

UNOFFICIAL COPY

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



15NW711151NS
CUB 16 8 20
Report Mortgage Fraud
800-532-8785



Doc#: 1621434206 Fee: \$104.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 08/01/2016 01:43 PM Pg: 1 of 31

The property identified as: **PIN:** 20-27-407-019-0000

Address:

Street: 7500-7504 S. Cottage Grove

Street line 2:

City: Chicago

State: IL

ZIP Code: 60628

Lender: Wilmington Trust, National Association

Borrower: Lindran Properties LLC

Loan / Mortgage Amount: \$13,560,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

Y
S
P 31
S 3
SOM
INT

Certificate number: 2D6C43BD-885F-4E67-A604-BACA844D4860

Execution date: 7/28/2016

UNOFFICIAL COPY

PREPARED BY AND AFTER
RECORDING RETURN TO:

Greenberg Traurig, LLP
77 West Wacker Drive
Suite 3100
Chicago, Illinois 60601
Attn: Thomas C. Smith

(For Recorder's Use Only)

ATTENTION: COUNTY CLERK - THIS MORTGAGE COVERS GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN AND IS TO BE FILED FOR RECORD IN THE RECORDS WHERE MORTGAGES ON REAL ESTATE ARE RECORDED. ADDITIONALLY, THIS MORTGAGE SHOULD BE APPROPRIATELY INDEXED, NOT ONLY AS A MORTGAGE, BUT ALSO AS A FIXTURE FILING COVERING GOODS THAT ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN. THE MAILING ADDRESSES OF THE BORROWER (DEBTOR) AND TRUSTEE (SECURED PARTY) ARE SET FORTH IN THIS MORTGAGE.

UNOFFICIAL COPY

MORTGAGE, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT

This MORTGAGE, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (this "**Mortgage**"), dated as of July 1, 2016, from LINDRAN PROPERTIES LLC, an Illinois limited liability company (the "**Borrower**"), as mortgagor, to WILMINGTON TRUST, NATIONAL ASSOCIATION, a national banking association having a corporate trust office in Dallas, Texas, as trustee under the Indenture identified below (the "**Trustee**"), or its assignee, as mortgagee.

WITNESSETH:

WHEREAS, pursuant to the Illinois Finance Authority Act, 20 ILCS 3501/801-1 *et seq.*, as amended (the "**Act**"), the Illinois Finance Authority, a body politic and corporate duly organized and existing under the laws of the State of Illinois (the "**Issuer**") has agreed to issue its \$11,655,000 aggregate principal amount of Multifamily Housing Revenue Bonds (Better Housing Foundation Shoreline Portfolio Project), Series 2016A (the "**Series 2016A Bonds**"), \$540,000 aggregate principal amount of Multifamily Housing Revenue Bonds (Better Housing Foundation Shoreline Portfolio Project), Taxable Series 2016B (the "**Series 2016B Bonds**") and \$1,365,000 aggregate principal of Multifamily Housing Revenue Bonds (Better Housing Foundation Shoreline Portfolio Project) Subordinate Series 2016C (the "**Series 2016C Bonds**") and, together with the Series 2016A Bonds and the Series 2016B Bonds, the "**Series 2016 Bonds**") for the purpose of (i) financing the costs of acquiring, rehabilitating, furnishing and equipping fourteen (13) multifamily residential rental facilities located within the City of Chicago, Cook County, Illinois (collectively, the "**Projects**"), (ii) funding a debt service reserve fund applicable to the Series 2016 Bonds, and (iii) paying costs of issuance of the Series 2016 Bonds; and

WHEREAS, the Issuer and the Trustee will enter into a Trust Indenture, dated as of July 1, 2016 (as amended, restated, supplemented or otherwise modified from time to time, the "**Indenture**"), under the terms of which the Issuer will issue the Series 2016 Bonds and lend the proceeds of the sale of the Series 2016 Bonds to the Borrower to enable the Borrower to finance the Projects and the Borrower, in consideration of the issuance of the Series 2016 Bonds by the Issuer and the loan of the proceeds of the sale of the Series 2016 Bonds to the Borrower by the Issuer will, pursuant to a Loan Agreement, dated as of July 1, 2016 (as amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), between the Issuer and the Borrower, agrees to repay said loan to the Issuer in such amounts and at such times as will be sufficient to enable the Issuer to pay the principal of, redemption premium (if any) and the interest on the Series 2016 Bonds as the same become due and to make certain other payments with respect to the Series 2016 Bonds; and

WHEREAS, the Series 2016 Bonds will be issued under and secured by, *inter alia*, the Indenture, this Mortgage, the other mortgages pledged as security for the Series 2016 Bonds (the "**Additional Mortgages**"), and all of the Issuer's right, title and interest (except only certain rights reserved by the Issuer under the Indenture and the Loan Agreement) in the Bond

UNOFFICIAL COPY

Documents (as hereinafter defined) that are being assigned by the Issuer to the Trustee pursuant to the Indenture; and

WHEREAS, in order to evidence the indebtedness to the Issuer under the Indenture, the Borrower has executed and delivered to the Issuer a Promissory Note in the aggregate principal amount of \$13,560,000, of even date herewith (the "Note"); and

WHEREAS, the Borrower has agreed to enter into this Mortgage to grant to the Trustee a mortgage lien on and perfected Security Interest (as hereinafter defined) in, the Mortgaged Property (as hereinafter defined), as security for the payment and performance of all obligations of the Borrower to the Trustee hereunder, and under the Note, the Indenture, and all of the other Bond Documents, and as security for all obligations of any nature, whether now existing or hereafter incurred, of the Borrower to the Trustee, the intended assignee of the Issuer (collectively, the "Obligations").

NOW, THEREFORE, for and in consideration of the mutual agreements contained herein, and the benefits to flow to each of the parties hereto and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, to secure the Borrower's performance of the Obligations and all of the Borrower's other obligations under the Indenture, the other Bond Documents and hereunder, the Borrower does hereby grant, bargain, sell, convey, assign, transfer, warrant, mortgage and pledge to the Trustee, and does hereby grant a Security Interest to the Trustee in the following properties (collectively, the "**Mortgaged Property**"):

(a) All of the tracts or parcels of land and premises in the City of Chicago, County of Cook, State of Illinois, as more specifically described in *Schedule A* attached hereto and made a part hereof (the "**Project Sites**"), including any land to the extent owned by the Borrower lying in the bed of any street, avenue or alley in front of or adjoining the Project Sites to the center line thereof;

(b) All buildings, structures and improvements now or hereafter located on the land comprising the Project Sites, including all appurtenant rights, easements and fixtures (as defined in Section 9-313 of the UCC (as hereinafter defined) of the Project Facilities (as hereinafter defined) and the Projects, all as constructed, improved or acquired;

(c) All equipment, machinery, building materials and/or other affixed personal property and fixtures of whatever character or description located at or used or to be used by the Borrower in the operation or maintenance of the Project Facilities (collectively, the "**Liened Equipment**");

(d) All right, title and interest of the Borrower to all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Project Facilities or any part thereof under the power of eminent domain or conveyance in lieu thereof, or for any damage (whether caused by such taking or otherwise) to the Project Facilities or any part thereof, or to any rights appurtenant thereto, including any award for change of grade of streets;

UNOFFICIAL COPY

(e) All right, title and interest of the Borrower to all proceeds of insurance with respect to the Project Facilities or any part thereof, and all claims and demands with respect thereto;

(f) All rights in and to all general construction contracts, engineering contracts and architectural services and contracts and other contracts and agreements affecting the Project Facilities;

(g) All permits and approvals obtained and to be obtained by the Borrower from all federal, state, county and municipal bodies and agencies necessary, required and incident to the Borrower's renovations to the Project Facilities;

(h) All easements, rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interest, privileges, liberties, tenements, hereditaments, and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Project Facilities (including without limitation, any and all development rights, air rights or similar or comparable rights of any nature whatsoever now or hereafter appurtenant to the Project Sites or now or hereafter transferred to the Project Sites);

(i) All present and future leases, rents and other agreements affecting the use or occupancy of the Project Facilities now or hereafter entered into (hereinafter referred to as the "**Leases**") and the right to receive and apply the rents, issues and profits of the Project Facilities (hereinafter referred to as the "**Rents**");

(j) The right, in the name and on behalf of the Borrower, to appear in and defend any action or proceeding brought with respect to the Project Facilities and to commence any action or proceeding to protect the interest of the Trustee in the Project Facilities;

(k) The following assets of the Borrower, including accounts, accounts receivable, money, securities, contract rights and all proceeds therefrom associated, machinery, equipment, furniture, fixtures, including insurance proceeds and products thereof, now owned or hereafter acquired; and

(l) All proceeds of any of the foregoing and any expansions, repairs, accessions, alterations, renewals, betterments, replacements and substitutions on the Project Facilities and additions, enlargements and improvements thereto.

IN TRUST for the benefit and security of the Trustee for the enforcement of the payment of all Obligations;

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto the Trustee and its successors and assigns forever.

PROVIDED, ALWAYS, that if the Obligations are paid according to the tenor and effect thereof when the same shall become due and payable, and if the Borrower performs all agreements herein contained or contained in the Indenture and the other Bond Documents in a timely manner, then this Mortgage shall be immediately cancelled and surrendered and the

UNOFFICIAL COPY

Trustee shall cooperate with the Borrower in executing all instruments necessary to evidence the release of this Mortgage and the Security Interest created hereby or by the Financing Statements (as hereinafter defined).

THE BORROWER HEREBY FURTHER AGREES WITH THE TRUSTEE, AS FOLLOWS:

ARTICLE I

DEFINITIONS AND CERTAIN RULES OF INTERPRETATION

Section 1.1. Definitions. The following terms shall have the meaning specified in the preambles to this Mortgage:

Act
 Additional Mortgages
 Series 2016 Bonds
 Borrower
 Indenture
 Issuer
 Leases
 Liened Equipment
 Loan Agreement
 Mortgage
 Mortgaged Property
 Note
 Obligations
 Project
 Projects
 Project Sites
 Real Estate
 Rents
 Trustee

In addition to the words and terms elsewhere defined herein, the following words and terms as used herein shall have the following meanings unless the context or use clearly indicates another or different meaning or intent:

“**Bond Documents**” shall have the meaning ascribed to such term in the Loan Agreement.

“**Default**” means an event or condition the occurrence of which would, with the lapse of time or the giving of notice or both, if any, become an Event of Default.

“**Event of Default**” shall have the meaning set forth in Section 4.1 hereof.

“**Financing Statements**” means any and all financing statements (including continuation statements) filed from time to time to perfect and continue the Security Interest.

UNOFFICIAL COPY

“GAAP” means, as of the date of any determination with respect thereto, those accounting principles applicable in the preparation of financial statements, as promulgated by, or not inconsistent with those of, the Financial Accounting Standards Board, or such other body or bodies as may be recognized as authoritative by the American Institute of Certified Public Accountants or any successor body, consistently applied and maintained throughout the relevant periods and from period to period.

“Permitted Encumbrances” shall have the meaning ascribed to such term in the Loan Agreement.

“Person” means any natural person, corporation, cooperative, partnership, association, joint stock company, trust or unincorporated organization, governmental body or agency, political subdivision, municipality or municipal authority or any legal entity, as in the context may be appropriate.

“Project Facilities” means the residential rental housing facilities located at the Project Sites and identified in Schedule A hereto.

“Security Interest” shall refer to the security interest created by and in this Mortgage, the Loan Agreement and the Indenture and shall have the meaning set forth in the UCC.

“State” means the State of Illinois.

“UCC” means the Uniform Commercial Code in effect from time to time in the State.

Section 1.2. Certain Rules of Interpretation. The words “hereof”, “herein”, “hereto”, “hereby” and “hereunder” and other equivalent words refer to this entire Mortgage. Unless otherwise indicated, all references to particular Articles or Sections (as capitalized terms) are references to the Articles or Sections of this Mortgage. Any pronoun used herein shall be deemed to cover all genders. References to any time of the day in this Mortgage shall refer to Central standard time or Central daylight savings time.

ARTICLE II

COVENANTS, WARRANTIES AND REPRESENTATIONS

Section 2.1. Obligations of the Borrower. The Borrower shall perform and comply with the terms and conditions of all agreements to which it is a party, including without limitation, all provisions of the Note and of the Indenture, or of any other Bond Document, or by which it or any of its properties (now owned or hereafter acquired) may be subject or bound.

Section 2.2. Taxes and Claims.

(a) The Borrower shall file all federal, state and local tax returns and other reports as the Borrower is required by law to file, maintain adequate reserves for the payment of all taxes, assessments, governmental charges, and levies imposed upon it, or upon any property belonging to it, including without limitation, the Mortgaged Property, and pay and discharge all such taxes, assessments, governmental charges and levies on or

UNOFFICIAL COPY

prior to the date on which due or before the period of grace (not to exceed thirty (30) days), if any, related thereto has expired, except where the same may be contested in good faith and by appropriate proceedings, if adequate reserves with respect thereto are maintained and segregated on the books of the Borrower in accordance with GAAP, and upon first giving the Trustee written notice thereof. The Borrower shall pay and discharge promptly all lawful claims of materialmen, mechanics, carriers, warehousemen, landlords, repairmen and other similar persons for labor, materials, supplies and rentals, which if unpaid might by law become a lien or charge upon its property, including without limitation, the Mortgaged Property, unless such claims are being contested in good faith and by appropriate proceedings, *provided* that adequate reserves with respect thereto are maintained and segregated on the books of the Borrower in accordance with GAAP, and upon first giving the Trustee written notice thereof.

(b) If so requested by the Trustee, the Borrower shall establish with the Trustee an appropriate escrow account or escrow accounts on a monthly basis to cover the costs of all real estate taxes on the Mortgaged Property, and the Borrower shall pay one-twelfth of the annual real estate taxes in respect of the Project Sites and the Project Facilities on or before the first day of each month (or at such other times as the Trustee shall require) to such escrow account and the Trustee shall pay all real estate taxes on the Mortgaged Property from such escrow account.

(c) The Borrower shall not claim or demand or be entitled to any credit or credits on account of the Obligations for any part of the taxes assessed against the Mortgaged Property or any part thereof and no deduction shall otherwise be made or claimed from the taxable value of the Mortgaged Property, or any part thereof, by reason of this Mortgage or the Obligations.

Section 2.3. Casualty and Other Insurance. The Borrower shall maintain insurance of the types, in such amounts and in such manner as set forth in Section 6.04 of the Loan Agreement, as such section may be subsequently amended. All policies must be kept in effect for the entire term of this Mortgage and until payment in full of all Obligations. The Borrower shall produce to the Trustee proof of payment of premiums therefor and provide evidence of insurance as required by the provisions of the Loan Agreement.

Section 2.4. Application of Net Proceeds. Any insurance policy required pursuant to Section 6.04 of the Loan Agreement shall be so written or endorsed as to make losses, if any, payable to the Issuer and the Trustee as their interests may appear and in accordance with Section 6.04 of the Loan Agreement. The Net Proceeds (as hereinafter defined) of any insurance proceeds or condemnation award resulting from the (a) destruction or damage (in whole or in part) of the Mortgaged Property by fire or other casualty or (b) taking under the exercise of the power of eminent domain by any Person, acting under governmental authority, of title to or any interest in, or the temporary use of, the Mortgaged Property or any part thereof, shall be applied and deposited in the manner required by the provisions of Sections 7.01 and 7.02 of the Loan Agreement. Provided that a Default has not occurred and is continuing, the Net Proceeds shall be used for the prompt repair, restoration, modification or improvement of the Mortgaged Property; provided, however, that if the Net Proceeds are insufficient to pay in full the cost of any such repair, restoration, modification or improvement, the Borrower shall nonetheless

UNOFFICIAL COPY

complete the work and shall pay any cost in excess of the amount of the Net Proceeds. In the event that a Default has occurred and is continuing, the Net Proceeds shall be applied in one or more of the following ways, as shall be elected by the Trustee in its sole discretion (after notice to the Borrower):

- (a) For the prompt repair, restoration, modification or improvement of the Mortgaged Property; *provided*, that if the Net Proceeds are insufficient to pay in full the cost of any such repair, restoration, modification or improvement, the Borrower shall nonetheless complete the work and shall pay any cost in excess of the amount of the Net Proceeds;
- (b) To prepay without preference or priority all or a part of the outstanding Obligations secured hereunder; or
- (c) For any other lawful purpose.

For the purposes of this Section, "**Net Proceeds**" shall mean the amount remaining after deducting from the gross proceeds of any insurance or condemnation award all expenses (including reasonable attorneys' fees) incurred in the collection of any insurance proceeds or condemnation award.

Section 2.5. After-Acquired Property. All right, title and interest of the Borrower in and to all improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Property, hereafter acquired, constructed, assembled or placed by the Borrower on the applicable Project Site, and all conversions of the security constituted thereby, shall immediately upon such acquisition, construction, assembly, placement or conversion, as the case may be, and in each such case without any further mortgage, filing, conveyance or assignment or other act of the Borrower, become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by the Borrower and specifically described in the granting clause hereof, but at any time and all times the Borrower, on demand, shall execute, acknowledge and deliver to the Trustee any and all such further assurances, deeds, conveyances or assignments thereof, and authorizes the Trustee to prepare and file such Financing Statements as the Trustee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

Section 2.6. Condemnation. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise, the Borrower shall continue to pay the Obligations at the time and in the manner provided for such payment in the Note, the Indenture, this Mortgage, the other Bond Documents or any other instruments evidencing or connected with the Obligations and the payment therefor shall continue to be actually received and applied by the Trustee to the discharge of the Obligations. If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by the Trustee of such award or payment, the Trustee shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive such award or payment, or if such award or payment exceeds the amount sufficient to pay the Obligations in full, the portion thereof sufficient to pay the Obligations in full. The Borrower shall file and prosecute its claim or claims for any such award or payment in good faith and with due diligence and cause the same to be collected and

UNOFFICIAL COPY

paid over to the Trustee. The Borrower hereby irrevocably authorizes and empowers the Trustee, in the name of the Borrower or otherwise, to collect and receive any such award or payment and to file and prosecute such claim or claims. Although it is hereby expressly agreed that the same shall not be necessary in any event, the Borrower shall, upon demand of the Trustee, make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning any such award or payment to the Trustee, free and clear of any encumbrances of any kind or nature whatsoever.

Section 2.7. Authority. The Borrower warrants that it has good and marketable fee simple title to the Mortgaged Property and it has full power, authority and legal right to execute, deliver and perform this Mortgage, and to mortgage, give, grant, bargain, sell, alien, convey, confirm and assign the Mortgaged Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on the Borrower's part to be performed.

Section 2.8. Enforcement. The Borrower hereby authorizes the Trustee at the expense of the Borrower and in its name, place and stead or otherwise to exercise any and all of the rights of the Borrower under the terms of this Mortgage. The Trustee does not assume and shall not be subject to any obligation or duty undertaken by the Borrower under the terms of this Mortgage. Any failure or omission to enforce this Mortgage for any period of time shall not impair its force and effect or prejudice the rights of the Trustee to enforce it in the future.

Section 2.9. Indemnification. The Borrower hereby agrees to indemnify the Trustee, its successors and assigns against and to save it harmless from any and all liability arising from this Mortgage.

Section 2.10. Additional Documents. The Borrower agrees to execute any and all additional documents and/or instruments and take all additional actions which are or may be necessary to effectuate the purpose and intent of this Mortgage.

Section 2.11. Conditional License. So long as the Borrower is not in Default of any covenant, duty or obligations imposed upon it pursuant to the terms of the Loan Agreement, the Indenture or the Note, the Borrower is hereby granted a conditional license to act based upon the authority given to the Borrower pursuant to the various terms and conditions of this Mortgage.

Section 2.12. Miscellaneous Covenants.

(a) No Sale or Transfer. The Borrower shall not sell or transfer all or any part of the Mortgaged Property so long as this Mortgage or the Obligations remain unsatisfied, except for leases to residents of the Projects.

(b) Continuing Use. The Borrower shall promptly act to obtain any reasonable easement or contract the Trustee may deem appropriate to insure the continuing use of all utilities and access to the Mortgaged Property. The continuing use shall be for whatever reasonable duration the Trustee deems necessary in its sole discretion. The Trustee shall notify the Borrower of any such easement or contract deemed appropriate.

UNOFFICIAL COPY

(c) Alteration, Additions, Removals. The Borrower shall keep the Mortgaged Property protected and in good order, condition and repair at all times and shall not (a) commit, permit or suffer any waste, damage, disfigurement or injury to or upon the Mortgaged Property or any portion thereof, (b) demolish, destroy, or remove any buildings, fixtures, structures or improvements now or hereafter erected on or annexed or affixed to the Mortgaged Property, (c) install, or permit to be installed, in or on the Project Facilities any new fixture in replacement of, substitution for or addition to, any fixture in or on the Project Facilities, if such new fixture would be subject to a security interest held by any person other than the Trustee, or (d) make any additions, alterations or changes thereto that would constitute structural changes or execute or cause to be executed any document purporting to grant any security interest therein without the prior written consent of the Trustee except as may otherwise be allowed under the Indenture or the Loan Agreement.

(d) Repairs and Maintenance. Throughout the term of this Mortgage, the Borrower, at its sole cost and expense, will take good care of the Mortgaged Property and the sidewalk and curbs if any, adjoining the Mortgaged Property and will keep the same in good order and condition and make all necessary repairs thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, and unforeseen and foreseen. All repairs made by the Borrower shall be equal or better in quality and class to the original work. The necessity for and adequacy of repairs to the building and improvements pursuant to this Mortgage shall be measured by the standard which is appropriate for structures of similar construction and class, *provided* that the Borrower shall in any event make all repairs necessary to avoid any structural damage or injury to the buildings and improvements and to keep the buildings and improvements in proper condition for their intended use.

(e) Inspection and Repairs by the Trustee. The Borrower will permit the Trustee and the Trustee's representatives to enter the Mortgaged Property at reasonable times to inspect same. In case of any breach or default under this Section 2.12, the Trustee may, at its option, upon reasonable prior notice, enter the Mortgaged Property to protect, restore or repair any part thereof, but the Trustee shall be under no obligation to do so. The Borrower will repay to the Trustee on demand any sums paid by the Trustee to protect, with interest thereon at the rate set forth in the Note, and until so paid, the same shall be secured by this Mortgage.

(f) Utilities. The Borrower shall maintain and make available at all times adequate sewer, water, electric, fuel and other utilities for the Project Facilities and the Mortgaged Property. The Borrower shall cooperate with such utility companies to the extent reasonably required to comply with this covenant.

(g) No Liens or Encumbrances. The Borrower shall not create, incur, assume or suffer to exist any lien or encumbrance or agree to become liable to do so on any of its assets, including without limitation, the Projects, the Mortgaged Property or any portion thereof, whether now or hereafter owned or acquired, except Permitted Encumbrances.

UNOFFICIAL COPY

(h) Additional Covenants and Agreements. All additional covenants and agreements contained in the Indenture and the Loan Agreement are hereby incorporated herein by reference and made a part hereof as if more fully set forth herein.

ARTICLE III

SPECIAL AGREEMENTS

Section 3.1. Advances by the Trustee. If the Borrower fails to maintain the full insurance coverage required by this Mortgage, or the Loan Agreement, or fails to keep the Mortgaged Property in a safe condition or fails to keep or cause to be kept the Project Facilities and Liened Equipment in good repair and good operating condition, the Trustee may (but shall be under no obligation to) take out the required policies and pay the premiums on the same or make the required repair, renewals and replacements; and all amounts so advanced or paid therefor by the Trustee will become a part of the Obligations secured by this Mortgage and will immediately, upon demand, become due and payable by the Borrower and will bear interest at the rate set forth in the Note.

Section 3.2. Further Assurances. At any time, and from time to time, upon request by the Trustee, the Borrower shall, and shall authorize the Trustee (at the Borrower's expense) to, make, execute and deliver or cause to be made, executed and delivered, to the Trustee and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or filed at such time and in such offices and places as shall be reasonably deemed desirable by the Trustee, any and all such other and further security agreements, Financing Statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the reasonable opinion of the Trustee, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve (a) the obligations of the Borrower under the Loan Agreement and this Mortgage, and (b) the lien of this Mortgage as a first and prior lien upon, and Security Interest in and to, all of the Mortgaged Property. Upon any failure by the Borrower so to do, the Trustee (at the Borrower's expense) may make, execute, record, file, re-record and/or refile any and all such security agreements, Financing Statements, continuation statements, instruments, certificates, and documents for and in the name of the Borrower and the Borrower hereby irrevocably appoints the Trustee as its agent and attorney-in-fact of the Borrower so to do. The lien hereof shall automatically attach, without further act, to all after-acquired property deemed to be a part of the Mortgaged Property.

Section 3.3. Expenses. The Borrower shall pay or reimburse the Trustee upon demand, for all reasonable counsel fees, reasonable out-of-pocket costs and expenses incurred by the Trustee in any suit, action, legal proceeding or dispute of any kind in which the Trustee is made a party or to appear as party plaintiffs or defendants, affecting the Obligations, this Mortgage or the interests created or assigned herein, or the Projects, including without limitation, the exercise of the power of sale contained in this Mortgage, any condemnation action involving the Mortgaged Property or any action to protect the security hereof; and any such amounts paid by the Trustee shall become a part of the Obligations secured by this Mortgage and will immediately, upon demand, become due and payable by the Borrower and will bear interest as set forth in the Indenture and the Loan Agreement.

UNOFFICIAL COPY

Section 3.4. Estoppel Affidavits. The Borrower, upon ten (10) days prior written notice, shall furnish the Trustee a written statement, duly acknowledged, setting forth the unpaid amount of, and any interest due on, the Obligations, and whether or not any offsets or defenses exist against the Obligations. The Trustee shall, upon ten (10) days prior written notice furnish the Borrower a written statement, duly acknowledged, setting forth the amount of any Obligations owed to it and other amounts owing to it and secured by this Mortgage.

Section 3.5. Subrogation. The Trustee shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the Obligations or are otherwise discharged or paid by the Trustee.

Section 3.6. Filing of Mortgage, Etc. The Borrower forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, shall cause this Mortgage, and any security instrument creating a lien or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such a manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect, preserve and perfect the lien hereof upon and the interest of the Trustee in the Mortgaged Property. The Borrower shall pay all filing, registration and recording fees, and all expenses incident to the preparation, execution and acknowledgement of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property, and any instrument of further assurance, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance.

Section 3.7. Compliance with Act and Other Laws. Throughout the term of this Mortgage, the Borrower, at its sole cost and expense, shall promptly comply with the Act and all other present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, courts, departments, commissions, boards and officers, any national or local Board of Fire Underwriters, or any other body exercising functions similar to those of any of the foregoing, which may be applicable to the Mortgaged Property, the maintenance and use thereof and the sidewalks and curbs adjoining the Mortgaged Property whether or not such law, ordinance, order, rule, regulation or requirements shall necessitate structural changes or improvements, or the removal of any encroachments or projections, ornamental, structural or otherwise, onto or over property contiguous or adjacent thereto. The Borrower will comply with all the orders and notices of violation thereof issued by any governmental authority. The Borrower will pay all license fees and similar municipal charges for the use and/or occupancy of the Mortgaged Property and the other areas now or hereafter comprising part thereof or used in connection therewith and will not, unless so required by any governmental agency having jurisdiction, discontinue use of the Mortgaged Property without prior written consent of the Trustee. If the Borrower shall fail to perform any covenant herein, the Trustee may (but shall be under no obligation to) perform such covenant for the account of the Borrower and any sums paid by the Trustee in such event shall be repaid by the Borrower to the Trustee with interest thereon at the rate set forth in the Note, and until so paid, the same shall be added to the principal sum secured by this Mortgage.

UNOFFICIAL COPY

ARTICLE IV

DEFAULTS AND REMEDIES

Section 4.1. Events of Default. The terms “default”, “event of default” or “events of default”, wherever used in this Mortgage, shall mean any one or more of the following events:

(a) failure by the Borrower to make any payment or payments required under the Indenture, the Loan Agreement, the Note or this Mortgage and such failure continues unremedied for a period of ten (10) days after the due date for such payment;

(b) failure of the Borrower to duly perform or observe any obligation, covenant or agreement on its part contained herein not otherwise specifically constituting an Event of Default under this Mortgage and such failure continues unremedied for a period of thirty (30) days (which thirty (30) day period may be extended to ninety (90) days in the event a remedy cannot reasonably be accomplished within the thirty (30) day period, *provided* that the Borrower commences to accomplish such remedy within such thirty (30) day period and diligently pursues such remedy) after the earlier of (i) notice to the Borrower of the existence of such failure, or (ii) any officer of the Borrower knows or should have known of the existence of such failure, *provided* that in the event such failure is incapable of remedy or was willfully caused or permitted by the Borrower, the Borrower shall not be entitled to any notice or grace hereunder. The Borrower expressly acknowledges and agrees that all notice and grace periods in the Bond Documents shall run concurrently with each other;

(c) an “Event of Default” occurs and is continuing under the Indenture, the Loan Agreement, or any Bond Documents; or

(d) any representation or warranty of the Borrower herein proves to have been false or misleading in any material respect when made; or the Borrower or any other person is in Default under any mortgage or deed of trust covering any part of the Mortgaged Property whether superior or inferior in lien to this Mortgage, and including without limitation, any such mortgage or deed of trust now or hereafter held by the Trustee.

Section 4.2. Acceleration of Maturity. If an Event of Default shall have occurred and be continuing uncured upon the expiration of any cure period provided for herein, then the Trustee may, at its option and in its sole discretion by notice to the Borrower, declare the Obligations to be forthwith due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived; *provided*, that upon the occurrence of an Event of Default described in Section 8.01 or Section 7.1 of the Indenture or the Loan Agreement, respectively, the Obligations shall automatically become due and payable without declaration, presentment, demand, protest or notice of any kind, all of which are hereby expressly waived.

UNOFFICIAL COPY

Section 4.3. The Trustee's Right to Enter and Take Possession, Operate and Apply Revenues.

(a) If an Event of Default shall have occurred and be continuing, the Borrower, upon demand of the Trustee, shall forthwith surrender to the Trustee the actual possession of the Mortgaged Property, including without limitation, the Project Facilities and, to the extent permitted by law, the Trustee may enter and take possession of all of the Mortgaged Property, including without limitation, the Project Facilities, without the appointment of a receiver, or an application therefor, and may reasonably exclude the Borrower and its agents and employees wholly therefrom, and may have joint access with the Borrower to the books, papers and accounts of the Borrower with respect to the Mortgaged Property.

(b) If the Borrower shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after such demand by the Trustee or to cure the Event of Default giving rise to such demand (within any applicable cure period) the Trustee may seek a judgment or decree conferring upon the Trustee the right to immediate possession or requiring the Borrower to deliver immediate possession of the Mortgaged Property to the Trustee. The Borrower shall pay to the Trustee all expenses of obtaining such judgment or decree, including reasonable compensation to the Trustee, its counsel and agents, and all such expenses and compensation will become a part of the Obligations secured by this Mortgage and will immediately, upon demand, become due and payable by the Borrower and will bear interest as set forth in the Note.

(c) Upon every such entering upon or taking of possession, the Trustee may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof and, from time to time, (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property, (ii) insure or keep the Project Facilities, the Liened Equipment and the Project Sites insured, (iii) manage and operate the Project Facilities and exercise all the rights and powers of the Borrower to the same extent as the Borrower could in its own name or otherwise with respect to same, and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Trustee, all as the Trustee from time to time may determine to be in its best interest.

(d) For the purpose of carrying out the provisions of this Section, the Borrower hereby irrevocably constitutes and appoints the Trustee the true and lawful attorney-in-fact of the Borrower to do and perform, from time to time, any and all actions necessary and incidental to such purpose and does, by these presents, ratify and confirm any and all actions of said attorney-in-fact with respect to the Mortgaged Property.

Section 4.4. Performance by the Trustee on Default by the Borrower. If the Borrower shall Default in the payment, performance or observance of any term, condition or agreement of this Mortgage, the Trustee may, upon reasonable notice to the Borrower, at the Trustee's option, pay, perform or observe the same, and all payments made or costs or expenses incurred by the Trustee in connection therewith will become a part of the Obligations secured by

UNOFFICIAL COPY

this Mortgage and will immediately, upon demand, become due and payable by the Borrower and will bear interest as set forth in the Note. The Trustee shall be the sole judge of the necessity for any such actions and of the amounts to be paid. The Trustee is hereby empowered to enter and to authorize others to enter upon the Project Facilities and the Project Sites or any part thereof for the purpose of performing or observing any such defaulted term, condition or agreement without thereby becoming liable to the Borrower or any person in possession holding under the Borrower. The Borrower expressly acknowledges and agrees, however, that notwithstanding anything contained in this Section to the contrary, the Trustee shall not be obligated under this Section to incur any expense or to perform any act whatsoever. Any sums so expended by the Trustee hereunder shall be added to the Obligations secured by the Mortgage and shall be repayable by the Borrower on demand.

Section 4.5 Receiver. If an Event of Default shall have occurred and be continuing, the Trustee, upon application to a court of competent jurisdiction, shall be entitled to the appointment of a receiver to take possession of and to operate the Project Facilities and to collect and apply the rents, issues, profits and revenues thereof. The receiver shall have all of the rights and powers permitted under the laws of the State. The Borrower shall pay to the Trustee all reasonable out-of-pocket expenses, including receiver's fees, counsel fees, costs and agents' compensation, incurred pursuant to the provisions of this Section; and all such expenses will become a part of the Obligations secured by this Mortgage and will immediately, upon demand, become due and payable by the Borrower and will bear interest as set forth in the Note. The Trustee's rights hereunder include its rights under 735 ILCS 5/15-1703, as such Section may be amended from time to time.

Section 4.6. Foreclosure Sale.

(a) If an Event of Default shall have occurred and be continuing, the Trustee, at its option and in its sole discretion, may sell the Mortgaged Property or any part of the Mortgaged Property at public sale or sales for cash, in order to pay the Obligations secured hereby and accrued interest thereon and insurance premiums, liens, fines, assessments, taxes and charges, including utility charges, if any, with accrued interest thereon, all as provided hereinabove, and all expenses of the sale and of all proceedings in connection therewith, including reasonable counsel fees. At any such public sale, the Trustee may execute and deliver to the purchaser a conveyance of the Mortgaged Property or any part of the Mortgaged Property in fee simple, with full warranties of title and to this end, the Borrower hereby constitutes and appoints the Trustee the agent and attorney-in-fact of the Borrower to make such sale and conveyance, and thereby to divest the Borrower of all right, title or equity that the Borrower may have in and to the Mortgaged Property and to vest the same in the purchaser or purchasers at such sale or sales, and all the acts and doings of said agent and attorney-in-fact are hereby ratified and confirmed and any recitals in said conveyance or conveyances as to facts essential to a valid sale shall be binding upon the Borrower. The aforesaid powers of sale and agency hereby granted are coupled with an interest and are irrevocable, are granted as cumulative of the other remedies provided hereby or by law for collection of the Obligations and shall not be exhausted by one exercise thereof but may be exercised until full payment of the Obligations.

UNOFFICIAL COPY

(b) If an Event of Default shall have occurred and be continuing, the Trustee may, in addition to and not in abrogation of the rights covered under Section 4.6(a), either with or without entry or taking possession as herein provided or otherwise, proceed by a suit or suits in law or in equity or by any other appropriate proceeding or remedy (i) to enforce the Obligations or the performance of any term, condition or agreement of this Mortgage or any other right, and (ii) to pursue any other remedy available to it, all as the Trustee shall determine most effectual for such purposes.

(c) If this Mortgage is foreclosed, the Mortgaged Property, or any interest therein, may, at the discretion of the Trustee, be sold in one or more parcels or in several interests or portions and in any order or manner.

(d) In lieu of a foreclosure sale, the Trustee at its option and in its sole discretion may accept from the Borrower a deed to the Mortgaged Property for a nominal consideration.

(e) Upon any foreclosure sale, the Trustee, its officers, attorneys and agents may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the Obligations as a credit to the purchase price.

Section 4.7. Application of Proceeds of Foreclosure Sale. In the event of a foreclosure sale of the Mortgaged Property pursuant to Section 4.6(a), the proceeds of said sale, after paying all of the Trustee's reasonable costs and expenses (including attorneys' fees) of collection, storage, custody, sale and delivery in connection with the Indenture, the Loan Agreement and this Mortgage and after retaining as collateral security or applying (in whole or in part at any time and from time to time) amounts equal to the aggregate of all other obligations of the Borrower to the Trustee, shall be applied to the payment in full of amounts in respect of the Obligations. No purchaser at any sale shall be responsible for the application of the purchase money. Any balance of the proceeds remaining after payment of the items above and the Obligations shall be returned to the Borrower; and if there results a deficiency, the Borrower shall be responsible for the same, with interest as set forth in the Note.

Section 4.8. Discontinuance of Proceedings and Restoration of the Parties. In case the Trustee shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case the Borrower and the Trustee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Trustee shall continue as if no such proceeding had been taken.

Section 4.9. Remedies Cumulative. No right, power or remedy conferred upon or reserved to the Trustee by this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder, under the Loan Agreement or now or hereafter existing at law or in equity or by statute.

UNOFFICIAL COPY

Section 4.10. Waiver.

(a) No delay or omission of the Trustee to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default, or acquiescence therein; and every right, power and remedy given by this Mortgage to the Trustee may be exercised from time to time and as often as may be deemed expedient by the Trustee. No consent or waiver, expressed or implied, by the Trustee to or of any breach or default by the Borrower in the performance of the obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance of the same or any other obligations of the Borrower hereunder. Failure on the part of the Trustee to act, complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, or to enforce this Mortgage shall not constitute a waiver by the Trustee of its rights hereunder or impair any rights, powers or remedies consequent on any breach or default by the Borrower. The Trustee may resort for payment of the Obligations to any other security held by the Trustee in such order and manner as the Trustee, in its discretion, may elect. The Trustee may take action to recover the Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of the Trustee thereafter to foreclose this Mortgage.

(b) If the Trustee: (i) grants forbearance of or an extension of time for the payment of any sums secured hereby; (ii) takes other or additional security for the payment of any sums secured hereby; (iii) waives or does not exercise any right granted herein, in the Indenture or in the Loan Agreement; (iv) releases any part of the Mortgaged Property from the lien and Security Interest of this Mortgage or otherwise changes any of the terms, conditions or agreements of this Mortgage, the Indenture, the Loan Agreement or any documents related to the Mortgage, the Indenture or the Loan Agreement; (v) consents to the filing of any map, plat or replat affecting the Mortgaged Property; (vi) consents to the granting of any easement or other right affecting the Mortgaged Property; or (vii) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under the Note, the Loan Agreement, this Mortgage or any other obligation of the Borrower; nor shall any such act or omission preclude the Trustee from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then made or of any subsequent default; nor, except as otherwise expressly provided herein or in an instrument or instruments executed by the Trustee, shall the lien and Security Interest of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, the Trustee, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the Obligations secured hereby, or with reference to any of the terms, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings of the Borrower.

(c) Any waiver asserted against the Trustee as being given by the Trustee must be evidenced by an express writing validly signed by the Trustee.

UNOFFICIAL COPY

Section 4.11. Suits to Protect the Mortgaged Property. The Trustee shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or any violation of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property and in the rents, issues, profits and revenues arising therefrom, and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of the Trustee under the Note, the Indenture or the Loan Agreement. All such reasonable costs and expenses, including counsel fees, expended by the Trustee hereunder will become a part of the Obligations secured by this Mortgage and will immediately, upon demand, become due and payable by the Borrower and will bear interest as set forth in the Note.

Section 4.12. The Trustee May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceeding affecting the Borrower, its creditors or its property, the Trustee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Trustee allowed in such proceedings for the entire amount due and payable by the Borrower under the Note, the Indenture, the Loan Agreement and this Mortgage at the date of the institution of such proceedings and for any additional amount which may become due and payable by the Borrower under the Note, the Indenture, the Loan Agreement and this Mortgage after such date.

Section 4.13. Rights of the Trustee. This Mortgage shall terminate as to the interests and rights of the Trustee upon the payment in full of all the Obligations. Upon payment of all of the Obligations, this Mortgage and all related Financing Statements will be released or terminated and the Trustee, at the Borrower's expense, shall execute such documents as may be necessary to evidence such release.

Section 4.14. Provisions for Benefit of the Trustee. The rights and remedies of the Trustee specified in this Article 4 are for the sole and exclusive benefit, use and protection of the Trustee, and the Trustee is entitled but shall have no duty or obligation to, the Borrower, the owner or holder of any Series 2016 Bond, or any other person, or otherwise, (a) to exercise or to refrain from exercising any right or remedy reserved to the Trustee hereunder, or (b) to cause any other person to exercise or to refrain from exercising any right or remedy available to such person under this Mortgage, the Note, the Indenture, the Loan Agreement or any other Bond Document.

Section 4.15. Security Agreement. This Mortgage constitutes both a real property mortgage and a "security agreement", within the meaning of the UCC, and the Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of the Borrower in the Mortgaged Property. The Borrower by executing and delivering this Mortgage has granted to the Trustee, as security for the performance of the Obligations and all of the Borrower's other obligations under the Note, the Indenture, the Loan Agreement and hereunder, a Security Interest in the Mortgaged Property. If there shall be continuing uncured an Event of Default under this Mortgage, the Trustee, in addition to any other rights and remedies which the Trustee may have, shall have and may

UNOFFICIAL COPY

exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the UCC, including without limitation, the right to take possession of the Mortgaged Property or any part thereof, and to take such other measures as the Trustee may deem necessary for the care, protection and preservation of the Mortgaged Property. Upon request or demand of the Trustee, the Borrower shall at the Borrower's expense, assemble the Mortgaged Property and make it available to the Trustee at a convenient place acceptable to the Trustee. Any and all reasonable expenses, including legal expenses and attorneys' fees, incurred or paid by the Trustee in protecting its interest in the Mortgaged Property and in enforcing the Trustee's rights hereunder with respect to the Mortgaged Property will immediately, upon demand, become due and payable by the Borrower and will bear interest as set forth in the Note. Any notice of sale, disposition or other intended action by the Trustee with respect to the Mortgaged Property sent to the Trustee in accordance with the provisions of this Mortgage at least seven (7) days prior to the date of any such sale, disposition or other action, shall constitute reasonable notice to the Borrower and the method of sale or disposition or other intended action set forth or specified in such notice shall conclusively be deemed to be commercially reasonable within the meaning of the UCC. The proceeds of any sale or disposition of the Mortgaged Property, or any part thereof, may be applied by the Trustee to the payment of the Obligations in such order, priority and proportions as the Trustee in its sole discretion shall deem proper.

Section 4.16. Fixture Financing Statement. From the date of its recording, this Mortgage shall be effective as a fixture financing statement with respect to all fixtures included within the definition of the Mortgaged Property and with respect to all goods constituting part of the Mortgaged Property which are or are to become fixtures related to the real estate described herein. It is intended that as to such fixtures and the proceeds thereof, this Mortgage shall be effective as a financing statement within the purview of Section 9-502(b) of the Illinois Uniform Commercial Code, filed as a fixture filing in the real estate records of the county in which the Mortgaged Property is located. For this purpose, the following information is set forth.

(a) Name and Address of Debtor:

Lindran Properties LLC
c/o Better Housing Foundation
1230 Erie Wood Drive
Rocky River, Ohio 44116
Attention: Jason Cook

(b) Name and Address of Secured Party:

Wilmington Trust, National Association, as Trustee
under Trust Indenture dated as of July 1, 2016
15950 North Dallas Parkway, Suite 550
Dallas, Texas 75248
Attention: Corporate Trust

Section 4.17. Lease and Contract Assignment. The Borrower, acknowledges that concurrently herewith, the Borrower has executed and delivered to the Trustee, as additional security for the repayment of the Note, and an Assignment of Contracts and Licenses, Permits

UNOFFICIAL COPY

and Agreements (collectively, the "Assignment") pursuant to which the Borrower has assignment to the Trustee interests in the leases of the Mortgaged Property and the rents and income from the Mortgaged Property. All of the provisions of the Assignment are hereby incorporated in this Mortgage as is fully set forth at length in the text of this Mortgage. The Borrower agrees to abide by all of the provisions of the Assignment.

ARTICLE V

MISCELLANEOUS

Section 5.1. Binding Effect. This Mortgage shall inure to the benefit of and be binding upon the Borrower, the Trustee and their respective successors and assigns (subject in the Borrower's case to such consent of the Trustee as may be required under the Loan Agreement); *provided*, that this Mortgage may not be assumed by any successor of and to the Borrower without the Trustee's prior written consent.

Section 5.2. Severability. If any provision of this Mortgage shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof. Should a term, condition or provision of this Mortgage become in conflict with a federal, state or county regulation and said conflict results in the modification of such term, condition or provision, then only the specific term, condition or provision will be affected. All other terms, conditions or provisions of this Mortgage will remain in full force and effect.

Section 5.3. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, return receipt requested, postage prepaid, or by private delivery service addressed as follows:

- (a) If to the Borrower:

Lindran Properties LLC
c/o Better Housing Foundation
1230 Erie Wood Drive
Rocky River, Ohio 44116
Attention: Jason Cook

- (b) If to the Trustee:

Wilmington Trust, National Association, as Trustee
15950 North Dallas Parkway
Dallas, Texas 75248
Attention: Corporate Trust

The Borrower and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

UNOFFICIAL COPY

Section 5.4. Amendments, Changes, Consents, Waivers and Modifications. The Borrower, together with the Trustee, may amend this Mortgage, and the Trustee may terminate this Mortgage or waive any term or condition hereof or grant any consent required hereunder, and any such amendment, termination, waiver or consent shall be binding upon the Borrower and the Trustee and their respective successors and assigns, without the necessity of any further action by the Trustee. All such amendments, terminations, waivers or consents under this Mortgage must be in an express writing signed by the Trustee and the Borrower.

Section 5.5. Captions. The captions and headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provision hereof.

Section 5.6. Law Governing Construction of Mortgage. This Mortgage shall be governed by, and construed in accordance with, the internal laws of the State without regard to principles of conflicts of law.

Section 5.7. Trustee's Counsel. All items subject to the Trustee's review, consent or approval hereunder shall also be subject to the review, consent or approval of the Trustee's counsel.

Section 5.8. Changes in Laws Regarding Taxation. In the event of the passage after the date of this Mortgage of any law of the State deducting from the value of real property for the purpose of taxation any lien or encumbrance thereon or changing in any way the laws for the taxation of mortgages or debts secured by mortgages for state or local purposes or the manner of the collection of any such taxes, and imposing a tax, either directly or indirectly, on this Mortgage or the Obligations, the Borrower shall, if permitted by law, pay any tax imposed as a result of any such law within the statutory period or within fifteen (15) days after demand by the Trustee, whichever is less; *provided*, that if, in the opinion of the attorneys for the Trustee, the Borrower is not permitted by law to pay such taxes, the Trustee shall have the right, at its option, to declare the Obligations due and payable on a date specified in a prior notice to the Borrower of not less than thirty (30) days.

Section 5.9. Offsets, Counterclaims and Defenses. Any assignee of this Mortgage shall take the same free and clear of all offsets, counterclaims or defenses of any nature whatsoever which the Borrower may have against any assignor of this Mortgage, and no such offset, counterclaim or defense shall be interposed or asserted by the Borrower in any action or proceeding brought by any such assignee upon this Mortgage and any such right to interpose or assert any such offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by the Borrower.

Section 5.10. Documentary Stamps. If at any time the United States of America, any state thereof, or any governmental subdivision of any such state, shall require revenue or other stamps to be affixed to the Note, the Loan Agreement or this Mortgage, the Borrower shall pay for the same, with interest and penalties thereon, if any.

Section 5.11. Right of Entry. The Trustee and its agents or representatives shall have the right to enter and inspect the Mortgaged Property at any reasonable time and from time to time.

UNOFFICIAL COPY

Section 5.12. Sole Discretion of the Trustee. Except as may otherwise be expressly provided to the contrary, wherever pursuant to the Note, the Indenture, the Loan Agreement, this Mortgage, or any other document or instrument now or hereafter executed and delivered in connection therewith or otherwise with respect to the obligations secured hereby, the Trustee exercises any right given to it to consent or not consent, or approve or disapprove, or any arrangement or term is to be satisfactory to the Trustee, the decision of the Trustee to consent or not consent, approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory, shall be in the sole and absolute discretion of the Trustee and shall be final and conclusive.

Section 5.13. Reasonableness. If at any time the Borrower believes that the Trustee has not acted reasonably in granting or withholding any approval or consent under the Indenture, the Loan Agreement, this Mortgage, or any other document or instrument now or hereinafter executed and delivered in connection therewith or otherwise with respect to the obligations secured hereby, as to which approval or consent either the Trustee has expressly agreed to act reasonably, or absent such agreement, a court of law having jurisdiction over the subject matter would require the Trustee to act reasonably, then the Borrower's sole remedy shall be to seek injunctive relief or specific performance and no action for monetary damages or punitive damages shall in any event or under any circumstances be maintained by the Borrower against the Trustee.

Section 5.14. Recovery of Sums Required to be Paid. The Trustee shall have the right at any time and from time to time to take action to recover any sum or sums which constitute a part of the Obligations as the same become due, without regard to whether or not the balance of the Obligations shall be due, and without prejudice to the right of the Trustee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by the Borrower existing at the time such earlier action was commenced.

Section 5.15. Actions and Proceedings. The Trustee shall have the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of the Borrower, which the Trustee, in its discretion, feels should be brought to protect its interest in the Mortgaged Property.

Section 5.16. Waiver of Notice. The Borrower shall not be entitled to any notices of any nature whatsoever hereunder from the Trustee except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by the Trustee to the Borrower, and the Borrower hereby expressly waives the right to receive any notice from the Trustee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by the Trustee to the Borrower.

Section 5.17. Local Law Provisions. The terms and provisions set forth in Appendix A attached hereto are hereby incorporated by reference as though fully set forth herein. In the event of any conflict between the terms and provisions contained in the body of this Mortgage and the terms and provisions set forth in Appendix A, the terms and provisions set forth in Appendix A shall govern and control.

UNOFFICIAL COPY

Section 5.18. Relationship. The relationship of the Trustee to the Borrower hereunder is strictly and solely that of lender and borrower and nothing contained in the Indenture, the Loan Agreement, this Mortgage, or any other document or instrument now or hereafter executed and delivered in connection therewith or otherwise in connection with the obligations secured hereby is intended to create, or shall in any event or under any circumstance be construed as creating, a partnership, joint venture, tenancy-in-common, joint tenancy or other relationship of any nature whatsoever between the Trustee and the Borrower other than as lender and borrower.

[Remainder of the Page Intentionally Left Blank; Signature Page Follows]

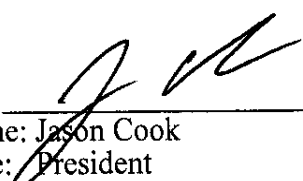
Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the Borrower, pursuant to a resolution duly adopted, has caused this Mortgage to be signed in its name by its managing member, all on the date first above written.

LINDRAN PROPERTIES LLC,
an Illinois limited liability company

By: Better Housing Foundation, an Ohio
nonprofit corporation, its sole member

By: 
Name: Jason Cook
Title: President

Property of Cook County Clerk's Office

[Signature page to Mortgage – Shoreline]

UNOFFICIAL COPY

STATE OF Ohio)
) SS.
COUNTY OF Franklin)

I, Meredith Rosenbeck a Notary Public in and for the County and State aforesaid, CERTIFY that Jason Cook, personally known to me to be the President of **LINDRAN PROPERTIES LLC**, an Illinois limited liability company, 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 acknowledged that he signed and delivered the foregoing instrument as his own free and voluntary act and as the free and voluntary act of the limited liability company for the uses and purposes set forth in such instrument.

GIVEN under my hand and Notarial Seal this 26th day of July, 2016.



Meredith L. Rosenbeck, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission expires on 08/17/2016
Sec. 147.01 B.C.

[Signature]
Notary Public

(S) My Commission Expires:

Does not expire

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Schedule A

LEGAL DESCRIPTIONS

PARCEL 10:

THE SOUTH 50 FEET OF LOT 103 IN DIVISION NUMBER 3 IN SOUTH SHORE SUBDIVISION OF THE NORTH FRACTIONAL 1/2 OF FRACTIONAL SECTION 30, TOWNSHIP 38 NORTH, RANGE 15 EAST OF THE THIRD PRINCIPAL MERIDIAN, TOGETHER WITH A RESUBDIVISION OF LOTS 1, 2, 4, 64, 66, 126, 127 AND 128 IN DIVISION ONE IN WESTFALL'S SUBDIVISION OF THE EAST 1/2 OF THE SOUTHWEST 1/4 AND THE SOUTHEAST FRACTIONAL 1/4 OF SECTION 30 IN COOK COUNTY, ILLINOIS.

PIN: 21-30-107-022-0000

Common Street Address: 7250 S. Shore Dr., Chicago, IL 60649

PARCEL 11:

LOT 100 IN DIVISION 1 IN WESTFALL'S SUBDIVISION OF 208 ACRES IN THE EAST 1/2 OF THE SOUTHWEST 1/4 AND THE SOUTHEAST FRACTIONAL 1/4 OF SECTION 30, TOWNSHIP 38 NORTH, RANGE 15 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PINs: 21-30-414-025-0000; 21-30-414-026-0000

Common Street Address: 7800 S. Shore Dr., Chicago, IL 60649

PARCEL 12:

LOT 17 (EXCEPT THE WEST 16 FEET THEREOF) ALL OF LOTS 18 AND 19 IN HARTY'S SUBDIVISION OF LOTS 9 AND 21 IN BLOCK 6 IN SOUTH KENWOOD, A RESUBDIVISION OF PARTS OF STAVE AND KLEMM'S SUBDIVISION OF THE NORTHEAST 1/4 OF SECTION 25, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PINs: 20-25-207-025-0000; 20-25-207-026-0000; 20-25-207-044-0000

UNOFFICIAL COPY

LEGAL DESCRIPTIONS - CONTINUED

PARCEL 13:

THE WEST 33.00 FEET OF LOT 9 AND ALL OF LOTS 10 AND 11 IN BLOCK 6 IN HARTY'S SUBDIVISION OF LOTS 9 AND 21 IN BLOCK 6 OF SOUTH KENWOOD, BEING A SUBDIVISION OF STAVE AND KLEMM'S SUBDIVISION OF SECTION 25, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 20-25-207-039-0000

Common Street Address: 2025-35 E. 72nd Street, Chicago, IL 60649

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Addendum A

LOCAL LAW PROVISIONS

Section A-1 Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Appendix A and the other terms and conditions of this Mortgage, the terms and conditions of this Appendix A shall control and be binding.

Section A-2. Type of Real Estate. Borrower acknowledges that the transaction of which this Mortgage is a part is a transaction that does not include either agricultural real estate (as defined in Section 15-1201 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq.; "Foreclosure Act") or residential real estate (as defined in Section 15-1219 of the Foreclosure Act).

Section A-3. Interest Rate. To the extent the provisions of the Illinois Interest Act (815 ILCS §205/4(l)) apply, the Obligations constitute business loans to a business association which come within the purview of 815 ILCS 205/4(1)(c), as well as loans secured by a mortgage on real estate which comes within the purview of 815 ILCS 205/4(1)(l).

Section A-4. Illinois Mortgage Foreclosure Law.

(a) In the event any provision in this Mortgage shall be inconsistent with any provision of the Foreclosure Act, the provisions of the Foreclosure Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Foreclosure Act.

(b) If any provision of this Mortgage shall grant to Trustee any rights or remedies upon default of Borrower which are more limited than the rights that would otherwise be vested in Trustee under the Foreclosure Act in the absence of said provision, Trustee shall be vested with the rights granted in the Foreclosure Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all reasonable expenses incurred by Trustee to the extent reimbursable under Sections 15-1510(b) and 15-1512 of the Foreclosure Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

(d) In addition to any provision of this Mortgage authorizing the Trustee to take or be placed in possession of the Property, or for the appointment of a receiver, Trustee shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the Foreclosure Act, to be placed in possession of the Property or, at its request, to have a receiver appointed, and such receiver, or Trustee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities and duties, as provided for in Sections 5/15-1701, 5/15-1702, 5/15-1703 and 5/15-1704 of the Foreclosure Act.

UNOFFICIAL COPY

(e) BORROWER SHALL NOT AND WILL NOT APPLY FOR OR AVAIL ITSELF OF ANY APPRAISEMENT, VALUATION, STAY, EXTENSION OR EXEMPTION LAWS, OR ANY SO-CALLED "MORATORIUM LAWS," NOW EXISTING OR HEREAFTER ENACTED IN ORDER TO PREVENT OR HINDER THE ENFORCEMENT OR FORECLOSURE OF THIS MORTGAGE, BUT HEREBY WAIVES THE BENEFIT OF SUCH LAWS. BORROWER FOR ITSELF AND ALL WHO MAY CLAIM THROUGH OR UNDER IT WAIVES ANY AND ALL RIGHT TO HAVE THE PROPERTY AND ESTATES COMPRISING THE PROPERTY MARSHALLED UPON ANY FORECLOSURE OF THE LIEN HEREOF AND AGREES THAT ANY COURT HAVING JURISDICTION TO FORECLOSE SUCH LIEN MAY ORDER THE PROPERTY SOLD AS AN ENTIRETY. IN THE EVENT OF ANY SALE MADE UNDER OR BY VIRTUE OF THIS MORTGAGE, THE WHOLE OF THE MORTGAGED PROPERTY MAY BE SOLD IN ONE PARCEL AS AN ENTIRETY OR IN SEPARATE LOTS OR PARCELS AT THE SAME OR DIFFERENT TIMES, ALL AS TRUSTEE MAY DETERMINE. TRUSTEE SHALL HAVE THE RIGHT TO BECOME THE PURCHASER AT ANY SALE MADE UNDER OR BY VIRTUE OF THIS MORTGAGE AND TRUSTEE SHALL BE ENTITLED TO CREDIT BID THE INDEBTEDNESS OR ANY PORTION THEREOF IN TRUSTEE'S SOLE DISCRETION.

(f) THE BORROWER, ON ITS OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN OR TITLE TO THE PROPERTY SUBSEQUENT TO THE DATE OF THIS MORTGAGE, HEREBY IRREVOCABLY WAIVES PURSUANT TO 735 ILCS 5/15-1601 OF THE FORECLOSURE ACT ANY AND ALL RIGHTS OF REINSTATEMENT (INCLUDING, WITHOUT LIMITATION, ALL RIGHTS OF REINSTATEMENT PROVIDED FOR IN 735 ILCS 5/15 1602) AND REDEMPTION FROM SALE OR FROM OR UNDER ANY ORDER, JUDGMENT OR DECREE OF FORECLOSURE OF THIS MORTGAGE (INCLUDING, WITHOUT LIMITATION, ALL RIGHTS OF REDEMPTION PROVIDED FOR IN 735 ILCS 5/15 1603) OR UNDER ANY POWER CONTAINED HEREIN OR UNDER ANY SALE PURSUANT TO ANY STATUTE, ORDER, DECREE OR JUDGMENT OF ANY COURT.

Section A-5. Future Advances; Maximum Indebtedness. This Mortgage is granted to secure not only existing indebtedness, but also future advances made pursuant to or as provided in the Loan Agreement and the documents related thereto (collectively, the "Loan Documents"), whether such advances are obligatory or to be made at the option of Trustee, or otherwise, to the same extent as if such future advances were made on the date of execution of this Mortgage, although there may be no advance made at the time of execution hereof, and although there may be no indebtedness outstanding at the time any advance is made. Notwithstanding anything in this Mortgage to the contrary, the maximum principal amount of the indebtedness secured by this Mortgage shall not exceed \$27,120,000, plus all costs of enforcement and collection of this Mortgage and the other Loan Documents, including reasonable attorney's fees, plus the total amount of any advances made pursuant to the Loan Documents to protect the collateral and the security interest and lien created hereby, or the priority thereof, together with interest on all of the foregoing as provided in the Loan Documents.

Section A-6. Insurance Disclosure. The following notice is provided pursuant to paragraph (3) of 815 ILCS 180/10: Unless the Borrower provides evidence of the insurance coverage required

UNOFFICIAL COPY

by the Loan Documents, the Trustee may purchase such insurance at the Borrower's expense to protect the Trustee's interests in the Borrower's collateral. This insurance may, but need not, protect the Borrower's interests. The coverage that the Trustee purchases may not pay any claim that the Borrower may make or any claim that is made against the Borrower in connection with the collateral. The Borrower may later cancel any insurance purchased by the Trustee, but only after providing evidence that the Borrower has obtained insurance as required by the Loan Documents. If the Trustee purchases insurance for the collateral, the Borrower will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges that the Trustee may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations of the Borrower. The costs of the insurance may be more than the cost of insurance that the Borrower may be able to obtain on the Borrower's own.

Property of Cook County Clerk's Office