all rights and remedies which Borrower may have or be able to assert by reason of the laws of the State of California pertaining to the rights and remedies of sureties, (iv) the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce the Subordinate Collateral Note or any other obligation secured by this Instrument, and (v) any rights, legal or equitable, to require marshalling of assets or to require upon
foreclosure sales in a particular order, including any rights under California Civil Code Sections 2899 and 3433. Lender shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided by this Instrument. Lender shall have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of the remedies provided by this Instrument. By signing this Instrument, Borrower does not waive its rights under Section 2924c of the California Civil Code.

(h) ADDITIONAL PROVISIONS CONCERNING ENVIRONMENTAL HAZARDS. In addition to the provisions of Section 18:

(i) Except for matters covered by an O&M Program or matters described in Section 18(b), Borrower shall not cause or permit any lien (whether or not such lien has priority over the lien created by this Instrument) upon the Mortgaged Property imposed pursuant to any Hazardous Materials Laws. Any such lien shall be considered a Prohibited Activity or Condition.

(ii) Borrower represents and warrants to Beneficiary Parties that:

(A) at the time of acquiring the Mortgaged Property, Borrower undertook all appropriate inquiry into the previous ownership and uses of the Mortgaged Property consistent with good commercial or customary practice and no evidence or indication came to light which would suggest that the Mortgaged Property has been or is now being used for any Prohibited Activities or Conditions; and

(B) the Mortgaged Property has not been designated as “hazardous waste property” or “border zone property” pursuant to Section 25220, et seq., of the California Health and Safety Code.

The representations and warranties in this subsection (ii) shall be continuing representations and warranties that shall be deemed to be made by Borrower throughout the term of the loan evidenced by the Subordinate Collateral Note, until the Indebtedness has been paid in full.

(iii) Without limiting any of the remedies provided in this Instrument, Borrower acknowledges and agrees that each of the provisions in Section 18 and in this Section 43(i) is an environmental provision (as defined in Section 736(f)(2) of the California Code of Civil Procedure) made by Borrower relating to the real property security (the “Environmental Provisions”), and that Borrower’s failure to comply with any of the Environmental Provisions will be a breach of contract that will entitle Lender to pursue the remedies provided by Section 736 of the California Code of Civil Procedure (“Section 736”) for the recovery of damages and for the enforcement of the
Environmental Provisions. Pursuant to Section 736, Lender’s action for recovery of damages or enforcement of the Environmental Provisions shall not constitute an action within the meaning of Section 726(a) of the California Code of Civil Procedure or constitute a money judgment for a deficiency or a deficiency judgment within the meaning of Sections 580a, 580b, 580d, or 726(b) of the California Code of Civil Procedure.

(iv) Any reference in this Instrument or in any other Subordinate Collateral Loan Document to Section 18 of this Instrument shall be construed as referring together to Section 18 and this Section 43(i).

(i) JUDICIAL REFERENCE AGREEMENT; REFEREE; COSTS.

(i) Controversies Subject to Judicial Reference; Conduct of Reference. In the event that any action, proceeding and/or hearing on any matter whatsoever, including all issues of fact or law arising out of, or in any way connected with, the Subordinate Collateral Note, this Instrument or any of the Subordinate Collateral Loan Documents, or the enforcement of any remedy under any law, statute, or regulation (hereinafter, a “Controversy”), is to be tried in a court of the State of California and the jury trial waiver provisions set forth below are not permitted or otherwise applicable under then-prevailing law:

(A) Each Controversy shall be determined by a consensual general judicial reference (the “Reference”) pursuant to the provisions of California Code of Civil Procedure §§ 638 et seq., as such statutes may be amended or modified from time to time.

(B) Upon a written request, or upon an appropriate motion by either Lender or Borrower, any pending action relating to any Controversy and every Controversy shall be heard by a single Referee who shall then try all issues (including any and all questions of law and questions of fact relating thereto), and issue findings of fact and conclusions of law and report a statement of decision. The Referee’s statement of decision will constitute the conclusive determination of the Controversy. Lender and Borrower agree that the Referee shall have the power to issue all legal and equitable relief appropriate under the circumstances before him/her.

(C) Lender and Borrower shall promptly and diligently cooperate with one another and the Referee, and shall perform such acts as may be necessary to obtain prompt and expeditious resolution of each Controversy in accordance with the terms of this Section 43(j).
Either Lender or Borrower may file the Referee’s findings, conclusions and statement with the clerk or judge of any appropriate court, file a motion to confirm the Referee’s report and have judgment entered thereon. If the report is deemed incomplete by such court, the Referee may be required to complete the report and resubmit it.

Lender and Borrower will each have such rights to assert such objections as are set forth in California Code of Civil Procedure §§ 638 et seq.

All proceedings shall be closed to the public and confidential, and all records relating to the Reference shall be permanently sealed when the order thereon becomes final.

Selection of Referee; Powers.

Lender and Borrower shall select a single neutral referee (the “Referee”), who shall be a retired judge or justice of the courts of the State of California, or a federal court judge, in each case, with at least ten years of judicial experience in civil matters. The Referee shall be appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts).

If within ten (10) days after the request or motion for the Reference, Lender and Borrower cannot agree upon a Referee, either Lender or Borrower may request or move that the Referee be appointed by the Presiding Judge of the [insert name of county where project is located] County Superior Court or of the U.S. District Court for the [insert district in which the project is located] District of California. The Referee shall determine all issues relating to the applicability, interpretation, legality and enforceability of this Section 43(j).

Provisional Remedies; Self-Help and Foreclosure.

No provision of this Section 43(j) shall limit the right of either Lender or Borrower, as the case may be, to (1) exercise such self-help remedies as might otherwise be available under applicable law, (2) initiate judicial or non-judicial foreclosure against any real or personal property collateral, (3) exercise any judicial or power of sale rights, or (4) obtain or oppose provisional or ancillary remedies, including without limitation, injunctive relief, writs of possession, the appointment of a receiver, and/or additional or supplementary remedies from a court of competent jurisdiction before, after or during the pendency of the Reference.
(B) The exercise of, or opposition to, any such remedy does not waive the right of Lender or Borrower to the Reference pursuant to this Section 43(j).

(iv) Costs and Fees.

(A) Promptly following the selection of the Referee, Lender and Borrower shall each advance equal portions of the estimated fees and costs of the Referee.

(B) In the statement of decision issued by the Referee, the Referee shall award costs, including reasonable attorneys’ fees, to the prevailing party, if any, and may order the Referee’s fees to be paid or shared by Borrower and/or Lender in such manner as the Referee deems just.

44. ATTACHED EXHIBITS. The following Exhibits are attached to this Instrument and are incorporated by reference herein as if more fully set forth in the text hereof:

- Exhibit A Description of the Land.
- Exhibit B Modifications to Instrument.
- Exhibit C Financing Statement Information.

The terms of this Instrument are modified and supplemented as set forth in said Exhibits. To the extent of any conflict or inconsistency between the terms of said Exhibits and the text of this Instrument, the terms of said Exhibits shall be controlling in all respects.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
45. **WAIVER OF TRIAL BY JURY.**

TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER AND LENDER EACH (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Instrument or caused this Instrument to be duly executed and delivered by its authorized representative as of the date first set forth above. The undersigned intends that this instrument shall be deemed to be signed and delivered as a sealed instrument.
BORROWER:

[TO BE ADDED]

STATE OF ___________ §

COUNTY OF__________ §

[TO BE ADDED]

________________________________________

NOTARY PUBLIC, State of _________________
EXHIBIT B
MODIFICATIONS TO INSTRUMENT

The following modifications are made to the text of the Instrument that precedes this Exhibit:

1. Section 3(a) is deleted in its entirety and replaced with the following:

   a. As part of the consideration for the Indebtedness, Borrower grants a security interest to Lender in the Rents, in accordance with the Texas Assignment of Rents Act (codified as Chapter 64 of the Texas Property Code). Notwithstanding any other provision hereof or in any of the Loan Documents to the contrary, all provisions related to the assignment of rents are subject to the terms, provisions, and conditions of the Texas Assignment of Rents Act ("TARA"), as codified in Tex. Prop. Code, Chapter 64, as the same may be amended, modified or supplemented from time to time. To the extent that specific terms and requirements of this Instrument or any other Loan Document, including the Loan Agreement, conflict with the specific terms and requirements of TARA, (i) to the extent such terms and requirements of TARA may be superseded by an agreement between the parties, the specific terms and requirements of this Instrument or the other Loan Documents hereby supercede such specific terms and requirements of TARA; and (ii) to the extent that such terms and requirements of TARA cannot be superseded by an agreement between the parties, the specific terms and requirements of TARA shall control, and the parties further agree that all other terms and requirements of this Instrument or the other Loan Documents shall not otherwise be impaired or superseded thereby and shall remain in full force and effect. This Instrument is intended to be a Security Instrument for purposes of TARA and the Indebtedness shall be a secured obligation for purposes of TARA. Promptly upon request by Lender, Borrower agrees to execute and deliver such further assignments as Lender may from time to time reasonably require. Borrower and Lender intend this assignment and grant of a security interest of Rents to be an assignment for security of the Indebtedness. Rents shall be deemed to be a part of the "Mortgaged Property". It is the intention of the Borrower that this Instrument create and perfect a lien on Rents in favor of Lender, which lien shall be effective as of the date of this Instrument.

2. Section 21(a) of the Instrument is amended by adding the following at the end of such Section:

   “(xii) notwithstanding anything to the contrary herein or in Borrower’s Organizational Documents, a Transfer or pledge of an interest in Borrower or any partner or member of Borrower to a 501(c)(3) nonprofit corporation, or a limited liability company whose sole member is a 501(c)(3) nonprofit corporation, without the prior written consent of Lender following full review and underwriting by Lender of the proposed transferee.”
Section 21(b) of the Instrument is amended by adding the following at the end of such Section:

“(viii) Provided that (i) Borrower owns the Mortgaged Property and remains the borrower under the Note, (ii) ________________ GP, LLC, a Texas limited liability company (“Managing General Partner”) is the sole general partner in Borrower and (iii) RBC Tax Credit Equity, LLC, an Illinois limited liability company, or its permitted transferee (the “Equity Investor”), has not less than a 99% limited partnership interest in Borrower:

(A) the removal by Equity Investor of Managing General Partner as managing general partner of Borrower and its replacement as managing general partner by RBC Capital Markets (“Equity Investor Sponsor”), or by a wholly-owned affiliate of Equity Investor Sponsor and/or the Equity Investor, which removal shall be in accordance with the terms of the limited partnership agreement of Borrower, provided that (i) the entity replacing the removed Managing General Partner must be a single purpose entity, and (ii) after such replacement, Equity Investor Sponsor, the Equity Investor or the Initial Owners of Equity Investor Sponsor must own not less than 51% of the general partnership or managing membership interests, as applicable, in the entity which replaced the removed Managing General Partner; or

(B) For the sole purpose of effecting the initial sale of limited partnership interests to a purchaser of low income housing tax credits allocated to the Mortgaged Property in either a one or two-step transaction: (i) a Transfer of limited partnership interests of Equity Investor in Borrower to (A) a wholly-owned affiliate of Equity Investor or a wholly-owned affiliate of Equity Investor Sponsor, or (B) an entity whose management is controlled by Equity Investor, by a wholly-owned affiliate of Equity Investor or by Equity Investor Sponsor, or (ii) so long as Equity Investor Sponsor remains the sole managing member, sole manager or sole general partner, as applicable, of Equity Investor, the transfer of non-managing membership interests or limited partnership interests, as applicable, in Equity Investor.

“(ix) A Transfer of non-managing membership interests in the Managing General Partner held by a member of the Managing General Partner, to (A) non-minor immediate family members; or (B) trusts established for the benefit of the transferor and/or immediate family members; provided, however, that (1) such Transfer of ownership interests will not cause a change in the management and control of Managing General Partner, and after which Transfer, the managing member of Managing General Partner

B- 2
shall maintain the same right and ability to manage and control Borrower and Managing General Partner as existed prior to the Transfer and (2) Lender shall be provided with advance written notice of all such Transfers permitted under this Section 21(b)(ix) no later than 5 days before the date of the Transfer.

Borrower must provide Lender with: (i) advance written notice of the identity of any entity replacing the Managing General Partner pursuant to this Section 21(b), and (ii) upon request by Lender from time to time, the names of all owners of interests in Borrower, whether such interests are owned directly or indirectly.”

4. Section 30(a) of the Instrument is amended to add the following at the end of such Paragraph:

“Lender agrees that, so long as Equity Investor has a continuing ownership interest in Borrower, effective notice to Borrower under the Loan Documents shall require delivery of a copy of such notice to Equity Investor. Such notice shall be given in the manner provided in this Section 30(a), at Equity Investor’s address set forth below:

RBC Tax Credit Equity, LLC  
600 Superior Avenue, Suite 2300  
Cleveland, Ohio 44114  
Attn: President and General Counsel

And to:

Applegate & Thorne-Thomsen  
626 West Jackson, Suite 400  
Chicago, Illinois 60661  
Attn: Bennett P. Applegate

Lender agrees that, notwithstanding its rights to invoke the remedies permitted by Section 43 of the Instrument, upon the breach of any covenant or agreement by Borrower in the Instrument (including, but not limited to, the covenants to pay when due sums secured by the Instrument) or any other Loan Document, Lender shall not, so long as Equity Investor has a continuing ownership interest in Borrower, conduct a foreclosure sale of the Mortgaged Property or receive a deed-in-lieu of foreclosure, until such time as Equity Investor has first been given 30 days written notice of such default and has failed, within such 30-day period to cure such default; provided, however, that Lender shall be entitled, during such 30-day period, to continue to accelerate the Note and to pursue its remedies.”

5. Section 43 is deleted in its entirety and replaced with the following:

43. ACCELERATION; REMEDIES.
Except as otherwise expressly provided in the Loan Documents, at any time during the existence and continuance of an Event of Default, Lender, at Lender's option, may declare the Indebtedness to be immediately due and payable without further demand, and may invoke the power of sale and any other remedies permitted by Texas law or provided in this Instrument or in any other Loan Document. Borrower acknowledges that the power of sale granted in this Instrument may be exercised by Lender without prior judicial hearing. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing such remedies, including reasonable attorneys' fees, costs of documentary evidence, abstracts and title reports.

If Lender invokes the power of sale, Lender may, by and through the Trustee, or otherwise, sell or offer for sale the Mortgaged Property in such portions, order and parcels as Lender may determine, with or without having first taken possession of the Mortgaged Property, to the highest bidder for cash at public auction. Such sale shall be made at the designated place in the county in which all or any part of the Land to be sold is situated (whether the parts or parcel, if any, situated in different counties are contiguous or not, and without the necessity of having any Personalty present at such sale) on the first Tuesday of any month between the hours of 10:00 a.m. and 4:00 p.m., after advertising the time, place and terms of sale and that portion of the Mortgaged Property to be sold by posting or causing to be posted written or printed notice of sale at least twenty-one (21) days before the date of the sale at the designated place in the county in which the sale is to be made and at the designated place in any other county in which a portion of the Land may be situated, and by filing such notice with the County Clerk(s) of the county(s) in which all or a portion of the Land may be situated, which notice may be posted and filed by the Trustee acting, or by any person acting for the Trustee, and Lender has, at least twenty-one (21) days before the date of the sale, served written or printed notice of the proposed sale by certified mail on each debtor obligated to pay the Indebtedness according to Lender's records by the deposit of such notice, enclosed in a postpaid wrapper, properly addressed to such debtor at debtor's most recent address as shown by Lender's records, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service.

Trustee shall deliver to the purchaser at the sale, within a reasonable time after the sale, a deed conveying the Mortgaged Property so sold in fee simple with covenants of general warranty. Borrower covenants and agrees to defend generally the purchaser's title to the Mortgaged Property against all claims and demands. The recitals in Trustee's deed shall be prima facie evidence of the truth of the statements contained in those recitals. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including reasonable Trustee's fees not to exceed 5% of the gross sale price (unless higher fees are customary in the jurisdiction where the Mortgaged Property is located) and attorneys' fees and costs of title evidence; (b) to the Indebtedness in such order as Lender, in Lender's discretion, directs; and (c) the excess, if any, to the person or persons legally entitled to the excess.

If all or any part of the Mortgaged Property is sold pursuant to this Section 43, Borrower will be divested of any and all interest and claim to the Mortgaged Property, including any interest or claim to all insurance policies, utility deposits, bonds, loan commitments and other intangible property included as a part of the Mortgaged Property. Additionally, after a sale of all or any part of the Land, Improvements, Fixtures and Personalty, Borrower will be considered a tenant at sufferance of the purchaser of the same, and the purchaser shall be entitled to immediate possession.
of such property. If Borrower shall fail to vacate the Mortgaged Property immediately, the purchaser may and shall have the right, without further notice to Borrower, to go into any justice court in any precinct or county in which the Mortgaged Property is located and file an action in forcible entry and detainer, which action shall lie against Borrower or its assigns or legal representatives, as a tenant at sufferance. This remedy is cumulative of any and all remedies the purchaser may have under this Instrument or otherwise.

In any action for a deficiency after a foreclosure under this Instrument occurring prior to the Conversion Date, if any person against whom recovery is sought requests the court in which the action is pending to determine the fair market value of the Mortgaged Property, as of the date of the foreclosure sale, the following shall be the basis of the court's determination of fair market value:

(a) the Mortgaged Property shall be valued "as is" and in its condition as of the date of foreclosure, and no assumption of increased value because of post-foreclosure repairs, refurbishment, restorations or improvements shall be made;

(b) any adverse effect on the marketability of title because of the foreclosure or because of any other title condition not existing as of the date of this Instrument shall be considered;

(c) the valuation of the Mortgaged Property shall be based upon an assumption that the foreclosure purchaser desires a prompt resale of the Mortgaged Property for cash within a six month-period after foreclosure;

(d) although the Mortgaged Property may be disposed of more quickly by the foreclosure purchaser, the gross valuation of the Mortgaged Property as of the date of foreclosure shall be discounted for a hypothetical reasonable holding period (not to exceed six months) at a monthly rate equal to the average monthly interest rate on the Note for the twelve months before the date of foreclosure;

(e) the gross valuation of the Mortgaged Property as of the date of foreclosure shall be further discounted and reduced by reasonable estimated costs of disposition, including brokerage commissions, title policy premiums, environmental assessment and clean-up costs, tax and assessment, prorations, costs to comply with legal requirements and attorneys' fees;

(f) expert opinion testimony shall be considered only from a licensed appraiser certified by the State of Texas and, to the extent permitted under Texas law, a member of the Appraisal Institute, having at least five years' experience in appraising property similar to the Mortgaged Property in the county where the Mortgaged Property is located, and who has conducted and prepared a complete written appraisal of the Mortgaged Property taking into considerations the factors set forth in this Instrument; no expert opinion testimony shall be considered without such written appraisal;
(g) evidence of comparable sales shall be considered only if also included in the
expert opinion testimony and written appraisal referred to in the preceding
paragraph; and

(h) an affidavit executed by Lender to the effect that the foreclosure bid accepted by
Trustee was equal to or greater than the value of the Mortgaged Property
determined by Lender based upon the factors and methods set forth in
subparagraphs (a) through (g) above before the foreclosure shall constitute prima
facie evidence that the foreclosure bid was equal to or greater than the fair market
value of the Mortgaged Property on the foreclosure date.

Lender may, at Lender's option, comply with these provisions in the manner permitted or
required by Title 5, Section 51.002 of the Texas Property Code (relating to the sale of real estate)
or by Chapter 9 of the Texas Business and Commerce Code (relating to the sale of collateral after
default by a debtor), as those titles and chapters now exist or may be amended or succeeded in
the future, or by any other present or future articles or enactments relating to same subject.
Unless expressly excluded, the Mortgaged Property shall include Rents collected before a
foreclosure sale, but attributable to the period following the foreclosure sale, and Borrower shall
pay such Rents to the purchaser at such sale. At any such sale:

(a) whether made under the power contained in this Instrument, Section 51.002, the
Texas Business and Commerce Code, any other legal requirement or by virtue of
any judicial proceedings or any other legal right, remedy or recourse, it shall not
be necessary for Trustee to have physically present, or to have constructive
possession of, the Mortgaged Property (Borrower shall deliver to Trustee any
portion of the Mortgaged Property not actually or constructively possessed by
Trustee immediately upon demand by Trustee) and the title to and right of
possession of any such property shall pass to the purchaser as completely as if the
property had been actually present and delivered to the purchaser at the sale;

(b) each instrument of conveyance executed by Trustee shall contain a general
warranty of title, binding upon Borrower;

(c) the recitals contained in any instrument of conveyance made by Trustee shall
conclusively establish the truth and accuracy of the matters recited in the
Instrument, including nonpayment of the Indebtedness and the advertisement and
conduct of the sale in the manner provided in this Instrument and otherwise by
law and the appointment of any successor Trustee;

(d) all prerequisites to the validity of the sale shall be conclusively presumed to have
been satisfied;

(e) the receipt of Trustee or of such other party or officer making the sale shall be
sufficient to discharge to the purchaser or purchasers for such purchaser(s)'
purchase money, and no such purchaser or purchasers, or such purchaser(s)'
assigns or personal representatives, shall thereafter be obligated to see to the
application of such purchase money or be in any way answerable for any loss, misapplication or nonapplication of such purchase money;

(f) to the fullest extent permitted by law, Borrower shall be completely and irrevocably divested of all of Borrower's right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold, and such sale shall be a perpetual bar to any claim to all or any part of the property sold, both at law and in equity, against Borrower and against any person claiming by, through or under Borrower; and

to the extent and under such circumstances as are permitted by law, Lender may be a purchaser at any such sale.

7. The following new Sections are added to the Instrument after the last numbered Section:

46. **RECOURSE LIABILITY.** So long as Equity Investor has a continuing ownership interest in Borrower, the provisions of Section 9 of the Subordinate Collateral Note, as they relate to Events of Default described in Section 9(d) of the Subordinate Collateral Note, shall be operative only after Equity Investor has been given thirty (30) days notice of the applicable Event(s) of Default described in Section 9(d) of the Subordinate Collateral Note, together with an opportunity within such thirty (30) day period to remedy the applicable Event(s) of Default. In all events, Lender shall be entitled during such thirty (30) day period to exercise all of its rights and remedies under this Instrument upon the occurrence of such Event of Default other than foreclosure of the Mortgaged Property.

47. **SENIOR LOAN.** All of the rights of Lender and obligations of Borrower are subject and subordinate to the obligations of Borrower to, and rights of, Senior Lender under the Senior Loan.

48. **EXTENDED LOW-INCOME HOUSING COMMITMENT.** Lender agrees that the lien of this Instrument shall be subordinate to any extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) (the “Extended Use Agreement”) recorded against the Mortgaged Property; provided that such Extended Use Agreement, by its terms, must terminate upon foreclosure under this Instrument or upon a transfer of the Mortgaged Property by instrument in lieu of foreclosure, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code.

49. **ANNUAL LIHTC REPORTING REQUIREMENTS.** Borrower must submit to Lender each year at the time of annual submission of Borrower’s financial analysis of operations, a copy of the following sections of Borrower’s federal tax return: Internal Revenue Forms 1065, 8586, 8609 and Form 8609, Schedule A, which must reflect the total low-income housing tax credits (“LIHTCs”) allocated to the Mortgaged Property and the LIHTCs claimed for the Mortgaged Property in the preceding year.
50. **CROSS-DEFAULT.** Borrower acknowledges and agrees that (a) any failure by Borrower or the Project to qualify for low income housing tax credits pursuant to the provisions of Section 42 of the Internal Revenue Code and (b) any default, event of default, or breach (however such terms may be defined) after the expiration of any applicable notice and/or cure periods under the Extended Use Agreement shall be an Event of Default under this Instrument and that any costs, damages or other amounts, including reasonable attorney’s fees incurred by Lender as a result of such an Event of Default by Borrower, including amounts paid to cure any default or event of default, under the Extended Use Agreement shall be an obligation of Borrower and become a part of the Indebtedness secured by this Instrument.

51. **ANNUAL COMPLIANCE.** Borrower shall submit to Lender on an annual basis, evidence that the Mortgaged Property is in ongoing compliance with all income, occupancy and rent restrictions under the Extended Use Agreement relating to the Mortgaged Property. Such submissions shall be made contemporaneously with Borrower’s reports required to be made to the regulator under the Extended Use Agreement.

52. **REGULATORY AGREEMENT.** Concurrently herewith Borrower and Lender are executing that certain Regulatory and Use Agreement (“Subordinate Regulatory Agreement”) which is being recorded against the Mortgaged Property. The Subordinate Regulatory Agreement is incorporated into and made a part of this Instrument and a default under such Subordinate Regulatory Agreement shall constitute an Event of Default under this Instrument and in such event Lender may exercise all of its rights and remedies under this Instrument.

53. **TRUSTEE.**

(a) Trustee may resign by giving of notice of such resignation in writing to Lender. If Trustee shall die, resign or become disqualified from acting under this Instrument or shall fail or refuse to act in accordance with this Instrument when requested by Lender or if for any reason and without cause Lender shall prefer to appoint a substitute trustee to act instead of the original Trustee named in this Instrument or any prior successor or substitute trustee, Lender shall have full power to appoint a substitute trustee and, if preferred, several substitute trustees in succession who shall succeed to all the estate, rights, powers and duties of the original Trustee named in this Instrument. Such appointment may be executed by an authorized officer, agent or attorney-in-fact of Lender (whether acting pursuant to a power of attorney or otherwise), and such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by Lender.

(b) Any successor Trustee appointed pursuant to this Section shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of the predecessor Trustee with like effect as if originally named as Trustee in this Instrument; but, nevertheless, upon the written request of Lender or such successor Trustee, the Trustee ceasing to act shall execute and deliver an instrument transferring to such successor Trustee, all the estates, properties, rights, powers and trusts of the Trustee so ceasing to act, and shall duly
assign, transfer and deliver any of the property and monies held by the Trustee ceasing to act to the successor Trustee.

Trustee may authorize one or more parties to act on Trustee's behalf to perform the ministerial functions required of Trustee under this Instrument, including the transmittal and posting of any notices.

54. [TAX EXEMPTION OR ABATEMENT.]

(a) Borrower represents, warrants and covenants to Lender that based on a duly issued predetermination notice, the Mortgaged Property will be eligible for a tax exemption or abatement (the “Tax Abatement”).

(b) Borrower must file or cause to be filed on a timely basis all documentation necessary to maintain the Tax Abatement.

(c) Borrower must comply or cause compliance fully with all requirements in order to obtain and maintain the Tax Abatement.

(d) In any application for a Transfer of the Mortgaged Property, any interest in the Mortgaged Property or any interest in Borrower, Borrower shall notify Lender if the completion of such Transfer without the consent of the agency administering the Tax Abatement would result in the termination of the Tax Abatement.

(e) Borrower shall avail itself of all rights and opportunities to renew or extend the Tax Abatement.

(f) Borrower shall not voluntarily take or cause to be taken any action that would threaten the Tax Abatement or cause the Tax Abatement to terminate without the prior written consent of Lender.

(g) Borrower represents and warrants that:

(1) Borrower has not received any notice indicating that the Tax Abatement will be terminated or will not be obtained.

(2) Borrower has adhered to any income, rent or other restrictions imposed by the Tax Abatement.

(h) Each of the following shall constitute an Event of Default:

(1) Any breach of any of the representations and warranties in Subsection (g).

(2) Any transfer of the Mortgaged Property, any interest in the Mortgaged Property, or any interest in Borrower that would cause the Tax Abatement to terminate.]
55. ADDITIONAL PROVISIONS REGARDING ASSIGNMENT OF RENTS.

In no event shall the assignment of Rents or Leases in Section 3 and Section 4 cause the Indebtedness to be reduced by an amount greater than the Rents actually received by Lender and applied by Lender to the Indebtedness, whether before, during or after (i) an Event of Default, or (ii) a suspension or revocation of the license granted to Borrower in Section 3(b) with regard to the Rents. Borrower and Lender specifically intend that the assignment of Rents and Leases in Section 3 and Section 4 is not intended to result in a pro tanto reduction of the Indebtedness. The assignment of Rents and Leases in Section 3 and Section 4 is not intended to constitute a payment of, or with respect to, the Indebtedness and, therefore, Borrower and Lender specifically intend that the Indebtedness shall not be reduced by the value of the Rents and Leases assigned. Such reduction shall occur only if, and to the extent that, Lender actually receives Rents pursuant to Section 3 and applies such Rents to the Indebtedness. Borrower agrees that the value of the license granted with regard to the Rents equals the value of the absolute assignment of Rents to Lender. The assignment of Rents contained in Section 3 and Section 4 shall automatically terminate upon the release of this Instrument.

56. LOAN CHARGES.

Borrower and Lender intend at all times to comply with the laws of the State of Texas governing the maximum rate or amount of interest payable on or in connection with the Indebtedness (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If the applicable law is ever judicially interpreted so as to render usurious any amount payable under the Subordinate Collateral Note, this Instrument or any other Subordinate Collateral Loan Document, or contracted for, charged, taken, reserved or received with respect to the Indebtedness, or if acceleration of the maturity of the Indebtedness, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by any applicable law, then Borrower and Lender expressly intend that all excess amounts collected by Lender shall be applied to reduce the unpaid principal balance of the Indebtedness (or, if the Indebtedness has been or would thereby be paid in full, shall be refunded to Borrower), and the provisions of the Subordinate Collateral Note, this Instrument and the other Subordinate Collateral Loan Documents immediately shall be deemed reformed and the amounts thereafter collectible under the Subordinate Collateral Loan Documents reduced, without the necessity of the execution of any new documents, so as to comply with any applicable law, but so as to permit the recovery of the fullest amount otherwise payable under the Loan Documents. The right to accelerate the maturity of the Indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Lender does not intend to collect any unearned interest in the event of acceleration. All sums paid or agreed to be paid to Lender for the use, forbearance or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of the Indebtedness until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the applicable usury ceiling. Notwithstanding any provision contained in the Note, this Instrument or any other Subordinate Collateral Loan Document that
permits the compounding of interest, including any provision by which any accrued interest is added to the principal amount of the Indebtedness, the total amount of interest that Borrower is obligated to pay and Lender is entitled to receive with respect to the Indebtedness shall not exceed the amount calculated on a simple (i.e., noncompounded) interest basis at the maximum rate on principal amounts actually advanced to or for the account of Borrower, including all current and prior advances and any advances made pursuant to the Instrument or any other Loan Document (such as for the payment of Impositions and similar expenses or costs).

57. ENTIRE AGREEMENT.

THIS INSTRUMENT, THE SUBORDINATE COLLATERAL NOTE AND THE OTHER SUBORDINATE COLLATERAL LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND CANNOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

58. INDEMNIFICATION OF TRUSTEE.

EXCEPT FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, TRUSTEE SHALL NOT BE LIABLE FOR ANY ACT OR OMISSION OR ERROR OF JUDGMENT. TRUSTEE MAY RELY ON ANY DOCUMENT BELIEVED BY HIM IN GOOD FAITH TO BE GENUINE. ALL MONEY RECEIVED BY TRUSTEE SHALL, UNTIL USED OR APPLIED AS HEREIN PROVIDED, BE HELD IN TRUST, BUT NEED NOT BE SEGREGATED (EXCEPT TO THE EXTENT REQUIRED BY LAW), AND TRUSTEE SHALL NOT BE LIABLE FOR INTEREST THEREON. BORROWER HEREBY INDEMNIFIES TRUSTEE AGAINST ALL OUT-OF-POCKET LIABILITY TO A THIRD PARTY AND REASONABLE EXPENSES THAT HE MAY INCUR IN THE PERFORMANCE OF HIS DUTIES HEREUNDER, EXCEPT TO THE EXTENT THE SAME RESULTS FROM TRUSTEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

59. MISCELLANEOUS

(a) Final Maturity of Indebtedness. The final maturity of the Indebtedness shall be the maturity date as stated in the Subordinate Collateral Note.

All capitalized terms used in this Exhibit not specifically defined herein shall have the meanings set forth in the text of the Instrument that precedes this Exhibit.

BORROWER’S INITIALS: ______
EXHIBIT C
FINANCING STATEMENT INFORMATION

1. Name and Address of Debtor:
   9349 WaterStone Blvd., Suite 200
   Cincinnati, Ohio 45249
   ____________________________________________

   Attention: Michael Riechman and Elizabeth A. Mangan, Esq.

2. Debtor’s State of Organization and Organizational I.D.#:
   _________________________________

3. State of Formation:
   Texas

   Type of Entity:
   Limited Partnership

   Organizational I.D.#:
   _________________________________

4. Name and Address of Secured Party:
   New Braunfels Housing Finance Industrial Development Corporation

   ____________________________________________

   Lender Address For Notices
   ____________________________________________

5. The Collateral is:
   Fixtures (as that term is described in the Uniform Commercial Code of Property State attached to the Land described in Exhibit A attached to this Instrument.)
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Agenda Item Memorandum

March 10, 2016

TO: NBIDC Board
FROM: Jeff Jewell, Development Coordinator
RE: Agenda Item #7 Discuss and consider approval of an amendment to the contract between the New Braunfels Industrial Development Corporation and TRG Customer Solutions, Inc. d/b/a Ibex Global Solutions.

Background:
In 2013, the NBIDC and City Council approved an incentive package for TRG Customers Solutions d/b/a Ibex Global Solutions. TRG operates several call centers across seven countries, through which it handles incoming customer inquiries and places outbound telemarketing calls on behalf of clients. The Company was required to create and maintain 600 new jobs in exchange for the purchase and installation of a power generation unit ($450,000) and up to $600,000 in job retention grants over a three year period. These grants were to be paid to the company in $200,000 increments starting in January 2015 and continue through January 2017. In exchange for the funds, the company was to provide a performance bond in the amount of the total incentive. TRG delivered a bond in the amount of $600,000 to the NBIDC ahead of its first payment in 2015.

In January 2016, staff audited the company’s employment records ahead of the required 2016 payment. At that time, TRG requested that the bonded amount be reduced. Staff is recommending a reduction in the bonded amount to $400,000. The payments are performance based and the Company receives the funds after it has maintained the positions for a full year prior to the payment. Reducing the amount of the performance bond does not substantially increase the risk to the NBIDC.

Fiscal Impact:
None