



Prepared By:

Doc# 1983918081 Fee \$72.00

Scott Neill  
Kutak Rock LLP  
1650 Farnam Street  
Omaha, Nebraska 68102

RHSP FEE:\$9.00 RPRF FEE: \$1.00

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 02/08/2019 03:53 PM PG: 1 OF 18

When recorded, return to:

Scott Neill  
Kutak Rock LLP  
1650 Farnam Street  
Omaha, Nebraska 68102

**Tax Parcel Nos.:**

2101 E. 71st St., Chicago, IL (20-25-200-036 and 20-25-200-037)  
2100 E. 72nd St., Chicago, IL (20-25-201-033)  
7153 S. Jeffery Avenue, Chicago, IL (20-25-200-034-0000)  
7131 S. Clyde Avenue, Chicago, IL (20-25-201-035-0000)

Recorder's Use

**INTERCREDITOR AGREEMENT**

THIS INTERCREDITOR AGREEMENT (the "**Agreement**") is made and entered into as of February 7, 2019, by and between NATIONAL COOPERATIVE BANK, N.A., a national banking association ("**Direct Lender**") and CDF SUBALLOCATEE XXXVII, LLC, an Illinois limited liability company (the "**Sub-CDE Lender**").

**RECITALS**

**WHEREAS**, 7131 Jeffery Development, LLC, an Illinois limited liability company (the "**Borrower**") intends to acquire that certain real property more commonly known as 2101 E. 71<sup>ST</sup> Street, Chicago, Illinois 60649, which is more particularly described in Exhibit A attached hereto (the "**Land**") and, on the Land, it is anticipated that Borrower shall renovate and develop an existing 113,000 square foot shopping center known as "Jeffery Plaza" (collectively, the "**Improvements**" and together with the Land, the "**Facility**") and Borrower shall (i) lease a portion of the Facility to Jeffrey Advisors LLC, an Illinois limited liability company (in such capacity, "**Operator**") pursuant to the Operating Lease (as such term is defined herein) to operate a "Shop & Save Market", and (ii) lease the remaining space in the Facility to certain third party tenants. Collectively, the acquisition, renovation, development, management, and leasing of the Facility shall be referred to herein as the "**Project**"; and

**WHEREAS**, concurrently with the execution of this Agreement, Direct Lender is making a loan to Borrower in the principal amount of \$10,250,000 (the "**Direct Loan**"), pursuant to that certain Construction Loan Agreement, dated on or about the date hereof (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the "**Direct Loan Agreement**"), between Borrower and Direct Lender, as evidenced by that certain Promissory Note in the principal amount of \$10,250,000 (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the "**Direct Loan Note**"). The Direct Loan Note, the Direct Loan Agreement and the other Direct Loan Documents (as defined below) are secured by, among other things, a first priority lien on the Facility (collectively, the

R4

# UNOFFICIAL COPY

*“Real Property Collateral”*) pursuant to that certain Mortgage, Assignment of Rents and Leases and Security Agreement (as modified, and as the same may be further amended, assigned, restated, modified, or supplemented from time to time, the *“Direct Loan Mortgage”*); and

**WHEREAS**, concurrently herewith the Sub-CDE Lender is making loans in the aggregate principal amount of \$11,760,000.00 (the *“QLICI Loans”*) to fund a portion of the Project. The QLICI Loans will be secured by a second-priority lien on the Real Property Collateral pursuant to that certain Mortgage and Security Agreement, Assignment of Leases and Rents and Fixture Filing (as the same may be amended, assigned, restated, modified, or supplemented from time to time, the *“QLICI Mortgage”*) and the other Subordinate Loan Documents (as defined below). In connection with the QLICI Construction Loans, Borrower has established the following pledged accounts in the name of the Sub-CDE Lender: (i) the Construction Disbursement Account (as such term is defined in the QLICI Loan Agreement) with an initial balance as of the date hereof of \$1,000,000 and the Construction Interest Reserve Account (as such term is defined in the QLICI Loan Agreement) with an initial balance as of the date hereof of \$73,440 and the TIF Clawback Reserve Account (as such term is defined in the QLICI Loan Agreement) with an initial balance as of the date hereof of \$250,000, each of which has been pledged as collateral solely to the Sub-CDE Lender (together and collectively, the *“Construction Disbursement Accounts”*); and (ii) the Interest Reserve Account (as such term is defined in the QLICI Loan Agreement) in the amount of \$252,000 which has been pledged as collateral solely to the Sub-CDE Lender (the *“Collateral Account”* and, collectively with the Construction Disbursement Accounts, the *“Separate Collateral”*).

**NOW THEREFORE**, the Direct Lender and the Sub-CDE Lender desire to enter into this Agreement for the purpose of establishing their rights arising from the respective Loan Documents and for the purpose of setting forth certain other agreements between them with respect to the transactions contemplated by the Loan Documents.

## AGREEMENT

**NOW THEREFORE**, in consideration of the premises, and in further consideration of the mutual covenants and agreements herein set forth and of the sum of Ten Dollars (\$10.00) paid by each party to the other, receipt of which is hereby acknowledged, the parties covenant and agree as follows:

1. **Basic Definitions and Data.** Each reference in this Agreement to any of the following terms shall incorporate the definition or data specified below:

**“Agreement”** has the meaning set forth in the introductory paragraph.

**“Borrower”** has the meaning set forth in the Recitals above.

**“Direct Loan”** has the meaning set forth in the Recitals above.

**“Direct Loan Agreement”** has the meaning set forth in the Recitals above.

**“Direct Loan Default Notice”** has the meaning set forth in Section 3.

**“Direct Loan Documents”** means the Direct Loan Note, the Direct Loan Mortgage, the Direct Loan Agreement and all other Loan Documents as defined in the Direct Loan Agreement.

**“Direct Loan Mortgage”** has the meaning set forth in the Recitals above.

**“Direct Loan Notes”** has the meaning set forth in the Recitals above.

# UNOFFICIAL COPY

**“Fee Agreement”** means that certain Asset Management Fee Agreement dated as of the date hereof by and between Sub-CDE Lender and CDF Management LLC, an Illinois limited liability company.

**“ISMA”** means that certain Impact Statement and Monitoring Agreement dated as of the date hereof by and among Sub-CDE Lender, Borrower and Operator.

**“Loan Documents”** means the Direct Loan Documents and the QLICI Loan Documents.

**“Lenders”** means the Direct Lender and the Sub-CDE Lender.

**“NMTC Compliance and Reporting Agreement”** means that certain New Markets Tax Credit Compliance Agreement dated as of date hereof and entered into by Borrower and Operator for benefit of Sub-CDE Lender.

**“Proceeding”** means, with respect to the QLICI Loans or Direct Loan, any foreclosure or enforcement proceeding under any of the QLICI Loan Documents or Direct Loan Documents executed by the Borrower, the exercise of any power of sale, under any of the QLICI Loan Documents or Direct Loan Documents, the acceptance by Sub-CDE Lender or Direct Lender of a deed in lieu of foreclosure, the obtaining of a receiver, the taking of possession or control of the Real Property Collateral, the commencement of any lawsuit, action or proceeding on any of the QLICI Loan Documents or Direct Loan Documents executed by the Borrower, or the taking of any other enforcement action against the Real Property Collateral; but specifically excludes: (a) requests and demands made upon the Borrower by delivery of notices to the Borrower and the cure by Sub-CDE Lender of any Event of Default by the Borrower under the Direct Loan Documents, (b) assertion or enforcement of any right of Sub-CDE Lender to receive payment from proceeds of a foreclosure sale of any property incident to foreclosure of the liens or security interests of the Direct Loan Documents which may remain after payment of costs and expenses of such foreclosure and payment and satisfaction in full of the Direct Loan, and (c) the filing of claims in any insolvency proceeding concerning the Borrower that may be required to protect and preserve the right of Sub-CDE Lender to participate in such insolvency proceeding as creditor and to participate in distributions of assets of the Borrower in said insolvency proceeding with respect to the QLICI Loans after payment and satisfaction in full of the Direct Loan; provided that any of the following actions brought by Sub-CDE Lender shall not be included within the definition of **“Proceeding”**: (a) to enforce the interest of the Sub-CDE Lender in the Separate Collateral and to foreclose on, accept payment of or take possession thereof, (b) the enforce its rights and remedies under the ISMA or (b) to enforce its rights under this Agreement.

**“Project”** has the meaning set forth in the Recitals above.

**“QLICI Loans”** has the meaning set forth in the Recitals above.

**“QLICI Loan Agreement”** means that certain Loan Agreement dated as of the date hereof by and between Sub-CDE Lender and Borrower.

**“QLICI Loan Documents”** means the QLICI Loan Agreement, QLICI Promissory Notes, the QLICI Mortgage, the ISMA, the NMTC Compliance and Reporting Agreement and the other Loan Documents (as defined in the QLICI Loan Agreement).

**“QLICI Mortgage”** has the meaning set forth in the Recitals above.

# UNOFFICIAL COPY

“**QLICI Notes**” means that certain Promissory Note A in the original principal amount of \$7,788,000 made by Borrower to Sub-CDE Lender on the date hereof and that certain Promissory Note B in the original principal amount of \$3,972,000 made by Borrower to Sub-CDE Lender on the date hereof.

“**Real Property Collateral**” has the meaning set forth in the Recitals above.

“**Separate Collateral**” has the meaning set forth in the Recitals above.

2. **Permission to Place Mortgage Lien on Real Property Collateral.** The Direct Lender agrees, notwithstanding the prohibition against inferior liens on the Real Property Collateral contained in the Direct Loan Documents and subject to the provisions of this Agreement, to permit the Sub-CDE Lender to record the QLICI Mortgage and other recordable QLICI Loan Documents against the Real Property Collateral (which are subordinate in all respects to the lien of the Direct Loan Mortgage) to secure the Borrower’s obligation to repay the QLICI Note and all other obligations, indebtedness and liabilities of the Borrower to the Sub-CDE Lender under and in connection with the QLICI Loans.

3. **Subordination.** Except as expressly set forth herein, the QLICI Loans and the QLICI Loan Documents executed by the Borrower are subordinate in lien and payment to the Direct Loan, the Direct Loan Documents and all advances and amounts owing thereunder, together with all interest, prepayment premiums, fees and all other sums due under the Direct Loan Documents, and to all amendments, modifications, extensions, replacements and renewals under the Direct Loan Documents.

4. **Direct Loan Default Notice.** Unless and until Sub-CDE Lender has been provided written notice of an Event of Default under the Direct Loan Documents (a “**Direct Loan Default Notice**”), the Sub-CDE Lender may accept payments of amounts due and payable under the QLICI Loan Documents. However, while an Event of Default exists under the Direct Loan Documents after the delivery of a Direct Loan Default Notice to the Sub-CDE Lender, the Sub-CDE Lender shall accept no payments of principal or interest on the QLICI Loans from Borrower except that Sub-CDE Lender shall be entitled to accept payment from Borrower of interest in an amount needed to pay those fees set forth in Fee Agreement and such amounts shall be released to Sub-CDE Lender at its direction from the Collateral Account. If, despite this prohibition, the Borrower nevertheless directs payments to the Sub-CDE Lender, the Sub-CDE Lender shall hold such payments in trust for application to the Direct Loan.

5. **Standstill; Limitation on Sub-CDE Lender Rights.**

(a) At all times during which the Direct Loan is outstanding, the following provisions shall apply:

(i) Notwithstanding Sub-CDE Lender’s rights under applicable law or any provision of the QLICI Loan Documents to the contrary and subject to Sections 5(a)(iv) and 5(b) below, Sub-CDE Lender hereby acknowledges and agrees that it shall not, for a period not less than one hundred eighty (180) calendar days following an Event of Default under the QLICI Loan Documents or an Event of Default under the Direct Loan Documents and written notice thereof to Sub-CDE Lender (“**Initial Standstill Period**”), make or take any Proceeding with respect to the Real Property Collateral or Borrower, without the express, written consent of the Direct Lender, until the satisfaction in full of the Direct Loan. Sub-CDE Lender agrees and acknowledges that the Standstill Period shall be extended for such additional time as commercially reasonable and necessary for Direct Lender to complete a Proceeding, but in no event more than three hundred sixty (360) calendar days following the end of the Initial Standstill Period (the “**Additional Standstill Period**” and, collectively with the Initial Standstill Period, being the “**Standstill Period**”)

# UNOFFICIAL COPY

if during the Initial Standstill Period the Direct Lender has commenced a Proceeding under the Direct Loan Documents and is in good faith actively continuing to pursue a Proceeding. Sub-CDE Lender hereby waives any right it may have to require Direct Lender marshal any assets of the Borrower in favor of Sub-CDE Lender, and Sub-CDE Lender agrees that it shall not acquire, by subrogation or otherwise, any lien, estate, right or other interest in any of the Real Property Collateral or the proceeds therefrom that is or may be prior to any of the Direct Loan Documents.

(ii) If at the end of the Initial Standstill Period, Direct Lender has elected not to pursue a Proceeding, or, if applicable, during the Additional Standstill Period, the Direct Lender has not completed its Proceeding, the Sub-CDE Lender, subject to the notice provisions set forth below, may exercise any of its rights and remedies under the QLICI Loan Documents, and/or under applicable laws. The Sub-CDE Lender acknowledges and agrees that if and to the extent the Sub-CDE Lender exercises any Proceeding all collections, monies and proceeds received by the Sub-CDE Lender, as the case may be, from or attributable to the Real Property Collateral, the Borrower or otherwise shall be remitted to the Direct Lender until the Direct Loan has been paid in full. For the avoidance of doubt, Sub-CDE Lender shall be entitled to keep all amounts received for the payment of fees (including an amount of interest from Borrower needed to pay the fees set forth in the Fee Agreement), costs, expenses, indemnities or amounts due under the ISMA.

(iii) Direct Lender may, but shall not be obligated to, request that Sub-CDE Lender participate in a resolution, restructure, or refinance of the Direct Loan and/or the QLICI Loans (a "**Workout**"). Notwithstanding the foregoing, the Sub-CDE Lender and the Borrower acknowledge and agree that the Direct Lender shall have no obligation or commitment to commence, continue or agree to a Workout or consult Sub-CDE Lender on any of the foregoing and may, at any time proceed to exercise and enforce any foreclosure, collection or other enforcement proceedings or activities as determined by the Direct Lender in its sole and absolute discretion. However, if Direct Lender does pursue in good faith a mutually acceptable Workout with Sub-CDE Lender during either of the Initial Standstill Period or the Additional Standstill Period (as applicable), the standstill provisions shall continue in accordance with terms of this Section 5(a) until such time as the Direct Loan is paid in full or such applicable standstill period terminates in accordance with this Agreement. Further, and notwithstanding the foregoing, the parties hereto agree and acknowledge that if during any period in which each of Direct Lender and Sub-CDE Lender has mutually agreed to pursue a Workout, and provided that the Direct Lender proceeds diligently and in good faith in the exercise of such Workout proceedings or activities, then Sub-CDE Lender agrees that any remaining time with respect to the Standstill Period (or Additional Standstill Period, as applicable) shall toll and remain available to Direct Lender if such Workout is unable to be viably concluded to the mutual approval of the Sub-CDE Lender.

(iv) In the event Direct Lender initiates a Proceeding as described herein, Sub-CDE Lender may join such Proceeding solely to the extent legally necessary to preserve its subordinate interest in the Real Property Collateral.

(b) Notwithstanding any of the foregoing to the contrary, the Sub-CDE Lender may take such equitable actions and enforce such equitable remedies under the QLICI Loan Documents against Borrower at any time and from time to time as are necessary to cause Borrower to comply with or to continue to comply with the "New Markets Tax Credit" representations, warranties and covenants set forth in the NMTC Compliance and Reporting Agreement, including but not limited



# UNOFFICIAL COPY

to, requiring that assets and employees be relocated in a qualifying census tract, requiring the disposition of nonqualified financial property or collectibles held by Borrower, compelling compliance under, or requiring cessation of any activities by Borrower that are prohibited under, the NMTC Program Requirements (as defined in the NMTC Compliance and Reporting Agreement), but excluding (i) taking any Proceeding, (ii) opposing or causing any delay in the conduct by Direct Lender of any enforcement action by Direct Lender, and (iii) taking any action or enforcing any remedy that jeopardizes or otherwise materially adversely affects the perfection, priority or validity of any lien held by Direct Lender in any of the Real Property Collateral. If the Sub-CDE Lender desires to take any action permitted under this Section 5, the Sub-CDE Lender shall deliver prior written notice of such action to the Direct Lender. For the avoidance of doubt, any proceeding or other action (i) against Borrower for the payment of money and/or foreclosure or similar action with respect to any of the Real Property Collateral, (ii) that challenges the validity or priority of the Direct Loan, or (iii) against Borrower under any bankruptcy, reorganization, readjustment of debt, arrangement of debt receivership, liquidation or insolvency law or statute, shall not be considered an action permitted to be taken under this Section 5 prior to the expiration of the Standstill Period.

6. **Separate Collateral; Sub-CDE Lender Enforcement Rights.** Notwithstanding anything to the contrary contained in this Agreement:

(a) In the event of the occurrence of an Event of Default under Section 19 of the QLICI Loan Agreement or any other default under the QLICI Loan Documents which Sub-CDE Lender reasonably determines could result in a Recapture Event (as defined in the QLICI Loan Agreement) (including without limitation a violation of the “substantially-all” requirement of Section 1.45D-1(c)(5) of the NMTC Program Requirements (as defined in the NMTC Compliance and Reporting Agreement)), Sub-CDE Lender may exercise, on its own behalf, any right or remedy available under the QLICI Loan Documents, at law, or in equity, other than a Proceeding, without the consent of Direct Lender or any other lender, and shall deliver prior written notice to the Direct Lender describing the nature of the default and the remedies it is exercising or intends to exercise.

(b) Direct Lender hereby acknowledges and agrees that it has no interest in or lien on the Separate Collateral and Sub-CDE Lender has the sole rights thereto. In the event of the occurrence of an Event of Default under any of the QLICI Loan Documents, Sub-CDE Lender may exercise, on its own behalf, any right or remedy available under the QLICI Loan Documents, at law, or in equity, against the Separate Collateral without the consent of the Direct Lender or any other lender, provided that Sub-CDE Lender shall deliver prior written notice to the Direct Lender describing the nature of the default and the remedies that Sub-CDE Lender is exercising or intends to exercise to the extent of the Separate Collateral. Further, and anything to the contrary herein notwithstanding, Sub-CDE Lender may at any time exercise any and all remedies available to it under the ISMA upon the occurrence of an Event of Default under the ISMA.

7. **Sub-CDE Lender Transfers.** The Sub-CDE Lender shall have the right to sell, assign, or otherwise transfer the QLICI Loans and QLICI Loan Documents without the consent of any party, provided that (i) Sub-CDE Lender shall give prior written notice of such transfer to the Direct Lender, (ii) Sub-CDE Lender has received written consent to such transfer from its investor member, a copy of which shall be provided concurrently to Direct Lender, and (iii) any transferee shall acknowledge in writing, delivered to the Direct Lender prior to the transfer, that it agrees to the terms of this Agreement.

8. **Condemnation Proceedings and Insurance Proceeds.** Because the QLICI Loans are junior to the Direct Loan, the Direct Lender at its sole discretion shall manage condemnation proceedings and insurance claims and shall have the sole right to make settlements with insurers and condemning

# UNOFFICIAL COPY

authorities. Insurance and condemnation proceeds shall be paid either to the Direct Lender or at the Direct Lender's direction for use and application as allowed by the Direct Loan Documents. If Direct Lender elects to apply insurance and condemnation proceeds to payment on account of the Direct Loan, and if the application of such insurance or condemnation proceeds results in the payment in full of the entire Direct Loan, any remaining insurance or condemnation proceeds held by Direct Lender will be paid to Sub-CDE Lender.

9. **Notice of Default.** So long as any indebtedness to more than one Lender remains outstanding, each Lender shall provide to all other Lenders written notice of any default under its respective Loan Documents. No Lender shall take any action to realize upon or enforce any of its rights with respect to any of the Loan Documents unless there has been an "Event of Default" as defined respectively in the applicable Loan Documents of the Lenders and then not without first providing each other Lender with written notice of its intent to commence such action and, except as otherwise expressly set forth herein, including, without limitation, actions taken pursuant to Section 6(b) hereof, a reasonable opportunity, not less than sixty (60) days after receipt of such notice, to attempt to structure a workout or other arrangement to avoid such taking possession, foreclosure, sale or transfer to the reasonable satisfaction of all of the Lenders. The failure to send any such notices under this paragraph shall not affect the validity of any notice given to the Borrower or otherwise affect foreclosure proceedings or the exercise of any other remedies by any Lender, or the validity of this Agreement.

10. **Bankruptcy and Insolvency Proceedings.** The Lenders shall not, and shall not solicit any person or entity to: (i) commence any proceeding or action against Borrower under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors; (ii) institute proceedings to have Borrower adjudicated as bankrupt or insolvent; (iii) consent to, or acquiesce in, the institution of bankruptcy or insolvency proceedings against Borrower; (iv) file a petition or consent to the filing of a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief by or on behalf of Borrower; (v) seek to consolidate any assets of Borrower in any proceeding relating to bankruptcy, insolvency, reorganization or relief of debtors; or (vi) take any action in furtherance of any of the foregoing.

11. **No Joinder of Other Lenders.** No Lender shall, without the prior written consent of the other Lenders, commence or join with any other creditor in commencing any bankruptcy, reorganization or insolvency proceedings with respect to the Borrower.

12. **Representations and Covenants.** Sub-CDE Lender hereby further represents, warrants, covenants and agrees with the Direct Lender as follows:

(a) Without limiting the generality of any other provisions of this Agreement, the Direct Lender may at any time and from time to time without the consent of, or notice to the Sub-CDE Lender, and without incurring responsibility to the Sub-CDE Lender, upon or without any terms or conditions and in whole or in part:

(1) change the manner, place or terms of payment or performance of, and change or extend the time of payment or performance of, renew or alter, any portion of the Direct Loan or any other obligations of any person evidenced or secured by the Direct Loan Documents, any security therefor, or any liability incurred directly or indirectly in respect thereof;

(2) sell, exchange, release, surrender, realize upon or otherwise deal with in any manner and in any order any property by whomsoever at any time pledged or mortgaged to secure, or howsoever securing, the Direct Loan or any other obligations of

# UNOFFICIAL COPY

any person evidenced or secured by the Direct Loan Documents, or any liabilities incurred directly or indirectly in respect thereof, and/or any offset there against;

(3) exercise or refrain from exercising any rights against the Borrower or others or otherwise act or refrain from acting;

(4) settle or compromise any portion of the Direct Loan or any other obligations of any person evidenced or secured by the Direct Loan Documents, any security therefor or any liability incurred directly or indirectly in respect thereto;

(5) apply any sums by whomsoever paid or howsoever realized to any liability or liabilities of the Borrower under the Direct Loan regardless of what liability or liabilities of the Borrower remain unpaid or unperformed;

(6) consent to or waive any breach of, or any act, omission or default under, any of the Direct Loan Documents, or otherwise amend, modify or supplement any of the Direct Loan Documents or any other instruments or agreements executed and delivered in connection therewith or otherwise relating thereto.

(b) Notwithstanding anything to the contrary set forth in Section 12 above or otherwise in this Agreement, the Direct Lender agrees not to do any of the following without the prior written consent of the Sub-CDE Lender:

(1) Increase the principal amount of the Direct Loan (excluding fees, protective advances and expenses that may increase the Direct Loan to the extent provided in the Direct Loan Documents following an Event of Default).

(2) Re-advance funds to the Borrower under the Direct Loan Documents.

(3) Increase the interest rate applicable to the Direct Loan (it being agreed that the application of a default rate of interest or late charge under the terms of the Direct Loan as applicable shall not be considered increasing the interest of the Direct Loan); or

(4) Increase the amount or timing of Borrower's scheduled principal and interest payments under the Direct Loan Documents.

(5) In the event that Direct Lender makes a modification in violation of the above provisions which is not subsequently consented to by the Sub-CDE Lender, Sub-CDE Lender's sole remedy shall be to require Direct Lender to modify the Direct Loan Documents in accordance with the above requirements.

(c) Sub-CDE Lender shall not amend or modify the QLICI Loans in any way which shall have the effect of (i) changing the maturity date thereof, (ii) increasing the interest rate (it being agreed that the application of any of (1) a default rate of interest, (2) a documented late charge or (3) a statutorily required change-in-rate under the terms of the QLICI Loan Documents (as applicable) shall not be considered increasing the interest rate of any QLICI Loan), (iii) changing the payment terms, (iv) increasing the obligations of Borrower or any Guarantor (except for protective advances) (each a "**Loan Modification**"), without the prior written consent of Direct Lender, not to be unreasonably withheld, denied, or delayed. If the Sub-CDE Lender seeks a Loan Modification of any QLICI Loan Document, the Sub-CDE Lender ("**Requesting Lender**") shall



# UNOFFICIAL COPY

send to Direct Lender ("**Receiving Lender**") such proposed Loan Modification amendments relating to such QLICI Loan. Notwithstanding anything to the contrary herein, in the event that the Sub-CDE Lender must make an amendment or modification solely to comply with the NMTC Program Requirements, then Direct Lender's consent shall not be necessary for such modification or amendment provided that (i) the Sub-CDE Lender provides Direct Lender with at least ten (10) Business Days prior written notice of the modification or amendment, and (ii) such modification or amendment shall not materially impair the ability of Borrower to repay the Direct Loan or Direct Lender's interest in the Real Property Collateral or rights hereunder.

13. **Sub-CDE Lender's Representations and Warranties.** The Sub-CDE Lender makes the following representations and warranties to the Direct Lender:

(a) **Term.** The maturity date of the QLICI Notes is December 31, 2052.

14. **Other Services.** This Agreement shall constitute a continuing agreement and each party may, without notice to any other party, lend money, extend credit and provide other financial services or accommodations to or on behalf of any entity, including the Borrower.

15. **Delays and Waivers.** No delay on the part of any Lender in exercising any right, power or privilege granted hereunder shall operate as a waiver thereof, and no purported waiver of any default, breach or violation of any term or provision contained herein shall be deemed to be a waiver of any such term or provision unless the waiver is in writing and signed by the waiving party. The rights or remedies herein expressly specified are cumulative and not exclusive of any other rights and remedies which the parties would otherwise have.

16. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which when so executed and delivered (whether by telecopy or otherwise) shall be an original, but all of which together shall constitute one and the same instrument.

17. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of each of the parties, their successors and assigns. References herein to each party shall be deemed to refer to such party and its successors and assigns. No other person shall have or obtain any right, benefit, priority or interest under this Agreement.

18. **Attorneys' Fees.** In the event that any action or suit is filed between or among any of the parties to this Agreement as such might relate to this Agreement, the prevailing party shall be entitled to recover all of its reasonable attorneys' fees and out-of-pocket costs, in addition to all other sums which it may be entitled from the other party or parties.

19. **Governing Law.** This Agreement shall be construed in accordance with the internal laws, other than the conflict of law's provisions thereof, of the State of Illinois. Each Lender irrevocably consents to the nonexclusive jurisdiction and venue of any state or federal court sitting in Cook County, Illinois over any action or proceeding arising out of or relating to this Agreement.

20. **Unenforceable Terms.** If any term or provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any application thereof shall not be affected thereby. To the extent that a provision is deemed unenforceable by virtue of its scope, but may be enforceable by limitation of such scope, such provision shall be enforceable to the fullest extent permitted under the laws and public policies of the State of Illinois.

# UNOFFICIAL COPY

21. **Receivership.** Only the Direct Lender shall have the right to appoint a receiver or to collect rents directly. Any funds remaining after cure of the Direct Loan shall be available for application to amounts due and payable under the QLICI Loans.

22. **Entire Agreement; Amendments.** This Agreement contains the entire agreement of the parties hereto with respect to the transactions contemplated hereby. No amendment, modification, or waiver of any provision hereof shall be valid unless in writing signed by all the parties.

23. **Notices.** Any notice to any Lender in conjunction with this Agreement shall be given in writing and be deemed to have been given when actually received by hand delivery or reputable overnight carrier, charges prepaid, properly addressed to a Lender at its office set forth below as such notice may be amended from time to time.

If to Direct Lender:

National Cooperative Bank, N.A.  
2011 Crystal Drive, Suite 800  
Arlington, Virginia 22202  
Attention: Corporate Banking  
Email: gexum@ncb.coop

COOK COUNTY  
RECORDER OF DEEDS

With a copy to:

Gallagher Evelius & Jones LLP  
218 North Charles Street, Suite 400  
Baltimore, Maryland 21201  
Attention: Michael J. Henigan, Esq.  
Facsimile: 410-468-2786  
Email: mhenigan@gejlaw.com

COOK COUNTY  
RECORDER OF DEEDS

If to Sub-CDE Lender:

CDF Suballocatee XXXVII, LLC  
c/o Department of Planning and Development, City of Chicago  
121 N LaSalle, Room 1000  
Chicago, IL 60602  
Attention: Commissioner, Department of Planning and Development  
Fax: (312) 747-9207  
Attention: Deputy Commissioner for Development Finance, Department of Planning and Development  
Fax: (312) 744-2324

and

CDF Management LLC  
c/o Department of Planning and Development, City of Chicago  
121 N LaSalle, Room 1000  
Chicago, IL 60602  
Attention: Commissioner, Department of Planning and Development  
Fax: (312) 747-9207  
Attention: Deputy Commissioner for Development Finance, Department of Planning and Development

**UNOFFICIAL COPY**

Fax: (312) 744-2324

With a Copy To:

Perkins Coie LLP  
 131 South Dearborn Street, Suite 1700  
 Chicago, IL 60603-5559  
 Attention: Bruce Bonjour  
 Telephone: (312) 324-8650  
 Facsimile: (312) 324-9650  
 E-mail: BBonjour@perkinscoie.com

COOK COUNTY  
 RECORDER OF DEEDS  
 COOK COUNTY  
 RECORDER OF DEEDS

and

S.B. Friedman & Company  
 221 North LaSalle Street, Suite 820  
 Chicago, Illinois 60601  
 Attention: Tony Q. Smith  
 Facsimile: (312) 424-4262  
 E-mail: tsmith@sbfriedman.com

**IN THE CASE OF NOTICE TO ANY PARTY, A COPY SHALL ALSO BE PROVIDED TO:**

71/Jeffery Investment Fund, LLC  
 c/o PNC Financial Services Group  
 The Tower at PNC Plaza, 14th Floor  
 300 Fifth Avenue  
 Mailstop: PT-PTWR-14-4  
 Pittsburgh, Pennsylvania 15222-2401  
 Attention: NMTC Asset Management  
 Facsimile: (412) 762-5022  
 E-mail: nmtcreporting@pnc.com

With a Copy To:

Kutak Rock LLP  
 1650 Farnam Street  
 Omaha, Nebraska 68102  
 Attention: Scott C. Neill  
 Facsimile: (402) 346-1148  
 E-mail: scott.neill@kutakrock.com

COOK COUNTY  
 RECORDER OF DEEDS

**[Remainder of page intentionally left blank]**

# UNOFFICIAL COPY

IN WITNESS WHEREOF, this Agreement has been duly executed as of the date first written above.

## DIRECT LENDER:

**NATIONAL COOPERATIVE BANK, N.A.,**  
a national bank

By: [Signature]  
Name: Gloria Exum  
Title: Senior Vice President

Commonwealth of Virginia

STATE OF \_\_\_\_\_, CITY/COUNTY OF Arlington, to wit:

I HEREBY CERTIFY, that on this 25<sup>th</sup> day of January, 2019, before me, the undersigned Notary Public, personally appeared Gloria Exum, who acknowledged himself /herself to be the SVP of National Cooperative Bank, N.A., a national bank, known to me (or satisfactorily proven) to be the person who executed the foregoing Intercreditor Agreement and acknowledged that he/she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Signature] (SEAL)  
Notary Public Monica Y Fisher  
My Commission expires: 7/31/2019



Monica Y Fisher  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. #7117298  
My Commission Expires  
7/31/2019

# UNOFFICIAL COPY

IN WITNESS WHEREOF, this Agreement has been duly executed as of the date first written above.

## DIRECT LENDER:

**NATIONAL COOPERATIVE BANK, N.A.,**  
a national bank

By: *Glenn Eum*  
Name: Glenn Eum  
Title: Senior Vice President

Commonwealth of Virginia  
STATE OF \_\_\_\_\_, CITY/COUNTY OF Arlington, to wit:

I HEREBY CERTIFY, that on this 15<sup>th</sup> day of January, 2019, before me, the undersigned Notary Public, personally appeared Glenn Eum, who acknowledged himself /herself to be the SVP of National Cooperative Bank, N.A., a national bank, known to me (or satisfactorily proven) to be the person who executed the foregoing Intercreditor Agreement and acknowledged that he/she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

*Monica Fisher* (SEAL)  
Notary Public Monica Fisher  
My Commission expires: 7/31/2019



Monica Y. Fisher  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. #7117268  
My Commission Expires  
7/31/2019



# UNOFFICIAL COPY

IN WITNESS WHEREOF, this Agreement has been duly executed as of the date first written above.

## DIRECT LENDER:

**NATIONAL COOPERATIVE BANK, N.A.,**  
a national bank

By: Gloria Exum  
Name: Gloria Exum  
Title: Senior Vice President

Commonwealth of Virginia  
STATE OF \_\_\_\_\_, CITY/COUNTY OF Arlington, to wit:

I HEREBY CERTIFY that on this 25<sup>th</sup> day of January, 2019, before me, the undersigned Notary Public, personally appeared Gloria Exum, SVP, who acknowledged himself /herself to be the SVP of National Cooperative Bank, N.A., a national bank, known to me (or satisfactorily proven) to be the person who executed the foregoing Intercreditor Agreement and acknowledged that he/she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Monica Y Fisher (SEAL)  
Notary Public Monica Y Fisher  
My Commission expires: 7/31/2019



Monica Y Fisher  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. #7117296  
My Commission Expires  
7/31/2019

# UNOFFICIAL COPY

IN WITNESS WHEREOF, this Agreement has been duly executed as of the date first written above.

## DIRECT LENDER:

**NATIONAL COOPERATIVE BANK, N.A.,**  
a national bank

By: Gloria Exum  
Name: Gloria Exum  
Title: Senior Vice President

Commonwealth of Virginia  
STATE OF \_\_\_\_\_, CITY/COUNTY OF Arlington, to wit:

I HEREBY CERTIFY, that on this 25<sup>th</sup> day of January, 2019, before me, the undersigned Notary Public, personally appeared Gloria Exum, who acknowledged himself /herself to be the SVP of National Cooperative Bank, N.A., a national bank, known to me (or satisfactorily proven) to be the person who executed the foregoing Intercreditor Agreement and acknowledged that he/she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Monica Y. Fisher (SEAL)  
Notary Public Monica Y. Fisher  
My Commission expires: 7/31/2019



Monica Y. Fisher  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. # 1117298  
My Commission Expires  
7/31/19

# UNOFFICIAL COPY

IN WITNESS WHEREOF, this Agreement has been duly executed as of the date first written above.

## SUB-CDE LENDER:

**CDF SUBALLOCATEE XXXVII, LLC,**  
an Illinois limited liability company

By: CDF Management LLC,  
an Illinois limited liability company,  
its Managing Member

By: *Aarti Kotak*  
Aarti Kotak  
Vice-President and Secretary-Treasurer

STATE OF IL, CITY/COUNTY OF Cook, to wit:

I HEREBY CERTIFY, that on this 29 day of January, 2019, before me, the undersigned Notary Public, personally appeared AARTI KOTAK, who acknowledged himself to be the Vice-President and Secretary-Treasurer of CDF Management LLC, an Illinois limited liability company, the managing member of CDF Suballocatee XXXVII, LLC, an Illinois limited liability company, known to me (or satisfactorily proven) to be the person who executed the foregoing Intercreditor Agreement and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

*Carolyn Hines* (SEAL)  
Notary Public  
My Commission expires: 7/23/2020



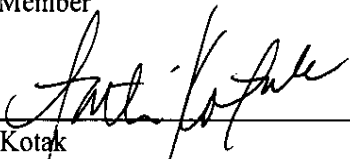
# UNOFFICIAL COPY

IN WITNESS WHEREOF, this Agreement has been duly executed as of the date first written above.

## SUB-CDE LENDER:

**CDF SUBALLOCATEE XXXVII, LLC,**  
an Illinois limited liability company

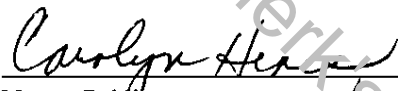
By: CDF Management LLC,  
an Illinois limited liability company,  
its Managing Member

By:   
Aarti Kotak  
Vice-President and Secretary-Treasurer

STATE OF IL, CITY/COUNTY OF Cook, to wit:

I HEREBY CERTIFY, that on this 29 day of January, 2019, before me, the undersigned Notary Public, personally appeared AARTI KOTAK, who acknowledged himself to be the Vice-President and Secretary-Treasurer of CDF Management LLC, an Illinois limited liability company, the managing member of CDF Suballocatee XXXVII, LLC, an Illinois limited liability company, known to me (or satisfactorily proven) to be the person who executed the foregoing Intercreditor Agreement and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

 (SEAL)  
Notary Public  
My Commission expires: 7/23/2020



# UNOFFICIAL COPY

## EXHIBIT A

### PROPERTY DESCRIPTION

#### PARCEL 1:

THE WEST 74.14 FEET OF LOT 7, LOTS 8 AND 9 (EXCEPT THE NORTH 22 FEET OF SAID LOTS 7, 8 AND 9); THE NORTH 67 FEET AND THE SOUTH 100 FEET OF LOT 11, LOTS 12, 13 AND LOT 16 (EXCEPT THE EAST 32 FEET THEREOF AND EXCEPT THE WEST 7.67 FEET OF LOT 16) ALL IN BLOCK 2 IN 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.

#### PARCEL 2:

LOTS 11 TO 20, BOTH INCLUSIVE (EXCEPT THE NORTH 22 FEET OF LOTS 11 AND 16), IN CARL LUNDAHL'S RESUBDIVISION OF LOTS 5 AND 6 AND LOT 7 (EXCEPT THE WEST 74.14 FEET THEREOF) IN BLOCK 2 IN STAVE AND KLEMM'S SUBDIVISION OF THE NORTHEAST 1/4 OF SECTION 25, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, TOGETHER WITH THE VACATED 8-FOOT WIDE NORTH-SOUTH ALLEY LYING WEST OF AND ADJOINING LOTS 11 TO 15 AFORESAID, AND ALL OF VACATED CLYDE AVENUE LYING EAST OF AND ADJOINING LOTS 11 TO 15, LYING WEST OF AND ADJOINING LOTS 16 TO 20 AFORESAID, LYING NORTH OF A LINE EXTENDED FROM THE SOUTHEAST CORNER OF SAID LOT 15 TO THE SOUTHWEST CORNER OF SAID LOT 20, AND LYING SOUTH OF A LINE EXTENDED FROM A POINT ON THE EAST LINE OF SAID LOT 11, A DISTANCE OF 22.00 FEET SOUTH OF THE NORTHEAST CORNER THEREOF TO A POINT ON THE WEST LINE OF SAID LOT 16, A DISTANCE OF 22.00 FEET SOUTH OF THE NORTHWEST CORNER THEREOF, IN COOK COUNTY, ILLINOIS.

#### PARCEL 3:

LOTS 1 TO 7, BOTH INCLUSIVE, IN E.T. HENDEE'S RESUBDIVISION OF LOTS 14, 15 AND THE WEST 7.67 FEET OF LOT 16 IN BLOCK 2 IN STAVE AND KLEMM'S SUBDIVISION OF THE NORTHEAST 1/4 OF SECTION 25, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, TOGETHER WITH THE VACATED 16-FOOT WIDE NORTH-SOUTH ALLEY LYING WEST OF AND ADJOINING SAID LOTS 1 TO 5 AFORESAID, AND ALL OF VACATED CLYDE AVENUE, LYING EAST OF AND ADJOINING SAID LOTS 1 TO 5, AND LYING SOUTH OF THE NORTH LINE OF LOT 5, EXTENDED EAST AND LYING NORTH OF THE SOUTH LINE OF LOT 1 EXTENDED EAST, IN COOK COUNTY, ILLINOIS.

#### PARCEL 4:

NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS APPURTENANT TO AND FOR THE BENEFIT OF PARCELS 1, 2 AND 3, TAKEN AS A TRACT, OVER, ACROSS AND UPON THE SOUTH 20.00 FEET OF LOT 10 IN BLOCK 2 IN 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, AND ALSO A NON-EXCLUSIVE EASEMENT FOR PARKING PURPOSES APPURTENANT TO AND FOR THE BENEFIT OF SAID PARCELS 1, 2 AND 3, TAKEN AS A TRACT, OVER THOSE PORTIONS OF LOT 10 (EXCEPT THE NORTH 22.00 FEET THEREOF) IN BLOCK 2 IN STAVE AND KLEMM'S SUBDIVISION, AFORESAID, CONSTRUCTED FOR THE PURPOSE OF PARKING MOTOR VEHICLES, AS CREATED BY RECIPROCAL GRANT OF EASEMENTS AGREEMENT DATED FEBRUARY 23, 1989 AND RECORDED JUNE 29, 1989 AS DOCUMENT NO. 89298743 AND FILED JUNE 29, 1989 AS DOCUMENT LR 3805916