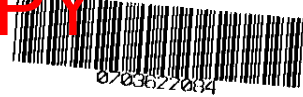


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Doc#: 0703622084 Fee: \$56.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 02/05/2007 01:36 PM Pg: 1 of 17

THIS INSTRUMENT
PREPARED BY AND AFTER
RECORDING RETURN TO:

Charles Brown
National City Community
Development Corporation
One North Franklin Suite 2550
Chicago, Illinois 60606

050101300098

Property of Cook County Clerk's Office

INTERCREDITOR AND SUBORDINATION AGREEMENT

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INTERCREDITOR AND SUBORDINATION AGREEMENT

THIS INTERCREDITOR AND SUBORDINATION AGREEMENT (this "Agreement") is made as of this 2nd day of December, 2005, among NATIONAL CITY COMMUNITY DEVELOPMENT CORPORATION, an Ohio corporation ("NCCDC"), TANDEM REALTY CORP, an Illinois corporation ("Subordinated Lender") and TIMBER COURT LLC, an Illinois limited liability company ("Company").

RECITALS:

A. Pursuant to the terms and conditions of a Second Amendment to Operating Agreement (the "Amendment") of even date herewith by and among DAVID ZAZOVE, RAYMOND CANNAN, HOWARD BLAIR, BARRON DEVELOPMENT, LLC, an Illinois limited liability company, and RIDGEWAY INVESTMENTS, LLC, an Illinois limited liability company, as "Controlling Members," and NCCDC, as "Special Member" NCCDC has agreed to make a capital contribution to the Company in the amount of TWO MILLION DOLLARS (\$2,000,000.00) ("Capital Contribution") and to be admitted to the Company as a "Special Member."

B. The Capital Contribution is to be made to finance in part the construction by the Company of a three building 108-unit condominium project, commonly known as Timber Court Condominiums on the land situated at Old Arlington Heights Road and East Country Lane in the Village of Arlington Heights, County of Cook, State of Illinois, as described on Exhibit A attached hereto (the real property, improvements thereon and other collateral being collectively referred to as "Property").

C. Pursuant to the Amendment, the Company is to make distributions to NCCDC on a preferred basis up to the amount of the Capital Contributions made by NCCDC, plus an annual Preferred Return (as defined in the Amendment).

D. The obligation of the Company to repay NCCDC's Capital Contribution and Preferred Return are secured by the Senior Mortgage (as hereinafter defined) encumbering the Property.

E. National City Bank of the Midwest ("Bank") has made a construction loan to the Company in the principal amount of THIRTEEN MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$13,800,000.00) (the "Bank Loan"). The Bank Loan is evidenced by a promissory note dated September 23, 2005 (as amended from time to time, the "Bank Note"), executed by Borrower and payable to the order of Bank, and is secured by that certain mortgage ("First Mortgage") dated as of September 23, 2005 from the Company to Bank and recorded in the Office of the Cook County Recorder of Deeds on October 11, 2005 as Document No. 0528419019. The First Mortgage is a first priority lien on the Property prior to the liens of the Subordinated Mortgage (as hereinafter defined) and the Senior Mortgage (as hereinafter defined).

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F. Subordinated Lender has made a loan to Company in the principal amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) (the "Subordinated Loan"). The Subordinated Loan is evidenced by a certain Installment Note dated February 12, 2004 (as amended from time to time, the "Subordinated Note"), executed by Company and payable to the order of Subordinated Lender, and is secured by a Mortgage dated February 12, 2004 and recorded February 27, 2004 with the Cook County Recorder of Deeds as Document Number 0405847023 (as amended from time to time, "Subordinated Mortgage"), from Company in favor of Subordinated Lender and encumbering the Property.

G. NCCDC and Subordinated Lender desire to evidence the subordination of the Subordinated Indebtedness (as hereinafter defined) to the Senior Obligations (as hereinafter defined), and the Subordinated Lender and the NCCDC desire to establish certain agreements between themselves.

NOW, THEREFORE, in consideration of the foregoing Recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the NCCDC, the Subordinated Lender and Company hereby covenant and agree as follows:

1. **Definitions.** For purposes of this Agreement, the following terms shall have the following meanings:

- (a) **Bankruptcy Event** means (i) any insolvency or bankruptcy case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding in connection therewith, relative to any entity comprising Company, or (ii) any liquidation, dissolution or other winding up of any entity comprising Company, whether voluntary or involuntary and whether or not involving insolvency or bankruptcy, or (iii) any assignment for the benefit of creditors or any other marshaling of assets or liabilities of any entity comprising Company.
- (b) **Event of Default** means the occurrence and continuance of an Event of Default as defined in the Senior Mortgage.
- (c) **Guarantors** means David Zazove and Raymond Cahnan.
- (d) **Lenders** means jointly the Subordinated Lender and the NCCDC.
- (e) **Lien** means any mortgage, pledge, hypothecation, assignment, deposit arrangement, security interest, encumbrance, lien (statutory or other and including, without limitation, any attachment, levy, or judgment lien), preference, priority, or other right, security agreement or other preferential arrangement whatsoever, including, without limitation, any right of setoff (statutory or otherwise), any conditional sale or other title retention agreement, the interest of a lessor under a lease, any financing lease having substantially the same economic effect as any of the foregoing and the filing of

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any financing statement (other than a financing statement filed by a “true” lessor pursuant to Section 9-408 of the Uniform Commercial Code or other comparable law of any jurisdiction) naming the owner of the asset to which such Lien relates as debtor.

(f) **Payment Date** means the date on which all of the Senior Obligations have been paid and satisfied in full.

(g) **Senior Obligations** means the amount of the Capital Contributions made by NCCDC, plus a 7% annual return thereon pursuant to the Amendment.

(h) **Senior Mortgage** means that certain Mortgage, of even date herewith, executed by the Company, as mortgagor, to NCCDC, as mortgagee, granting a mortgage lien on the Property to secure the Senior Obligations.

(i) **Subordinated Indebtedness** means all indebtedness of Company to the Subordinated Lender, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, under the Subordinated Loan Documents including, without limitation, all principal, interest (regular and default), late fees, enforcement expenses, attorneys’ fees and expenses, costs of collection, and all other costs and expenses whatsoever arising under the Subordinated Loan Documents or by applicable law and irrespective of whether such amounts may be collected from, accrued or claimed against Company, and all renewals, extensions and modifications thereof. Subordinated Indebtedness shall also include any and all interest accruing or costs or expenses incurred after the date of the commencement of any Bankruptcy Event, regardless of whether the claim therefore is allowed or allowable in the case or proceeding related thereto.

(j) **Subordinated Loan Agreement.** See Recitals.

(k) **Subordinated Loan Documents** means, collectively, the Subordinated Note and the Subordinated Mortgage and any other documents evidencing or securing the Subordinated Loan.

All terms not otherwise defined herein shall have the meanings ascribed thereto in the Amendment.

2. **General Subordination.** Any and all of: (a) the Subordinated Loan Documents (and every amendment, modification, renewal and extension thereof); (b) the indebtedness, liabilities and obligations evidenced or created by the Subordinated Loan Documents or associated therewith; and (c) the other indebtedness, liabilities and obligations of any kind whatsoever (whether now existing or hereafter arising) of Company or Guarantors to Subordinated Lender are hereby subordinated to: (x) any and all of the Senior Obligations and the Senior Mortgage and every amendment, modification, renewal and extension thereof; and (y) all indebtedness, liabilities, obligations, liens and security interests evidenced, secured by or created by the Senior

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Mortgage or associated therewith in whatever amounts and whenever made; and (z) all other indebtedness, liabilities and obligations of any kind whatsoever (whether now existing or hereafter arising) of Company and Guarantors to NCCDC relating to the Property.

3. **Subordination of Payments.** The payment of all amounts due and owing or coming due and owing under the Subordinated Loan Documents, specifically including, without limitation (i) payments from Company to Subordinated Lender of interest and principal under the Subordinated Note; (ii) payments of insurance proceeds and condemnation, eminent domain or similar awards to be paid to or for the benefit of Subordinated Lender under the terms of any of the Subordinated Loan Documents; and (iii) Subordinated Lender's interest in all rents, issues and profits from the Property shall be postponed and shall be subordinate to the payment in full of the Senior Obligations to be paid to or for the benefit of NCCDC under the terms of any of the Amendment and the Senior Mortgage, NCCDC's interest in all rents, issues and profits from the Property and payments of any other sums due and owing under the Amendment or the Senior Mortgage.

4. **Payment Blockage.**

(a) Until the Payment Date, no payment or distribution of any assets of the Company or Guarantors of any kind or character, including cash or cash equivalents, for any reason whatsoever shall be made by the Company or any Guarantor on account of the Subordinated Indebtedness. Notwithstanding anything to the contrary contained herein, provided that no Event of Default exists, Borrower shall be permitted to make payments of the principal and interest on the Subordinated Note, provided that the source of any such payment is not from the proceeds of the Bank Loan, NCCDC's Capital Contributions or the proceeds from the sales of any units in the Project.

(b) In the event that the Company or Guarantors shall make any payment to the Subordinated Lender prohibited by Section 4(a), then and in such event such payment shall be received and held in trust for the NCCDC, shall not be deemed to have been applied to the Subordinated Indebtedness and shall be paid over and delivered forthwith to the NCCDC. Furthermore, the proceeds from refinancing of the Subordinated Indebtedness in violation of this Agreement shall be received and held in trust for the NCCDC and shall be paid over and delivered forthwith as provided in this subparagraph (b).

5. **Bankruptcy.** So long as any portion of the Senior Obligations remains outstanding, the Subordinated Lender will not commence or join with any other creditor or creditors of the Company in commencing any Bankruptcy Event. In the event of a Bankruptcy Event, then and in any such event and from and after such event:

(a) NCCDC shall be entitled to receive payment in full of all amounts due on or in respect of all Senior Obligations in cash or in a manner satisfactory to the NCCDC,

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before the Subordinated Lender is entitled to receive any payment or distribution of any kind or character;

(b) any payment or distribution of assets of Company or any of the Guarantors of any kind or character, whether in cash, property or securities, by set-off or otherwise, to which the Subordinated Lender would be entitled but for the provisions of this Agreement shall be paid by the liquidating trustee or agent or other person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee or otherwise, directly to NCCDC according to the aggregate amounts remaining unpaid on account of the Senior Obligations, to the extent necessary to make payment in full of all Senior Obligations remaining unpaid;

(c) in the event that, notwithstanding the foregoing provisions of this Agreement, the Subordinated Lender shall have received any payment or distribution of assets of Company or any of the Guarantors of any kind or character, whether in cash, property or securities in respect of the Subordinated Indebtedness before all Senior Obligations is paid in full in cash or in a manner satisfactory to the NCCDC, then and in such event such payment or distribution shall be received and held in trust for the NCCDC and shall be paid over or delivered to the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee, agent or other Person making payment or distribution of assets of Company or any of the Guarantors, unless otherwise required by applicable law. Such amounts shall be delivered for application to the payment of all Senior Obligations remaining unpaid, to the extent necessary to pay all Senior Obligations in full in cash; and

(d) the Subordinated Lender will not, without the prior written consent of NCCDC: (i) propose or vote for a plan in any Bankruptcy Proceedings not supported by NCCDC; (ii) object to or oppose any motions or petitions for relief by NCCDC for a cash collateral order on terms proposed by NCCDC; (iii) seek or move to obtain the appointment of a trustee on behalf of Company or any of the Guarantors; or (iv) object to or oppose any motions or petitions for relief by NCCDC for the lifting of the automatic stay for the purpose of enforcement and the foreclosure of the applicable Senior Mortgage.

The limitations and assignments contained in this section shall terminate upon the Payment Date. The Subordinated Lender agrees, however, that it will not (i) file any appeal or take any other action claiming that the payment of the Senior Obligations was improperly paid; (ii) question the validity of a plan or reorganization which caused the Senior Obligations to be paid; or (iii) otherwise object to or appeal the payment of the Senior Loan or any collateral realization actions under the Senior Mortgage.

6. Subordinated Indebtedness.

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(a) Company and the Subordinated Lender warrant and represent to NCCDC that the Subordinated Indebtedness is evidenced solely by the Subordinated Note and that the Subordinated Indebtedness is secured solely by the liens and interests created by the Subordinated Mortgage.

(b) Subordinated Lender agrees not to transfer, assign, pledge, hypothecate or grant any interest in the Subordinated Indebtedness or the Subordinated Loan Documents without the prior written consent of NCCDC.

(c) Company and Subordinated Lender agree not to modify or amend the Subordinated Loan Documents or grant or enter into any other instrument in connection therewith, without the prior written consent of NCCDC.

7. Subordinated Loan Documents.

(a) Subordinated Lender shall have no right to take, and agrees to refrain from taking, any enforcement or remedial actions under the Subordinated Loan Documents prior to the Payment Date.

(b) Neither the Company nor Guarantors shall grant any collateral to the Subordinated Lender for the Subordinated Indebtedness prior to the Payment Date which may be in addition to that provided for in the initial Subordinated Loan Documents.

8. Actions by NCCDC. NCCDC may, at any time and from time to time, without (i) the consent of the Subordinated Lender; (ii) incurring responsibility or liability to the Subordinated Lender; or (iii) impairing the obligations hereunder of the Subordinated Lender to NCCDC, do any one or more of the following: (a) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, the Senior Obligations or any instrument evidencing the same or any agreement under which the Senior Obligations is outstanding; (b) sell, exchange, release or otherwise deal with the Collateral; (c) release any person liable in any manner for the collection of the Senior Obligations, including any of the Guarantors; (d) exercise or refrain from exercising any rights or remedies against Company, Guarantors and any other person under the Senior Mortgage or otherwise; (e) modify, amend, restate, or otherwise change the terms and conditions of the Amendment or any of the other Senior Mortgage; (f) cause or consent to the sale or assignment of any direct or indirect interest in the Senior Loan to any person or entity, which purchaser or assignee shall automatically have the benefits and be bound by this Agreement; (g) require Company or any of the Guarantors to grant to NCCDC such additional Collateral as NCCDC may deem appropriate; (h) make advances for the purpose of protecting the Collateral; and (i) enter into such agreements which NCCDC may deem appropriate or desirable, including the sale of the Senior Mortgage to the Subordinated Lender or its designee. All such actions set forth in (a) through (i) above shall be senior in all respects to the Subordinated Indebtedness.

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9. **Reinstatement of Agreement.** The provisions of this Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Senior Obligations or the Subordinated Indebtedness is invalidated, declared to be fraudulent or preferential, set aside, rescinded or must otherwise be returned by NCCDC under any bankruptcy law, state or federal law, common law or equitable cause, all as though such payment had not been made.

10. **Representations and Warranties.**

(a) The Subordinated Lender represents and warrants to NCCDC that it is the lawful owner of the Subordinated Indebtedness, and no part thereof has been assigned to third parties or subordinated or subjected to any other security interest in favor of anyone other than NCCDC.

(b) NCCDC represents and warrants to the Subordinated Lender that NCCDC is the lawful owner of the Senior Obligations, and no part thereof has been assigned to third parties or subordinated or subjected to any other security interest in favor of anyone other than National City Bank of the Midwest; provided, however, that the foregoing representation and warranty shall not limit or affect the full right of NCCDC to sell, assign and hypothecate its interest in the Senior Loan.

11. **Enforcement of the Agreement.** NCCDC is hereby authorized to demand specific performance of this Agreement. The Subordinated Lender hereby irrevocably waives any defense based on the adequacy of a remedy at law which might be asserted as a bar to the remedy of specific performance hereof in any action brought therefor by NCCDC. The Subordinated Lender further waives presentment, notice and protest in connection with all negotiable instruments evidencing their respective indebtedness and notice of the acceptance of this Agreement by the other party.

12. **No Duties Imposed on the NCCDC and Waivers.**

(a) The rights granted to NCCDC hereunder are solely for its protection and nothing herein contained shall impose on NCCDC any duties with respect to any property of Company or the Subordinated Lender received hereunder. All of the Senior Obligations shall be deemed to have been made or incurred in reliance upon this Agreement. The Subordinated Lender expressly waives all notice of the acceptance by NCCDC of the subordination and other provisions of this Agreement and all other notices not specifically required pursuant to the terms of this Agreement. The Subordinated Lender expressly consents to reliance by NCCDC upon the subordination and other agreements as provided herein.

(b) The Subordinated Lender agrees that:

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- (i) NCCDC has not made warranties or representations with respect to the due execution, legality, validity, completeness or enforceability of the Senior Mortgage or the collectability of the obligations thereunder; and
- (ii) NCCDC shall be entitled to manage and determine the making of its Capital Contributions to the Company without regard to the existence of any rights that the Subordinated Lender may now or hereafter have, other than those specifically set forth herein.
- (c) The Subordinated Lender has received and reviewed and consents to and approves all the provisions of the Amendment and the Senior Mortgage. The Subordinated Lender hereby acknowledges that the execution, delivery and performance of the Amendment and the Senior Mortgage will not constitute a default under the Subordinated Loan Documents.
- (d) The Subordinated Lender acknowledges and agrees that NCCDC is under no obligation or duty to, nor has the NCCDC represented that it will, see to the application to a particular purpose of the Capital Contributions by Company, and any application or use of such proceeds shall not affect, impair or defeat the subordination herein in whole or in part. The Subordinated Lender hereby waives any rights it may have to require NCCDC (i) to marshal any portion of the Collateral (or any other property, instruments, documents, agreements or guaranties securing the Senior Obligations) (ii) to protect, secure, perfect or insure any security interest or lien on any of the Collateral, or (iii) to seek or exhaust any remedies against Company or the Guarantors before enforcing its rights against any other portion of the Collateral (or the Collateral as a whole) or its rights herein against the Subordinated Lender.
- (e) NCCDC will have no liability to Subordinated Lender for, and Subordinated Lender waives, any claim which it may now or in the future have against NCCDC arising out of: (i) any and all actions which NCCDC, in good faith, takes or omits to take with respect to the Senior Mortgage or the collection of the Senior Liabilities or the valuation, use, protection or release of any collateral (including, without limitation, actions or inactions of NCCDC with respect to the creation, perfection or continuation of liens or security interests in its collateral, the occurrence of an Event of Default, the foreclosure on, sale, release of, depreciation of, or failure to realize on, any of its collateral, and the collection of any claim for all or any part of the NCCDC from any account debtor, guarantor or other party), (ii) any consents given or withheld under the terms of the Senior Mortgage, (iii) NCCDC's election, in any reorganization proceeding of the application of Section 1111 (b)(2) of the Bankruptcy Code, or (iv) any borrowing or grant of a security interest by Company in a reorganization proceeding under Section 364 of the Bankruptcy Code.

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(f) If NCCDC shall seek to exercise any remedy under the Senior Mortgage, including, without limitation, filing for a foreclosure action with respect to the Property, seeking the appointment of a receiver or seeking the appointment of a mortgagee in possession, Subordinated Lender agrees not to object to, defend against or raise any counterclaims with respect to any such action. Subordinated Lender agrees that: (i) the Senior Mortgage and the transactions contemplated thereby do not constitute a partnership or joint venture; and (ii) based on the language and intent of Section 1 hereof, there are or would be no circumstance in which the Subordinated Loan could have priority over or parity with the Senior Loan. Without limiting the foregoing, Subordinated Lender agrees not to file any defenses, counterclaims or objections with respect to an action to foreclose the Senior Mortgage and waives its right to bring all such defenses, counterclaims and objections of any kind or nature in such foreclosure action. Subordinated Lender agrees that NCCDC is relying on such agreements and waivers in entering into this Agreement and would not have entered into this Agreement without such agreements and waivers.

(g) The Subordinated Lender acknowledges and agrees that NCCDC shall have no duty, fiduciary or otherwise, to advise Subordinated Lender of information known to NCCDC regarding the Property, Company's or any Guarantor's business, financial or other condition or the risk of non-payment of the Senior Obligations or the Subordinated Indebtedness.

(h) The Subordinated Lender agrees that NCCDC owes no duty, fiduciary or otherwise, to Subordinated Lender in connection with the use by the Company of the Capital Contributions and Subordinated Lender waives any right it may otherwise have to assert any claim therefor.

13. **Insurance and Condemnation.** Subordinated Lender shall have no right to participate in the adjustment or settlement of insurance losses and/or condemnation claims relating to the Property.

14. **Binding on Successors and Assigns.** This Agreement shall be binding upon and enforceable against Company, the Subordinated Lender, the NCCDC and their respective executors, administrators, other legal representatives, successors and assigns. The NCCDC may freely assign the Senior Obligations or interests therein.

15. **Notices.** All notices, and copies thereof, provided for under this Agreement shall be made in writing and shall be personally delivered or sent by nationally recognized overnight delivery service to the respective party at the address set forth below. Company acknowledges and agrees that Company's right to receive any notice or a copy of a notice given by NCCDC to Subordinated Lender or by Subordinated Lender to NCCDC, and the inclusion of the Company in this Section is to facilitate giving notice to Company, if desired by the party giving notice in its sole discretion. The effective date of all notices hereunder shall be the date of personal

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delivery or the next business day after depositing in the overnight delivery service in the manner set forth above. The address for notice may be changed in the same manner as set forth above. The address for notice for the parties hereto are as follows:

NCCDC: National City Community Development Corporation
One North Franklin Street, Suite 3600
Chicago, Illinois 60606
Attn: Charles E. Brown, Senior Vice President

With a copy to: Charity & Associated, P.C.
20 N. Clark Street
Suite 1150
Chicago, Illinois 60602
Attn: Elvin E. Charity, Esq.

Subordinated Lender: Tandem Realty Corp.
3047 North Lincoln Avenue
Chicago, Illinois 60667
Attn: David Zazove

Company: Timber Court, LLC
c/o Tandem Realty Corp.
3047 North Lincoln Avenue
Chicago, Illinois 60667
Attn: David Zazove

16. **Counterparts.** This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

17. **Time is of the Essence.** Time is of the essence of this Agreement.

18. **Choice of Law.** This instrument shall be governed by and construed in accordance with the laws of the State of Illinois.

19. **Waiver of Jury Trial.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE COMPANY, THE SUBORDINATED LENDER AND NCCDC HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY PARTY OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS UNDER THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT, AND ANY CLAIM OR DEFENSE ASSERTING THAT

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THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR NCCDC AND THE SUBORDINATED LENDER TO ENTER THIS AGREEMENT.

20. **Venue.** The parties hereto agree that all actions or proceedings arising directly, indirectly or otherwise in connection with, out of, related to or from this Agreement shall be litigated only in courts having a situs within the County of Cook, State of Illinois, or the United States District Court for the Northern District of Illinois, Eastern Division. Each party to this Agreement hereby waives any right it may have to transfer or change the venue of any litigation brought against it by another party in accordance with this section.
21. **Integration.** This Agreement represents the entire agreement of the Company, the Subordinated Lender and NCCDC with respect to the subject matter hereof, and there are no promises, undertakings, representations or warranties by NCCDC, the Company or the Subordinated Lender relative to the subject matter hereof not expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings among such parties relating to the subject matter hereof. Accordingly, this Agreement may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten agreements among the parties.
22. **Interpretation.** The Company, the Subordinated Lender and NCCDC and their respective counsel have reviewed and revised, or requested revisions to, this Agreement and the usual rule of construction that any ambiguities are to be resolved against the drafting party shall be inapplicable in construing and interpreting this Agreement.
23. **Conflicting Provisions.** This instrument shall control over any conflicting provisions of the Senior Mortgage and the Subordinated Loan Documents.
24. **Further Assurances.** NCCDC, the Subordinated Lender and Company agree to enter into such additional documents and instruments as may reasonably be required by the other party in order to fully effectuate the terms and provisions of this Agreement.
25. **Benefit of Lenders.** The Company agrees that this Agreement is for the benefit of NCCDC and the Subordinated Lender and this Agreement shall not relieve the Company from any of its obligations and liabilities under the Senior Mortgage or the Subordinated loan Documents.

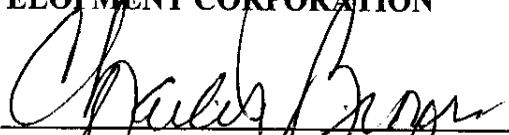
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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

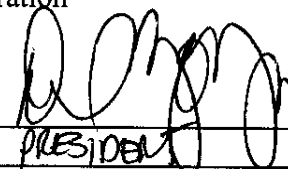
NCCDC:

**NATIONAL CITY COMMUNITY
DEVELOPMENT CORPORATION**

By: 
Its: Senior Vice President

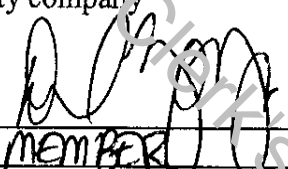
SUBORDINATED LENDER:

TANDEM REALTY CORP., an Illinois corporation

By: 
Its: PRESIDENT

COMPANY:

TIMBER COURT, LLC, an Illinois limited liability company

By: 
Its: MEMBER

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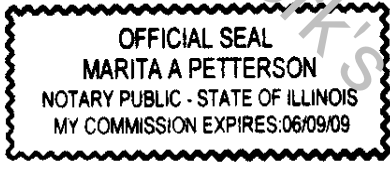
STATE OF ILLINOIS)
)
COUNTY OF Cook) SS.

I, Marita A. Peterson, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Charles E. Brown, the Senior Vice President of NATIONAL CITY COMMUNNITY DEVELOPMENT CORPORATION, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Charles Brown, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 16th day of December, 2005.

Marita A. Peterson
Notary Public

My Commission Expires:
June 16, 2009.



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STATE OF ILLINOIS)
)
COUNTY OF Cook) SS.

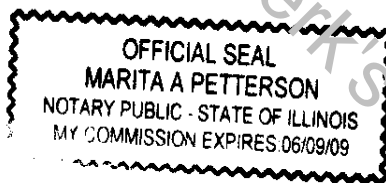
I, Marita A. Pettersen, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that David Zaew, as _____ the general partner of TANDEM REALTY CORP, an Illinois corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such general partner, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act in his capacity as general partner of said limited partnership.

GIVEN under my hand and Notarial Seal this 11th day of December, 2005.

Marita A. Pettersen
Notary Public

My Commission Expires:

June 6, 2009.



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STATE OF ILLINOIS)
)
COUNTY OF Cook) SS.

I, Marita A. Patterson, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that David Zarek, the _____ of TIMBER COURT, LLC, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 16th day of December, 2005.

Marita A. Patterson
Notary Public

My Commission Expires:
June 6, 2009.



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EXHIBIT A

LEGAL DESCRIPTION

LOTS 10, 11, 12, 13 AND 14 IN FREEDOM SMALL FARMS, A SUBDIVISION OF THE NORTH 485.6 FEET (EXCEPT THE EAST 307.95 FEET THEREOF) TOGETHER WITH THE EAST 433.5 FEET (EXCEPT THE NORTH 485.6 FEET THEREOF) OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 8, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.	03-08-100-013
	03-08-100-014
	03-08-100-015
	03-08-100-016
	03-08-100-017

Street Address: 3400 North Arlington Heights Road, Arlington Heights, Illinois