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RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:



Citibank, N.A.
390 Greenwich Street, 2nd Floor
New York, NY 10013
Attn: Transaction Management Group
Deal ID # 23201

Doc#: 1535616078 Fee: \$88.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 12/22/2015 03:55 PM Pg: 1 of 26

617 4013157 (17)

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SUBORDINATION AGREEMENT (CHA)

This SUBORDINATION AGREEMENT (this "Agreement") dated as of December 1, 2015, is executed by and among (i) CITIBANK, N.A., a national banking association ("Senior Lender"), (ii) the CHICAGO HOUSING AUTHORITY, an Illinois municipal corporation ("Subordinate Lender") and (iii) CLYDIV, LLC, an Illinois limited liability company ("Borrower").

RECITALS:

A. The Borrower has applied to Senior Lender for a loan in the maximum principal amount of \$18,000,000 (the "Senior Loan") for the acquisition, construction, rehabilitation, development, equipping and/or operation of the property described on Exhibit A attached hereto (the "Mortgaged Property").

B. The Senior Loan is evidenced by the Senior Note (as defined below), is secured by, among other things, that certain Multifamily Mortgage, Assignment of Rents, and Security Agreement and Fixture Filing (the "Senior Security Instrument"), dated as of the date hereof, encumbering the Mortgaged Property, and will be advanced to Borrower pursuant to that certain Construction Loan Agreement dated as of the date hereof between Borrower and Senior Lender (the "Senior Loan Agreement").

C. Subordinate Lender is making a loan (the "Subordinate Loan") to Borrower in the original principal amount of \$8,100,000, which Subordinate Loan is evidenced by a certain note dated as of December 1, 2015 made by Borrower to Subordinate Lender (the "Subordinate Note") secured by the Subordinate Mortgage (as hereinafter defined) encumbering the Mortgaged Property, and will be advanced to Borrower pursuant to that certain Chicago Housing Authority Loan Agreement dated as of December 1, 2015.

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D. As a condition to the making of the Senior Loan, Senior Lender requires that Subordinate Lender execute and deliver this Agreement prior to the making of the Subordinate Loan and the granting of the Subordinate Mortgage by Borrower.

E. In connection with the Subordinate Loan, Borrower, Subordinate Lender and United States of America, acting by and through the Secretary of Housing and Urban Development (“HUD”) have entered into that certain Declaration of Restrictive Covenants (the “**Declaration**”), and Borrower and Subordinate Lender have entered into that certain Regulatory and Operating Agreement (“**Regulatory Agreement**”), each dated as of December 1, 2015 and recorded substantially concurrently herewith, which Declaration and Regulatory Agreement contain covenants running with the land that obligate Borrower and any successor in title to Borrower to maintain and operate the PHA-Assisted Units in compliance with certain public housing requirements as set forth therein.

F. Subordinate Lender, Borrower, CLYDIV MANAGER, LLC, an Illinois limited liability company (the “**Managing Member**”) and CABRINI GREEN CDC-SPE, LLC, an Illinois limited liability company (the “**Special Member**”) shall enter into that certain Right of First Refusal Agreement dated as of December 1, 2015 and recorded substantially concurrently herewith (the “**ROFR**”), which ROFR shall be consented to by USA CLYBOURN DIVISION LLC, a Delaware limited liability company (the “**Investor**”), which ROFR permits Subordinate Lender to purchase from Borrower the PHA-Assisted Units on the terms and subject to the conditions set forth in the ROFR.

G. Senior Lender has agreed to permit the Subordinate Loan and to allow the subordinate mortgage lien relating thereto against the Mortgaged Property subject to all of the conditions contained in this Agreement.

AGREEMENTS:

NOW, THEREFORE, in order to induce Senior Lender to permit the Subordinate Loan to Borrower and to allow subordinate mortgage liens relating thereto against the Mortgaged Property, and in consideration thereof, Senior Lender, Subordinate Lender and Borrower agree as follows:

1. **Recitals.**

The recitals set forth above are incorporated herein by reference.

2. **Definitions.**

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

“**Affiliate**” means, when used with respect to a Person, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual Controlled by,

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under common Control with, or which Controls such Person, and in all cases any other Person that holds fifty percent (50%) or more of the ownership interests in such Person.

"Borrower" means the Person named as such in the first paragraph on page 1 of this Agreement, any successor or assign of Borrower, including without limitation, a receiver, trustee or debtor-in-possession and any other Person (other than Senior Lender) who acquires title to the Mortgaged Property after the date of this Agreement.

"Business Day" means any day other than (a) a Saturday, (b) a Sunday, (c) a day on which Senior Lender is not open for business, or (d) a day on which the Federal Reserve Bank of New York is not open for business.

"CHA" means the Chicago Housing Authority, an Illinois municipal corporation.

"Condemnation Action" means any action or proceeding, however characterized or named, relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect.

"Control" (including with correlative meanings, the terms "Controlling," "Controlled by" and "under common Control with"), as applied to any entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or operations of such entity, whether through the ownership of voting securities, ownership interests or by contract or otherwise.

"Default Notice" means: (a) a copy of any written notice from Senior Lender to Borrower and Subordinate Lender stating that a Senior Loan Default has occurred under the Senior Loan Documents; or (b) a copy of the written notice from Subordinate Lender to Borrower and Senior Lender stating that a Subordinate Loan Default has occurred under any Subordinate Loan Documents. Each Default Notice shall specify the default upon which such Default Notice is based.

"Person" means an individual, an estate, a trust, a corporation, a partnership, a limited liability company or any other organization or entity (whether governmental or private).

"PHA-Assisted Units" means those certain twenty-six (26) units that Borrower has agreed to dedicate for use as "public housing" as defined in Section 3(b) of the United States Housing Act of 1937 (42 USC § 1437, et.seq.).

"Senior Lender" means the Person named as such in the first paragraph on Page 1 of this Agreement, its successors and assigns and any other Person who becomes the legal holder of the Senior Loan after the date of this Agreement.

"Senior Loan Default" means the occurrence of an "Event of Default" as that term is defined in the Senior Loan Documents.

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“Senior Loan Documents” means the Senior Security Instrument, the Senior Note, the Senior Loan Agreement, and all other “Loan Documents” as that term is defined in the Senior Loan Agreement.

“Senior Note” means that certain Multifamily Construction Note dated as of December 1, 2015, executed by Borrower and made payable to the order of Senior Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Subordinate Lender” means CHA, any of CHA’s successors or assigns, including without limitation, a receiver, trustee or debtor-in-possession and any other Person who becomes the legal holder of the Subordinate Note after the date of this Agreement.

“Subordinate Loan Default” means a default by Borrower in performing or observing any of the terms, covenants or conditions in the Subordinate Loan Documents to be performed or observed by it, which continues beyond any applicable period provided in the Subordinate Loan Documents for curing the default.

“Subordinate Loan Documents” means the Subordinate Note, the Subordinate Mortgage, the Subordinate Loan Agreement, and all other documents evidencing, securing or otherwise executed and delivered in connection with the Subordinate Loan, excluding the Declaration, Regulatory Agreement and ROFR.

“Subordinate Mortgage” means that certain Subordinate Mortgage, Security Agreement and Financing Statement and that certain Subordinate Assignment of Rents and Leases against the Mortgaged Property, each made by Borrower to Subordinate Lender (as amended, restated, replaced, supplemented or otherwise modified from time to time, which Subordinate Mortgage shall be recorded in the Official Records of Cook County, Illinois concurrently herewith.

“Subordinate Note” has the meaning given such term in Recital C to this Agreement.

3. **Permission to Place Mortgage Lien Against Mortgaged Property.**

Senior Lender agrees, notwithstanding the prohibition against inferior liens on the Mortgaged Property contained in the Senior Loan Documents and subject to the provisions of this Agreement, to permit Subordinate Lender to record the Subordinate Mortgage and other recordable Subordinate Loan Documents against the Mortgaged Property to secure Borrower’s obligation to repay the Subordinate Note and all other obligations, indebtedness and liabilities of Borrower to Subordinate Lender under and in connection with the Subordinate Loan.

4. **Borrower’s and Subordinate Lender’s Representations and Warranties.**

Borrower and Subordinate Lender each makes the following representations and warranties to Senior Lender:

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(a) Subordinate Loan Documents.

The Subordinate Loan is evidenced by the Subordinate Note and is secured by the Subordinate Mortgage, the Subordinate Loan Agreement and the Subordinate Loan Documents.

(b) Subordinate Note.

The following provision is either contained in or shall be deemed to be included in the Subordinate Note:

The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by that certain note (and any schedules thereto) dated on or about the date hereof in the original principal amount of \$18,000,000.00 (the "**Senior Note**"), executed by CLYDIV, LLC, an Illinois limited liability company ("**Borrower**"), and payable to the order of Citibank, N.A., a national banking association ("**Senior Lender**"), to the extent and in the manner provided in that certain Subordination Agreement dated as of even date herewith executed by and among Borrower, Senior Lender and the Chicago Housing Authority, an Illinois municipal corporation, (the "**Subordination Agreement**"). The mortgage, deed of trust or deed to secure debt (and any exhibits thereto) securing this Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of that certain Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Filing (Illinois) (and any exhibits thereto) dated as of December 1, 2015, securing the Senior Note, and the terms, covenants and conditions of that certain Construction Loan Agreement by and between Borrower and Senior Lender, along with all other loan documents evidencing the terms of the Senior Note, as more fully set forth and as defined in the Subordination Agreement. The rights and remedies of the payee and each subsequent holder of this Note under the mortgage, deed of trust or deed to secure debt (and any exhibits thereto) securing this Note are subject to the restrictions and limitations set forth in the Subordination Agreement. Each subsequent holder of this Note shall be deemed, by virtue of such holder's acquisition of the Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the "Subordinate Lender" under the Subordination Agreement.

(c) Relationship of Borrower to Subordinate Lender and Senior Lender.

Subordinate Lender is not an Affiliate of Borrower and Subordinate Lender is not in possession of any facts which would lead it to believe that Senior Lender is an Affiliate of Borrower.

(d) Term.

The term of the Subordinate Note does not end before the stated term of the Senior Note.

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(e) Subordinate Loan Documents.

The executed Subordinate Loan Documents are substantially in the same forms as those submitted to, and approved by, Senior Lender prior to the date of this Agreement.

5. [Reserved].

6. Terms of Subordination.

(a) Agreement to Subordinate.

Senior Lender and Subordinate Lender agree that (1) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement, to the prior payment in full of the Indebtedness evidenced by the Senior Loan Documents, and (2) the liens, terms, covenants and conditions of the Subordinate Mortgage and the other Subordinate Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Security Instrument and the other Senior Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the Senior Security Instrument and the other Senior Loan Documents (including but not limited to, all sums advanced for the purposes of (A) protecting or further securing the lien of the Senior Security Instrument, curing defaults by Borrower under the Senior Loan Documents or for any other purpose expressly permitted by the Senior Loan Documents, or (B) constructing, renovating, repairing, furnishing, fixturing or equipping the Mortgaged Property).

(b) Subordination of Subrogation Rights.

Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Mortgaged Property which (but for this subsection) would be senior to the lien of the Senior Security Instrument, then, in that event, such lien shall be subject and subordinate to the lien of the Senior Security Instrument.

(c) Payments Before Senior Loan Default.

Until Subordinate Lender receives a Default Notice (or otherwise acquires actual knowledge) of a Senior Loan Default, Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Documents.

(d) Payments After Senior Loan Default.

Borrower agrees that, after it receives a Default Notice (or otherwise acquires knowledge) of a Senior Loan Default, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorneys' fees, or any other sums secured by the Subordinate Loan

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Documents) without Senior Lender's prior written consent. Subordinate Lender agrees that, after it receives a Default Notice from Senior Lender with written instructions directing Subordinate Lender not to accept payments from Borrower on account of the Subordinate Loan, it will not accept any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorneys' fees, or any other sums secured by the Subordinate Loan Documents) without Senior Lender's prior written consent. If Subordinate Lender receives written notice from Senior Lender that the Senior Loan Default which gave rise to Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by Senior Lender, the restrictions on payment to Subordinate Lender in this Section 6 shall terminate, and Senior Lender shall have no right to any subsequent payments made to Subordinate Lender by Borrower prior to Subordinate Lender's receipt of a new Default Notice from Senior Lender in accordance with the provisions of this Section 6(d).

(e) Remitting Subordinate Loan Payments to Senior Lender.

If, after Subordinate Lender (with the exception of City, which shall not be required to comply with the terms of this Section 6(d)), receives a Default Notice from Senior Lender in accordance with Section 6(d), Subordinate Lender receives any payments under the Subordinate Loan Documents, Subordinate Lender agrees that such payment or other distribution will be received and held in trust for Senior Lender and unless Senior Lender otherwise notifies Subordinate Lender in writing, will be promptly remitted, in kind to Senior Lender, properly endorsed to Senior Lender, to be applied to the principal of, interest on and other amounts due under the Senior Loan Documents in accordance with the provisions of the Senior Loan Documents. By executing this Agreement, Borrower specifically authorizes Subordinate Lender to endorse and remit any such payments to Senior Lender, and specifically waives any and all rights to have such payments returned to Borrower or credited against the Subordinate Loan. Borrower and Senior Lender acknowledge and agree that payments received by Subordinate Lender, and remitted to Senior Lender under this Section 6, shall not be applied or otherwise credited against the Subordinate Loan, nor shall the tender of such payment to Senior Lender waive any Subordinate Loan Default which may arise from the inability of Subordinate Lender to retain such payment or apply such payment to the Subordinate Loan.

(f) Notice of Payment from Other Persons.

Subordinate Lender agrees to notify (telephonically or via email, followed by written notice) Senior Lender of Subordinate Lender's receipt from any Person other than Borrower of a payment with respect to Borrower's obligations under the Subordinate Loan Documents, promptly after Subordinate Lender obtains knowledge of such payment.

(g) Agreement Not to Commence Bankruptcy Proceeding.

Subordinate Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing any bankruptcy, reorganization, arrangement,

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insolvency or liquidation proceedings against or with respect to Borrower, without Senior Lender's prior written consent.

7. **Default Under Subordinate Loan Documents.**

(a) **Notice of Subordinate Loan Default and Cure Rights.**

Subordinate Lender shall deliver to Senior Lender a Default Notice within five (5) Business Days in each case where Subordinate Lender has given a Default Notice to Borrower. Failure of Subordinate Lender to send a Default Notice to Senior Lender shall not prevent the exercise of Subordinate Lender's rights and remedies under the Subordinate Loan Documents, subject to the provisions of this Agreement. Senior Lender shall have the right, but not the obligation, to cure any Subordinate Loan Default within sixty (60) days following the date of such notice; provided, however that Subordinate Lender shall be entitled, during such sixty (60) day period, to continue to pursue its rights and remedies under the Subordinate Loan Documents, subject to the provisions of this Agreement. All amounts paid by Senior Lender in accordance with the Senior Loan Documents to cure a Subordinate Loan Default shall be deemed to have been advanced by Senior Lender pursuant to, and shall be secured by, the Senior Loan Agreement and the Senior Security Instrument.

(b) **Subordinate Lender's Exercise of Remedies After Notice to Senior Lender.**

If a Subordinate Loan Default occurs and is continuing, Subordinate Lender agrees that, without Senior Lender's prior written consent, it will not commence foreclosure proceedings with respect to the Mortgaged Property under the Subordinate Loan Documents or exercise any other rights or remedies it may have under the Subordinate Loan Documents, including, but not limited to accelerating the Subordinate Loan (and enforcing any "due on sale" provision included in the Subordinate Loan Documents), collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder, unless and until it has given Senior Lender at least ninety (90) days prior written notice; during such ninety (90) day period, however, Subordinate Lender shall be entitled to exercise and enforce all other rights and remedies available to Subordinate Lender under the Subordinate Loan Documents and/or under applicable laws, including without limitation, rights to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in any land use restriction agreement.

(c) **Cross Default.**

Borrower and Subordinate Lender agree that a Subordinate Loan Default shall constitute a Senior Loan Default under the Senior Loan Documents and Senior Lender shall have the right to exercise all rights or remedies under the Senior Loan Documents in the same manner as in the case of any other Senior Loan Default. If Subordinate Lender notifies Senior Lender in writing that any Subordinate Loan Default of which Senior Lender has received a Default Notice has been cured or waived, as determined by Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Mortgaged Property pursuant to its rights

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under the Senior Loan Documents, any Senior Loan Default under the Senior Loan Documents arising solely from such Subordinate Loan Default shall be deemed cured, and the Senior Loan shall be reinstated, provided, however, that Senior Lender shall not be required to return or otherwise credit for the benefit of Borrower any default rate interest or other default related charges or payments received by Senior Lender during such Senior Loan Default.

8. Default Under Senior Loan Documents.

(a) Notice of Senior Loan Default and Cure Rights.

Senior Lender shall deliver to Subordinate Lender a Default Notice within five (5) Business Days in each case where Senior Lender has given a Default Notice to Borrower. Failure of Senior Lender to send a Default Notice to Subordinate Lender shall not prevent the exercise of Senior Lender's rights and remedies under the Senior Loan Documents, subject to the provisions of this Section 8(a), nor shall such failure constitute a default by Senior Lender under this Agreement. Subordinate Lender shall have the right, but not the obligation, to cure any such Senior Loan Default within sixty (60) days following the date of such Default Notice or the date on which Subordinate Lender otherwise acquires actual knowledge of Senior Loan Default; provided, however, that Senior Lender shall be entitled during such sixty (60) day period to continue to pursue its remedies under the Senior Loan Documents. Subordinate Lender may have up to ninety (90) days from the date of the Default Notice to cure a non-monetary default if during such ninety (90) day period Subordinate Lender keeps current all payments required by the Senior Loan Documents. In the event that such a non-monetary default creates an unacceptable level of risk relative to the Mortgaged Property, or Senior Lender's secured position relative to the Mortgaged Property, as determined by Senior Lender in its sole discretion, then Senior Lender may exercise during such ninety (90) day period all available rights and remedies to protect and preserve the Mortgaged Property and the rents, revenues and other proceeds from the Mortgaged Property. All amounts paid by Subordinate Lender to Senior Lender to cure a Senior Loan Default shall be deemed to have been advanced by Subordinate Lender pursuant to, and shall be secured by the Subordinate Loan Agreement and the Subordinate Mortgage.

(b) Cross Default.

Subordinate Lender agrees that, notwithstanding any contrary provision contained in the Subordinate Loan Documents, a Senior Loan Default shall not constitute a default under the Subordinate Loan Documents (if no other default has occurred under the Subordinate Loan Documents) until either (1) Senior Lender has accelerated the maturity of the Senior Loan, or (2) Senior Lender has taken affirmative action to exercise its rights under the Senior Loan Documents to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on (or to exercise a power of sale contained in) the Senior Loan Documents. At any time after a Senior Loan Default is determined to constitute a default under the Subordinate Loan Documents, Subordinate Lender shall be permitted to pursue its remedies for default under the Subordinate Loan Documents, subject to the restrictions and limitations of this Agreement. If at any time Borrower cures any Senior Loan Default to the satisfaction of Senior Lender, as evidenced by written notice from Senior Lender to Subordinate Lender, any default under the

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Subordinate Loan Documents arising from such Senior Loan Default shall be deemed cured and the Subordinate Loan shall be retroactively reinstated as if such Senior Loan Default had never occurred.

9. Conflict.

Borrower, Senior Lender and Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the Senior Loan Documents, the Subordinate Loan Documents and the terms of this Agreement, the terms of this Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of Senior Lender and Subordinate Lender in the Mortgaged Property; (b) the timing of the exercise of remedies by Senior Lender and Subordinate Lender under the Senior Loan Documents and the Subordinate Loan Documents, respectively; and (c) solely as between Senior Lender and Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which Senior Lender and Subordinate Lender have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower's time to cure any Senior Loan Default or Subordinate Loan Default, as the case may be; give Borrower the right to notice of any Senior Loan Default or Subordinate Loan Default, as the case may be other than that, if any, provided, respectively under the Senior Loan Documents or the Subordinate Loan Documents; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

10. Rights and Obligations of Subordinate Lender Under the Subordinate Loan Documents and of Senior Lender under the Senior Loan Documents.

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Documents covering the same subject matter:

(a) Protection of Security Interest.

Subordinate Lender shall not, without the prior written consent of Senior Lender in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that Subordinate Lender shall have the right to advance funds to cure Senior Loan Defaults pursuant to Section 8(a) and advance funds pursuant to the Subordinate Loan Documents for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Mortgaged Property and curing other defaults by Borrower under the Subordinate Loan Documents.

(b) Condemnation or Casualty.

Following the occurrence of (1) a Condemnation Action, or (2) a fire or other casualty resulting in damage to all or a portion of the Mortgaged Property (collectively, a "Casualty"), at any time or times when the Senior Security Instrument remains a lien on the Mortgaged Property the following provisions shall apply:

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(A) Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Condemnation Action or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation Action or a Casualty shall be and remain subject and subordinate in all respects to Senior Lender's rights under the Senior Loan Documents with respect thereto, and Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Condemnation Action or a Casualty made by Senior Lender; provided, however, this subsection or anything contained in this Agreement shall not limit the rights of Subordinate Lender to file any pleadings, documents, claims or notices with the appropriate court with jurisdiction over the proposed Condemnation Action or Casualty; and

(B) all proceeds received or to be received on account of a Condemnation Action or a Casualty, or both, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the Senior Loan) in the manner determined by Senior Lender in its sole discretion; provided, however, that if Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the Senior Loan, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Senior Loan shall be paid to, and may be applied by, Subordinate Lender in accordance with the applicable provisions of the Subordinate Loan Documents, provided however, Senior Lender agrees to consult with Subordinate Lender in determining the application of Casualty proceeds, provided further however that in the event of any disagreement between Senior Lender and Subordinate Lender over the application of Casualty proceeds, the decision of Senior Lender, in its sole discretion, shall prevail.

(C) Nothing contained herein shall supersede the requirements set forth in Section 11 of that certain Mixed Finance Amendment to Consolidated Annual Contributions Contract, dated as of December 16, 2015, executed by and between Subordinate Lender and HUD, applicable to the Mortgaged Property.

(c) Insurance.

Subordinate Lender agrees that all original policies of insurance required pursuant to the Senior Security Instrument shall be held by Senior Lender. The preceding sentence shall not preclude Subordinate Lender from requiring that it be named as a loss payee, as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to the Mortgaged Property, provided such action does not affect the priority of payment of the proceeds of property damage insurance under the Senior Security Instrument, or that it be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property.

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(d) No Modification of Subordinate Loan Documents.

Borrower and Subordinate Lender each agree that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of Senior Lender in each instance, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon Senior Lender under the Senior Loan Documents. Any unauthorized amendment of the Subordinate Loan Documents or assignment of Subordinate Lender's interest in the Subordinate Loan without Senior Lender's consent shall be void ab initio and of no effect whatsoever.

11. Modification or Refinancing of Senior Loan.

Subordinate Lender consents to any agreement or arrangement in which Senior Lender waives, postpones, extends, reduces or modifies any provisions of the Senior Loan Documents, including any provision requiring the payment of money. Subordinate Lender further agrees that its agreement to subordinate hereunder shall extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Loan (including reasonable and necessary costs associated with the closing and/or the refinancing) (provided, however, that with respect to Subordinate Lender, any permitted refinancing shall be governed by the terms of and approval rights described in the Regulatory Agreement (as defined in the Senior Security Instrument)); and that all the terms and covenants of this Agreement shall inure to the benefit of any holder of any such refinanced debt; and that all references to the Senior Loan, the Senior Note, the Senior Loan Agreement, the Senior Security Instrument, the Senior Loan Documents and Senior Lender shall mean, respectively, the refinance loan, the refinance note loan agreement, the mortgage securing the refinance note, all documents evidencing securing or otherwise pertaining to the refinance note and the holder of the refinance note.

12. Default by Subordinate Lender or Senior Lender.

If Subordinate Lender or Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting lender shall have the right to all available legal and equitable relief.

13. Reinstatement.

To the extent that Borrower makes a payment to Senior Lender or Senior Lender receives any payment or proceeds of the collateral securing the Senior Loan for Borrower's benefit, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/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 doctrine, then to the extent of such payment or proceeds received and not retained by Senior Lender, this Agreement shall be reinstated and continue in full force and effect until full and final payment shall have been made to Senior Lender. Subordinate Lender agrees to hold in trust for Senior Lender and promptly

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remit to Senior Lender any payments received by Subordinate Lender after such invalidated, rescinded or returned payment was originally made.

14. Notices.

(a) Process of Serving Notice.

All notices under this Agreement shall be:

- (1) in writing and shall be:
 - (A) delivered, in person;
 - (B) mailed, postage prepaid, either by registered or certified delivery, return receipt requested;
 - (C) sent by overnight courier; or
 - (D) sent by electronic mail with originals to follow by overnight courier;
- (2) addressed to the intended recipient at the address(es) set forth in Section (d) below, as applicable; and
- (3) deemed given on the earlier to occur of:
 - (A) the date when the notice is received by the addressee; or
 - (B) if the recipient refuses or rejects delivery, the date on which the notice is so refused or rejected, as conclusively established by the records of the United States Postal Service or any express courier service.

(b) Change of Address.

Any party to Agreement may change the address to which notices intended for it are to be directed by means of notice given to the other parties identified in this Agreement.

(c) Receipt of Notices.

Senior Lender, Subordinate Lender or Borrower shall not refuse or reject delivery of any notice given in accordance with this Agreement. Each party is required to acknowledge, in writing, the receipt of any notice upon request by the other party.

(d) Addresses.

All notices delivered pursuant to the terms of this Agreement shall be delivered to each intended recipient at the following address(es), as applicable:

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If to Subordinate Lender: Chicago Housing Authority
60 East Van Buren, 12th Floor
Chicago, Illinois 60605
Attention: Chief Executive Officer

With a copy to: Chicago Housing Authority
Office of the General Counsel
60 East Van Buren, 12th Floor
Chicago, Illinois 60605
Attention: Chief Legal Officer

If to Borrower: ClyDiv, LLC
c/o Brinshore Development, L.L.C.
666 Dundee Road, Suite 1102
Northbrook, Illinois 60062
Attention: Richard J. Sciortino
Facsimile: (847) 562-9401

With a copy to: ClyDiv, LLC
c/o The Michaels Organizations
3 East Stow Road, Suite 100
Marlton, New Jersey 08053
Attention: Ava J. Goldman

And: ClyDiv, LLC
c/o The Michaels Organizations
542 South Dearborn Street, Suite 560
Chicago, Illinois 60605
Attention: Mikki Anderson
Facsimile: (312) 455-0542

With a copy to: Applegate & Thorne-Thomsen, P.C.
626 West Jackson, Suite 400
Chicago, Illinois 60661
Attention: Bennett P. Applegate
Facsimile: (312) 491-4411

With a copy to: USA Clybourn Division LLC
c/o The Richman Group
340 Pemberwick Road
Greenwich, CT 06831
Attention: Joanne D. Flanagan, Esq.
Facsimile: (203) 869-9543

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If to Senior Lender:

Citibank, N.A.
 390 Greenwich Street, 2nd Floor
 New York, New York 10013
 Attention: Transaction Management Group
 Deal ID #23201
 Facsimile: (212) 723-8209

With a copy to:

Citibank, N.A.
 325 East Hillcrest Drive, Suite 160
 Thousand Oaks, California 91360
 Attention: Operations Manager/Asset Manager
 Deal ID #23201
 Facsimile: (805) 557-0924

Prior to Conversion
with a copy to:

Citibank, N.A.
 787 W. Fifth Street, 29th Floor
 Los Angeles, California 90071
 Attention: Account Specialist
 Deal ID #23201
 Facsimile: (213) 624-3380

After Conversion,
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 #23201
 Facsimile: (215) 328-0305

With a copy of any
notice of default to:

Citibank, N.A.
 388 Greenwich Street, 17th Floor
 New York, New York 10013
 Attention: General Counsel's Office
 Deal ID #23201
 Facsimile: (646) 291-5754

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15. General.

(a) Assignment/Successors.

This Agreement shall be binding upon Borrower, Senior Lender and Subordinate Lender and shall inure to the benefit of the respective legal successors, transferees and assigns of Borrower, Senior Lender and Subordinate Lender. Borrower shall not assign any of its rights and obligations under this Agreement without the prior written consent of Senior Lender.

(b) No Partnership or Joint Venture.

Senior Lender's permission for the placement of the Subordinate Loan does not constitute Senior Lender as a joint venturer or partner of Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of the other party hereto.

(c) Senior Lender's and Subordinate Lender's Consent.

Wherever Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever Subordinate Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

(d) Further Assurances.

Subordinate Lender, Senior Lender and Borrower each agrees, at Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Mortgage is subordinate to the lien, covenants and conditions of the Senior Loan Documents, or to further evidence the intent of this Agreement.

(e) Amendment.

This Agreement shall not be amended except by written instrument signed by all parties hereto.

(f) Governing Law.

This Agreement shall be governed by the laws of the jurisdiction in which the Mortgaged Property is located without giving effect to any choice of law provisions thereof that would result in the application of the laws of another jurisdiction. Senior Lender, Subordinate Lender and Borrower agree that any controversy arising under or in relation to this Security Instrument shall be litigated exclusively in the jurisdiction in which the Mortgaged Property is located. The state and federal courts and authorities with jurisdiction in such locale shall have exclusive jurisdiction over all controversies that arise under or in relation to this Agreement. The parties

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hereto irrevocably consent to service, jurisdiction, and venue of such courts for any such litigation and waive any other venue to which any might be entitled by virtue of domicile, habitual residence or otherwise.

(g) Severable Provisions.

If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

(h) Term.

The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (1) the payment in full of the principal of, interest on and other amounts payable under the Senior Loan Documents; (2) the payment in full of the principal of, interest on and other amounts payable under the Subordinate Loan Documents, other than by reason of payments which Subordinate Lender is obligated to remit to Senior Lender pursuant to Section 6 hereof; (3) the acquisition by Senior Lender of title to the Mortgaged Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Senior Loan Documents; or (4) the acquisition by Subordinate Lender of title to the Mortgaged Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in the Subordinate Loan Documents, but only if such acquisition of title does not violate any of the terms of this Agreement.

(i) Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one (1) and the same instrument.

(j) Sale of Senior Loan.

Nothing in this Agreement shall limit Senior Lender's (including any assignee or transferee of Senior Lender) right to sell or transfer the Senior Loan, or any interest in the Senior Loan. The Senior Loan or a partial interest in the Senior Loan (together with this Agreement and the other Loan Documents) may be sold one or more times without prior notice to Borrower.

[Remainder of Page Intentionally Blank]

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IN WITNESS WHEREOF, Borrower, Senior Lender and Subordinate Lender have signed and delivered this Agreement under seal (where applicable) or have caused this Agreement to be signed and delivered under seal (where applicable) by a duly authorized representative. Where applicable law so provides, Borrower, Senior Lender and Subordinate Lender intend that this Agreement shall be deemed to be signed and delivered as a sealed instrument.

SENIOR LENDER:

CITIBANK, N.A.,
a national banking association

By:



Mark G. Risch
Vice President

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SUBORDINATE LENDER:

CHICAGO HOUSING AUTHORITY,
an Illinois municipal corporation

By: 

Name: Eugene E. Jones, Jr.

Its: Acting Chief Executive Officer

Property of Cook County Clerk's Office

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BORROWER:

CLYDIV, LLC,
an Illinois limited liability company

By: ClyDiv Manager, LLC,
an Illinois limited liability company,
its managing member

By: Brinshore PL, LLC,
an Illinois limited liability company,
a member

By: Brinshore Development, L.L.C.,
an Illinois limited liability company,
its managing member

By: RIS Real Estate Services, Inc.,
an Illinois corporation, a member

By: _____
Name: Richard J. Sciortino
Title: President

By: Michaels Chicago Holding Company, LLC,
an Illinois limited liability company,
a member

By: _____
Name: John J. O'Donnell
Title: President

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BORROWER:

CLYDIV, LLC,
an Illinois limited liability company

By: ClyDiv Manager, LLC,
an Illinois limited liability company,
its managing member

By: Brinshore PL, LLC,
an Illinois limited liability company,
a member

By: Brinshore Development, L.L.C.,
an Illinois limited liability company,
its managing member

By: R/S Real Estate Services, Inc.,
an Illinois corporation, a member

By: _____
Name: Richard J. Sciortino
Title: President

By: Michaels Chicago Holding Company, LLC
an Illinois limited liability company,
a member

By: 
Name: John J. O'Donnell
Title: President

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STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 17 day of December, 2015 by Mark G. Risch, as Vice President of Citibank, N.A.

Witness my hand and official seal.

My commission expires: 01/08/2018

[Handwritten Signature]

Notary Public

ANDREW RUHLAND
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID #20104000988
MY COMMISSION EXPIRES 01/08/2018

Property of Cook County Clerk's Office

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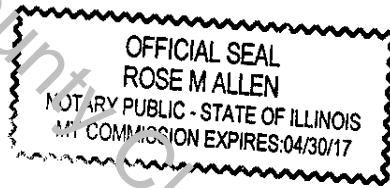
STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Eugene E. Jones, Jr., personally known to me to be the Acting Chief Executive Officer of **CHICAGO HOUSING AUTHORITY**, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed and delivered the said instrument in her respective capacity as President, as her free and voluntary act and deed, as the free and voluntary act and deed of said corporation, and as the free and voluntary act and deed of Chicago Housing Authority, for the uses and purposes therein set forth.

Given under my hand and official seal this 21 day of December, 2015.

Rose M. Allen
 Notary Public

My commission expires: _____



UNOFFICIAL COPY

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that Richard J. Sciortino, personally known to me to be the president of RJS Real Estate Services, Inc., a member of Brinshore Development, L.L.C., an Illinois limited liability company, the sole member of Brinshore Holding, LLC, an Illinois limited liability company, a member of BMD-I, LLC, an Illinois limited liability company (the "Developer"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such officer, he signed and delivered the said instrument, pursuant to authority given by the members of the Developer as the free and voluntary act of such person, and as the free and voluntary act and deed of the Developer, for the uses and purposes therein set forth.

Given under my hand and official seal this 17 day of December, 2015.



Joan T. Holowaty
Notary Public

STATE OF NEW JERSEY)
) ss
COUNTY OF BURLINGTON)

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that John J. O'Donnell, personally known to me to be the president of The Michaels Development Holding Company, L.L.C., a New Jersey limited liability company, the sole managing member of The Michaels Development Company I, L.P., a New Jersey limited partnership, a member of BMD-I, LLC, an Illinois limited liability company (the "Developer"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such officer, he signed and delivered the said instrument, pursuant to authority given by the members of the Developer as the free and voluntary act of such person, and as the free and voluntary act and deed of the Developer, for the uses and purposes therein set forth.

Given under my hand and official seal this ___ day of _____, 2015.

(SEAL)

Notary Public

UNOFFICIAL COPY

STATE OF ILLINOIS)
) ss
 COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that Richard J. Sciortino, personally known to me to be the president of RJS Real Estate Services, Inc., a member of Brinshore Development, L.L.C., an Illinois limited liability company, the sole member of Brinshore Holding, LLC, an Illinois limited liability company, a member of BMD-I, LLC, an Illinois limited liability company (the "Developer"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such officer, he signed and delivered the said instrument, pursuant to authority given by the members of the Developer as the free and voluntary act of such person, and as the free and voluntary act and deed of the Developer, for the uses and purposes therein set forth.

Given under my hand and official seal this _____ day of _____, 2015.

 Notary Public

(SEAL)

STATE OF NEW JERSEY)
) ss
 COUNTY OF BURLINGTON)

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that John J. O'Donnell, personally known to me to be the president of The Michaels Development Holding Company, L.L.C., a New Jersey limited liability company, the sole managing member of The Michaels Development Company I, L.P., a New Jersey limited partnership, a member of BMD-I, LLC, an Illinois limited liability company (the "Developer"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such officer, he signed and delivered the said instrument, pursuant to authority given by the members of the Developer as the free and voluntary act of such person, and as the free and voluntary act and deed of the Developer, for the uses and purposes therein set forth.

Given under my hand and official seal this 15th day of December, 2015.

Catherine A. Freas
 Notary Public

(SEAL)

CATHERINE A. FREAS
 NOTARY PUBLIC OF NEW JERSEY
 COMMISSION EXPIRES 6/30/2020

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EXHIBIT A

THAT PART OF BUTTERFIELD'S ADDITION TO CHICAGO IN THE WEST HALF OF THE NORTHWEST QUARTER AND THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF LOT 1 IN THE SUBDIVISION OF LOT 34 IN BUTTERFIELDS' ADDITION TO CHICAGO AFORESAID; THENCE NORTHWEST ALONG THE SOUTHWESTERLY LINE OF NORTH CLYBOURN AVENUE 330.24 FEET TO THE MOST NORTHERLY CORNER OF LOT 1 IN THE SUBDIVISION OF LOT 40 AND THE NORTHWEST HALF OF LOT 38 IN BUTTERFIELD'S ADDITION TO CHICAGO AFORESAID; THENCE SOUTHWEST ALONG THE NORTHWESTERLY LINE OF LOT 1 IN THE AFORESAID SUBDIVISION OF LOT 40 AND THE NORTHWEST HALF OF LOT 38, A DISTANCE OF 111.16 FEET TO THE POINT OF INTERSECTION WITH THE NORTHERLY EXTENSION OF THE EAST LINE OF THE WEST 20.00 FEET OF LOT 39 IN BUTTERFIELD'S ADDITION TO CHICAGO AFORESAID; THENCE SOUTH ALONG SAID EAST LINE OF THE WEST 20.00 FEET OF LOT 39 AND ITS NORTHERLY EXTENSION, 155.63 FEET, MORE OR LESS TO THE POINT OF INTERSECTION WITH THE SOUTH LINE OF SAID LOT 39, SAID LINE ALSO BEING THE NORTH LINE OF WEST DIVISION STREET; THENCE EAST ALONG SAID NORTH LINE OF WEST DIVISION STREET 310.00 FEET TO THE HEREINABOVE DESIGNATED POINT OF BEGINNING,

EXCEPTING THEREFROM THAT PART DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF LOT 1 IN THE SUBDIVISION OF LOT 34 IN BUTTERFIELDS' ADDITION TO CHICAGO AFORESAID; THENCE NORTHWEST ALONG THE SOUTHWESTERLY LINE OF NORTH CLYBOURN AVENUE, 45.28 FEET; THENCE SOUTHWESTERLY 34.00 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 1, SAID LINE ALSO BEING THE NORTH LINE OF WEST DIVISION STREET, SAID POINT BEING 43.30 FEET WEST FROM THE SOUTHEAST CORNER OF SAID LOT 1; THENCE EAST ALONG THE SOUTH LINE OF SAID LOT 1, 43.30 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

ADDRESS: 454 West Division Street, Chicago, IL

PIN: 17-04-142-001; 17-04-142-002; 17-04-142-003; 17-01-142-004; 17-04-142-006; 17-04-142-007; 17-04-142-008; 17-04-142-009; 17-04-142-010; 17-04-142-011; 17-04-142-012; 17-04-142-013; 17-04-142-014; and 17-04-142-015